

# Committee for the Environment

## Report on the Planning Bill (NIA 7/10)

Together with the Minutes of Proceedings and Minutes of Evidence

Ordered by the Committee for the Environment to be printed 22 February 2010  
Report: NIA 49/10/11R (Committee for the Environment)

**Session 2010/2011**

**Fifth Report**

### Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2007 has been as follows:

Mr Cathal Boylan (Chairperson) <sup>9</sup>  
Mr Thomas Buchanan <sup>7,8,13</sup>  
Mr Trevor Clarke <sup>15</sup>  
Mr Willie Clarke <sup>14</sup>  
Mr John Dallat <sup>5</sup>  
Mr Danny Kinahan <sup>3,4</sup>  
Mr Patsy McGlone (Deputy Chairperson) <sup>6,9,10,12</sup>  
Mr Alastair Ross <sup>1</sup>  
Mr George Savage <sup>2,16</sup>  
Mr Peter Weir  
Mr Brian Wilson <sup>11</sup>

<sup>1</sup> On 21 January 2008, Alastair Ross was appointed as a Member and Mr Alex Maskey ceased to be a Member

<sup>2</sup> On 15 September 2008 Mr Roy Beggs replaced Mr Sam Gardiner

<sup>3</sup> On 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong

<sup>4</sup> On 22 June 2009 Mr Danny Kinahan replaced Mr David McClarty

<sup>5</sup> On 29 June 2009 Mr John Dallat replaced Mr Tommy Gallagher

<sup>6</sup> On 3 July 2009 Mrs Dolores Kelly replaced Mr Patsy McGlone as Chairperson

<sup>7</sup> On 14 September 2009 Mr Adrian McQuillan replaced Mr Trevor Clarke

<sup>8</sup> On 1 February 2010 Jonathan Bell replaced Mr Adrian McQuillan

<sup>9</sup> On 12 April 2010 Mr Cathal Boylan was appointed as Chairperson and Mrs Dolores Kelly ceased to be a Member

<sup>10</sup> On 12 April 2010 Mr Dominic Bradley was appointed as Deputy Chairperson

<sup>11</sup> On 13 April 2010 Mr Brian Wilson was appointed as a Member and Mr David Ford ceased to be a Member

<sup>12</sup> On 21 May 2010 Mr Patsy McGlone replaced Mr Dominic Bradley as Deputy Chairperson

<sup>13</sup> On 13 September 2010 Mr Thomas Buchanan replaced Mr Jonathan Bell

<sup>14</sup> On 13 September 2010 Mr Willie Clarke replaced Mr Daithi McKay

<sup>15</sup> On 13 September 2010 Mr Trevor Clarke replaced Mr Ian McCrea

<sup>16</sup> On 1 November 2010 Mr George Savage replaced Mr Roy Beggs

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# **Executive Summary**

1. This report sets out the Committee for the Environment's consideration of the Planning Bill.
2. The Bill consisted of 248 clauses and 7 schedules and provides the legislative basis for a comprehensive reform of the planning system in Northern Ireland and gives effect to the Review of Public Administration changes which will transfer the majority of functions and decision making responsibilities relating to local development planning, development management plus planning enforcement to district councils.
3. The Committee sought a balanced range of views as part of its deliberations on the Planning Bill and requested evidence from interested organisations and individuals as well as from Assembly Research and Library Services, other Committees and the DOE.
4. The Committee was broadly supportive of the Bill and agreed the majority of clauses are drafted. However the following key issues were identified, many of which led to Departmental or Committee amendments or recommendations for consideration and action.

## **Key issues**

### **Clause-Specific Issues**

Part 1 – Functions of Department of the Environment with Respect to Development of Land

#### **Planning functions of the Department to encompass well-being (Clause 1)**

5. Many responses to the Committee's call for evidence indicated concern that the function of the Department identified within the Bill was no different from its role under current planning arrangements. Most respondents felt the function should be expanded to reflect the desired outcome of the new planning system and the Committee agreed with the concerns of stakeholders and sought amendments to improve the Department's commitment to sustainable development and well-being as a way of recognising the full aspiration of the new approach to planning in Northern Ireland.

#### **Requirements on Department and councils with regard to observing policies and guidance issued by the Department for Regional Development (Clauses 1, 5 & 8)**

6. Several respondents to the Committee's call for evidence were concerned about the difference in wording between the Department's and councils' obligations to policies and guidance issued by DRD compared with those of councils to the regional development strategy in Clause 8(5). The Committee sought an amendment to remove any risk of misinterpretation.

### **Sustainable Development (Clauses 1 & 5)**

7. Stakeholders were concerned about the lack of commitment contained in the Bill for both the functions of the Department and those of local authorities. The Committee sought an amendment that would require the Department and councils to 'further' sustainable development.

### **Timing of Departmental Statement of Community Involvement (Clause 2)**

8. Some organisations that submitted evidence to the Committee on this clause were concerned that the provision to produce a statement of community involvement had been in statute for several years but the Department had still to produce one. They suggested that a finite time period be allocated on the face of the Bill for its production. The Committee suggested that the Department should be given a year to prepare and publish its statement of community involvement from the day appointed for the coming into operation of the relevant section.

Part 2 – Local Development Plans

### **Department's oversight powers (Clauses 11, 12, 15, 16, 26, 29, 69, 71 & 74 & 78)**

9. The Department's power of oversight and call-in throughout the Bill was an issue raised by many respondents to the Committee's call for evidence on the Bill. The Department stated that it is imperative that policy and direction which are set at the centre, are adhered to and achieved through local development plans. Therefore it is necessary for central government to have a role in assessing local development plans and, if necessary, intervening in their production to achieve these objectives. The Committee was content with this rationale and the balance of Departmental powers proposed.

### **Inclusion of Climate Change in Survey of District (Clause 3)**

10. The Committee was keen to see the inclusion of a requirement for local authorities to take climate change into consideration when conducting the survey of the district and asked the Department to consider amending the clause. In the absence of such an amendment from the Department the Committee agreed to bring forward its own at consideration stage.

### **Terms of oversight of Council Statement of Community Involvement (Clause 4)**

11. Respondents to the Committee's call for evidence suggested that any ambiguity in the meaning of this clause should be removed by replacing 'may' with 'must' or 'will'. The Committee asked the Department to consider this but was advised that the existing wording allows the Department flexibility in how it deals with discrepancies it has with councils' statements of community involvement. The Committee accepted this rationale.

## **Local Development Plan (Clause 6)**

12. Many respondents to the Committee's call for evidence called for the Bill to make a statutory link between local development plans and community plans and the Committee asked the Department to consider this. The Department replied that local development plans will be one way in which councils deliver their community plans however community plans do not yet exist in legislation. They informed the Committee that legal opinion suggests that any link should be established by using future local government legislation to amend this planning legislation. The Minister endorsed this position in a letter to the Committee.

## **Plan Strategy and Area Development Plans (Clause 8)**

13. The Committee wanted more information on this clause and was advised that subordinate legislation would form the form and content of each development plan document, including mapping requirements and justification of the policies. The Committee accepted the information but noted that there needed to be clear links with current area plans and new plan strategies as they were being developed.

## **Independent Examination of plans (Clause 10)**

14. There was considerable concern among stakeholders about the proposals in this clause to enable the Department to appoint an independent examiner. Some felt that it was giving the Department inappropriate control. Some suggested that if the Planning Appeal Commission (PAC) did not have the capacity to meet requirements, it should be tasked to PAC to make the appointment of an Independent Examiner. The Department stressed that PAC will be the first choice for conducting independent examinations however if they are unable to do so in the appropriate timescale, this clause would give sufficient flexibility to appoint an alternative examiner should the Commission not be in a position to conduct a hearing in exceptional circumstances when there are unacceptable delays caused by the increasing workload of PAC. The Department agreed to amend the clause to strengthen its position.

15. The Committee was also concerned about the allocation of costs for the process. Members were concerned that whilst the costs of PAC carrying out its duties are covered by OFMdFM, there was no indication of how an independent examiner would be paid if used. The Department later confirmed that it would pay for independent examinations which are conducted by an independent person it appoints.

## **Consultation with PAC (Clauses 10 & 16)**

16. Aware that PAC in particular had concerns about the Department's power to appoint independent examiners, the Committee asked the Department to indicate how it would ensure that PAC were supportive of the approach being proposed. The Department stressed that it sees it as critical that there is flexibility to appoint external independent examiners regardless of the level of resources which the PAC may have, as there may be circumstances where a large number of plans are submitted for independent examination at the same time. This approach would allow independent examinations to take place expediently, thus reducing delays to this stage of the development plan process.

## **Withdrawal of development plan documents (Clause 11)**

17. There was a suggestion from stakeholders that details of the withdrawal of development plan documents should be on the face of the Bill rather than in subordinate legislation. However,

the Department argued that due to the technical and administrative nature of the processes, it is more appropriate that these details are in regulations so that they can be easily amended as part of the evolution of the new planning system. The Committee accepted this response.

### **Review of local development plans (Clause 13)**

18. Stakeholders had several concerns about the proposals for reviewing local development plans. Several wanted greater detail on the format of reviews, while others wanted clarification of the intervals at which reviews would take place. There was also a suggestion that councils should have responsibility for triggering the review process. The Department stated that regulations will require councils to carry out a review of their plan at least every 5 years however they will be able to trigger a review process at any time. The Committee was content with this explanation.

### **Directing councils to prepare joint plans (Clause 18)**

19. While most stakeholders were content with this clause, there was concern that the Bill does not make adequate provision for linear infrastructure, such as electricity cables, that might transcend several council boundaries. The Department replied that the Bill provides the power for the Department to prepare a plan on a specific issue for the whole of the region as appropriate or alternatively the Department for Regional Development has powers to deal with Regional Planning through the Regional Development Strategy and the Committee was content with this response.

### **Cost of annual monitoring reports (Clause 21)**

20. Councils in particular were concerned about the additional costs and workload that would be incurred by the requirement to produce an annual report to the Department. The Department replied that it sees the monitoring and review of plans as an essential element in establishing how plans are being implemented and whether any changes are required to keep them up to date and relevant. The Committee accepted this response.

### **Regulations (Clause 22)**

21. Most respondents to the Committee's call for evidence called for a commitment from the Department to producing the regulations required to implement the Bill and a timeframe for their production. The Committee was provided with a memorandum of delegated powers that set out the regulations provided for in the Bill and the Department provided a summary of the extensive programme of secondary legislation and an outline timetable.

Part 3 – Planning Control

### **Meaning of development (Clause 23)**

22. A few respondents had concerns about the proposals for applications for demolition and suggested that they should only be required within conservation areas or where it affected listed buildings. The Department confirmed that this clause carries over the current provisions from the 1991 Planning Order and that currently consent for demolition is only required in these circumstances. The Committee was content with this clause.

### **Hierarchy of development (Clause 25)**

23. Several stakeholders felt that it would be helpful if broad thresholds between major and local applications were given in the Bill and that it would be helpful if the Bill could outline circumstances in which the Department may reclassify a development proposal. The Department's response stated that thresholds for regionally significant and major development will be provided in subordinate legislation, and this will be subject to consultation. The Department will be able to class a local development as 'major' where a request is made by the Council to do so. The Committee welcomed the detailed explanations provided and was content with the clause as drafted.

### **Definition of regionally significant (Clause 26)**

24. Respondents sought confirmation that the Department would clearly define what constitutes regionally significant and major developments. The Department responded that the definition of 'regionally significant' will be defined in subordinate legislation. The Committee was content with this.

### **Pre-application community consultation (Clause 27)**

25. Most respondents to the Committee welcomed proposals for pre-application consultation by developers however some felt the proposals in the Bill fell short of the Department's commitments following consultation to make pre-consultation a compulsory requirement and for a report of the consultation to be made publicly available. The Department suggested that pre-application engagement with statutory consultees is part of creating a more proactive and positive development management culture. Effective front-loading of the application process, with a strong emphasis on pre-application engagement can lead to proposals being shaped prior to issues arising, shorter delays in processing times and higher quality planning applications. The Committee accepted the response.

### **Pre-application consultation report (Clause 28)**

26. Many respondents to the Committee's call for evidence wanted an opportunity to be provided for the public and community groups to comment on the report. The Department stated that the consultation report would be made available to the public and published on the internet.

### **Predetermination hearings (Clause 30)**

27. Several respondents wanted to see minimum criteria provided in association with this clause and the Department responded that this would be provided by subordinate legislation.

### **Development rights for minerals (Clause 32)**

28. In relation to this clause it was suggested that it should include permitted development rights for minerals. The Department responded that it was looking at this issue but needs to give the potential amenity impacts of permitted development rights more consideration.

### **Simplified Planning Zones (Clauses 33 – 38)**

29. There were mixed views, both in the Committee and in stakeholder responses, in relation to the need for simplified planning zones. Several stakeholders welcomed provisions relating to simplified planning and enterprise zones and one stated that it would be keen that the non-port lands within the Harbour Estate be considered for such provisions. However, other respondents to the Committee's call for evidence had concerns about the zones. Some felt it was important to

exclude conservation areas and areas of natural importance from simplified planning zones, some that the justification for these anachronistic zones no longer exist and that simplified planning zones should be remodelled as Renewable Energy Zones and others called for more information relating to the proposed arrangements for 'zoning', in particular land zoned for sport and physical recreation.

30. The Committee sought additional information from the Department and Assembly Research to assist in their consideration on the inclusion of provisions to establish simplified planning zones. The Committee concluded that the provisions for simplified planning zones should remain in the Bill.

### **Neighbourhood notification (Clauses 41 & 42)**

31. Concerns were raised by the Committee under these clauses in relation to the need for proper and effective notification of planning proposals. The Department informed the Committee that the Minister has agreed to bring forward subordinate legislation in relation to site notices and neighbourhood notification. The Committee welcomed this response.

### **Aftercare conditions on landfill sites (Clause 53)**

32. In response to suggestions from stakeholders, the Committee asked the Department to consider expanding the scope of this clause to include a power to impose aftercare conditions on landfill sites. The Department responded that the management of landfill sites is currently dealt with under the Landfill Regulations (Northern Ireland) 2003 and the Pollution Prevention and Control and the Waste Management Licensing regimes, in the context of relevant EU and other requirements.

### **New material to appeal (Clause 58)**

33. The Committee asked the Department to consider an amendment that would restrict the introduction of new material at planning appeals. However, on reflection recognised that there may be circumstances under which such information might be allowed and subsequently agreed a Departmental amendment to this effect.

### **Better enforcement of developer contributions (Clause 75)**

34. The Committee called for better enforcement of developer contributions and asked the Department to consider how this might be achieved. The Department suggested that, similarly to notices of completion, this is an issue that could be considered to become part of the responsibilities of Building Control once the two functions were located within councils.

Part 4 – Additional Planning Control

### **Levels and scales of fines (Clauses 84, 102, 116, 125, 136, 133, 146, 148, 149)**

35. Several respondents to the Committee's call for evidence stated that the fines included in the Bill, whether listed as scales or levels, were no longer sufficient deterrents to prevent unauthorised demolition of listed buildings or trees. The Committee was mindful of this, and the fact that the fine amounts had been largely determined 20 years ago in The Planning (Northern Ireland) Order 1991, and recommended that the Department brings forward amendments to raise several fines and scales throughout the Bill.



## **Protection of listed buildings and trees (Clauses 84 & 125)**

36. As a result of seeking higher fines in association with offences in these clauses the Committee recognised that there would be an increased risk to protected buildings and trees, and to those likely to merit such protection, and urged the Department to ensure that enforcement of compliance was maximised.

## **Revocation of listed building consent (Clause 97)**

37. Some members expressed concern that current listing practices can hinder growth and development and the image of an area and suggested that more consideration should be given to supporting listed building owners. The Committee agreed it should recommend that guidance on applying PPS6 should encourage sensitivity and balance.

## **Arbitration (Clauses 97 & 103)**

38. The Committee asked the Department to comment on the need for and provision of arbitration in relation to decisions to revoke or modify listed building consent or designate a conservation area. The Department replied that such powers were provided solely as a safeguard and will only be used in rare, exceptional circumstances if a council fails to fulfil its duties. The Committee was content with this explanation.

## **Roles of planning authority and NIEA in relation to hazardous substances (Clause 107)**

39. The Committee sought more information on the way in which this clause would be implemented and the respective roles of the planning authority and NIEA with respect to its implementation. The Department clarified that hazardous substances must be disposed of in ways which render them as safe as possible and minimise their environmental impact according to NIEA regulations.

## **Inclusion of trees in local development plans (Clause 121)**

40. The Committee asked the Department to comment on the approach proposed for dealing with areas of trees and dead and dying trees. The Department responded that this clause was transferring existing powers to councils with no radical changes. It confirmed that the clause provides that Tree Protection Orders (TPOs) will include areas of trees and does not see any requirement to expand TPOs to include areas of trees as entire woodlands can already be encompassed within TPOs and blanket TPOs are automatically established within conservation areas. The Department also indicated it would not change its approach to dead or dying trees but it will issue guidance on good practice.

## **Replacement of trees (Clause 124)**

41. The Committee sought confirmation that sufficient flexibility would be provided with this clause to allow a tree to be replaced near, but not necessarily in, the place the previous tree stood where there had been a disease problem. The Department confirmed that this was the case.

## **Enforcement of tree protection orders (Clause 125)**

42. In addition to recommending the fine in this clause be raised the Committee suggested that the two offences contained in this clause be codified into one offence. The Department accepted it might be possible to merge the two offences, but it refused to do so, on the grounds that it would reduce the flexibility to deal with the potentially wide range of contraventions under the clause.

### **Obtaining expert information (Clauses 128, 160 & 197)**

43. The Committee was concerned about the availability and accessibility of expert information to councils once planning functions had been devolved. Members were concerned that where expertise was not required on a frequent basis there may be a considerable cost associated with obtaining it. The Committee also asked for confirmation that the possibility of expertise provided from the centre being charged as a cost to councils could be ruled out. The Department's response indicated that statutory bodies will be designated through subordinate legislation as statutory consultees to the planning system and a list is being compiled with a view to public consultation. So far, there has been no discussion of fees with any of these bodies.

Part 5 – Enforcement

### **Enforcement (Clauses 130 & 152-154]**

44. The Committee had concerns on enforcement and requested details from the Department on enforcement practices to date including the number of staff transferred from Planning Service to the enforcement section and a response on how the issue of legal costs influences decisions on enforcement action.

45. The Committee asked about the expectation on councils to carry out enforcement activities; was it a statutory function, for example and what were the resource implications. The Department replied that enforcement will be demand-led and that it is impossible to say how much resource will be required as some councils may put more emphasis on enforcement than others. The Department indicated that their key objectives for planning enforcement are:

- To bring unauthorised activity under control
- To remedy the undesirable effects of unauthorised development
- To take legal action where necessary

### **Delegated powers of the Bill (Clauses 152, 153, 202, 208, 226, 229, 244, & 247)**

46. The Committee was provided with a Delegated Powers Memorandum by the Department and sought advice from the Examiner of Statutory Rules in relation to the delegated powers within the Bill. The Examiner informed the Committee that most powers to make subordinate legislation within the Bill are in the form of orders and are afforded an appropriate level of scrutiny.

47. The Committee agreed its own amendment to the clause containing the commencement orders for Part 3 of the Bill to ensure that responsibility for planning control cannot pass to local authorities without the assent of the Assembly.

48. The Examiner drew the Committee's attention to powers in 2 other clauses which are currently afforded no Assembly scrutiny and suggested these be made subject to negative resolution which the Department agreed to do.

49. The Examiner also drew the Committee's attention to the fact that the Bill allocates the function of appointing special advocates for the purposes of this clause to the Advocate General for Northern Ireland. He pointed out that as a consequence of this, rules under Clause 229(5) would be made by the Lord Chancellor and laid before Parliament at Westminster in accordance with the negative procedure there (Clause 229(6)). The Examiner suggested that this is out of place in Clause 229 which, in contrast to 228, is the fully devolved provision relating to the public interest relating to the security of premises or property other than that within Clause 228. He therefore suggested that Clause 229 should more appropriately confer functions on the Department of Justice and the Attorney General for Northern Ireland and that all the rules made under Clause 229 should be subject to draft negative resolution. Following consultation with the Department of Justice, the Department agreed to make these changes.

### **Time limits (Clause 131 & 44)**

50. The Committee questioned the continuation of a 10 year time limit for breaches of planning control other than for building, engineering, mining or other operations and the change of use of any building to use as a dwelling house Members asked if the Department would consider reducing this period on the grounds that a single period would reduce confusion and better enforcement should require less time to identify such breaches. The Department agreed to bring forward amendments bringing both periods to 5 years.

### **Stop notices (Clauses 134-136, 149-150 & 183-186)**

51. The Committee received a written delegation requesting that the issuing of stop notices be looked at more closely during scrutiny of the Bill. The Department advised that powers in the Planning Bill will enable the planning authority to be able to prevent unauthorised development at an early stage without first having to issue an enforcement notice. In addition it allows up to 28 days for the planning authority to decide whether further enforcement action is appropriate and what action should be without the breach intensifying by being allowed to continue.

### **Consistency of enforcement (Clause 140)**

52. The Committee sought an indication of if and how the Department would oversee how councils conduct enforcement and if there would be any mechanism to ensure consistency across the different council areas. The Department indicated that the devolution of planning functions to councils would undoubtedly result in variation between councils and that this was natural consequence of devolving planning powers.

### **Clarification of urgent works (Clause 160)**

53. The Committee sought clarification of ownership under this clause and the Department explained that under this clause the planning authority (council or Department) may carry out and recover the costs of urgent works to either a listed building or a building in a conservation whose preservation is important for maintaining the character or appearance of that area. The Committee accepted this explanation.

Part 6 – Compensation

### **Compensation for revoking (Clause 178)**

54. Most of the councils that submitted evidence to the Committee expressed concern about this clause. The Committee sought more information on revoking action to date. The Department

explained that Clause 71 of the Bill allows the Department to intervene if a council is not fulfilling its duties to revoke a planning permission. When such an order is made by the Department it has the same effect as if made by the council. Responsibility for any subsequent compensation payment rests with the council under this clause. The Department indicated it would not consider an amendment but stressed that it anticipated such occurrences to be very rare and that it would also try to seek agreement with the council they do. The Committee accepted this position.

## **Duty of statutory consultees to respond (Clauses 187 & 224)**

55. The Committee was extremely concerned when advised by the Department that in the event of a late or non-response from a statutory consultee, a council would be liable for its decision. This would apply even if a decision that had been made after the agreed time limit had to be revoked as a result of information coming forward from a statutory consultee that had not responded in time. In the Committee's opinion this was unfair and it asked the Department to consider an amendment. When it refused to do so, the Committee agreed its own amendment to table at consideration stage.

Part 7 – Purchase of Estates

## **Interpretation of 'reasonably' (Clause 189)**

56. The Committee sought clarification of the use of the term 'reasonably beneficial use' in this clause. The Department informed the Committee that 'reasonably beneficial use' is not defined in this legislation or in any equivalent UK legislation as each case should be examined on its own individual merits.

PART 8 – Further provisions as to historic buildings

## **The roles of different bodies relating to listed buildings (Clause 196)**

57. Several submission to the Committee's call for evidence requested clarification on the roles of the different bodies relating to listed buildings and the Committee sought further information on this issue. The Department summarised that the current powers of the NIEA will remain with the Department, with the exception of Building Preservation Notices, while the current powers of Planning Service, including enforcement, will devolve to councils.

Part 9 – The Planning Appeals Commission

## **Award of costs (Clause 202)**

58. Several respondents to the Committee's call for evidence felt that the PAC should have the power to award costs where it felt that an appeal had been made frivolously or vexatiously. The Committee agreed with this and asked the Department to consider an amendment which the Department agreed to introduce.

Part 10 – Assessment of Council's Performance or Decision Making

## **Assessment of councils' performance (Clause 203)**

59. The Committee requested more information on how the level of scrutiny under this clause will tie in with the audit function of the Department. The Department replied that this clause

gives it powers to conduct an assessment of a council's performance or appoint a person to do so. The assessment may cover the council's performance of their planning functions in general or of a particular function. The Committee accepted this explanation.

#### Part 11 – Application of Act to Crown Land

60. The only issues raised under this part related to delegated powers which are covered in Part 5.

#### Part 12 – Correction of Errors

### **Correction of errors (Clause 215)**

61. The Committee was concerned that the wording of this clause was cumbersome and thereby difficult to interpret. Members asked if it could be redrafted and welcomed a Departmental amendment accordingly.

#### Part 13 – Financial Provisions

### **Fees and charges (Clause 219)**

62. The Committee sought further information on the setting of fees and the ability of councils to recoup costs for other planning functions other than assessing planning applications. The Department responded that for the first three years after planning functions are transferred to councils, the Department would continue to set the fees. It will review fees after three years with a view to passing responsibility for fee-setting to individual councils.

### **Grants to bodies providing assistance (Clause 221)**

63. One of the respondents to the Committee's call for evidence suggested that this clause should be strengthened by the inclusion of a requirement for bodies to further the understanding of planning policy proposals. Also, that the oversight role of DFP was out of date and no longer needed. The Department agreed to amend the clause to address both issues.

#### PART 14 – Miscellaneous and general provision

### **Involving public agencies (Clause 226)**

64. Councils that responded to the Committee's call for evidence wanted reassurance that councils would be closely involved in any decision to hold a local public inquiry. The Committee also sought clarification of who would cover the costs of government agencies in the event of a public inquiry. The Department clarified that only it could initiate a local public inquiry and that it would pay for any inquiry it causes under this provision. The Committee was content with this response.

### **Compatibility of IT systems (Clause 237)**

65. The Committee questioned the compatibility of council and Departmental IT systems. The Committee accepted the principle that as central and local government systems are required to be of the same standard, the expectation is that they will be compatible.

#### Part 15 – Supplementary

## **Interpretation of reserved matters (Clause 243)**

66. On behalf of respondents to the call for evidence, the Committee asked the Department to interpret 'reserved matters' in this clause. The Department replied that 'reserved matters' is defined in subordinate legislation – the Planning (General Development) Order (Northern Ireland) 1993 and the Committee was content with this response.

Schedule 2 – Review of Old Mineral Planning Permission

## **Definition of dormant sites (Schedule 2)**

67. The Department advised the Committee that it would be amending the definition of 'dormant site' in this schedule to take account of the fact that it has never been enacted and is now out of date.

Schedule 5- The Historic Buildings Council

## **Duration of tenure on Statutory Advisory Councils (Schedule 5)**

68. One of the respondents to the Committee's call for evidence suggested that the period of tenure for a member of the Council should be lengthened to ensure consistency of advice it gives to NIEA. The Committee agreed to recommend that this issue is taken into consideration during the review of the 3 Statutory Advisory Councils that is underway.

Issues relating to the Bill in general

## **Governance of Planning Functions at Council Level**

69. The Committee was extremely concerned about the timing of the Bill because the governance arrangements for ensuring equality and fairness in council decisions are not yet in place. The Department insisted that the Planning Bill would not be implemented until Local Government Reform had taken place and the two processes would progress in tandem.

70. The Committee received a letter of confirmation from the Minister that planning functions would not be devolved to local authorities until the necessary governance arrangements were in place.

71. The Committee also agreed to table its own amendment that will prevent commencement of any powers in Part 3, devolving planning functions to councils, without the prior approval of the Assembly (see delegated powers).

## **Resources**

72. All respondents to the Committee's call for evidence raised the issue of resources. Many were sceptical of the Minister's suggestion that the process of transferring planning powers to local authorities would be cost neutral and the Committee asked the Department for more information.

73. The Department reminded the Committee that it is in the process of consulting on a radical reform of the planning fee structure and maintained that it will be ensuring that in due course fees will more accurately reflect the true cost associated with the development in question. The

Committee welcomed this, acknowledging that the current fee structure was out of synch with the work involved.

## **Capacity and Training**

74. The Committee recognised that the transfer of planning functions to local authorities represented a seismic shift in approach and involvement for councillors and council staff. Along with many respondents to the Committee's call for evidence, members called for training and capacity building to be seen as an essential part of the process.

75. The Department agreed and indicated it was drawing up specifications of how the process would work and would be carrying out a series of pilots across all councils to address the change in culture required.

## **Land Use Strategy**

76. The Committee recognised the need for the Department to retain control over major planning decisions and those of regional significance and welcomed proposals for secondary legislation to set out the criteria for these. However, members inquired on what basis decisions of these kinds would be made by the Department and how, in a plan-led system consistency would be achieved for decisions across Northern Ireland.

77. The Department indicated that the overarching strategy for regionally significant and major planning decisions would be the Regional Development Strategy but the Committee stressed the need to think beyond this to full land use planning akin to that being carried out in Scotland. A land use strategy would look beyond regional development taking other and take that looks at the whole region

## **Review Period**

78. Several stakeholders expressed concern about the process of devolving planning functions to local authorities and suggested that there should be a requirement in the Bill for the Department to review implementation of the bill within 3 years of it being enacted and periodically thereafter. The Committee considered bringing forward its own amendment but eventually agreed that the decision if and when to review implementation of the Bill should be left to policy rather than legislation.

## **Third party right of appeal**

79. The majority of respondents to the Committee's call for evidence on the Bill believed it would be very important to include provision for third party right of appeal in the Bill. Some felt there may be scope to introduce it initially as a transitional provision, while the return of planning powers to local authorities embeds whilst others called for it to be introduced on a limited basis to ensure that vexatious appeals are curbed. Research provided to the Committee outlined the pros and cons of the inclusion of third party appeals and identified various models that could be adopted.

80. In response the Department stated that the Government response to the Planning Reform policy consultation was agreed by the Executive on 25 February 2010. The response indicated that given that the Department had made it clear that there were no proposals to make provision for third party appeals in the current package of reforms, and on the basis of the analysis of responses, there did not appear to be any immediate compelling reason to proceed in

the public interest towards making provision for third party appeals in the current round of planning reform proposals.

## **Community Amenity Levy**

81. There was much discussion in the Committee about the possibility of introducing a Community Infrastructure Levy. Many respondents also believed that consideration should be given to introducing this, at a time to be specified, in order to increase planning gain. 71% of respondents to the Department's consultation on Planning Reform agreed that developers should be required to make a greater contribution towards the provision of infrastructure but no reference is made in the Bill to a community infrastructure fund or similar levy arrangement.

82. The Committee considered an amendment of its own to introduce powers to enable the Department to introduce a Community Amenity Levy in the future but eventually agreed that in the time available it was unable to conduct sufficient research to be sure this was the right approach. Instead it agreed to recommend that the Department should explore the potential of a Community Amenity Levy in the future.

## **Marine Spatial Planning**

83. The Committee expressed disappointment at the absence of any recognition of the roles of the Department and local authorities in relation to marine spatial planning. Neither was there any indication of how potential overlaps between terrestrial and marine planning would be addressed.

## **Notices of Completion**

84. Several respondents to the Committee's call for evidence suggested that notices of completion should be introduced through the Bill. The analysis of the provisions of the Bill provided by QUB, through Assembly Research and Library Services, also drew the Committee's attention to the lack of inclusion of notification of development and completion of development certificates.

85. The Committee agreed to recommend that the Department revisits the issue when the two functions, planning and building control, are together in council.

## **Chief Planner**

86. Several respondents to the call for evidence and the QUB analysis paper on Implementation, Performance and Decision making (Appendix 5) noted that in other regions of the UK, a Chief Planning Officer provides a professional leadership role to complement administrative leadership provided through elected representatives and their departments. The Department advised that the appointment of a Chief Planner does not need to be provided for in legislation but may be appointed at any time such a policy decision might be made.

## **Ensuring vulnerable and hard to reach groups can engage in the planning process**

87. The Committee was concerned that there was a risk that community engagement processes would exclude vulnerable groups and those that were hard to reach. Again reference was made to the Equality Impact Assessment (Appendix 6) which identified that low level literacy rates for example, might act as a barrier to full participation in some planning processes.



88. The Department noted that the Bill requires it to prepare a Statement of Community Involvement setting out its policy for involving the community in its development management functions. However its aim is to encourage and facilitate the involvement of the community rather than require it. The Committee accepted the response but noted the need for close links between a local authority's community plan and the local development planning process.

## **The legacy of area plans**

89. Several respondents, especially local authorities, were concerned about the legacy of current area plans when a new plan-led system came into being. They asked if the area plan framework that is to be inherited by councils will be obsolete and what would happen where area plans were still not in place.

90. The Department advised that plans which have been adopted before planning powers transfer to councils will continue to apply until the new council's own local development plan is adopted.

## **Recommendations**

Clause-specific recommendations

### **Levels and scales of fines (Clauses 84, 102, 116, 125, 136, 133, 146, 148, 149) Clauses 84, 116, 125, 136, 149 & 149**

91. The Committee recommends that the fines of £30,000 are amended to £100,000 to act as a deterrent and reflect the seriousness of the offences as follows:

Clause 84, Page 53, Line 37

Leave out '£30,000' and insert '£100,000'

Clause 116, Page 75, Line 31

Leave out '£30,000' and insert '£100,000'

Clause 125, Page 80, Line 26

Leave out '£30,000' and insert '£100,000'

Clause 136, Page 87, Line 18

Leave out '£30,000' and insert '£100,000'

Clause 146, Page 95, Line 15

Leave out '£30,000' and insert '£100,000'

Clause 149, Page 98, Line 6

Leave out '£30,000' and insert '£100,000'

### **Clauses 102 & 133**

92. The Committee recommends that the fine levels are raised from level 3 to level 5. It also called for an amendment to Clause 102 to make acts causing damage to a listed building a more serious offence by including an option of conviction on indictment to an unlimited fine. The Department provided the following amendment for Clause 133:

Clause 133, Page 85, Line 21  
Leave out '3' and insert '5'

93. While the Department agreed in principle to make the requested amendment to raise the level of fine in Clause 102 it did not produce it in time for the report. The Committee agreed its own amendment to introduce the option of conviction on indictment.

## **Clause 148**

94. The Committee recommends that the level 5 fine is raised to £7,500, as follows:

Clause 148, Page 96, Line 27  
Leave out from 'level' to 'scale,' and insert £7,500'

## **Delegated powers of the Bill (202, 226, 229, 247) Clause 202**

95. On the advice of the Examiner of Statutory Rules, the Committee recommends that the Department requests that OFMdfM brings forward an amendment so that powers regulating the procedure in appeals to the Planning Appeals Commission in Clause 202(5) will be made subject to negative resolution. They are currently subject to no procedure. The Committee agreed the following amendment accordingly:

Clause 202, Page 133, Line 32  
At end insert—  
'(7A) Rules made under subsection (5) shall be subject to negative resolution.'

## **Clause 226**

96. The Committee recommends that powers in Clause 226(3), which allow the Department to make rules regulating the procedure in respect of local inquiries, are subject to negative resolution; consistent with other similar orders in the Bill. They are currently subject to no procedure. The Committee asked the Department to consider such an amendment and was advised that the Minister would be asked to consider the request but a response was not forthcoming in time to be included in the Committee's report.

## **Clause 229**

97. The Committee recommends that reference to the Advocate General in Clause 229(1) and (2) should be amended to the Attorney General to ensure that this clause reflects the fully devolved position and does not require rules made under this clause to be made by the Lord Chancellor and laid before the Parliament at Westminster. The Department agreed to make the following amendment accordingly:

Clause 229, Page 147, Line 14  
Leave out 'Advocate General' and insert 'Attorney General'

Clause 229, Page 147, Line 18  
Leave out 'Advocate General' and insert 'Attorney General'

## **Clause 247**

98. The Committee recommends that commencement orders in Part 3 of the Bill should not be made unless they have been approved by the Assembly. This is to ensure that planning control functions cannot be undertaken by councils before the Assembly is satisfied that the necessary governance measures are in place within councils before planning functions are devolved. The Committee agreed the following amendment accordingly:

Clause 247, page 160, line 16

At end insert—

( ) No order shall be made under subsection (1) in respect of Part 3 unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

### **Planning functions of the Department to encompass well-being (Clause 1)**

99. The Committee recommends that the functions of the Department should include a commitment to well-being as follows:

Clause 1, page 1,

Leave out line 11 and insert—

- (i) furthering sustainable development; and
- (ii) promoting or improving social well-being

### **Sustainable Development (Clauses 1 & 5)**

100. The Committee recommends that both the Department and local authorities should be required to further sustainable development in relation to delivering their planning functions as follows:

Clause 1, page 1,

Leave out line 11 and insert—

furthering sustainable development; and  
promoting or improving social well-being

Clause 5, page 3, line 25

Leave out 'contributing to the achievement of' and insert 'furthering'

### **Requirements on Department and councils with regard to observing policies and guidance issued by the Department for Regional Development (Clauses 1, 5 & 8)**

101. The Committee recommends that the Department removes any risk of misinterpretation regarding the Department's and councils' obligations to policies and guidance issued by DRD in Clauses 1(3), 5(2) and 8(5) with the following amendments:

Clause 1, Page 1, Line 12

Leave out 'have regard to' and insert 'take account of'

Clause 5, Page 3, Line 7

Leave out 'have regard to' and insert 'take account of'

## **Timing of Departmental Statement of Community Involvement (Clauses 2)**

102. The Committee recommends that a time limit is placed on the production and publication of the Department's Statement of Community Involvement with the following Departmental amendment:

Clause 2, Page 2, Line 7  
After 'prepare' insert 'and publish'

Clause 2, Page 2, Line 11  
At end insert—  
(3) The Department must prepare and publish a statement in community involvement within the period of one year from the day appointed for the coming into operation of this section.'

## **Inclusion of Climate Change in Survey of District (Clause 3)**

103. The Committee recommends that local authorities are required to take the implications of mitigating and adapting to climate change into consideration when conducting the survey of the district with the following Committee amendment:

Clause 3, page 2, line 27  
At end insert—  
'( ) the potential impact of climate change

## **Local Development Plan (Clause 6)**

104. The Committee recommends that there should be a statutory link between local development plans and community plans. However, it accepted that this would be best achieved through local government legislation still to be produced and welcomed the Minister's written commitment that the Department will include a statutory link between community plans and local development plans in future local government legislation.

## **Independent Examination of plans (Clause 10)**

105. The Committee recommends that the Department amends this clause to reinforce its position that the Planning Appeals Commission (PAC) will be the first choice for conducting independent examinations and only if the Commission is unable to do so in the appropriate timescale, the Department may appoint an alternative examiner, as follows:

Clause 10, Page 6, Line 10  
At end insert—  
'(4A) The Department must not appoint a person under subsection (4)(b) unless, having regard to the timescale prepared by the council under section 7(1), the Department considers it expedient to do so.'

## **Neighbourhood notification (Clauses 41 & 42)**

106. The Committee recommends that subordinate legislation should introduce mandatory site notices and neighbourhood notification.

## **New material to appeal (Clause 58)**

107. The Committee recommends that the Department amends this clause to restrict any new material that can be presented at appeal to that which did not exist at the time the case went to appeal or could not have been provided due to exceptional circumstances as follows:

### **New clause**

After clause 58 insert—

‘Matters which may be raised in an appeal under section 58

—(1) In an appeal under section 58, a party to the proceedings is not to raise any matter which was not before the council or, as the case may be, the Department at the time the decision appealed against was made unless that party can demonstrate—

- (a) that the matter could not have been raised before that time, or
  - (b) that its not being raised before that time was a consequence of exceptional circumstances.
- (2) Nothing in subsection (1) affects any requirement or entitlement to have regard to-
- (a) the provisions of the local development plan
  - (b) any other material consideration.’

## **Better enforcement of developer contributions (Clause 75)**

108. The Committee recommends that once planning functions have been devolved to local authorities, mechanisms to improve enforcement of developer contributions are considered.

## **Protection of listed buildings and trees (Clauses 84 & 125)**

109. The Committee recommends that as penalties associated with offences against listed buildings and trees are increased, the Department looks at ways of ensuring compliance is enforced. This is not only important for trees covered by Tree Protection Orders and listed buildings but also for those that are likely to merit such protection but have yet to be listed/protected.

## **Revocation of listed building consent (Clause 97)**

110. The Committee recommends that in relation to this clause guidance should be provided and that it should encourage sensitivity and common sense be used.

## **Inclusion of trees in local development plans (Clause 121)**

111. The Committee recommends that guidance encourages councils to include trees in their local development plans.

## **Time limits (Clause 131)**

112. The Committee recommends that the time limits in Clause 131 after which no enforcement action may be taken with respect to all planning control is amended to 5 years.

113. No Departmental amendment was available at the time of the writing of the report but an assurance was provided by the Department that:

'...we are currently working with our lawyers to bring forward the further amendments within clause 131 and any necessary consequential amendments to change the time limits for both the 4 year and 10 year periods to 5 years.'

### **Duty of statutory consultees to respond (Clause 187 & 224)**

114. The Committee recommends that councils should not be held responsible for compensation in the event of a planning decision being revoked on the basis of information from a statutory consultee, if that decision was made after the time limit agreed for a response from that statutory consultee had elapsed. It agreed the following Committee amendment accordingly:

New Clause

After Clause 187 insert

'Compensation: decision taken by council where consultee fails to respond under section 224

At end insert—

'187A. (1) Where a consultee fails to respond to a council consultation in accordance with section 224(3) and that council:

takes a decision under this Act in the absence of such a response; and

subsequently receives information which the council could reasonably expect to have been included in that response; and

decides to revoke or modify planning permission due to the information referred to in paragraph (b); and

compensation is payable by a council under section 178 in connection with the decision under paragraph (c);

the relevant department shall pay to the council the amount of compensation payable.

(2) For the purposes of subsection (1) "the relevant department" means the department (if any) to which the consultee is accountable."

### **Award of costs (Clause 202)**

115. The Committee recommends that PAC is provided with powers to award costs for frivolous or vexatious appeals with the following amendment:

New clause

After clause 202 insert —

'Power to award costs

202A.—(1) The appeals commission may make an order as to the costs of the parties to an appeal under any of the provisions of this Act mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The provisions are—

(a) sections 58, 59, 95, 96, 114, 142, 158, 164 and 172;

(b) sections 95 and 96 (as applied by section 104(6));

(c) in Schedule 2, paragraph 6(11) and (12) and paragraph 11(1)

(d) in Schedule 3, paragraph 9.

(3) An order made under this section shall have effect as if it had been made by the High Court.

(4) Without prejudice to the generality of subsection (2), the Master (Taxing Office) shall have the same powers and duties in relation to an order made under this section as the Master has in relation to an order made by the High Court.

(5) Proceedings before the appeals commission shall, for the purposes of the Litigants in Person (Costs and Expenses) Act 1975 (c. 47), be regarded as proceedings to which section 1(1) of that Act applies.'

New clause

After clause 202 insert—

'Orders as to costs: supplementary

202B.—(1) This section applies where—

(a) for the purpose of any proceedings under this Act—

(i) the appeals commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether that person wishes, to appear before and be heard by it; and

(ii) arrangements are made for a hearing to be held;

(b) the hearing does not take place; and

(c) if it had taken place, the appeals commission would have had power to make an order under section 202A requiring any party to pay any costs of any other party.

(2) Where this section applies the power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.'

## **Grants to bodies providing assistance (Clause 221)**

116. The Committee recommends that this clause should be strengthened by the inclusion of a requirement for bodies to further the understanding of planning policy proposals. Also, that it is amended to remove the requirement of an oversight role for DFP in the awarding of grants to bodies providing assistance as follows:

Clause 221, Page 142, Line 41

After 'understanding' insert 'of planning policy proposals and'

Clause 221, Page 142, Line 41

After 'aspect of' insert 'other'

Clause 221, Page 143, Line 8

Leave out from ', with' to 'Personnel,' in line 9

## **Duration of tenure on Statutory Advisory Councils (Schedule 5)**

117. The Committee recommends that the period of tenure for a member of Historic Buildings Council is looked at from the perspective of providing consistent advice to NEIA, during the current review of Statutory Advisory Councils.

Recommendations relating to the Bill in general

## **Governance Arrangements at Council Level (General)**

118. The Committee recommends that planning functions are not devolved to local government until the necessary checks and balances are in place in councils that will ensure planning decisions are carried out, and seen to be carried out, with equality and fairness.

119. To ensure that the transfer of planning functions cannot happen inappropriately early, the Committee also recommends that an amendment is made to Clause 247 (see delegated powers) to prevent commencement of any orders in Part 3, devolving planning control to local authorities, of the Bill without the approval of the Assembly.

## **Resources**

120. The Committee recommends that the Department provides strict guidance on the planning functions that will be covered by planning fees and those that are expected to be funded directly by councils. The Committee wants to see a full transfer of resources from the Department to councils for the planning functions being taken on by councils that are not covered by planning fees.

## **Capacity and Training**

121. The Committee recommends that pilot projects are rolled out across and made available to all councils. Also, that training and capacity building programmes for councillors and councils staff are targeted (tailor-made), of suitable duration and adequately resourced.

## **Community Amenity Levy (General)**

122. The Committee recommends that the Department explores the potential of the introduction of a Community Amenity Levy in the future.



## **Notices of Completion (General)**

123. The Committee recommends that the decision not to introduce notices of completion is reconsidered when both planning and building control functions are operating within councils.

## **Introduction**

124. The Planning Bill was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 14 December 2010.

125. The Minister of the Environment (the Minister) made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the Planning Bill would be within the legislative competence of the Northern Ireland Assembly'.

126. The Bill provides the legislative basis for planning reforms and also gives effect to the Review of Public Administration (RPA) changes which will transfer the majority of functions and decision making responsibilities relating to local development planning, development management plus planning enforcement to district councils.

127. During the period covered by this Report, the Committee considered the Bill and related issues at meetings on 25 November 2010, 13 January 2011, 18 January 2011, 20 January 2011, 26 January 2011, 27 January 2011, 1 February 2011, 3 February 2011, 8 February 2011, 10 February 2011, 15 February 2011 and 22 February 2011. The relevant extract from the Minutes of Proceedings for these meetings are included at Appendix 1.

128. The Committee had before it the Planning Bill (NIA 7/10) and the Explanatory and Financial Memorandum that accompanied the Bill.

129. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 17 December 2010 in the Belfast Telegraph, Belfast Telegraph North West edition, Irish News and News Letter seeking written evidence on the Bill.

130. A total of 61 organisations responded to the request for written evidence and copies of the submissions received by the Committee are included at Appendix 3.

131. The Committee was first briefed by officials about the consultation stages and policy development of the policy areas covered by the Bill on 25 November 2010. The Committee was also briefed by Assembly Research and Library Service and QUB, NILGA, The Northern Ireland Housing Executive, the Ministerial Advisory Group, Professor Greg Lloyd, the Planning Task Force, QPANI, Consumer Council, Community Places, Planning Appeals Commission, the Royal Town Planning Institute and the Royal Institute of Chartered Surveyors.

132. The Committee also held a stakeholder event involving over 25 organisations that had submitted written evidence on the Bill. The event focused on four key issues relating to the Bill that had been raised by a majority of respondents. The Department replied both orally and in writing to the issues discussed.

133. The Committee began its formal clause by clause scrutiny of the Bill on 8 February 2011 and concluded this on 10 February 2011.

## **Extension of Committee Stage of the Bill**

134. On 7 February 2011, the Assembly agreed to extend the Committee Stage of the Bill to 1 March 2011.

## **Report on the Planning Bill**

135. At its meeting on 22 February 2011 the Committee agreed its report on the Bill and agreed that it should be printed.

## **Consideration of the Bill by the Committee**

136. The Bill consists of 248 Clauses divided into 15 Parts and 7 Schedules.

## **Departmental briefing on the draft Planning Bill, 25 November 2010**

137. Departmental officials briefed members on 25 November 2010. Officials provided the Committee with an overview of the draft Bill.

138. The officials stated that the most of the Bill carries forward existing primary planning legislation and that one of the main aims of the Bill was to deliver a development plan system with more effective public engagement with the transfer of most planning powers to local councils.

139. The officials then answered members' questions on enforcement, developers' contributions, funding, third party rights of appeal, the role of councillors in planning applications, the need for a culture change in relation to planning, the role of the Department versus the role of councils, the reduction of time for appeals, simplified planning zones, the planning hierarchy, community involvement, pre application community consultation and development plans.

## **Assembly Research briefing on Planning Bill – Planning Functions and Local Development Plans, 13 January 2011**

140. An Assembly Research official and a member of Queens University School of Planning briefed members on 13 January on Planning Functions and Local Development Plans.

141. The main areas of discussion were spatial planning, independent examination of local development plans, experiences of planning reform in other jurisdictions, joint development plans, community involvement and front loaded consultations, the importance of the Regional Development Strategy, training and guidance and the rollout of subordinate legislation, the definition of community, and independent examination of local development plans.

## **Departmental briefing on Planning Bill – Planning Functions and Local Development Plans, 13 January 2011**

142. Departmental officials briefed the Committee and answered member's questions on Planning Bill – Parts 1 and 2 – Planning Functions and Local Development Plans.

143. The main areas of discussions were Local Development Plans, the timeframe for the reform of local government, training and guidance, community infrastructure levy and the review of local development plans.

## **Assembly Research briefing on Planning Bill – Development Management, Planning Control and Enforcement, 18 January 2011**

144. An Assembly Research official and a member of Queens University School of Planning briefed members on 18 January on Development Management, Planning Control and Enforcement.

145. The main areas of discussion were the role of the Department and call in powers, the onus on the applicant to undertake pre application consultation, the reduction in the timescale for appeals, simplified planning zones, sustainable development, performance agreements, third party appeals, award of costs, the hierarchy of planning, the role of the Planning Appeals Commission, independent examination, the role of councillors in the process, pre determination hearings and completion notices.

## **Departmental briefing on Planning Bill – Development Management, Planning Control and Enforcement, 18 January 2011**

146. Departmental officials briefed the Committee and answered member's questions on 18 January 2011 on the Planning Bill, Development Management, Planning Control and Enforcement

147. The main areas of discussions were independent examination, statements of community involvement, the rights of objectors, joint working between councils, statements of community involvement, the Regional Development Strategy responsibility for enforcement, tree protection orders and the need for guidance.

## **Assembly Research briefing on Planning Bill – Assessment of Councils' Performance and all remaining provisions , 20 January 2011**

148. An Assembly Research official and a member of Queens University School of Planning briefed the Committee and answered member's questions 20 January 2011 on the Planning Bill - Development Management, Planning Control and Enforcement.

149. The main areas of discussions were the need for leadership, roles and responsibilities, potential barriers to effective delivery, resources, collaborations between councils, governance in local government, capacity building, the need for guidance, experiences in other jurisdictions, training and resources, performance management, the timetable for subordinate legislation.

## **Departmental briefing on Planning Bill – Assessment of Councils' Performance and all remaining provisions, 20 January 2011**

150. Departmental officials briefed the Committee and answered member's questions on 18 January 2011 on the Planning Bill - Assessment of Councils' Performance and all remaining provisions.

151. The main areas of discussions were resources, the quality of the built environment, sustainable development, the timeframe for detailed guidance, the Department's oversight role, compensation, pilot schemes and best practice from other jurisdictions.

## **Planning Bill Oral Evidence Session – NILGA, 26 January 2011**

152. NILGA officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

153. The main areas of discussion were training, resources, capacity building, communication with the Department, governance arrangements, pilot projects, the hierarchy of planning, enforcement, costs, liability, funding, third party right of appeal and community planning.

### **Planning Bill Oral Evidence Session – NI Housing Executive, 26 January 2011**

154. NI Housing Executive officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

155. The main areas of discussion were the Regional Development Strategy, third party right of appeal, developer contributions, joint council working, the duration of planning permission, pre application discussions, performance agreements, land banking and zoning of land for social housing.

### **Planning Bill Oral Evidence Session – Planning Appeals Commission, 26 January 2011**

156. Planning Appeals Commission officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

157. The main areas of discussion were independent examination, the Department's call in power, submission notices, planning agreements and award of costs.

### **Planning Bill Oral Evidence Session – QPANI QPANI, 26 January 2011**

158. Quarry Products Association NI (QPANI) officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

159. The main areas of discussion were sustainable development, mineral planning, definition of community, nature conservation, multiple fees, consultation period and aftercare of sites.

### **Planning Bill Oral Evidence Session – Royal Town Planning Institute, 26 January 2011**

160. Royal Town Planning Institute (RTPI) officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

161. The main areas of discussion were the timescale for the Bill, resources, training, plan led systems, definition of community, the Regional Development Strategy, the Department's role in the Bill, independent examination, pilot schemes, development management and area plans.

### **Planning Bill Oral Evidence Session – Royal Institute of Chartered Surveyors, 26 January 2011**

162. Royal Institute of Chartered Surveyors officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

163. The main areas of discussion were training, resources, planning hierarchy, the Department's role, community plans, capacity building, resources and appeals.

### **Planning Bill Oral Evidence Session – Planning Task Force, 27 January 2011**

164. The Planning Task Force briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

165. The main areas of discussion were award of costs, community plans, third party rights of appeal, subordinate legislation, sustainable development, community infrastructure levy and the need for a climate change duty.

### **Planning Bill Oral Evidence Session – Consumer Council, 27 January 2011**

166. A Consumer Council official briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

167. The main areas of discussion were the Regional Development Strategy, community consultation, the need for guidance, the performance of councils, and third party rights of appeal.

### **Planning Bill Oral Evidence Session – Community Places, 27 January 2011**

168. Community Places representatives briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

169. The main areas of discussion were pre application community consultation, the need for guidance, statements of community involvement, the need for a statutory link between community planning and the local development plan, community investment levy, grant aid, independent examination, fees, developer contributions and third party rights of appeal.

### **Planning Bill Oral Evidence Session – Ministerial Advisory Group, 27 January 2011**

170. An official from the Ministerial Advisory Group briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

171. The main areas of discussion were community involvement, community networks, pre application community consultation, local masterplanning, capacity building, statements of community involvement, business improvement districts, simplified planning zones and areas of townscape character.

### **Planning Bill Oral Evidence Session – Professor Greg Lloyd, 27 January 2011**

172. Professor Greg Lloyd briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

173. The main areas of discussion were the Scottish planning model, the Regional Development Strategy, the Department's role in the Bill, the role of developers, the need to invest and resource the planning system, community aspirations, joint working between departments, the hierarchy of planning, simplified planning zones, cost neutrality and the definition of community.

## **Planning Bill Stakeholder Event, 27 January 2011**

174. The Committee held a Stakeholder Event on 27 January 2011 to take views on the following issues:

- Independent examination of development plans and appeals
- Community Infrastructure Fund/Developer Contributions
- Pre-application community consultation
- Third party right of appeal

## **Independent examination of development plans and appeals**

175. Several stakeholders highlighted a need for clarity regarding the costs attached to the independent examination, and who will be responsible for covering these costs. The potential legal costs and legal liabilities are a major worry for councils, as most lack the financial backing required to pursue court cases.

176. The Department stated that during the formal clause by clause consideration of the Planning Bill that the issue of costs still needed to be resolved. A council will gain finances from planning fees and from resources being transferred to local government, however, the degree of budget has yet to be agreed. Currently the PAC is sponsored by the OFMdfM; however, the introduction of an independent examiner will require funding to be provided from the planning system.

177. Stakeholders also felt that public confidence and transparency in the independence of the appeals system was an essential element in the majority of submissions. Many believed that the independence of the PAC should be retained within the process and any appointment of an alternative independent examiner is a role for the local authority responsible for the development plan. One stakeholder felt that the Department should only appoint a person other than the PAC only under exceptional circumstances; however, the statute would require amending to incorporate this exceptional clause. The RSPB's key concern was if an independent examiner makes recommendations to rectify a draft plan which they consider to be unsound, and the Department does not accept these recommendations, is there any chance of legal challenge.

178. The Department stated that independent examination of plans and the use of the PAC and independent examiners are not meant to cast doubt on the impartiality of independence of the Planning Appeals Commission. In the past when there was a huge backlog or a large number of plans received at once, the PAC had difficulties in dealing with them. The Department anticipate that similar difficulties will arise in the future and the Minister wants to be able to step in and ensure that, if there is a problem, there is another means of moving independent examinations forward. This approach would be used only as a last resort, and the Department will ensure that all proper procedures are in place so that those appointed are independent and appropriately qualified.

## **Community Infrastructure Fund/Developer Contributions**

179. A number of stakeholders felt that the Bill remained silent on the issue of community infrastructure fund and that an opportunity had been missed to introduce some form of planning gain, which would enable future developments to yield a contribution to social housing/or community infrastructure.

180. The Department stated that the Community Infrastructure Levy introduced to England and Wales through the 2008 Planning Act empowers local authorities to introduce a statutory planning charge on development and to use the proceeds to fund infrastructure but that there is no equivalent in Northern Ireland.

181. One stakeholder stated that infrastructural needs will be one of the biggest challenges to face Northern Ireland over the next ten years. Other stakeholder varied as to how best to meet these infrastructural needs, however, a number called for a clear definition of what a developer is. One common theme was the pooling of a number of small developments in an area that stand alone would not require a contribution to infrastructure. Many agreed that absolute clarity on the financial model for determining the infrastructure and time that is associated with the payments was essential. Some stakeholders felt that a regional levy should be set, resulting in consistency across the region. The RSPB requested the possibility of an exception for development for charities as in section 210 of the Planning Act 2008 in England and Wales.

182. The Department stated that PPS1 identifies that contributions from developers may be required where, for example, a proposed development needs the provision or improvement of infrastructure works or where a proposed development depends on carrying out works outside the site. These contributions can be secured through conditions attached to planning permission or through a negotiated legally binding agreement under Article 40 of the Planning (Northern Ireland) Order 1991.

183. Article 40 has been carried forward in the Planning Bill as clause 75. At 75(d) and (e) financial developer contributions under a planning agreement may be paid to the planning authority or to a Northern Ireland Department, whereas Article 40 provided only payment to DOE. This change would facilitate developer contributions being paid

## **Pre-application community consultation**

184. Many of the stakeholders welcomed the introduction of pre-application community consultation; however, a number of respondents expressed the need for a clear definition of community. Although welcomed one stakeholder felt it important to include a duty on the person conducting the consultation to take the responses and to demonstrate that the responses have been listened to and included in the final documentation. Another stakeholder felt the need for safeguards against individuals or groups who do not necessarily have the wider communities backing or interest whilst another stakeholder felt it prudent to amend the Bill to ensure that pre-application consultation is not required for amendments to conditions or minor changes to applications.

185. NIE believed that pre-application community consultation is important, however, they felt that provisions are already enshrined in legislation and is a fundamental part of the planning process for major infrastructure projects, therefore it does not think that compulsory pre-application consultation is particularly helpful.

186. The Department stated that community involvement is a crucial feature of the new development system. Pre-application community consultation will be a mandatory requirement for all major and regionally significant proposals. Clause 28 introduces a requirement on applicants to prepare a pre application consultation report and additionally Clause 50 makes it

possible for the Department or a Council to decline applications where the applicant has not complied with the necessary pre application consultation.

187. Under Clause 30 Council may hold pre-determination hearings. The aim is to make the planning system more inclusive and to ensure that the community has been consulted and their views are properly taken into account. The Department states that guidance on pre-application consultation will explain the role of the prospective applicant, and how active and meaningful consultation with communities can best be achieved.

### **Third party right of appeal**

188. Almost all written responses commented on third party appeals. The majority, but not all, were in favour of their inclusion. Research provided to the Committee outlined the pros and cons of the inclusion of third party appeals and identified various models that could be adopted.

189. The Department's reply stated that the Executive Committee has agreed that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and local government reform have settled down and are working effectively.

190. The Reform of the Planning System in Northern Ireland: Your chance to influence change consultation paper agreed by the Executive Committee and published in July 2009 explained that the planning reform policy was to front load the planning system with opportunities for third party engagement and to extend its openness and transparency.

191. On the basis of evidence in an earlier Regulatory Impact Assessment, the paper explained that the introduction of third party appeals would result in:

- costs to the public purse;
- time lag in the final decisions on all applications to enable third parties time to appeal;
- further time would be required to reach a final decision on those planning applications which are subject to third party appeal;
- a need for additional staff for both planning authorities and the Planning Appeals Commission;
- greater uncertainty in the outcome of the planning process.

As a consequence of all of these there would be a potentially adverse impact upon investment and the economy.

## **Key Issues**

192. During its consideration of oral and written evidence from interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department, the Examiner of Statutory Rules, Assembly Research and Library Services and external organisations.

### **Clause-Specific Issues**

Part 1 – Functions of Department of the Environment with respect to development of land



- Planning functions of the Department to encompass well-being
- Requirements on Department and councils with regard to observing policies and guidance issued by the Department for Regional Development
- Sustainable Development
- Timing of Departmental Statement of Community Involvement

#### Part 2 – Local Development Plans

- Department's oversight powers
- Inclusion of Climate Change in Survey of District
- Sustainable Development (see Part 1)
- Terms of oversight of Council Statement of Community Involvement
- Local Development Plan
- Plan Strategy and Area Development Plans
- Independent Examination of plans
- Consultation with PAC
- Withdrawal of development plan documents
- Review of local development plans
- Directing councils to prepare joint plans
- Cost of annual monitoring reports
- Regulations

#### Part 3 – Planning Control

- Department's oversight powers (see Part 2)
- Meaning of development
- Hierarchy of development
- Definition of regionally significant
- Pre-application community consultation
- Pre-application consultation report
- Predetermination hearings
- Development rights for minerals
- Simplified planning zones
- Neighbourhood notification
- Aftercare conditions on landfill sites
- New material to appeal
- Better enforcement of developer contributions

#### Part 4 – Additional Planning Control

- Levels and scales of fines

- Protection of listed buildings and trees
- Revocation of listed building consent
- Arbitration
- Roles of planning authority and NIEA in relation to hazardous substances
- Inclusion of trees in local development plans
- Replacement of trees
- Enforcement of tree protection orders
- Obtaining expert information

#### Part 5 – Enforcement

- Enforcement
- Levels and scales of fines (see Part 4)
- Delegated powers
- Time limits
- Stop notices
- Consistency of enforcement
- Clarification of urgent works
- Obtaining expert information (see Part 4)

#### Part 6 – Compensation

- Stop notices (see Part 5)
- Compensation for revoking
- Duty of statutory consultees to respond

#### Part 7 – Purchase of Estates

- Interpretation of 'reasonably' (Clause 189)

#### Part 8 – Further Provisions as to Historic Buildings

- Obtaining expert information (see Part 4)
- The roles of different bodies related to listed buildings

#### Part 9 – The Planning Appeals Commission

- Delegated powers (see Part 5)
- Award of costs

#### Part 10 – Assessment of Council's Performance or Decision Making

- Consistency of enforcement (see Part 5)
- Assessment of councils' performance

## Part 11 – Application of Act to Crown Land

- Delegated powers (see Part 5)

## Part 12 – Correction of Errors

- Correction of errors

## Part 13 – Financial Provisions

- Fees and charges
- Grants to bodies providing assistance

## Part 14 – Miscellaneous and General Provision

- Delegated powers (see Part 5)
- Duty of statutory consultees to respond (see Part 6)
- Involving public agencies
- Compatibility of IT systems

## Part 15 – Supplementary

- Delegated powers (See Part 5)
- Interpretation of reserved matters

## Schedule 2 – Review of Old Mineral Planning Permission

- Definition of dormant sites (Schedule 2)

## Schedule 5- The Historic Buildings Council

- Duration of tenure on Statutory Advisory Councils (Schedule 5)

## Issues relating to the Bill in general

- Governance of Planning Functions at Council Level
- Resources
- Capacity and Training
- Land Use Strategy
- Review Period
- Third party right of appeal
- Community Amenity Levy
- Marine Spatial Planning
- Notices of Completion
- Chief Planner
- Ensuring vulnerable and hard to reach groups can engage in the planning process

- The legacy of area plans

#### Clause-Specific Issues

#### Part 1 – Functions of Department of the Environment with respect to Development of Land

193. This part maintains the general background authority for the Department to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development. Issues raised in relation to Part 1 included:

- Planning functions of the Department to encompass well-being
- Requirements on Department and councils with regard to observing policies and guidance issued by the Department for Regional Development
- Sustainable Development
- Timing of Departmental Statement of Community Involvement

### **Planning functions of the Department to encompass well-being (Clause 1)**

194. Many responses to the Committee's call for evidence indicated concern that the function of the Department identified within the Bill was no different from its role under current planning arrangements. They suggested that this continued focus on "securing the orderly and consistent development of land" is no longer sufficient as it fails to reflect a shift to a plan-led model of planning.

195. Most respondents felt the function should be expanded to reflect the desired outcome of the new planning system. They felt this should go beyond governing the development of land to promoting sustainable development and tackling disadvantage and poverty. One organisation suggested that reference should be made to requirements of the Northern Ireland Act 1998 relating to equality, as defined in Sections 75(1) and 75(2). However the Department stressed that as every public body is under a statutory obligation to this Act there would be no benefit to its incorporation into this Bill.

196. Other organisations sought recognition of environmental limits, well-being and other social factors such as disadvantage and good relations. The Department insisted that duties to the environment were covered by its obligations to local, national and European legislation, that the social factors were already requirements for the public sector and that 'well-being' as a concept was still being consulted upon as part of the local government reform consultation.

197. Nonetheless, the Committee agreed with the concerns of stakeholders and sought amendments to improve the Department's commitment to sustainable development (see section on Sustainable Development) and well-being as a way of recognising the full aspiration of the new approach to planning in Northern Ireland.

198. In the absence of a Departmental amendment to include 'well-being' as one of the objectives for which the Department must formulate and coordinate policy, the Committee agreed its own amendment to Clause 1 as follows:

Clause 1, page 1,  
 Leave out line 11 and insert—  
 furthering sustainable development; and  
 (ii) promoting or improving social well-being

## **Requirements on Department and councils with regard to observing policies and guidance issued by the Department for Regional Development (Clauses 1, 5 & 8)**

199. Several respondents to the Committee's call for evidence were concerned about the difference in wording between the Department's obligations to policies and guidance issued by DRD in Clause 1(3) and those of councils in Clause 5(2) as follows:

'...must have regard to'

compared with that of councils to the regional development strategy in Clause 8(5) :

'...must take account of'

200. The Committee asked the Department to explain the discrepancy and was advised that whilst legislatively there was no practical difference in the wording it would remove any risk of misinterpretation by bringing forward the following amendments:

Clause 1, Page 1, Line 12

Leave out 'have regard to' and insert 'take account of'

Clause 5, Page 3, Line 7

Leave out 'have regard to' and insert 'take account of'

201. The Committee accepted these amendments.

## **Sustainable Development (Clauses 1 & 5)**

202. Stakeholders were concerned about the lack of commitment contained in the Bill for both the functions of the Department (Clause 1) and those of local authorities (Clause 5).

203. Almost every organisation that responded called for the commitment to sustainable development at both planning function levels to be strengthened from 'contributing to' to 'securing'. The Department insisted that sustainable development is not the sole duty of the Department for the Environment and nor can it be delivered solely by planning. For this reason, it argued, it would be inappropriate to require planning functions to secure sustainable development. The Department offered to amend the clause removing "to the achievement of" suggesting that this would strengthen the obligation. The Committee was not convinced and agreed its own amendments that would require the Department and councils to 'further' sustainable development as follows:

Clause 1, page 1,

Leave out line 11 and insert—

furthering sustainable development; and promoting or improving social well-being

Clause 5, page 3, line 25

Leave out 'contributing to the achievement of' and insert 'furthering'

## **Timing of Departmental Statement of Community Involvement (Clause 2)**

204. Some organisations that submitted evidence to the Committee on this clause were concerned that the provision to produce a statement of community involvement had been in statute for several years but the Department had still to produce one. They suggested that a finite time period be allocated on the face of the Bill for its production. The Department responded that as the date of commencement of the Bill had yet to be decided by the Executive, exact dates should be avoided. The Committee accepted this argument but requested instead that a time limitation linked to commencement of the Bill is included.

205. The Committee agreed that the Department should be given a year to prepare and publish its statement of community involvement from the day appointed for the coming into operation of the relevant section as follows:

Clause 2, Page 2, Line 7  
After 'prepare' insert 'and publish'

Clause 2, Page 2, Line 11  
At end insert-  
(3) The Department must prepare and publish a statement of community involvement within the period of one year from the day appointed for the coming into operation of this section.'

## Part 2 – Local Development Plans

206. This part provides for the preparation of local development plans by district councils for their district. Local development plans will comprise two documents; a Plan Strategy and a Local Policies Plan which must be prepared in accordance with the relevant timetable. Issues raised in relation to Part 2 included:

- Department's oversight powers
- Inclusion of Climate Change in Survey of District
- Sustainable Development (see Part 1)
- Terms of oversight of Council Statement of Community Involvement
- Local Development Plan
- Plan Strategy and Area Development Plans
- Independent Examination of plans
- Consultation with PAC
- Withdrawal of development plan documents
- Review of local development plans
- Directing councils to prepare joint plans
- Cost of annual monitoring reports
- Regulations

## **Department's oversight powers (Clauses 11, 12, 15, 16, 26, 29, 69, 71 & 74 & 78)**

207. The Department's power of oversight and call-in throughout the Bill was an issue raised by many respondents to the Committee's call for evidence on the Bill.

208. There were concerns that arrangements for calling in projects centrally had the potential to undermine the local authority and local democracy and concern was also expressed that there was a lack of precision in language to describe the circumstances in which Departmental intervention might happen.

209. In its response to these concerns the Department stated that it is imperative that policy and direction which are set at the centre, are adhered to and achieved through local development plans. Therefore it is necessary for central government to have a role in assessing local development plans and, if necessary, intervening in their production to achieve these objectives. The Department stressed that it would only direct a council to withdraw a document if it considers that it will not be appropriate to continue to process the document further.

210. The Department noted that it had a responsibility to ensure the orderly and consistent development of land for the whole of the region therefore it is necessary to have a role in assessing local development plans and powers of intervention. In response to a particular concern about vagueness of definition in relation to its powers, the Department suggested it would be impractical and overly cumbersome to insert on the face of the Bill every eventuality where intervention might be required but that it might intervene if:

- It believes that preparation requirements are not being adhered to
- It requires a change to be made to the plan for overriding reasons to secure the orderly and consistent use of land

211. The Department also indicated that the use of call-in will be clearly explained through guidance produced, on which it will consult. The intention is only to intervene, or call-in, in limited circumstances. A direction on call-in will set out the criteria whereby a council must notify the Department of a planning application which may have issues of regional significance. By exception the Department can call-in a planning application that sits out with these criteria but must give account of reasons for doing so based on the application being considered regionally significant. This is a similar approach to that which exists in other jurisdictions.

212. The Committee was content with the rationale provided and the balance of Departmental powers proposed.

### **Inclusion of Climate Change in Survey of District (Clause 3)**

213. The Committee was keen to see the inclusion of a requirement for local authorities to take climate change into consideration when conducting the survey of the district and asked the Department to consider amending the clause. In its response the Department indicated that it did not believe it would be possible for councils to collate the necessary information from the sectors which produce emissions in their regions to enable them to meet such a requirement.

214. The Committee argued that councils should be required by the legislation to take the implications of mitigating and adapting to climate change into account in their survey. This should not necessarily require councils to collect and collate detailed local emission information but should necessitate the consideration of long term flooding predictions and observance of best practice in relation to reducing carbon emissions etc.

215. In the absence of a Departmental amendment the Committee agreed its own amendment as follows:

Clause 3, page 2, line 27

At end insert—

'( ) the potential impact of climate change

## **Terms of oversight of Council Statement of Community Involvement (Clause 4)**

216. Respondents to the Committee's call for evidence suggested that any ambiguity in the meaning of this clause should be removed by replacing 'may' with 'must' in subsection 4(3) and 'may' with 'will' in subsections 4(4) and 4(6).

217. The Committee asked the Department to consider this but was advised that the existing wording allows the Department flexibility in how it deals with discrepancies it has with councils' statements of community involvement. Tightening the wording as suggested would preclude any other option the Department may think preferable. The Committee accepted this rationale and agreed the Clause as drafted.

## **Local Development Plan (Clause 6)**

218. Many respondents to the Committee's call for evidence called for the Bill to make a statutory link between local development plans and community plans and the Committee asked the Department to consider this.

219. The Department replied that local development plans will be one way in which councils deliver their community plans however community plans do not yet exist in legislation. They informed the Committee that legal opinion suggests that any link should be established by using future local government legislation to amend this planning legislation. The Minister endorsed this position in a letter to the Committee (7 February 2011 Appendix 6) saying that:

"...an additional function of any new Local Development Plan will be to deliver the spatial aspects of the community planning. The Department will include a statutory link between community plans and local development plans. Legal opinion is that the appropriate way to take this forward is to use the local government legislation which will introduce community planning to make the necessary amendments to the Planning Bill."

220. The Committee was content to accept Clause 6 as drafted accordingly.

## **Plan Strategy and Area Development Plans (Clause 8)**

221. The Committee wanted more information on this clause and was advised that subordinate legislation would form the form and content of each development plan document, including mapping requirements and justification of the policies. The Department also indicated subordinate legislation would cover publicity for the draft development plan documents and how and where they must be made available for inspection.

222. The Committee accepted the information but noted that there needed to be clear links with current area plans and new plan strategies as they were being developed. The Department indicated that current plans will remain in place until the new ones are produced.

## **Independent Examination of plans (Clause 10)**



223. There was considerable concern among stakeholders about the proposals in this clause to enable the Department to appoint an independent examiner. Some felt that it was giving the Department inappropriate control. Some suggested that if the Planning Appeal Commission (PAC) did not have the capacity to meet requirements, it should be tasked to PAC to make the appointment of an Independent Examiner. Others wanted reassurance that the process of appointing an Independent Examiner would be of the same standard as that for appointing PAC.

224. The Department stressed that PAC will be the first choice for conducting independent examinations however if they are unable to do so in the appropriate timescale, this clause would give sufficient flexibility to appoint an alternative examiner. The examiner would be appropriately qualified and impartial. However, in order to reinforce the position that an Independent Examiner would only be used in exceptional circumstances when there are unacceptable delays caused by the increasing workload of PAC, the Department agreed to amend the clause as follows and this was welcomed by the Committee:

Clause 10, Page 6, Line 10

At end insert—

‘(4A) The Department must not appoint a person under subsection (4)(b) unless, having regard to the timescale prepared by the council under section 7(1), the Department considers it expedient to do so.’

225. The Committee was also concerned about the allocation of costs for the process. Members were concerned that whilst the costs of PAC carrying out its duties are covered by OFMdfM, there was no indication of how an independent examiner would be paid if used. The Department later confirmed that it would pay for independent examinations which are conducted by an independent person it appoints.

## **Consultation with PAC (Clauses 10 & 16)**

226. Aware that PAC in particular had concerns about the Department's power to appoint independent examiners, the Committee asked the Department to indicate how it would ensure that PAC were supportive of the approach being proposed in Clauses 10 and 16.

227. In addition to its response for Clause 10, the Department stressed that it sees it as critical that there is flexibility to appoint external independent examiners regardless of the level of resources which the PAC may have, as there may be circumstances where a large number of plans are submitted for independent examination at the same time. This approach would allow independent examinations to take place expediently, thus reducing delays to this stage of the development plan process. The Department indicated it would produce clear guidance on the use of other independent examiners which will include details on a process of their appointment.

228. The Committee was content with this explanation.

## **Withdrawal of development plan documents (Clause 11)**

229. There was a suggestion from stakeholders that details of the withdrawal of development plan documents should be on the face of the Bill rather than in subordinate legislation. However, the Department argued that due to the technical and administrative nature of the processes, it is more appropriate that these details are in regulations so that they can be easily amended as part of the evolution of the new planning system.

230. In response to concerns about the Department's power to direct a council to withdraw its development plan, the Department stressed that it would only direct the council to withdraw the

document if it considers that it would not be appropriate to continue to process the document any further, for example if it clearly does not meet preparation requirements or tests of soundness.

231. The Committee accepted this response.

### **Review of local development plans (Clause 13)**

232. Stakeholders had several concerns about the proposals for reviewing local development plans. Several wanted greater detail on the format of reviews, while others wanted clarification of the intervals at which reviews would take place. There was also a suggestion that councils should have responsibility for triggering the review process.

233. The Department stated that regulations will require councils to carry out a review of their plan at least every 5 years however they will be able to trigger a review process at any time. Subordinate legislation will also set out the manner by which a review will be dealt with. Councils will also be required to undertake an Annual Monitoring Report which may identify the need for a review at an earlier stage.

234. The Department considers that a 15 year time span is appropriate to allow for longer term planning of an area and this information will be set out in guidance. However the annual monitoring and the review provisions of the Bill will identify any changes to the plan that are required and a revision to the plan can be made accordingly allowing for any adjustments to be made to the plan in a timely manner where deemed appropriate.

235. The Committee was content with this explanation.

### **Directing councils to prepare joint plans (Clause 18)**

236. While most stakeholders were content with this clause, there was concern that the Bill does not make adequate provision for linear infrastructure, such as electricity cables, that might transcend several council boundaries.

237. The Department replied that the Bill provides the power for the Department to prepare a plan on a specific issue for the whole of the region as appropriate or alternatively the Department for Regional Development has powers to deal with Regional Planning through the Regional Development Strategy.

238. The Committee was content with this response.

### **Cost of annual monitoring reports (Clause 21)**

239. Councils in particular were concerned about the additional costs and workload that would be incurred by the requirement to produce an annual report to the Department. Some also suggested that it would have limited benefits. Other stakeholders were supportive of the approach and suggested that there should be a requirement for them to include indicators of environmental impacts, shared space, accessibility, community relations, etc..

240. The Department replied that it sees the monitoring and review of plans as an essential element in establishing how plans are being implemented and whether any changes are required to keep them up to date and relevant. It indicated that the form and content of annual monitoring will be in subordinate legislation which will be the subject of public consultation.

Further information will be set out in guidance and monitoring will be focused on the extent to which the objectives set out in the local development plan are being achieved.

241. The Committee accepted this response.

## **Regulations (Clause 22)**

242. Most respondents to the Committee's call for evidence called for a commitment from the Department to producing the regulations required to implement the Bill and a timeframe for their production.

243. The Committee was provided with a memorandum of delegated powers that set out the regulations provided for in the Bill and the Department provided a summary of the extensive programme of secondary legislation and an outline timetable.

244. The Committee was content with the information provided.

## **Part 3 – Planning Control**

245. This part re-enacts key provisions from the Planning (Northern Ireland) Order 1991 which define development and set the framework for the processing and determination of applications for planning permission. A new development management approach is introduced which includes assigning different categories of development to a new hierarchy which will determine the method by which applications will be processed. Issues raised in relation to Part 3 included:

- Department's oversight powers (see Part 2)
- Meaning of development
- Hierarchy of development
- Definition of regionally significant
- Pre-application community consultation
- Pre-application consultation report
- Predetermination hearings
- Development rights for minerals
- Simplified planning zones
- Neighbourhood notification
- Aftercare conditions on landfill sites
- New material to appeal
- Better enforcement of developer contributions
- Time limits (see Part 5)

## **Meaning of development (Clause 23)**

246. A few respondents had concerns about the proposals for applications for demolition and suggested that they should only be required within conservation areas or where it affected listed buildings. The Department confirmed that this clause carries over the current provisions from the 1991 Planning Order and that currently consent for demolition is only required in these circumstances.

247. Having clarified that this applied to all listed buildings, not just those in conservation areas, the Committee was content with this clause.

## **Hierarchy of development (Clause 25)**

248. Several stakeholders felt that it would be helpful if broad thresholds between major and local applications were given in the Bill and that it would be helpful if the Bill could outline circumstances in which the Department may reclassify a development proposal. A definition of 'class' was also sought.

249. In addition to this, one submission felt there should be 3 classes of development, not two as proposed, and that all applications by a district council should be handled centrally, by the Planning Service.

250. The Department's response stated that thresholds for regionally significant and major development will be provided in subordinate legislation, and this will be subject to consultation. The Department will be able to class a local development as 'major' where a request is made by the Council to do so. The examples of where this could apply will be set out in guidance. The Department also agreed to consider including in its guidance, the suggestion from a respondent that the decision on whether or not a development was major, could be based on whether or not it was in accordance with the local development plan.

251. In terms of the number of classes of development, the Department's reply stated that for the purposes of the Bill the Major development category also includes Regionally Significant development which will be dealt with by the Department. In working practice however, and as provided for under both subordinate legislation and guidance, there will in effect be 3 categories of development, with Regionally Significant development forming the top tier of applications. Minor applications would fall under the local development category where it does not meet the requirements of permitted development and permitted development, as provided for under the new Planning (General Permitted Development) Order, will set out thresholds for development types where planning permission will not be required.

252. The Department considers that a requirement for local applications to be subject to pre-application consultation would be unnecessarily onerous on the applicant and cause delays in issuing smaller scale planning applications. As in other jurisdictions this will include councils' own applications though arrangements are put in place which will allow regulations to set out the detailed procedure in such cases. These can provide for certain applications to be decided by the Department.

253. One submission called for the Department to be required to decide within a fixed time period what constitutes a major application in order to reduce potential for delays at this stage of the planning process. The Department indicated that it had not introduced a timescale at this stage owing to the difficulty in determining what is deemed 'sufficient information'. Timeliness by the Department in its decision making will be encouraged through the use of a Performance Agreement, which will be a non-statutory mechanism but one which the Department will promote when dealing with regionally significant applications. Guidance will be produced in relation to Performance Agreements and how they can be used effectively to provide clarity on pre and post application stages to reduce delays. The Department said it will also promote the use of pre-application discussions in relation to regionally significant and major developments.

254. The Committee welcomed the detailed explanations provided and were content with the clause as drafted.

## **Definition of regionally significant (Clause 26)**

255. Respondents sought confirmation that the Department would clearly define what constitutes regionally significant and major developments. Some suggested that the decisions on what determines regionally significant should be given to PAC as an independent and impartial body. However, the Department insisted that this is a key role of the Department and accountability must rest with it in fulfilling its function to secure the orderly and consistent development of land. It noted that this role will be enhanced through new procedures in the Bill

256. One respondent was keen to see details on the criteria that will be used to determine whether or not an inquiry is held and was keen to see the inclusion of impact on Natura 2000 sites. The Department responded that the definition of 'regionally significant' as proposed through draft subordinate legislation does not refer to environmental designations but rather the types of development such as housing or retailing. It pointed out that Natura 2000 sites are protected under the Habitats Directive and that there is a legal process for considering any development proposal affecting Natura 2000 sites – the Habitats Regulations Assessment – which affords the highest level of protection for nature conservation sites regardless of the planning authority responsible for the decision.

257. The Committee was content with this explanation.

## **Pre-application community consultation (Clause 27)**

258. Most respondents to the Committee welcomed proposals for pre-application consultation by developers however some felt the proposals in the Bill (Clauses 26 - 28) fell short of the Department's commitments following consultation to make pre-consultation a compulsory requirement and for a report of the consultation to be made publicly available. There were also several suggestions that the Bill should incorporate measures currently being brought forward in a Localism Bill in England that prescribe the approach that should be adopted. There was also a concern that with no third party right of appeal there are still no consequences if pre-application consultation is not done properly.

259. The Department suggested that pre-application engagement with statutory consultees is part of creating a more proactive and positive development management culture. Effective front-loading of the application process, with a strong emphasis on pre-application engagement can lead to proposals being shaped prior to issues arising, shorter delays in processing times and higher quality planning applications. It is intended that planning policy through a revised PPS1 will set out details surrounding pre-application engagement with consultees particularly where a Performance Agreement has been entered into on major and regionally significant development applications. The Department noted that requirements for pre-application discussion will be set out in subordinate legislation and the planning authority must decline to determine an application if the statutory requirements have not been met.

260. Stakeholders also asked for a definition of 'community' with regards to this clause as there was concern that 'community' might be limited to the immediate area where a proposed development is located without taking much wider impacts into consideration. The Department indicated that Clause 4 refers to 'community' as 'persons who appear to the council to have an interest in matters relating to development in its district'. This is intentionally wider than the people who live in the district so that it can, for example, include people who work or invest there or who visit it to use services.

261. The Department also explained that as part of the requirements of statutory pre-application consultation, the planning authority (either the Department or councils) have a role in advising

the prospective applicant on whom to consult and the applicant must show how they have carried out this consultation and how they have taken on board comments to amend proposals. Consultation requirements will vary depending on the nature and scale of the application and the area in which it is to be located. A range of consultation methods may be considered more appropriate for some developments rather than others therefore the onus will lie with the prospective applicant to work in conjunction with the planning authority in providing the most acceptable arrangements.

262. In response to a request for clarification on whether or not pre-application consultation would be required for amendments to conditions, the Department agreed to seek clarification and suggested it might be possible for subordinate legislation to indicate certain types of application for which pre-application consultation will not be required.

263. The Committee accepted these responses and agreed the clause as drafted.

### **Pre-application consultation report (Clause 28)**

264. Many respondents to the Committee's call for evidence wanted an opportunity to be provided for the public and community groups to comment on the report. The Department stated that the consultation report would be made available to the public and published on the internet.

265. The Department noted that this clause introduces a requirement on applicants to prepare a pre-application consultation report and this will need to demonstrate how the developer approached pre-application consultation and what they have done to amend their proposals in light of the consultation. Also, that comments on the report made by interested parties will be considered a material consideration in the planning authority's determination of whether to decline to determine the application.

266. The Committee was content with the responses provided by the Department.

### **Predetermination hearings (Clause 30)**

267. Several respondents wanted to see minimum criteria provided in association with this clause and the Department responded that this would be provided by subordinate legislation.

268. The Department stressed that this clause gives councils the power to hold pre-determination hearings which aim to make the planning system more inclusive, allowing the views of applicants and those who have made representations to be heard before a planning decision is made.

269. The Committee was content with the response.

### **Development rights for minerals (Clause 32)**

270. In relation to this clause, one respondent suggested that this clause should include permitted development rights for minerals. The Department responded that it was looking at this issue but needs to give the potential amenity impacts of permitted development rights more consideration.

271. The Committee was content with this response.

## **Simplified Planning Zones (Clauses 33 – 38)**

272. There were mixed views, both in the Committee and in stakeholder responses, in relation to the need for simplified planning zones. Several stakeholders welcomed provisions relating to simplified planning and enterprise zones and one stated that it would be keen that the non-port lands within the Harbour Estate be considered for such provisions.

273. However, other respondents to the Committee's call for evidence had concerns about the zones. Some felt it was important to exclude conservation areas and areas of natural importance from simplified planning zones, some that the justification for these anachronistic zones no longer exist and that simplified planning zones should be remodelled as Renewable Energy Zones and others called for more information relating to the proposed arrangements for 'zoning', in particular land zoned for sport and physical recreation.

274. One submission was totally opposed to the idea of simplified planning zones stating that it did not understand why these had been included in the draft legislation as they had not, in the past, resulted in any significant benefit to Northern Ireland. Another submission welcomed the principle of Simplified Planning Zones but strongly objected to the inclusion of legislation regarding Simplified Planning Zones in the Planning Bill as it had not been consulted on this matter and as such had not been given adequate opportunity to consider this important planning function.

275. In its reply to these views the Department stated that the Bill transfers powers to make and alter simplified planning zones from the Department to councils. Councils will therefore be responsible for the designation of any simplified planning zones in the future. The power to create an enterprise zone will be retained by the Department, although this remains subject to the approval of DFP and touches on the responsibilities of DETI. The simplified planning zone powers in the 1991 Planning Order have never been exercised by the Department and it is therefore not possible to ascertain whether or not they are of benefit.

276. The Committee sought additional information from the Department and Assembly Research to assist in their consideration on the inclusion of provisions to establish simplified planning zones. They asked for confirmation that they would be time-limited and require thresholds and a business case. The Department confirmed that the Bill provides for these and the zones should be seen as another tool for councils to use rather than a requirement that they must put in place. Some members remained unconvinced of the value such zones might offer Northern Ireland in a plan-led system but others saw them as a potentially useful tool for councils to enhance tourism and renewable energy as well as more traditionally, jobs and growth. The Committee concluded that the provisions for simplified planning zones should remain in the Bill.

## **Neighbourhood notification (Clauses 41 & 42)**

277. Concerns were raised by the Committee under these clauses in relation to the need for proper and effective notification of planning proposals.

278. The Department informed the Committee that the Minister has agreed to bring forward subordinate legislation in relation to site notices and neighbourhood notification. The Committee welcomed this response.

## **Aftercare conditions on landfill sites (Clause 53)**

279. In response to suggestions from stakeholders, the Committee asked the Department to consider expanding the scope of this clause to include a power to impose aftercare conditions on landfill sites.

280. The Department responded that the management of landfill sites is currently dealt with under the Landfill Regulations (Northern Ireland) 2003 and the Pollution Prevention and Control and the Waste Management Licensing regimes, in the context of relevant EU and other requirements. The NIEA Interim Guidance on Landfill Closure, Capping and Restoration (2007) identifies the main after-use options for landfills. It maintained therefore, that as landfill is comprehensively dealt with elsewhere, there is no need to include it in the Planning Bill.

281. The Committee accepted this rationale and agreed Clause 53 as drafted.

### **New material to appeal (Clause 58)**

282. The Committee asked the Department to consider an amendment that would restrict the introduction of new material at planning appeals. However, on reflection recognised that there may be circumstances under which such information might be allowed.

283. The Department suggested the following amendment:

New clause

After clause 58 insert—

'Matters which may be raised in an appeal under section 58

-(1) In an appeal under section 58, a party to the proceedings is not to raise any matter which was not before the council or, as the case may be, the Department at the time the decision appealed against was made unless that party can demonstrate-

(a) that the matter could not have been raised before that time, or

(b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—

(a) the provisions of the local development plan

(b) any other material consideration.'

284. The Committee felt the amendment provided just the right balance of flexibility for what could be considered permissible information to be provided at appeal and welcomed it accordingly.

### **Better enforcement of developer contributions (Clause 75)**

285. The main issue raised by stakeholders under Clause 75 was that of the need for a Community Infrastructure Levy in addition to developer contributions. This is discussed in detail under 'Community Amenity Levy' in Issues relating to the Bill in general.



286. However relating to developer contributions specifically, the Committee called for better enforcement of these and asked the Department to consider how this might be achieved. The Department suggested that, similarly to notices of completion, this is an issue that could be considered to become part of the responsibilities of Building Control once the two functions were located within councils.

#### Part 4 – Additional Planning Control

287. This part covers listed buildings and conservation areas, hazardous substances, trees, review of mineral permissions and advertisement controls. Most of these functions are re-enacted from the 1991 planning Order and transferred to councils but some, more specialist functions, are retained by the Department. Issues raised in relation to Part 4 included:

- Levels and scales of fines
- Protection of listed buildings and trees
- Revocation of listed building consent
- Arbitration
- Roles of planning authority and NIEA in relation to hazardous substances
- Inclusion of trees in local development plans
- Replacement of trees
- Enforcement of tree protection orders
- Obtaining expert information

#### **Levels and scales of fines (Clauses 84, 102, 116, 125, 136, 133, 146, 148, 149)**

288. Several respondents to the Committee's call for evidence stated that the fines included in the Bill, whether listed as scales or levels, were no longer sufficient deterrents to prevent unauthorised demolition of listed buildings or trees.

289. The Committee was mindful of this, and the fact that the fine amounts had been determined 20 years ago in The Planning (Northern Ireland) Order 1991, when scrutinising the Bill.

290. At Clause 84 the Committee considered the level of fine identified for demolition of a listed building or failing to comply with conditions of a listed building consent, and agreed that £30,000 was no longer an appropriate level of fine to act as a deterrent. The Department stated that this fine exceeds the equivalent in GB which is £20,000 and that Clause 84(6)(b) provides for an unlimited fine or a prison sentence. The Department also considers £30,000 to be a significant level of potential fine, although it is for the Courts to decide the actual fines.

291. Members recognised that the option of conviction on indictment allowed for an unlimited fine for very serious breaches but also felt that the fine on the face of the Bill gives the signal of how seriously a breach should be taken and will influence a court decision. It also felt that the current level was no longer in keeping with the value of development and it was suggested anecdotally that some developers treat such fines as part of the process and factor them in to their costs.

292. The Committee therefore agreed that the following amendment should be made and welcomed the Minister's subsequent agreement to bring it forward at consideration stage:

Clause 84, Page 53, Line 37

Leave out '£30,000' and insert '£100,000'

293. For the same reasons in relation to protecting listed buildings, the Committee sought the fine level in Clause 102 to be raised from level 3 to level 5. It also called for this clause to make acts causing damage to a listed building a more serious offence by including an option of conviction on indictment to an unlimited fine.

294. The Department agreed to these amendments but did not produce them in time for the report.

295. The Committee also considered the level of fine associated with contravention of hazardous substances control in Clause 116. Before agreeing on whether or not the levels should be raised, members sought details of the types of substances the clause refers to, how often such fines had been used to date and where money collected as fines goes to.

296. The Department provided a list of the hazardous substances covered by the Clause (Appendix 6) and advised that only 1 warning letter had ever been issued in recent years because it aims to avoid breaches by conducting regular meetings to discuss upcoming or potential cases in advance. It also noted that money taken in fines goes to the central fund, i.e. Treasury.

297. The Committee accepted the information and agreed it would be appropriate for the fine to be raised from £30,000 to £100,000 to act as a deterrent and welcomed the Department's agreement to raise the fine with the following amendment:

Clause 116, Page 75, Line 31

Leave out '£30,000' and insert '£100,000'

298. As with listed buildings, the Committee wanted penalties for contravention of tree preservation orders in Clause 125 to carry a heavier fine and welcomed the Department's agreement to bring forward the following amendment at consideration stage of the Bill:

Clause 125, Page 80, Line 26

Leave out '£30,000' and insert '£100,000'

299. The Committee was advised that the Bill contained three other clauses that included £30,000 fines for breach of conditions; Clauses 136 and 149 for contravention of stop notices and Clause 146 for non-compliance with an enforcement notice. The Committee had already indicated its content with the three clauses as drafted but agreed it should accept the following Departmental amendments when tabled at consideration stage:

Clause 136, Page 87, Line 18

Leave out '£30,000' and insert '£100,000'

Clause 146, Page 95, Line 15

Leave out '£30,000' and insert '£100,000'

Clause 149, Page 98, Line 6

Leave out '£30,000' and insert '£100,000'

300. The Committee also considered the penalty in Clause 133 for non-compliance with a planning contravention notice and having ascertained that a level 3 fine is currently £1,000 called for it to be raised as members felt this no longer reflected the seriousness of such a breach. The Committee welcomed the Department's agreement to raise it to level 5, £5,000, as follows with the following amendment:

Clause 133, Page 85, Line 21  
Leave out '3' and insert '5'

301. Similarly in Clause 148, members felt that a £5,000 (level 5) fine for contravening an enforcement notice no longer reflected current economic conditions and called for it to be raised. The Committee accepted the Department's agreement to amend the clause as follows:

Clause 148, Page 96, Line 27  
Leave out from 'level' to 'scale,' and insert £7,500'

### **Protection of listed buildings and trees (Clauses 84 & 125)**

302. As a result of seeking higher fines in association with offences in these clauses (see Levels and Scales of fines), the Committee recognised that there would be an increased risk to protected buildings and trees, and to those likely to merit such protection, and urged the Department to ensure that enforcement of compliance was maximised. There was a suggestion that once powers were devolved to councils this might be a function that could be delivered by Building Control.

### **Revocation of listed building consent (Clause 97)**

303. Some members expressed concern that current listing practices can hinder growth and development and the image of an area and suggested that more consideration should be given to supporting listed building owners. The Committee agreed it should recommend that guidance on applying PPS6 should encourage sensitivity and balance.

### **Arbitration (Clauses 97 & 103)**

304. The Committee asked the Department to comment on the need for and provision of arbitration in relation to decisions to revoke or modify listed building consent or designate a conservation area.

305. The Department replied that such powers were provided solely as a safeguard and will only be used in rare, exceptional circumstances if a council fails to fulfil its duties. The Department is required to give notice or consult with councils before carrying out these actions. So in practice, the Department maintained, it would expect to be in close contact and discussion with a council before it would exercise such powers and given that such cases will be very few, it does not consider it necessary to establish formal arbitration arrangements.

306. The Committee was content with this explanation.

### **Roles of planning authority and NIEA in relation to hazardous substances (Clause 107)**

307. The Committee sought more information on the way in which this clause would be implemented and the respective roles of the planning authority and NIEA with respect to its implementation.

308. The Department clarified that hazardous substances must be disposed of in ways which render them as safe as possible and minimise their environmental impact according to NIEA regulations. However, in relation to this clause, the planning authority is responsible for its implementation.

309. The Committee was content with this response.

### **Inclusion of trees in local development plans (Clause 121)**

310. The Committee asked the Department to comment on the approach proposed for dealing with areas of trees and dead and dying trees.

311. The Department responded that this clause was transferring existing powers to councils with no radical changes. It confirmed that the clause provides that Tree Protection Orders (TPOs) will include areas of trees and does not see any requirement to expand TPOs to include areas of trees as entire woodlands can already be encompassed within TPOs and blanket TPOs are automatically established within conservation areas. The Department also indicated it would not change its approach to dead or dying trees but it will issue guidance on good practice.

312. The Committee commented that many historical or important trees remain unprotected and agreed to recommend that councils are encouraged to include trees in their development plans.

### **Replacement of trees (Clause 124)**

313. The Committee sought confirmation that sufficient flexibility would be provided with this clause to allow a tree to be replaced near, but not necessarily in, the place the previous tree stood where there had been a disease problem.

314. The Department confirmed that this was the case and the Committee accepted the clause as drafted.

### **Enforcement of tree protection orders (Clause 125)**

315. In addition to recommending the fine in this clause be raised (see levels and scales on fines) the Committee suggested that the two offences contained in this clause be codified into one offence. The Department accepted it might be possible to merge the two offences, however, it refused to do so, on the grounds that it would reduce the flexibility to deal with the potentially wide range of contraventions under the clause. It also argued that as it was it provided a balanced approach for both landowner and council.

316. The Committee accepted this response.

### **Obtaining expert information (Clauses 128, 160 & 197)**

317. The Committee was concerned about the availability and accessibility of expert information to councils once planning functions had been devolved. Members were concerned that where expertise was not required on a frequent basis there may be a considerable cost associated with obtaining it.

318. In its response the Department recognised that there are a number of specialised areas within the planning system (such as the review of mineral planning permissions) which councils will wish to consider how best to deliver. It suggested that one model might be a shared delivery model, or if certain types of development were clustered, a lead council could deliver the function.

319. The Committee also asked for confirmation that the possibility of expertise provided from the centre (e.g. NIEA) being charged as a cost to councils could be ruled out.

320. The Department's response indicated that statutory bodies will be designated through subordinate legislation as statutory consultees to the planning system and a list is being compiled with a view to public consultation. So far, there has been no discussion of fees with any of these bodies.

321. The Committee accepted the response.

## Part 5 – Enforcement

322. This part deals with enforcement powers which may be invoked where development has been carried out without the requisite grant of planning permission or consent. Enforcement powers are re-enacted and transferred to councils which will be responsible for all breaches of planning control. Issues raised in relation to Part 5 included:

- Enforcement
- Levels and scales of fines (see Part 4)
- Delegated powers
- Time limits
- Stop notices
- Consistency of enforcement
- Clarification of urgent works
- Obtaining expert information (see Part 4)

## **Enforcement (Clauses 130 & 152-154]**

323. The Committee had concerns on enforcement and requested details from the Department on enforcement practices to date including the number of staff transferred from Planning Service to the enforcement section and a response on how the issue of legal costs influences decisions on enforcement action.

324. The Department's response stated that this clause defines a breach of planning control and sets out that enforcement action constitutes the issuing of an enforcement notice or breach of condition notice. The main enforcement powers available to the Department are contained in Part VI of the Planning (Northern Ireland) Order 1991. This primary legislation has been amended by the Planning (Amendment) (Northern Ireland) Order 2003, which introduced a number of measures including new and revised enforcement powers and penalties. Further amendments to primary legislation are contained in the Planning Reform (Northern Ireland) Order 2006.

325. Under the provisions of the Order, the Department has a general discretion to take enforcement action when it regards it as expedient to do so, having regard to the provision of

the development plan and any other material considerations. The Department's general policy approach to dealing with breaches of planning control is contained in Planning Policy Statement (PPS) 9 'The Enforcement of Planning Control'.

326. The Committee asked about the expectation on councils to carry out enforcement activities; was it a statutory function, for example and what were the resource implications. The Department replied that enforcement will be demand-led and that it is impossible to say how much resource will be required as some councils may put more emphasis on enforcement than others. The Committee sought more information on current enforcement activity and costs, in particular an indication of the nature of breaches and what the proportion that had been deemed not expedient to progress. The Department indicated that their key objectives for planning enforcement are:

- To bring unauthorised activity under control
- To remedy the undesirable effects of unauthorised development
- To take legal action where necessary

327. It stressed that all complaints are looked into even though quite a high proportion are found to be non-breaches. The number of cases deemed 'not expedient' to progress was relatively low; in the region of 20%.

328. Members accepted the information provided but noted that councils were still very much in the dark on this issue and were deeply concerned about the future costs of this function. Resources are covered in more detail in the general issues section of the report.

### **Delegated powers of the Bill (Clauses 152, 153, 202, 208, 226, 229, 244, & 247)**

329. The Committee was provided with a Delegated Powers Memorandum by the Department and sought advice from the Examiner of Statutory Rules in relation to the delegated powers within the Bill.

330. The Examiner informed the Committee that most powers to make subordinate legislation within the Bill are in the form of orders (mostly development orders) and regulations subject to negative resolution and that this was an appropriate level of scrutiny.

331. The Examiner also pointed out that Clauses 152(9) and 153(9) in Part 5 contain powers to set fixed penalty payments in regulations subject to draft affirmative procedure and this too seems an appropriate level of scrutiny. The Committee agreed on this issue having recently called for the highest level of scrutiny to be applied to similar provisions in other legislation it had recently considered.

332. The Examiner made no comment on the power contained within Clause 208(1) in Part 11 of the Bill to alter the definition of "Crown Estate" by order which is subject to affirmative resolution.

333. Clause 244, in Part 14, contains a power to make further orders by order and that where that involves modification, amendment or repeal of a statutory provision, the power is subject to draft affirmative procedure. For all other instances it will be subject to negative resolution. The Examiner approved of the balance that this provides.

334. The Examiner also noted that Clause 247 in Part 15 contains powers to make commencement orders which, in accordance with standard practice, are not subject to Assembly procedure. However, the Committee agreed its own amendment to this clause to ensure that commencement orders in Part 3 of the Bill will be subject to draft affirmative procedure as follows:

Clause 247, page 160, line 16

At end insert—

( ) No order shall be made under subsection (1) in respect of Part 3 unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

335. The reasons for this are provided in the Key Issues of this report.

336. The Examiner did however draw the Committee's attention to several provisions.

337. In Part 9 the Examiner was concerned that powers in Clause 202(5) allowing OFMdFM to make rules regulating the procedure in appeals to the Planning Appeals Commission are subject to no Assembly procedure. He suggested that these powers should be made subject to negative resolution, akin to the level of scrutiny accorded to most of the subordinate legislation under the Bill relating to procedural matters. The Committee agreed with his concerns and asked the Department to address this anomaly. The Department indicated that it would bring it to the attention of OFMdFM but a response from the Department was not provided before formal clause consideration and Clause 202 was agreed as drafted. However, on 17 February 2011 the Committee was advised by the Department that in response to the Committee's request it would be tabling the following amendment at consideration stage which was accepted by the Committee:

Clause 202, Page 133, Line 32

At end insert—

'(7A) Rules made under subsection (5) shall be subject to negative resolution.'

338. Similarly, in Part 14 the Examiner was concerned that the powers in Clause 226(3) allowing the Department to make rules regulating the procedure in respect of local inquiries are also subject to no procedure. Again he suggested that these rules should be subject to negative resolution. In response to the Committee's query on this issue, the Department indicated that it would recommend the Examiner's comments to the Minister but a response was not forthcoming in time to be included in the Committee's report.

339. In relation to Clause 229(1) and (2), the Examiner drew the Committee's attention to the fact that the Bill allocates the function of appointing special advocates for the purposes of this clause to the Advocate General for Northern Ireland. He pointed out that as a consequence of this, rules under Clause 229(5) would be made by the Lord Chancellor and laid before Parliament at Westminster in accordance with the negative procedure there (Clause 229(6)). The Examiner suggested that this is out of place in Clause 229 which, in contrast to 228, is the fully devolved provision relating to the public interest relating to the security of premises or property other than that within Clause 228. He therefore suggested that Clause 229 should more appropriately confer functions on the Department of Justice and the Attorney General for Northern Ireland and that all the rules made under Clause 229 should be subject to draft negative resolution.

340. In response to these concerns the Committee asked the Department to consider amending Clause 229 accordingly. Following consultation with the Department of Justice, the Department agreed to make the following amendments which were accepted by the Committee:

Clause 229, Page 147, Line 14

Leave out 'Advocate General' and insert 'Attorney General'

Clause 229, Page 147, Line 18

Leave out 'Advocate General' and insert 'Attorney General'

## **Time limits (Clauses 131 & 44)**

341. The Committee questioned the continuation of a 10 year time limit for breaches of planning control other than for building, engineering, mining or other operations and the change of use of any building to use as a dwelling house (Clause 131(3)). Members asked if the Department would consider reducing this period on the grounds that a single period would reduce confusion and better enforcement should require less time to identify such breaches.

342. The Department indicated that the Minister accepted that introducing a single time period would make the system simpler and less open to misunderstanding and suggested that a single period of 7 years for all planning activities might be appropriate. The Committee questioned the point at which such a change would become applicable and was assured that time limits would not be applied retrospectively.

343. The Committee was not content for the current 4-year period to be increased to 7 years but agreed that a single period of 5 years would provide the most appropriate balance for time limits on breaches of all planning controls.

344. The Department accepted this and agreed to amend the Clauses 131 and 44 as a consequence accordingly. The amendment was not available in time for the report but the Department gave the following assurance in writing:

'...we are currently working with our lawyers to bring forward the further amendments within clause 131 and any necessary consequential amendments to change the time limits for both the 4 year and 10 year periods to 5 years. We will forward these as soon as we have them.'

## **Stop notices (Clauses 134-136, 149-150 & 183-186)**

345. The Committee received a written delegation requesting that the issuing of stop notices be looked at more closely during scrutiny of the Bill. Members asked for more information on the number of stop notices that have been issued and were advised that since 2009 10 stop notices have been issued and 7 temporary stop notices. Of the temporary stop notices were followed by a notice and 1 by an injunction.

346. The Department also advised that powers to issue temporary stop notices have been carried over into the Planning Bill by Clause 134 and that this will enable the planning authority to prevent unauthorised development at an early stage without first having to issue an enforcement notice. In addition it allows up to 28 days for the planning authority to decide whether further enforcement action is appropriate and what action should be without the breach intensifying by being allowed to continue. The provisions also impose certain limitations on activities that specify that contravention of such a notice would become a criminal offence punishable on summary conviction by a limited fine (the level depending on amendments – see Levels of scales and fines) or on indictment by an unlimited fine.

347. The Committee accepted that the legislation provided the necessary tools for enforcement but that the level of enforcement activity would depend on the degree of priority it was given and the resources allocated to it by local authorities. It also noted that this activity may have



compensation implications which will be another aspect for planning authorities to take into consideration when they take on responsibility for planning functions.

### **Consistency of enforcement (Clause 140)**

348. The Committee sought an indication of if and how the Department would oversee how councils conduct enforcement and if there would be any mechanism to ensure consistency across the different council areas.

349. The Department indicated that the devolution of planning functions to councils would undoubtedly result in variation between councils and that this was natural consequence of devolving planning powers. However the Department reminded the Committee that the audit powers provided in Part 10 allows the Department to look at councils' delivery and can be used to audit, review and encourage best practice. It noted however that this would be done through dialogue with councils.

350. The Committee accepted this response.

### **Clarification of urgent works (Clause 160)**

351. The Committee sought clarification of ownership under this clause.

352. The Department explained that under this clause the planning authority (council or Department) may carry out and recover the costs of urgent works to either a listed building or a building in a conservation whose preservation is important for maintaining the character or appearance of that area. The owner must be given at least 7 days notice of the works to be carried out.

353. The owner may appeal the notice within 28 days and grounds for appeal are that the work is unnecessary, that a temporary structure or support has been left in place for an unreasonable period or that the cost is unreasonable or its recovery would cause hardship. An owner who does not pay the cost set out in the notice may be taken to court by the planning authority.

354. The Committee accepted this explanation.

### **Part 6 – Compensation**

355. This part carries forward compensation provisions contained in the Land Development Values (compensation) Act (NI) 1965, the Planning (NI) Order and the Planning Reform (NI) Order 2006. It transfers enforcement powers that currently fall to the Department to district councils. Issues raised in relation to Part 6 included:

- Stop notices (see Part 5)
- Compensation for revoking
- Duty of statutory consultees to respond

### **Compensation for revoking (Clause 178)**

356. Most of the councils that submitted evidence to the Committee expressed concern about this clause. The Committee sought more information on revoking action to date including the total number of applications that have been revoked and the amount of compensation paid. The

Committee also asked the Department to consider making an amendment to require the Department to pay the compensation due when the Department exercises its power to revoke a planning application.

357. The Department explained that Clause 78 of the Bill allows the Department to intervene if a council is not fulfilling its duties to revoke a planning permission. When such an order is made by the Department it has the same effect as if made by the council. Responsibility for any subsequent compensation payment rests with the council under this clause.

358. The Department also told the Committee that its records show that 24 revocation / modification cases arose between 2000 and 2006. It also informed the Committee that whilst the method of data storage made it impossible to distinguish between payments for revocation and modification, it was able to report that there were no payments relating to revocation / modification for between 2006 and November 2010. It also stressed that it is normal practice to revoke or modify planning permissions with the agreement of the parties concerned (for example revoking one planning permission for the substitution of another) therefore no compensation liability arises.

359. The Department indicated it would not consider an amendment but stressed that it anticipated such occurrences to be very rare and that it would also try to seek agreement with the council they do. The Committee accepted this position.

### **Duty of statutory consultees to respond (Clauses 187 & 224)**

360. The Committee was extremely concerned when advised by the Department that in the event of a late or non-response from a statutory consultee, a council would be liable for its decision. This would apply even if a decision that had been made after the agreed time limit had to be revoked as a result of information coming forward from a statutory consultee that had not responded in time.

361. In the Committee's opinion this was unfair and it asked the Department to consider an amendment ensuring that councils would not be held liable for decisions made where a statutory consultee had failed to respond within the required period.

362. The Department indicated that it was not willing to bring forward such an amendment and the Committee subsequently agreed its own amendment as follows:

New Clause

After Clause 187 insert

'Compensation: decision taken by council where consultee fails to respond under section 224

At end insert—

'187A. (1) Where a consultee fails to respond to a council consultation in accordance with section 224(3) and that council:

(e) takes a decision under this Act in the absence of such a response; and

(f) subsequently receives information which the council could reasonably expect to have been included in that response; and

(g) decides to revoke or modify planning permission due to the information referred to in paragraph (b); and

(h) compensation is payable by a council under section 178 in connection with the decision under paragraph (c);

the relevant department shall pay to the council the amount of compensation payable.

(2) For the purposes of subsection (1) "the relevant department" means the department (if any) to which the consultee is accountable."

## Part 7 – Purchase of Estates

363. This part deals with purchase notices and enables a land owner who claims their land is left without reasonable beneficial use by virtue of a planning decision, to issue a purchase notice to seek to have the district council acquire it from them and be paid compensation. Issues raised in relation to Part 7 included:

- Interpretation of 'reasonably'

### **Interpretation of 'reasonably' (Clause 189)**

364. The Committee sought clarification of the use of the term 'reasonably beneficial use' in this clause. The Department informed the Committee that 'reasonably beneficial use' is not defined in this legislation or in any equivalent UK legislation as each case should be examined on its own individual merits.

365. The Committee accepted this explanation.

## Part 8 – Further Provisions as to Historic Buildings

366. This part re-enacts powers within the 1991 Planning Order for the continuance of the Historic Buildings Council for the making of grants by the Department towards the maintenance and repair of listed buildings and the acquisition of listed buildings. Issues raised in relation to Part 8 included:

- Obtaining expert information (see Part 4)
- The roles of different bodies related to listed buildings

### **The roles of different bodies relating to listed buildings (Clause 196)**

367. Several submission to the Committee's call for evidence requested clarification on the roles of the different bodies relating to listed buildings and the Committee sought further information on this issue.

368. The Department's response indicated that it is responsible for the listing and de-listing of buildings of special architectural or historic interest under the 1991 Planning Order which have been carried over into the Planning Bill. Listing covers the complete interior and exterior of the building and can also extend to features and free standing objects within the curtilage of the building. Around 8,500 structures are listed. It noted that it has to consult the Historic Buildings Council when it compiles or amends a list of buildings of special architectural or historic interest. In effect, this means that the current powers of the NIEA will remain with the Department, with

the exception of Building Preservation Notices, while the current powers of Planning Service, including enforcement, will devolve to councils.

369. The Committee accepted the explanation but stressed the importance of better liaison between statutory consultees and councils.

#### Part 9 – The Planning Appeals Commission

370. This part re-enacts existing powers within the 1991 Planning Control Order which provide for the continuance and procedures of the PAC. Issues raised in relation to Part 9 included:

- Delegated powers (see Part 5)
- Award of costs

### **Award of costs (Clause 202)**

371. Several respondents to the Committee's call for evidence felt that the PAC should have the power to award costs where it felt that an appeal had been made frivolously or vexatiously. The Committee agreed with this and asked the Department to consider an amendment which the Department agreed to introduce as follows:

New clause

After clause 202 insert—

'Power to award costs

202A.—(1) The appeals commission may make an order as to the costs of the parties to an appeal under any of the provisions of this Act mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The provisions are-

(a) sections 58, 59, 95, 96, 114, 142, 158, 164 and 172;

(b) sections 95 and 96 (as applied by section 104(6));

(c) in Schedule 2, paragraph 6(11) and (12) and paragraph 11(1)

(d) in Schedule 3, paragraph 9.

(3) An order made under this section shall have effect as if it had been made by the High Court.

(4) Without prejudice to the generality of subsection (2), the Master (Taxing Office) shall have the same powers and duties in relation to an order made under this section as the Master has in relation to an order made by the High Court.

(5) Proceedings before the appeals commission shall, for the purposes of the Litigants in Person (Costs and Expenses) Act 1975 (c. 47), be regarded as proceedings to which section 1(1) of that Act applies.'

New clause

After clause 202 insert—

'Orders as to costs: supplementary

202B.—(1) This section applies where—

(a) for the purpose of any proceedings under this Act—

(i) the appeals commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether that person wishes, to appear before and be heard by it; and

(ii) arrangements are made for a hearing to be held;

(b) the hearing does not take place; and

(c) if it had taken place, the appeals commission would have had power to make an order under section 202A requiring any party to pay any costs of any other party.

(2) Where this section applies the power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.'

372. The Committee was content with this amendment.

#### Part 10 – Assessment of Council's Performance or Decision Making

373. This part introduces new provisions for the Department to undertake audits or assessments in respect of planning functions that will transfer to district councils. It includes powers about the reporting of these audits or assessments. Issues raised in relation to Part 10 included:

- Consistency of enforcement (see Part 5)
- Assessment of councils' performance

### **Assessment of councils' performance (Clause 203)**

374. The Committee requested more information on how the level of scrutiny under this clause will tie in with the audit function of the Department.

375. The Department replied that this clause gives it powers to conduct an assessment of a council's performance or appoint a person to do so. The assessment may cover the council's performance of their planning functions in general or of a particular function.

376. The Department indicated that a key way to demonstrate the effectiveness and integrity of the planning system will be through governance and performance management and monitoring will be critical in ensuring that planning functions are carried out and are seen to be carried out in a clear, fair and consistent manner and that best practice is applied across the new district councils. These functions will also be important in providing a quality assurance service for councils.

377. The Department noted that at present it has its own planning audit function which undertakes regular reviews of planning processes within Planning Service. In relation to councils, the Local Government Auditor is currently responsible for financial and value for money audits.

However, the nature of these local government audits is very different from the planning audit function which focuses primarily on specialist planning issues.

378. The Department said that in light of the views previously expressed by political representatives, including the Environment Committee, industry representatives and others in relation to the need for strong governance arrangements, it proposed that central government should have a statutory audit / inspection function. An audit / inspection function of this nature could cover general or function-specific assessments of local government's planning functions, reviewing planning processes and the application of policy, with a focus on quality assurance, advice and the promotion of best practice. The Department stressed that it believed that this approach will help to provide further assurance to the public that the planning system is open, fair and transparent.

379. The Committee accepted this explanation.

#### Part 11 – Application of Act to Crown Land

380. This part re-enacts provisions within the 1991 Planning Order which apply planning legislation to the Crown subject to certain exceptions. New powers are introduced to deal with urgent Crown development applications. One issue was raised in relation to Part 11:

- Delegated powers (see Part 5)

#### Part 12 – Correction of Errors

381. This part re-enacts provisions from the 2006 Planning Reform Order to correct decision documents including omissions. One issue was raised in relation to Part 12:

- Correction of errors

### **Correction of errors (Clause 215)**

382. The Committee was concerned that the wording of this clause was cumbersome and thereby difficult to interpret. Members asked if it could be redrafted and welcomed the following amendments accordingly:

Clause 215, Page 140, Line 2  
After 'it' insert '-(a)'

Clause 215, Page 140, Line 2  
After '(a)' insert ':or  
(b)'

#### Part 13 – Financial Provisions

383. This part deals with financial provisions and re-enacts powers for the payment of fees and charges as well as new specific powers to charge multiple fees for retrospective planning applications. Powers for the Department to pay grants for research and bursaries to bodies providing assistance in relation to certain development proposals are also re-enacted. Issues raised in relation to Part 13 included:

- Fees and charges

- Grants to bodies providing assistance

## **Fees and charges (Clause 219)**

384. The Committee sought further information on the setting of fees and the ability of councils to recoup costs for other planning functions other than assessing planning applications.

385. The Department responded that for the first three years after planning functions are transferred to councils, the Department would continue to set the fees. It noted that it was currently undergoing a review of these fees to make them fairer and more reflective of the true costs involved in the process. It also noted that it is currently undergoing a review of its staffing structures so that it has an accurate indication of the costs of the other planning functions to be transferred.

386. The Department said that it will review fees after three years with a view to passing responsibility for fee-setting to individual councils. While councils will then have the ability to set their own fees, the Department anticipates councils working together on a voluntary basis in this regard.

387. The Committee accepted this explanation and costs of devolved planning functions are discussed further under 'resources'.

## **Grants to bodies providing assistance (Clause 221)**

388. One of the respondents to the Committee's call for evidence suggested that this clause should be strengthened by the inclusion of a requirement for bodies to further the understanding of planning policy proposals. The Committee asked the Department to consider such an amendment and it agreed to bring forward the following amendment at consideration stage:

Clause 221, Page 142, Line 41

After 'understanding' insert 'of planning policy proposals and'

Clause 221, Page 142, Line 41

After 'aspect of' insert 'other'

389. Also in relation to this clause, it was suggested that the oversight role of DFP was out of date, no longer needed and was not present in similar grant making provisions in other legislation.

390. Again the Committee asked the Department to update the clause with a suitable amendment and the Department agreed with the following amendment accordingly:

Clause 221, Page 143, Line 8

Leave out from ', with' to 'Personnel,' in line 9

## **Part 14 – Miscellaneous and General Provision**

391. This part deals with a number of miscellaneous and general provisions including the introduction of powers for persons or bodies which are required to be consulted in the determination of applications of planning permission. Issues raised in relation to Part 14 included:

- Delegated powers (see Part 5)

- Duty of statutory consultees to respond (see Part 6)
- Involving public agencies
- Compatibility of IT systems

### **Involving public agencies (Clause 226)**

392. Councils that responded to the Committee's call for evidence wanted reassurance that councils would be closely involved in any decision to hold a local public inquiry. The Committee also sought clarification of who would cover the costs of government agencies in the event of a public inquiry.

393. The Department clarified that only it could initiate a local public inquiry and that it would pay for any inquiry it causes under this provision. The Committee was content with this response.

### **Compatibility of IT systems (Clause 237)**

394. The Committee questioned the compatibility of council and Departmental IT systems. Its concerns were based on problems it has been made aware of during the roll out of the Department's electronic planning portal, ePIC.

395. The Department replied that planning systems conform to IT best practice and use civil service strategic tool sets which enable exchange of information and integration with other IT systems and that the compatibility of Departmental and council IT systems will be dealt with under the pilot projects with councils.

396. The Department also noted that councils will be required to keep and make available a planning register and that a development order may require the Department to populate the register of the relevant district council when an application is submitted directly to it or issues a notice under departmental reserve powers.

397. The Committee accepted the principle that as central and local government systems are required to be of the same standard, the expectation is that they will be compatible.

#### Part 15 – Supplementary

398. This part covers the interpretation, further provision, minor and consequential amendments, repeals, commencement provision and short title. Issues raised in relation to Part 15 included:

- Delegated powers (See Part 5)
- Interpretation of reserved matters

### **Interpretation of reserved matters (Clause 243)**

399. On behalf of respondents to the call for evidence, the Committee asked the Department to interpret 'reserved matters' in this clause. The Department replied that 'reserved matters' is defined in subordinate legislation – the Planning (General Development) Order (Northern Ireland) 1993 and the Committee was content with this response.

#### Schedule 2 – Review of old Mineral Planning Permission



## **Definition of dormant sites (Schedule 2)**

400. The Department advised the Committee that it would be amending the definition of 'dormant site' in this schedule to take account of the fact that it has never been enacted and is now out of date. Rather than including another date the Department intends to define a dormant site as a period of time as follows:

Schedule 2, Page 164, Line 33

Leave out from 'in' to the end of line 34 and insert 'within the period of 15 years ending on the date on which this Schedule comes into operation.'

401. The Committee accepted the explanation and amendment accordingly.

Schedule 5- The Historic Buildings Council

## **Duration of tenure on Statutory Advisory Councils (Schedule 5)**

402. One of the respondents to the Committee's call for evidence suggested that the period of tenure for a member of the Council should be for a minimum of 3 years rather than a maximum (Schedule 5, paragraph 2). They suggested that a member is only getting into the role and responsibilities after a year in post and the quick change over results in a major break in the consistency of advice it gives to NIEA.

403. The Committee agreed to recommend that this issue is taken into consideration during the review of the 3 Statutory Advisory Councils that is underway.

Issues Relating to the Bill in General

## **Governance of Planning Functions at Council Level**

404. The Committee was extremely concerned about the timing of the Bill because the governance arrangements for ensuring equality and fairness in council decisions are not yet in place. The Department insisted that the Planning Bill would not be implemented until Local Government Reform had taken place and the two processes would progress in tandem.

405. The Committee drew the Department's attention to the Equality Impact Assessment (EQIA) carried out at a strategic level on the Reform of the Planning System (Appendix 6). An assessment of potential substantive and procedural impacts by Section 75 grounds indicated that:

"While there may be no strong indication that religious belief will impact on the regional dimensions to the reformed planning system, given the correlation between political opinion and community background/religion, there may be concerns, whether real or perceived, that the political allegiance of elected members could reflect in local planning decisions at district council level and in particular where elected members are directly involved in any decision-making process. These anxieties should be duly acknowledged in any emerging proposals.

406. The Committee commissioned research on the EQIA and was advised that the Bill does not contain significantly greater detail in terms of equality safeguards than the reform process for which the EQIA was produced so there would be relatively little detail on which to base another EQIA. The Research paper also suggested that the impacts of the planning process will be better

understood with the development of appropriate guidance, subordinate legislation and local plans, for which equality impact assessments will be required.

407. The research clarified that the Section 75 duty remains applicable at local authority level and therefore local planning policies would require an equality impact assessment. The Equality Commission envisaged that:

"... new local development plans will be effective tools in assisting district councils to fulfil their duties under Section 75 of the Northern Ireland Act to have due regard to the need to promote equality of opportunity and good relations".

408. The Committee agreed to pursue the equality implications of the Bill after Committee Stage but considered options available to it during the legislative process for preventing planning functions being devolved to local authorities until the necessary checks and balances were in place. These were identified as obtaining an assurance from the Minister that it was his intention for the two pieces of legislation to be brought forward together, delaying commencement of key moments of the Bill by defining their start point in law, making the commencement of key moments of the Bill subject to Assembly approval or voting the Bill down at final stage.

409. The Committee sought and received reassurance from the Minister that the planning functions of the Bill would not be devolved to local councils until governance structures were in place. In his response the Minister indicated that:

"... the transfer of planning powers to district councils will not take place until the new governance arrangements are in place for councils along with a revised ethical standards regime which includes a mandatory Code of Conduct for councillors."

410. Members welcomed this but mindful that responsibility for such a decision was on the verge of potential change, sought the reassurance of a legislative mechanism to prevent functions transferring to councils too soon.

411. Ideally the Committee wanted to link the commencement of the Bill to that of the Local Government Reform Bill. However, it was advised that this was not technically possible as the Local Government Reform legislation does not yet exist. The next best alternative was deemed to be to ensure that none of the commencement orders passing the responsibility of planning functions to councils could take place without the approval of the Assembly and members agreed to make the commencement of Part 3 (Planning Control) subject to draft affirmative procedure (details of amendment under delegated powers).

## **Resources**

412. All respondents to the Committee's call for evidence raised the issue of resources. Many were sceptical of the Minister's suggestion that the process of transferring planning powers to local authorities would be cost neutral and the Committee asked the Department for more information.

413. The Department reminded the Committee that it is in the process of consulting on a radical reform of the planning fee structure and maintained that it will be ensuring that in due course fees will more accurately reflect the true cost associated with the development in question. The Committee welcomed this, acknowledging that the current fee structure was out of synch with the work involved.

414. The Committee was also concerned about the cost of the other planning functions that would be handed to councils; survey of district, local development plans and enforcement in particular. Members were also keen to know who would pay for expertise required to inform the various planning processes. In addition, members sought clarity on who would be required to cover the costs of the PAC and those of an independent examiner, should one be appointed by the Department.

415. The Department insisted that appropriate resources would transfer to councils with the functions and that it was currently in the process of assessing the costs of various planning functions. It also confirmed that costs incurred by PAC in the process would continue to be covered by OFMdfM and if it appointed an independent examiner, the costs would be covered central government.

416. The Committee sought confirmation from the Department that there would be strict guidance on what would be covered by fees and what was expected to be covered by council funds.

## **Capacity and Training**

417. The Committee recognised that the transfer of planning functions to local authorities represented a seismic shift in approach and involvement for councillors and council staff. Along with many respondents to the Committee's call for evidence, members called for training and capacity building to be seen as an essential part of the process.

418. The Department agreed and indicated it was drawing up specifications of how the process would work and would be carrying out a series of pilots across all councils to address the change in culture required. It indicated it would be working closely with NILGA and industry bodies such as the Royal Town Planning Institute and the Royal Institute of Chartered Surveyors on issues surrounding implementation. Specific formal training will be provided starting in April / May 2011 and councils would be given opportunities to rehearse their new roles and responsibilities before the process 'went live'.

419. The Committee welcomed the proposals but cautioned on the need for training programmes to be tailor-made and of a suitable duration and also for the whole process to be adequately funded.

## **Land Use Strategy**

420. The Committee recognised the need for the Department to retain control over major planning decisions and those of regional significance and welcomed proposals for secondary legislation to set out the criteria for these. However, members inquired on what basis decisions of these kinds would be made by the Department and how, in a plan-led system consistency would be achieved for decisions across Northern Ireland.

421. The Department indicated that the overarching strategy for regionally significant and major planning decisions would be the Regional Development Strategy but the Committee stressed the need to think beyond this to full land use planning akin to that being carried out in Scotland. A land use strategy would look beyond regional development taking account of land across the whole region

## **Review Period**

422. Several stakeholders expressed concern about the process of devolving planning functions to local authorities and suggested that there should be a requirement in the Bill for the Department to review implementation of the bill within 3 years of it being enacted and periodically thereafter.

423. The Committee agreed with the need for a review of the Bill and asked the Department if it would consider an appropriate amendment. The Department refused on the grounds that it, the Executive or indeed the Environment Committee, could initiate reviews as and when they saw fit and that there was no need for such a requirement to be placed on the face of the Bill. The Committee considered bringing forward its own amendment but eventually agreed that the decision if and when to review implementation of the Bill should be left to policy rather than legislation.

### **Third party right of appeal**

424. The majority of respondents to the Committee's call for evidence on the Bill believed it would be very important to include provision for third party right of appeal in the Bill. Some felt there may be scope to introduce it initially as a transitional provision, while the return of planning powers to local authorities embeds whilst others called for it to be introduced on a limited basis to ensure that vexatious appeals are curbed. Research provided to the Committee outlined the pros and cons of the inclusion of third party appeals and identified various models that could be adopted.

425. In response the Department stated that the Government response to the Planning Reform policy consultation was agreed by the Executive on 25 February 2010. The response indicated that given that the Department had made it clear that there were no proposals to make provision for third party appeals in the current package of reforms, and on the basis of the analysis of responses, there did not appear to be any immediate compelling reason to proceed in the public interest towards making provision for third party appeals in the current round of planning reform proposals.

426. The response also indicated that given the majority of respondents supported their introduction, the Department considers that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and implementation of local government reform have settled down and are working effectively. In addition, this approach would ensure that third party appeals would not present an opportunity to hinder the recovery and delivery of a productive and growing economy in Northern Ireland. Third party rights at this stage could well be a competitive economic disadvantage to Northern Ireland, given that third party appeals have not been introduced in England, Scotland or Wales and there is a suggested significant risk of potential adverse impact upon investment in the Northern Ireland economy if they were to be introduced.

### **Community Amenity Levy**

427. There was much discussion in the Committee about the possibility of introducing a Community Infrastructure Levy. Many respondents also believed that consideration should be given to introducing this, at a time to be specified, in order to increase planning gain. 71% of respondents to the Department's consultation on Planning Reform agreed that developers should be required to make a greater contribution towards the provision of infrastructure but no reference is made in the Bill to a community infrastructure fund or similar levy arrangement.

428. The Committee asked the Department to consider the introduction of a community infrastructure levy and the Department stated that this is beyond the scope of the Planning Bill.

The Community Infrastructure Levy was introduced in England and Wales but does not extend to Northern Ireland. The issue of a wider system of developer contributions to more general infrastructure provision beyond site specific mitigation was included in the planning reform consultation to initiate debate on this topic. Responses indicated an appetite for seeking enhanced contributions from developers and the Department has recommended that future work in this area be taken forward at Executive level in relation to responsibility for the funding and provision of strategic infrastructure.

429. The Committee considered an amendment of its own to introduce powers to enable the Department to introduce a Community Amenity Levy in the future but eventually agreed that in the time available it was unable to conduct sufficient research to be sure this was the right approach. Instead it agreed to recommend that the Department should explore the potential of a Community Amenity Levy in the future.

## **Marine Spatial Planning**

430. The Committee expressed disappointment at the absence of any recognition of the roles of the Department and local authorities in relation to marine spatial planning. Neither was there any indication of how potential overlaps between terrestrial and marine planning would be addressed.

431. The Department confirmed that marine planning was not in this Bill and would be dealt with through separate legislation. It has been agreed by the Executive for a Northern Ireland Marine Bill to be brought forward early in the next session, 2012, and that the UK Marine Act already applies where marine matters are reserved or accepted. It also stressed that a Marine Policy Statement has been made in this session and that the first Marine Plan is scheduled to be in place in 2014.

## **Notices of Completion**

432. Several respondents to the Committee's call for evidence suggested that notices of completion should be introduced through the Bill. The analysis of the provisions of the Bill provided by QUB, through Assembly Research and Library Services, (Appendix 5) also drew the Committee's attention to the lack of inclusion of notification of development and completion of development certificates.

433. QUB pointed out that although 69% respondents to the Department's consultation were in support of their introduction the Department declined to introduce them in the Bill arguing that the notices would add another layer of bureaucracy to the process and that it would need to examine the practicalities and outcomes of the Scottish experience with such notices before reaching any conclusions. The Department indicated that it wanted to consider resource implications and to explore the potential for closer links with the building control notification system and any benefits that might come from planning functions and building control functions both being the responsibility of local authorities.

434. The QUB paper said that there is evidence to suggest that notices of initiation provide security for land owners who could be assured that they have commenced development prior to expiration to their permission, which remains an area of some concern. This would alleviate uncertainty and ensure consistent agreement on the definition of commencement. It would also ensure that development is completed in accordance with the permission granted thereby reducing levels of non-compliance and the need for enforcement action.

435. The Committee accepted the Department's rationale for not bringing forward notices of completion at this stage but agreed to recommend that the Department revisits the issue when the two functions, planning and building control, are together in council.

## **Chief Planner**

436. Several respondents to the call for evidence and the QUB analysis paper on Implementation, Performance and Decision making (Appendix 5) noted that in other regions of the UK, a Chief Planning Officer provides a professional leadership role to complement administrative leadership provided through elected representatives and their departments. Reference was made to the comparable roles of the Chief Medical Officer and the Chief Scientific Officer in Northern Ireland.

437. The Committee asked the Department if it would consider including in the Bill a requirement for a Chief Planning Officer for Northern Ireland to be appointed. In response, the Department advised that the appointment of a Chief Planner does not need to be provided for in legislation but may be appointed at any time such a policy decision might be made.

## **Ensuring vulnerable and hard to reach groups can engage in the planning process**

438. The Committee was concerned that there was a risk that community engagement processes would exclude vulnerable groups and those that were hard to reach. Again reference was made to the Equality Impact Assessment (Appendix 6) which identified that low level literacy rates for example, might act as a barrier to full participation in some planning processes.

439. The Committee requested research into how vulnerable groups are represented in the planning systems of other jurisdictions and was advised that local authorities in England, Scotland, Wales and the Republic of Ireland have developed a range of processes and structures to enable community engagement. In most cases these are supported and facilitated by community planning support or networking organisations in the community and voluntary sector.

440. The Department noted that the Bill requires it to prepare a Statement of Community Involvement setting out its policy for involving the community in its development management functions. However its aim is to encourage and facilitate the involvement of the community rather than require it. The Committee accepted the response but noted the need for close links between a local authority's community plan and the local development planning process.

## **The legacy of area plans**

441. Several respondents, especially local authorities, were concerned about the legacy of current area plans when a new plan-led system came into being. They asked if the area plan framework that is to be inherited by councils will be obsolete and what would happen where area plans were still not in place.

442. The Department advised that plans which have been adopted before planning powers transfer to councils will continue to apply until the new council's own local development plan is adopted. It indicated that it anticipates progressing to adoption any draft plans which remain when powers transfer.

## **Clause by Clause Consideration of the Bill**

443. The Committee conducted its clause by clause scrutiny of the Bill on 8 February 2011, 10 February 2011 and 15 February 2011 – see Appendix 2. The Committee recommended several amendments which are outlined below.

### **Clause 1 - General functions of Department with respect to development of land**

444. At the meeting on 8 February the Committee decided to defer a decision on the Clause until the Department considered the possibility of including 'wellbeing'. The Committee considered the Department's response at its meeting on 10 February 2011 and decided to defer a final decision on the Clause until the meeting on 15 February 2011.

445. At the meeting on 15 February 2011 the Committee was content with the Clause as amended by the Department to 'further' sustainable development and 'take account of' policies and guidance and subject to a Committee amendment requiring the Department to promote or improve social well-being as follows:

Clause 1, page 1,

Leave out line 11 and insert—

- (i) furthering sustainable development; and
- (ii) promoting or improving social well-being.

Clause 1, Page 1, Line 12

Leave out 'have regard to' and insert 'take account of'

### **Clause 2 - Preparation of statement of community involvement by Department**

446. At the meeting on 8 February 2011 the Committee was content with the clause subject to a Departmental amendment to include a finite period for the preparation and production of its statement of community involvement as follows:

Clause 2, Page 2, Line 7

After 'prepare' insert 'and publish'

Clause 2, Page 2, Line 11

At end insert—

'(3) The Department must prepare and publish a statement of community involvement within the period of one year from the day appointed for the coming into operation of this section.'

### **Clause 3 - Survey of district**

447. At the meeting on 8 February 2011 the Committee decided to defer a decision on the Clause until a draft Committee amendment was brought back for further consideration. At the Committee meeting on 10 February the Committee agreed, after a division, that it was content with the Clause subject to a Committee amendment to include climate change as follow:

Clause 3, Page 2, Line 27

At end insert—

'( ) the potential impact of climate change

### **Clause 4 - Statement of community involvement**

448. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 5 - Sustainable development**

449. At the meeting on 8 February 2011 the Committee welcomed the Department's agreement to amend the clause to 'take account of' policies and guidance as follows:

Clause 5, Page 3, Line 7

Leave out 'have regard to' and insert 'take account of'

450. However the Committee decided to defer a decision on the Clause until the Department had reported back to the Committee on Clause 1 in relation to sustainable development. At the meeting on 10 February 2011 the Committee decided it was content with the Clause subject to a Committee amendment to further sustainable development as follows:

Clause 5, Page 3, Line 25

Leave out 'contributing to the achievement of' and insert 'furthering'

On 15 February 2011 the Department agreed it would bring forward both these amendments.

### **Clause 6 - Local development plan**

451. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 7 - Preparation of timetable**

452. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 8 - Plan strategy**

453. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 9 - Local policies plan**

454. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 10 - Independent examination**

455. At the meeting on 8 February 2011 the Committee decided to defer a decision on the Clause until the Department reported back on who would be responsible for paying the costs if an independent examiner was used. At the meeting on 10 February the Department agreed to amend the Clause to strengthen its position on the appointment of an independent adviser and the Committee agreed the clause subject to this Departmental amendment as follows:

Clause 10, Page 6, Line 10

At end insert—

'(4A) The Department must not appoint a person under subsection (4)(b) unless having regard to the timescale prepared by the council under section 7(l), the Department considers it expedient to do so.'

### **Clause 11 - Withdrawal of development plan documents**



456. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 12 – Adoption**

457. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 13 - Review of local development plan**

458. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 14 - Revision of plan strategy or local policies plan**

459. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 15 - Intervention by Department**

460. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 16 - Department's default powers**

461. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 17 - Joint plans**

462. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 18 - Power of Department to direct councils to prepare joint plans**

463. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 19 - Exclusion of certain representations**

464. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 20 – Guidance**

465. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 21 - Annual monitoring report**

466. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 22 – Regulations**

467. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 23 - Meaning of "development"**

468. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 24 - Development requiring planning permission**

469. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 25 - Hierarchy of developments**

470. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 26 - Department's jurisdiction in relation to developments of regional significance**

471. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 27 - Pre-application community consultation**

472. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 28 - Pre-application community consultation report**

473. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 29 - Call in of applications, etc., to Department**

474. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 30 - Pre-determination hearings**

475. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 31 - Local developments: schemes of delegation**

476. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 32 - Development orders**

477. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 33 – Simplified planning zones**

478. At the meeting on 8 February 2011 the Committee deferred a decision on this Clause until further consideration at the meeting on 10 February 2011. At the meeting on 10 February 2011 the Committee decided to defer a final decision on the Clause until the meeting on 15 February 2011 when the Department had provided examples of guidance.

479. At the meeting on 15 February the Committee was content with the Clause as drafted.

## **Clause 34 – Making and alteration of simplified planning zone schemes**

480. At the meeting on 8 February 2011 the Committee deferred a decision on this Clause until further consideration at the meeting on 10 February 2011. At the meeting on 10 February 2011 the Committee decided to defer a final decision on the Clause until the meeting on 15 February 2011 when the Department had provided examples of guidance.

481. At the meeting on 15 February the Committee was content with the Clause as drafted.

## **Clause 35 – Simplified planning zone schemes: conditions and limitations on planning permission**

482. At the meeting on 8 February 2011 the Committee deferred a decision on this Clause until further consideration at the meeting on 10 February 2011. At the meeting on 10 February 2011 the Committee decided to defer a final decision on the Clause until the meeting on 15 February 2011 when the Department had provided examples of guidance.

483. At the meeting on 15 February the Committee was content with the Clause as drafted.

## **Clause 36 - Duration of simplified planning zone scheme**

484. At the meeting on 8 February 2011 the Committee deferred a decision on this Clause until further consideration at the meeting on 10 February 2011. At the meeting on 10 February 2011 the Committee decided to defer a final decision on the Clause until the meeting on 15 February 2011 when the Department had provided examples of guidance.

485. At the meeting on 15 February the Committee was content with the Clause as drafted.

## **Clause 37 - Alteration of simplified planning zone scheme**

486. At the meeting on 8 February 2011 the Committee deferred a decision on this Clause until further consideration at the meeting on 10 February 2011. At the meeting on 10 February 2011 the Committee decided to defer a final decision on the Clause until the meeting on 15 February 2011 when the Department had provided examples of guidance.

487. At the meeting on 15 February the Committee was content with the Clause as drafted.

## **Clause 38 - Exclusion of certain descriptions of land or development**

488. At the meeting on 8 February 2011 the Committee deferred a decision on this Clause until further consideration at the meeting on 10 February 2011. At the meeting on 10 February 2011 the Committee decided to defer a final decision on the Clause until the meeting on 15 February 2011 when the Department had provided examples of guidance.

489. At the meeting on 15 February the Committee was content with the Clause as drafted.

## **Clause 39 - Grant of planning permission in enterprise zones**

490. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

## **Clause 40 - Form and content of applications**

491. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

## **Clause 41– Notice, etc., of applications for planning permission**

492. At the meeting on 8 February 2011 the Committee deferred a decision on this Clause until the Department clarified if neighbour notification would be made compulsory. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

## **Clause 42 - Notification of applications to certain persons**

493. At the meeting on 8 February 2011 the Committee deferred a decision on this Clause until the Department reported back on the number of occasions Planning Service had used the powers under this Clause. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

## **Clause 43 - Notice requiring planning application to be made**

494. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

495. However, at the meeting on 22 February 2011 the Committee was advised that the Departmental amendment to Clause 131, as requested by the Committee, would have a consequential impact on this clause. The Committee noted the following consequential amendment:

Clause 43, Page 26, Line 2

Leave out paragraphs (a) and (b) and insert 'within the period of 5 years from the date on which the development to which it related was begun'

## **Clause 44 - Appeal against notice under section 43**

496. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted. However, at the meeting on 10 February 2011, an issue was raised under a later clause that had an impact on this clause and it was decided to defer a final decision. At the meeting on 15 February 2011 the Committee agreed a Departmental amendment to Clause 131 that would have a consequential impact on this clause and the Committee agreed this clause subject to that consequential amendment.

497. On 22 February 2011, the Committee noted the following consequential amendment:

Clause 44, Page 27, Line 16

Leave out from '4' to 'be,' and insert '5 years'

## **Clause 45 - Determination of planning applications**

498. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

## **Clause 46 - Power of council to decline to determine subsequent application**

499. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 47 - Power of Department to decline to determine subsequent application**

500. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 48 - Power of council to decline to determine overlapping application**

501. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 49 - Power of Department to decline to determine overlapping application**

502. At the meeting on 8 February 2011 the Committee was content with the Clause as amended by the Department to ensure a consistent approach throughout the Bill as follows:

Clause 49, Page 30, Line 29

After 'land' insert 'made to it in accordance with section 26(5)'

**Clause 50 - Duty to decline to determine application where section 27 not complied with**

503. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 51 - Assessment of environmental effects**

504. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 52 - Conditional grant of planning permission**

505. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 53 - Power to impose aftercare conditions on grant of mineral planning permission**

506. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 54 - Permission to develop land without compliance with conditions previously attached**

507. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 55 - Planning permission for development already carried out**

508. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

**Clause 56 - Directions etc. as to method of dealing with applications**

509. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 57 - Effect of planning permission**

510. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 58 – Appeals**

511. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

512. At the meeting on 15 February 2011 the Committee was content with a new clause after Clause 58 to prevent any new material being presented after an appeal has been lodged unless it could not have been presented at the time or there were exceptional circumstances for it not being presented as follows:

New clause

After clause 58 insert—

‘Matters which may be raised in an appeal under section 58

.—(1) In an appeal under section 58, a party to the proceedings is not to raise any matter which was not before the council or, as the case may be, the Department at the time the decision appealed against was made unless that party can demonstrate—

(a) that the matter could not have been raised before that time, or

(b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—

(a) the provisions of the local development plan, or

(b) any other material consideration.’

### **Clause 59 - Appeal against failure to take planning decision**

513. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 60 - Duration of planning permission**

514. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 61 - Duration of outline planning permission**

515. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 62 - Provisions supplementary to sections 60 and 61**

516. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 63 - Termination of planning permission by reference to time limit**

517. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 64 - Effect of completion notice**

518. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 65 - Power of Department to serve completion notices**

519. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 66 - Power to make non-material changes to planning permission**

520. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 67 - Revocation or modification of planning permission by council**

521. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 68 - Aftercare conditions imposed on revocation or modification of mineral planning permission**

522. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 69 - Procedure for section 67 orders: opposed cases**

523. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 70 - Procedure for section 67 orders: unopposed cases**

524. At the meeting on 8 February 2011 the Committee was content with the Clause as amended by the Department.

### **Clause 71 - Revocation or modification of planning permission by the Department**

525. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 72 - Orders requiring discontinuance of use or alteration or removal of buildings or works**

526. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 73 - Confirmation by Department of section 72 orders**

527. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 74 –and Power of Department to make section 72 orders**

528. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 75 - Planning agreements**

529. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 76 - Modification and discharge of planning agreements**

530. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 77 –Appeals**

531. At the meeting on 8 February 2011 the Committee was content with the Clause as drafted.

### **Clause 78 - Land belonging to councils and development by councils**

532. At the meeting on 8 February 2011 the Committee was content with the clause subject to a Departmental amendment to delete an unnecessary reference as follows:

Clause 78, Page 49, Line 16

At end insert—

'(c) Part 5.'

Clause 78, Page 49, Line 40

Leave out from '(except' to '107')' in line 41

### **Clause 79 - Lists of buildings of special architectural or historic interest**

533. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 80 – Temporary listing: building preservation notices**

534. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 81 –Temporary listing in urgent cases**

535. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 82 - Lapse of building preservation notices**

536. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 83 - Issue of certificate that building is not intended to be listed**



537. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 84 - Control of works for demolition, alteration or extension of listed buildings**

538. At the meeting on 10 February 2011 the Committee was content with the Clause subject to a Committee amendment to raise the level of fine.

539. At the meeting on 15 February 2011 the Committee was informed that the Department was prepared to introduce an amendment to raise the level of fine and the Committee agreed to the Clause subject to the Departmental amendment as follows:

Clause 84, Page 53, Line 37  
Leave out '£30,000' and insert '£100,000'

### **Clause 85 - Applications for listed building consent**

540. At the meeting on 10 February 2011 the Committee was content Clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 85, Page 54, Line 28  
Leave out 'directions' and insert 'the regulations or by any direction'

Clause 85, Page 54, Line 41  
After 'councils' insert 'or the Department'

### **Clause 86 - Notification of applications for listed building consent to certain persons**

541. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 87 - Call in of certain applications for listed building consent to Department**

542. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 88 - Duty to notify Department of applications for listed building consent**

543. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 89 - Directions concerning notification of applications, etc.**

544. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 90 – Decision on application for listed building consent**

545. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 91 – Power to decline to determine subsequent application for listed building consent**

546. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 92 – Power to decline to determine overlapping application for listed building consent**

547. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 93 - Duration of listed building consent**

548. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 94 - Consent to execute works without compliance with conditions previously attached**

549. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 95 - Appeal against decision**

550. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 96 - Appeal against failure to take decision**

551. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 97 - Revocation or modification of listed building consent by council**

552. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 98 - Procedure for section 97 orders: opposed cases**

553. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 99 - Procedure for section 97 orders: unopposed cases**

554. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 100 - Revocation or modification of listed building consent by the Department**

555. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 101 - Applications to determine whether listed building consent required**

556. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 102 - Acts causing or likely to result in damage to listed buildings**

557. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011.

558. At the meeting on 10 February 2011 the Committee was content with the Clause subject to a Departmental amendment to raise the level of fine and to a Committee amendment to provide for an option of conviction on indictment. Wording of amendments were not available in time for this report.

### **Clause 103 - Conservation areas**

559. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 104 - Control of demolition in conservation areas**

560. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 104, Page 65, Line 38

Leave out from 'consent' to 'section made' in line 39 and insert 'conservation area consent made'

Clause 104, Page 65, Line 40

After 'any' insert 'conservation area'

### **Clause 105 - Grants in relation to conservation areas**

561. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 106 - Application of Chapter 1, etc., to land and works of councils**

562. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 106, Page 67, Line 2

Leave out 'Act' and insert 'Chapter'.

### **Clause 107 - Requirement of hazardous substances consent**

563. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 108 – Applications for hazardous substances consent;**

564. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 109 – Determination of applications for hazardous substances consent**

565. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 110 – Grant of hazardous substances consent without compliance with conditions previously attached**

566. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 111 – Revocation or modification of hazardous substances consent**

567. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 112 – Confirmation by Department of section 111 orders**

568. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 113 - Call in of certain applications for hazardous substances consent to Department**

569. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 113, Page 72, Line 28

Leave out ' , 109 and 118(2) to (4)' and insert 'and 109'

### **Clause 114– Appeals and Effect of hazardous substances consent**

570. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 115 - Change of control of land**

571. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to allow the hazardous substances consent to remain in place if the control of land remains within the Crown:

Clause 115, Page 74, Line 20

At end insert—

'( ) Subsections (2) and (3) do not apply if the control of land changes from one emanation of the Crown to another'

### **Clause 116 – Offences**

572. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011.

573. At the meeting on 15 February 2011 the Committee was content with the Clause subject to the Departmental amendment to raise the level of fine to £100,000 as follows:

Clause 116, Page 75, Line 31  
Leave out '£30,000' and insert '£100,000'

574. The Committee also agreed that although it had already agreed the clauses as drafted, the Committee is content with the Departmental amendments to raise the level of fine to £100,000 in Clauses 136, 146 and 149 if tabled as Consideration Stage by the Department.

### **Clause 117 – Emergencies**

575. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 118 – Health and safety requirements**

576. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 119 – Applications by councils for hazardous substances consent**

577. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 120 - Planning permission to include appropriate provision for trees**

578. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 121 - Tree preservation orders: councils**

579. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 122 - Provisional tree preservation orders**

580. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 123 - Power for Department to make tree preservation orders**

581. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 124 - Replacement of trees**

582. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 125 - Penalties for contravention of tree preservation orders**

583. At the meeting on 10 February 2011 the Committee was content with the Clause subject to a Committee amendment to raise the level of fine.

584. At the meeting on 15 February 2011 the Committee was informed that the Department was prepared to introduce an amendment to raise the level of fine and the Committee agreed to the Clause subject to the Departmental amendment as follows:

Clause 125, Page 80, Line 26  
Leave out '£30,000' and insert '£100,000'

### **Clause 126 - Preservation of trees in conservation areas**

585. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 127 - Power to disapply section 126**

586. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 128 - Review of mineral planning permissions**

587. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 129 - Control of advertisements**

588. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 130 - Expressions used in connection with enforcement**

589. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011.

590. At the meeting on 15 February 2011 the Committee was content with the Clause as drafted.

### **Clause 131- Time limits**

591. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011.

592. At the meeting on 17 February the Committee considered an e mail from the Department and members were content with the Clause subject to the commitment from the Department to make an amendment. The e mail read as follows:

We are currently working with our lawyers to bring forward the further amendments within clause 131 and any necessary consequential amendments to change the time limits for both the 4 year and 10 year periods to 5 years. We will forward these as soon as we have them.

593. At the meeting on 15 February 2011 the Committee was content with the Clause subject to a Departmental amendment to make both time limits 5 years for breaches of planning control.

594. At the meeting on 22 February the Committee noted the following Departmental amendment to this clause:

Clause 131, Page 83, Line 23  
Leave our '4' and insert '5'

Clause 131, Page 83, Line 27  
Leave out '4' and insert '5'

Clause 131, Page 83, Line 30  
Leave out '10' and insert '5'

Clause 131, Page 83, Line 37  
Leave out '4' and insert '5'

### **Clause 132 - Power to require information about activities on land**

595. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 133 - Penalties for non-compliance with planning contravention notice**

596. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to raise the level of fine as follows:

Clause 133, Page 85, Line 21  
Leave out '3' and insert '5'

### **Clause 134 - Temporary stop notice**

597. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 135 - Temporary stop notice**

598. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

599. However, at the meeting on 22 February 2011 the Committee was advised that the Departmental amendment to Clause 131, as requested by the Committee, would have a consequential impact on this clause. The Committee noted the following consequential amendment:

Clause 135, Page 86, Line 28  
Leave out '4' and insert '5'

### **Clause 136 - Temporary stop notice: restrictions**

600. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

601. At the meeting on 15 February 2011 the Committee was informed that the Department was prepared to introduce an amendment to raise the level of fine and the Committee agreed to the Clause subject to the Departmental amendment as follows:

Clause 136, Page 87, Line 18  
Leave out '£30,000' and insert '£100,000'

### **Clause 137 - Temporary stop notice: offences**

602. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 138 - Issue of enforcement notice by councils**

603. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 139 - Issue of enforcement notice by Department**

604. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 140 - Contents and effect of enforcement notice**

605. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 141 - Variation and withdrawal of enforcement notices by councils**

606. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 142 - Variation and withdrawal of enforcement notices by Department**

607. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 143- Appeal against enforcement notice**

608. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 144 - Appeal against enforcement notice - general supplementary provisions**

609. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 144, Page 92, Line 38  
Leave out 'Department' and insert 'council'

### **Clause 145 - Appeal against enforcement notice - supplementary provisions relating to planning permission**

610. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows

Clause 145, Page 93, Line 42  
Leave out 'carrying into effect this Part' and insert 'taking steps under subsection (1)'

### **Clause 146 - Execution and cost of works required by enforcement notice**

611. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.



612. At the meeting on 15 February 2011 the Committee was informed that the Department was prepared to introduce an amendment to raise the level of fine and the Committee agreed to the Clause subject to the Departmental amendment as follows:

Clause 146, Page 95, Line 15  
Leave out '£30,000' and insert '£100,000'

### **Clause 147 - Offence where enforcement notice not complied with**

613. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 148 - Effect of planning permission, etc., on enforcement or breach of condition notice**

614. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to raise the level of fine as follows:

Clause 148, page 96, Line 27  
Leave out from 'level' to 'scale;' and insert '£7,500'

### **Clause 149 - Enforcement notice to have effect against subsequent development**

615. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

616. At the meeting on 15 February 2011 the Committee was informed that the Department was prepared to introduce an amendment to raise the level of fine and the Committee agreed to the Clause subject to the Departmental amendment as follows:

Clause 149, Page 98, Line 6  
Leave out '£30,000' and insert '£100,000'

617. At the meeting on 22 February 2011 the Committee was advised that the Departmental amendment to Clause 131, as requested by the Committee, would have a consequential impact on this clause. The Committee noted the following consequential amendment:

Clause 149, Page 97, Line 13  
Leave out '4' and insert '5'

### **Clause 150 - Service of stop notices by councils**

618. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 151 - Service of stop notices by Department**

619. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 152 - Enforcement of conditions**

620. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011.

621. At the meeting on 15 February 2011 the Committee was content with the Clause as drafted.

### **Clause 153 - Fixed penalty notice where enforcement notice not complied with**

622. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011.

623. At the meeting on 15 February 2011 the Committee was content with the Clause as drafted.

### **Clause 154 - Fixed penalty notice where breach of condition notice not complied with**

624. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011.

625. At the meeting on 15 February 2011 the Committee was content with the Clause as drafted.

### **Clause 155 - Use of fixed penalty receipts**

626. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 156 – Injunctions**

627. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 157 - Issue of listed building enforcement notices by councils**

628. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 158 - Issue of listed buildings enforcement notices by Department**

629. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 159 - Appeal against listed building enforcement notice**

630. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 160 - Effect of listed building consent on listed building enforcement notice**

631. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to specify the range of buildings on which it may carry out urgent works as follows:

Clause 160, Page 106, Line 15  
Leave out 'a listed building, and insert—  
'(a) a listed building, or

(b) a building in respect of which a direction has been given by the Department that this section shall apply'

Clause 160, Page 107, Line 3

After 'council' insert 'or, as the case may be, by the Department'

### **Clause 161 - Urgent works to preserve building**

632. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 162 - Hazardous substances contravention notice**

633. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 163 - Variation of hazardous substances contravention notices**

634. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

635. However, at the meeting on 22 February 2011 the Committee was advised that the Departmental amendment to Clause 131, as requested by the Committee, would have a consequential impact on this clause. The Committee noted the following consequential amendment:

Clause 163, Page 109, Line 1

Leave out '4' and insert '5'

### **Clause 164 - Enforcement of duties as to replacement of trees**

636. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 165 - Appeals against section 163 notices**

637. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 166 - Execution and cost of works required by section 163 notice**

638. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 167 - Enforcement of controls as respects trees in conservation areas**

639. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 167, Page 112, Line 22

After 'council' insert 'or, as the case may be, by the Department'

### **Clause 168 - Enforcement of orders under section 72**

640. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 169 - Certificate of lawfulness of existing use or development**

641. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 170 - Certificate of lawfulness of proposed use or development**

642. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 171 - Certificates under sections 168 and 169: supplementary provisions**

643. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 172 - Offences**

644. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows

Clause 172, Page 115, Line 26

Leave out from 'within' to the end of line 27 and insert—

'—

in the case described in paragraph (a), within the period of 4 months from the date on which the application is refused or is refused in part [or such other period as may be prescribed];

in the case described in paragraph (b), within the period of 4 months from the end of the period referred to in that paragraph [or such other period as may be prescribed].'

### **Clause 173 - Appeals against refusal or failure to give decision on application**

645. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 174 - Further provisions as to appeals under section 172**

646. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to reflect changes to enforcement of advertisement control provided by the Clean Neighbourhoods Bill as follows:

Clause 174, Page 116, Line 36

Leave out from 'that it' to the end of line 37 and insert 'either of the matters specified in subsection (4).

(4) The matters are that-

(a) the advertisement was displayed without the person's knowledge; or

(b) the person took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.'

### **Clause 175 - Enforcement of advertisement control**

647. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 176 - Rights to enter without warrant**

648. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 177 - Right to enter under warrant**

649. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 178 - Rights of entry: supplementary provisions**

650. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 179 - Compensation where planning permission is revoked or modified**

651. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 180 - Modification of the Act of 1965 in relation to minerals**

652. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 181 - Compensation where listed building consent revoked or modified**

653. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 182 - Compensation in respect of orders under section 72, 74 or 111**

654. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 183 - Compensation in respect of tree preservation orders**

655. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 184 - Compensation where hazardous substances consent modified or revoked under section 115**

656. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 185 - Compensation for loss due to stop notice**

657. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 186 - Compensation for loss or damage caused by service of building preservation notice**

658. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 187 - Compensation for loss due to temporary stop notice**

659. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 188 - Compensation where planning permission assumed for other development**

660. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 189 - Interpretation of Part 6**

661. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 190 - Service of purchase notice**

662. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 191 - Purchase notices: Crown land**

663. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 192 - Action by council following service of purchase notice**

664. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 193 - Further ground of objection to purchase notice**

665. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 194 - Reference of counter-notices to Lands Tribunal**

666. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 195 - Effect of valid purchase notice**

667. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 196 - Special provision as to compensation under this Part**

668. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

**Clause 197 - Historic Buildings Council**

669. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 198 - Grants and loans for preservation or acquisition of listed buildings**

670. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 199 - Acquisition of listed buildings by agreement**

671. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 200 - Acceptance by Department of endowments in respect of listed buildings**

672. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 201 - Compulsory acquisition of listed buildings**

673. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 202 - The Planning Appeals Commission**

674. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011

675. At the meeting on 15 February 2011 the Committee was content with the Clause as drafted and content with a Departmental amendment introducing new clauses to allow for the awarding of costs by the appeals commission where a party has been put to unnecessary expense as follows:

New clause

After clause 202 insert—

'Power to award costs

202A.—(1) The appeals commission may make an order as to the costs of the parties to an appeal under any of the provisions of this Act mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The provisions are—

(a) sections 58, 59, 95, 96, 114, 142, 158, 164 and 172;

(b) sections 95 and 96 (as applied by section 104(6));

(c) in Schedule 2, paragraph 6(11) and (12) and paragraph 11(1);

(d) in Schedule 3, paragraph 9.

(3) An order made under this section shall have effect as if it had been made by the High Court.

(4) Without prejudice to the generality of subsection (2), the Master (Taxing Office) shall have the same powers and duties in relation to an order made under this section as the Master has in relation to an order made by the High Court.

(5) Proceedings before the appeals commission shall, for the purposes of the Litigants in Person (Costs and Expenses) Act 1957 (c. 47), be regarded as proceedings to which section 1(1) of that Act applies.'

New clause

After clause 202 insert—

'Orders as to costs: supplementary

202B.—(1) This section applies where—

(a) for the purpose of any proceedings under this Act—

(i) the appeals commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether that person wishes, to appear before and be heard by it; and

(ii) arrangements are made for a hearing to be held;

(b) the hearing does not take place; and

(c) if it had taken place, the appeals commission would have had power to make an order under section 202A requiring any party to pay any costs of any other party.

(2) Where this section applies the power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.'

676. At the meeting on 17 February the Committee was informed of a further Departmental amendment to Clause 202 to make Planning Appeals Commission rules subject to negative resolution and agreed the amendment as follows:

Clause 202, Page 133, Line 32

At end insert—

'(7A) Rules made under subsection (5) shall be subject to negative resolution.'

### **Clause 203 - Procedure of appeals commission**

677. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 204 - Assessment of council's performance**

678. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 205 - Assessment of council's decision making**

679. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.



### **Clause 206 - Further provision as respects assessment of performance or decision making**

680. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 207 - Report of assessment**

681. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 208 - Application to the Crown**

682. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 208, Page 137  
Leave out line 1

Clause 208, Page 137  
Leave out lines 16 and 17

### **Clause 209 - Urgent Crown development**

683. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 210 - Urgent works relating to listed buildings on Crown land**

684. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 211 - Enforcement in relation to the Crown**

685. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 212 - References to an estate in land**

686. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 213 - Applications for planning permission, etc. by Crown**

687. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 214 - Service of notices on the Crown**

688. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 215 - Correction of errors in decision documents**

689. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011

690. At the meeting on 15 February 2011 the Committee was content with the Clause as amended by the Department as follows:

Clause 215, Page 140, Line 2  
After 'it' insert '-(a)'

Clause 215, Page 140, Line 2  
After '(a)' insert ': or  
(b)'

### **Clause 216 - Correction notice**

691. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 217 - Effect of correction**

692. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 218 – Supplementary**

693. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 219 - Fees and charges**

694. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 220 - Grants for research and bursaries**

695. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 221 - Grants to bodies providing assistance in relation to certain development proposals**

696. At the meeting on 10 February 2011 the Committee was content with the Clause as amended by the Department to strengthen the requirement for bodies to receive grants and remove the requirement for DFP to be consulted before awarding grants as follows:

Clause 221, Page 142, Line 41  
After 'understanding' insert 'of planning policy proposals and'

Clause 221, Page 142, Line 41  
After 'aspects of' insert 'other'

Clause 221, Page 143, Line 8  
Leave out from ', with' to 'Personnel,' in line 9

### **Clause 222 - Contributions by councils and statutory undertakers**

697. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 222, Page 143, Line 17  
Leave out '(except section 26)'

Clause 222, Page 143, Line 18  
Leave out '(except sections 103 to 105 and 119)'

Clause 222, Page 143, Line 19  
Leave out '141,'

Clause 222, Page 143, Line 20  
At end insert-  
'(e) Part 7.'

### **Clause 223 - Contributions by departments towards compensation paid by councils**

698. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 223, Page 143, Line 42  
Leave out from 'under' to the end of line 3 on page 144 and insert 'under Part 3, 4, 5 or 7.'

### **Clause 224 - Duty to respond to consultation**

699. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011

700. At the meeting on 15 February 2011 the Committee considered amending this clause to address concerns relating to the duty of statutory consultees to respond to consultation. However on being advised that this concern would be better achieved by the insertion of a new clause after Clause 187, it agreed this clause as drafted but on 22 February acknowledged that it would be content with the clause subject to a Department amendment to ensure a consistent approach throughout the Bill as follows:

Clause 224, Page 144, Line 30  
Leave out 'prescribe' and insert 'specify'

Clause 224, Page 144, Line 31  
Leave out 'prescribe' and insert 'specify'

701. At the meeting on 15 February 2011 the Committee was content to table a Committee amendment inserting a New Clause after Clause 187 as follows:

New Clause

After Clause 187 insert

'Compensation: decision taken by council where consultee fails to respond under section 224

At end insert—

'187A. (1) Where a consultee fails to respond to a council consultation in accordance with section 224(3) and that council:

(a) takes a decision under this Act in the absence of such a response; and

(b) subsequently receives information which the council could reasonably expect to have been included in that response; and

(c) decides to revoke or modify planning permission due to the information referred to in paragraph (b); and

(d) compensation is payable by a council under section 178 in connection with the decision under paragraph (c);

the relevant department shall pay to the council the amount of compensation payable.

(2) For the purposes of subsection (1) "the relevant department" means the department (if any) to which the consultee is accountable.'

### **Clause 225 – Minerals**

702. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 226 - Local inquiries**

703. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

704. At the meeting on 17 February the Committee was informed that the Minister had yet to make a decision on whether to make an amendment to the Clause to make local inquiries subject to negative resolution.

### **Clause 227 - Inquiries to be held in public subject to certain exceptions**

705. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 228 - Directions: Secretary of State**

706. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 229 - Directions: Department of Justice**

707. At the meeting on 10 February 2011 the Committee decided to defer a decision on this clause until the meeting on 15 February 2011

708. At the meeting on 15 February 2011 the Committee was content with the Clause as amended by the Department to replace reference to the Advocate General with the Attorney General as follows:

Clause 229, Page 147, Line 14

Leave out 'Advocate General' and insert 'Attorney General'

Clause 229, Page 147, Line 18  
Leave out 'Advocate General' and insert 'Attorney General'

### **Clause 230 - National security**

709. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 231 - Rights of entry**

710. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 231, Page 149, Line 15  
Leave out ', adoption or approval' and insert 'or adoption'

Clause 231, Page 149, Line 35  
Leave out ', adoption'

Clause 231, Page 150, Line 15  
After 'Environment' insert 'or a council'

Clause 231, Page 150, Line 20  
Leave out from 'section' to the end of line 21 and insert 'any of sections 180 to 186'

### **Clause 232 - Supplementary provisions as to powers of entry**

711. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 233 - Supplementary provisions as to powers of entry: Crown land**

712. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 234 - Service of notices and documents**

713. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 235 - Information as to estates in land.**

714. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 236 - Information as to estates in Crown land**

715. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 237 - Planning register**

716. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 238 - Power to appoint advisory bodies or committees**

717. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 239 - Time limit for certain summary offences under this Act**

718. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 239, Page 155, Line 14  
Leave out '125(1) or'

### **Clause 240 - Registration of matters in Statutory Charges Register**

719. At the meeting on 10 February 2011 the Committee was content with the clause subject to a Departmental amendment to ensure a consistent approach throughout the Bill as follows:

Clause 240, Page 155, Line 21  
At end insert—  
( ) planning agreements under section 75;'

### **Clause 241 – Directions**

720. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 242 - Regulations and orders**

721. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 243 – Interpretation**

722. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 244 - Further provision**

723. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 245 - Minor and consequential amendments**

724. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 246 – Repeals**

725. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Clause 247 – Commencement**

726. At the meeting on 10 February 2011 the Committee was content with the Clause as subject to a draft Committee amendment as follows:

Clause 247, page 160, line 16  
At end insert—

( ) No order shall be made under subsection (1) in respect of Part 3 unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

### **Clause 248 - Short title**

727. At the meeting on 10 February 2011 the Committee was content with the Clause as drafted.

### **Schedule 1 - Simplified planning zones**

728. At the meeting on 10 February 2011 the Committee was content with the Schedule as drafted.

### **Schedule 2 - Review of old mineral planning permission**

729. At the meeting on 10 February 2011 the Committee was content with the Schedule as drafted.

730. At the meeting on 15 February the Departmental officials presented the Committee with an amendment to Schedule 2 and the Committee was content with Schedule 2 as amended by the Department as follows:

Schedule 2, Page 164, Line 33

Leave out from 'in' to the end of line 34 and insert 'within the period of 15 years ending on the date on which this Schedule comes into operation.'

### **Schedule 3 - Periodic review of mineral planning permissions**

731. At the meeting on 10 February 2011 the Committee was content with the Schedule as drafted.

### **Schedule 4 - Amendments to the Land Development Values (Compensation) Act (Northern Ireland) 1965 (c. 23)**

732. At the meeting on 10 February 2011 the Committee was content with the Schedule as drafted.

### **Schedule 5 - The Historic Buildings Council**

733. At the meeting on 10 February 2011 the Committee was content with the Schedule as drafted.

### **Schedule 6 - Minor and consequential amendments**

734. At the meeting on 10 February 2011 the Committee was content with the Schedule as drafted.

### **Schedule 7 – Repeals**

735. At the meeting on 10 February 2011 the Committee was content with the Schedule as drafted.

## **Appendix 1**

### **Minutes of Proceedings**

#### **Thursday 25 November 2010, Room 144, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross

#### **12. Departmental briefing on the Planning Bill**

Departmental officials briefed the Committee and answered members' questions on the Planning Bill.

Agreed: That the Department provides the Committee with a timetable for the Bill.

#### **Cathal Boylan**

Chairperson, Committee for the Environment  
02 December 2010

[EXTRACT]

#### **Thursday 13 January 2011, Room 144, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
George Savage



Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

## **6. Assembly Research briefing on Planning Bill – Parts 1 and 2 – Planning Functions and Local Development Plans**

The Chairperson informed members that they had been provided with a Bill timeline, a letter from Craigavon Borough Council about the timing of the Bill and a list of organisations who have asked for an extension to the deadline for submissions.

Agreed: That members are content with the proposed timeline for the Committee stage of the Bill including a stakeholder event.

The Chairperson informed members that, due to time pressures, the Committee would consider the remaining items of business before recommencing the meeting after lunch in Room 21.

1.32p.m The Chairperson suspended the meeting.

2.02p.m The meeting restarted in Room 21 in public session. with the following members present:

Mr Boylan  
Mr Willie Clarke  
Mr Kinahan  
Mr Savage  
Mr Weir  
Mr Wilson

## **12. Assembly Research briefing on Planning Bill – Parts 1 and 2 – Planning Functions and Local Development Plans**

Assembly Research briefed the Committee and answered members' questions on Planning Bill – Parts 1 and 2 – Planning Functions and Local Development Plans.

2.10p.m Mr Weir left the meeting.

2.25p.m Mr McGlone rejoined the meeting.

2.25p.m Mr Kinahan left the meeting.

The main areas of discussions were spatial planning, independent examination of local development plans, training and guidance and the rollout of subordinate legislation.

## **12. Departmental briefing on Planning Bill – Parts 1 and 2 – Planning Functions and Local Development Plans**

Departmental officials briefed the Committee and answered member's questions on Planning Bill – Parts 1 and 2 – Planning Functions and Local Development Plans.

2.55p.m Mr Clarke left the meeting.

2.57p.m Mr Savage left the meeting.

The main areas of discussions were Local Development Plans, the timeframe for the reform of local government, training and guidance.

3.01p.m The Chairperson adjourned the meeting.

## **Cathal Boylan**

Chairperson, Committee for the Environment

20 January 2011

[EXTRACT]

# **Tuesday 18 January 2011, Senate Chamber, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)

Mr Thomas Buchanan

Mr Willie Clarke

Mr John Dallat

Mr Danny Kinahan

Mr Patsy McGlone

Mr Alastair Ross

Mr Peter Weir

Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)

Mr Sean McCann (Assistant Clerk)

Mr Nathan McVeigh (Clerical Supervisor)

Ms Antoinette Bowen (Clerical Officer)

## **2. Planning Bill submissions**

10.13 am Mr Ross joined the meeting.

The Chairperson informed members that they had been provided with copies of submissions received to date.

Agreed: That the following organisations are invited to present oral evidence:

- NILGA
- RTPI
- RICS

- Planning Appeals Commission
- Belfast Harbour
- Utility Regulator
- Professor Greg Lloyd
- NI Housing Executive
- Consumer Council
- Community Places
- Ministerial Advisory Group
- Planning Task Force
- QPANI

### **3. Assembly Research briefing on Planning Bill – Development Management, Planning Control and Enforcement**

10.20 am Mr Dallat joined the meeting.

Assembly Research officials briefed the Committee and answered members' questions on the Planning Bill - Development Management, Planning Control and Enforcement.

10.37 am Mr Willie Clarke left the meeting.

The main areas of discussion were appeals, performance agreements, the role of the Planning Appeals Commission, the hierarchy of planning, award of costs, the Department's role and pre determination hearings.

Agreed: That copies of the Assembly Research papers are forwarded to the Department for comment and that the papers are published on the Assembly website.

### **3. Departmental briefing on Planning Bill – Development Management, Planning Control and Enforcement**

11.25 am Mr Willie Clarke rejoined the meeting.

Departmental officials briefed the Committee and answered member's questions on the Planning Bill – Development Management, Planning Control and Enforcement.

Agreed: That Departmental officials provide the Committee with the equality assessment carried out on the Bill.

The main areas of discussions were independent examination, statements of community involvement, the rights of objectors, responsibility for enforcement, tree protections orders and guidance.

11.47 am Mr Kinahan joined the meeting.

12.35 pm The Chairperson suspended the meeting for lunch.

1.38 pm The meeting resumed with the following members present:

Mr Boylan, Mr Willie Clarke, Mr Wilson, Mr Wilson, Mr Ross.

#### **4. Assembly Research briefing on Planning Bill – Community Involvement**

Assembly Research officials briefed the Committee and answered members' questions on the Planning Bill – community involvement.

1.57 pm Mr Ross left the meeting.

The main areas of discussions were pre application consultation, pre determination hearings, public inquiries, award of costs, third party appeals, community benefits, statements of community involvement and neighbourhood development plans.

2.14 pm Mr Kinahan rejoined the meeting.

#### **5. Departmental briefing on Planning Bill – Community Involvement**

Departmental officials briefed the Committee and answered member's questions on the Planning Bill – community involvement.

The Departmental officials informed the Committee that an amendment to the Bill in relation to costs awards would be brought forward at a later meeting.

2.45 pm Mr Willie Clarke left the meeting.

The main areas of discussions were third party appeals, the cost neutrality of the Bill, resources, neighbor notification, subordinate legislation to follow from implementation of the Bill, statements of community involvement, developer contributions, pre determination hearings, monitoring of local development plans and community benefit.

Cathal Boylan  
Chairperson, Committee for the Environment  
20 January 2011

[EXTRACT]

### **Thursday 20 January 2011, Room 144, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)

Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Trevor Clarke  
Mr John Dallat  
Mr George Savage

#### **4. Assembly Research briefing on Planning Bill – Assessment of Councils' Performance and all remaining provisions**

Assembly Research officials briefed the Committee and answered members' questions on the Planning Bill - Assessment of Councils' Performance and all remaining provisions.

The main areas of discussions were the need for leadership, roles and responsibilities, potential barriers to effective delivery, capacity building, guidance, experiences in other jurisdictions, training and resources.

Agreed: That Assembly Research provides the Committee with further information on the power of wellbeing and strategic partnership and examples of how transparency and collaborative working between councils have worked in other jurisdictions.

Agreed: That the research paper is placed on the Assembly website.

#### **5. Departmental briefing on Planning Bill – Assessment of Councils' Performance and all remaining provisions**

Departmental officials briefed the Committee and answered members' questions on the Planning Bill – community involvement.

11.50 am Mr Boylan left the meeting and Mr McGlone assumed the Chair

The main areas of discussions were resources, the quality of the built environment, sustainable development, the timeframe for detailed guidance, the Department's oversight role, compensation, pilot schemes and best practice from other jurisdictions.

12.20 pm Mr Boylan rejoined the meeting and resumed the Chair.

Agreed: That the Department provides the Committee with a briefing paper on sustainable development within the Planning Bill.

Cathal Boylan  
Chairperson, Committee for the Environment  
27 January 2011

[EXTRACT]

**Wednesday 26 January 2011,  
Room 29, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Trevor Clarke

Mr Willie Clark  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Thomas Buchanan  
Mr John Dallat  
Mr Patsy McGlone  
Mr Peter Weir

### **3. Planning Bill submissions**

The Chairperson informed members that they had been provided with further submissions on the Planning Bill.

Agreed: That the submissions are incorporated into the final Committee report and published on the Assembly website.

The Chairperson informed members that they had been provided with a letter from Jean Forbes in relation to the Planning Bill Stakeholder Event.

Agreed: That a letter is issued to Ms Forbes to explain that, due to the timeframe of the Bill, it was impossible to invite everyone that responded to the Committee's call for evidence to present oral evidence to members and that the Stakeholder Event was an opportunity for individuals to present their views.

### **4. Planning Bill Oral Evidence Session – NILGA**

NILGA officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

11.00 am Mr Ross joined the meeting.

Mr Savage declared an interest as a member of NILGA and Craigavon Borough Council.

Mr Willie Clarke declared an interest as a member of Down District Council

The main areas of discussion were training, resources, capacity building, communication with the Department, governance arrangements, pilot projects, the hierarchy of planning, enforcement, costs, liability, funding, third party right of appeal and community planning.

### **5. Planning Bill Oral Evidence Session – NI Housing Executive**

11.35 am Mr Trevor Clarke joined the meeting.

NI Housing Executive officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

11.45 am Mr Wilson left the meeting.

The main areas of discussion were the Regional Development Strategy, third party right of appeal, developer contributions, joint council working, the duration of planning permission, pre application discussions, performance agreements and zoning of land for social housing.

12.04 pm Mr Kinahan left the meeting.

Agreed: That an Assembly Research paper is requested on the zoning of social housing in other jurisdictions.

## **6. Planning Bill Oral Evidence Session – Planning Appeals Commission**

Planning Appeals Commission officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

The main areas of discussion were independent examination, the Department's call in power, submission notices, planning agreements and award of costs.

12.20 pm Mr Savage left the meeting.

## **7. Planning Bill Oral Evidence Session – QPANI**

QPANI officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

The main areas of discussion were sustainable development, mineral planning, definition of community, nature conservation, multiple fees, consultation period and aftercare of sites.

1.00 pm The Chairperson suspended the meeting for lunch.

1.45 pm The meeting re-started with the following members present:

Mr Boylan, Mr Trevor Clarke, Mr Willie Clarke, Mr Wilson, Mr Kinahan

## **8. Planning Bill Oral Evidence Session – Royal Town Planning Institute**

Royal Town Planning Institute officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

The main areas of discussion were the timescale for the Bill, resources, training, plan led systems, definition of community, the Regional Development Strategy, the Department's role in the Bill, independent examination, pilot schemes, development management and area plans.

2.00 pm Mr Kinahan left the meeting.

Agreed: That RTPI provides the Committee with a copy of the Planning Advisory Service report on fees.

## **10. Planning Bill Oral Evidence Session – Royal Institute of Chartered Surveyors**

Royal Institute of Chartered Surveyors officials briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

The main areas of discussion were training, resources, planning hierarchy, the Department's role, community plans, capacity building, resources and appeals.

Cathal Boylan  
Chairperson, Committee for the Environment  
27 January 2011

[EXTRACT]

### **Thursday 27 January 2011, Room 144, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Trevor Clarke  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr George Savage

## **2. Planning Bill Oral Evidence Session – Planning Task Force**

The Planning Task Force briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

The main areas of discussion were award of costs, community plans, third party rights of appeal, subordinate legislation, sustainable development, community infrastructure levy and the need for a climate change duty.

10.25a.m Mr Trevor Clarke joined the meeting.

Agreed: That the Planning Task Force provides the Committee with details of how a community infrastructure levy operates in England.



Agreed: That the Department provides the Committee with the timescales for the delivery of sustainability across Departments.

The Chairperson informed members that they had been provided with a draft motion to extend Committee Stage of the Planning Bill to 1 March 2011.

Agreed: That the motion is lodged with the Business Office.

## **5. Planning Bill Oral Evidence Session – Consumer Council**

A Consumer Council official briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

The main areas of discussion were the Regional Development Strategy, community consultation, the need for guidance, the performance of councils, and third party rights of appeal.

Agreed: That the Department provides the Committee with a list of statutory consultees.

10.58a.m Mr Ross joined the meeting.

## **6. Planning Bill Oral Evidence Session – Community Places**

Community Places representatives briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

11.20a.m Mr Weir joined the meeting.

The main areas of discussion were pre application community consultation, the need for guidance, statements of community involvement, the need for a statutory link between community planning and the local development plan, community investment levy, grant aid, independent examination, fees, developer contributions and third party rights of appeal.

11.35a.m Mr Trevor Clarke left the meeting.

## **11. Planning Bill Oral Evidence Session – Ministerial Advisory Group**

An official from the Ministerial Advisory Group briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

The main areas of discussion were community involvement, community networks, pre application community consultation, local masterplanning, capacity building, statements of community involvement, business improvement districts, simplified planning zones and areas of townscape character.

Agreed: That the Ministerial Advisory Group provides the Committee with further information on simplified planning zones and business improvement districts.

12.02p.m Mr McGlone returned to the meeting.

12.05p.m Mr Kinahan left the meeting.

## **12. Planning Bill Oral Evidence Session – Professor Greg Lloyd**

Professor Greg Lloyd briefed the Committee and answered members' questions on their submission to the Committee's call for evidence on the Planning Bill.

The main areas of discussion were the Scottish planning model, the Regional Development Strategy, the Department's role in the Bill, the role of developers, the need to invest and resource the planning system, community aspirations, joint working between departments, the hierarchy of planning, simplified planning zones, cost neutrality and the definition of community.

Cathal Boylan  
Chairperson, Committee for the Environment  
3 February 2011

[EXTRACT]

## **Tuesday 1 February 2011, Senate Chamber, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr George Savage  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

### **1. Apologies**

There were no apologies.

### **2. Planning Bill – informal clause by clause consideration – Parts 1 - 4**

The Committee commenced informal clause by clause consideration of the Planning Bill with discussion on Clauses 1 – 16.

10.12 a.m Mr Wilson joined the meeting.

10.16a.m Mr Kinahan joined the meeting.

Agreed: That the Department considers an amendment to Clause 1 to strengthen the wording on sustainable development.

Agreed: That a recommendation is made in the Committee report that the power of wellbeing is included in future local government legislation.

10.29a.m Mr Ross left the meeting.

10.36a.m Mr Dallat joined the meeting.

The Chairperson informed members they had been provided with a Departmental reply to Assembly Research papers on parts 2 and 3 of the Bill.

Agreed: That the response is incorporated into the final Committee report.

The Chairperson informed members they had been provided with an equality impact assessment and human rights assessment of the planning reform process.

Agreed: That the Committee receives a briefing on equality impact and human rights assessments on the Bill.

10.48a.m Mr Weir joined the meeting.

10.50a.m Mr Savage joined the meeting.

The Chairperson informed members they had been provided with a paper from the Examiner of Statutory Rules on the delegated powers of the Bill, a further Assembly Research paper, a paper from the NI Federation of Housing Associations on developer contributions, a Ministerial Advisory Group paper on simplified planning zones and supplementary papers from Community Places and RSPB following their oral evidence sessions on the Bill.

Agreed: That the papers are incorporated into the final Committee report.

Agreed: That the Department changes the reference on sustainable development in Clause 1(2) from 'contributing to' to 'securing'.

11.27a.m Mr Buchanan joined the meeting.

The main areas of discussion were the criteria for sustainability, land use and spatial planning, wellbeing, the need for guidance, equality, joint council plans, resources, definition of community, neighbour notification, climate change, balanced communities, costs, fees, subordinate legislation, local policy plans, independent examination, the need for a review period and the Department's power of intervention.

Agreed: That the Minister would write to the Committee in relation to the inclusion of a statutory link between local development plans and community strategies in Clause 2.

Agreed: That the Committee accepted on Clause 2 that, in the absence of a date for its implementation precise dates would be best avoided on the face of the Bill. the Committee requested that a time limitation linked to commencement of the Bill is included in Clause 2(1) for the Department's to publish a statement of community involvement.

Agreed: That the Department considers incorporating climate change into Clause 3 of the Bill.

11.37a.m Mr Willie Clarke left the meeting.

Agreed: That the Department reports back to the Committee on neighbour notification in relation to Clause 4 and provides the Committee with examples of community involvement from other jurisdictions.

Agreed: That the Department provides the Committee with an example of a statement of community involvement from another jurisdiction.

11.47a.m Mr Ross rejoined the meeting.

Agreed: That the Department provides the Committee with details of the subordinate legislation that will follow from Clause 8 and provides members with an amendment to Clause 8(5)

Agreed: That the Department reports back to the Committee on consultation with the Planning Appeals Commission in relation to its role in Clause 16.

12.30p.m Mr Ross left the meeting.

12.33p.m The Chairperson suspended the meeting for lunch.

1.37p.m The meeting resumed with the following members present: Mr Boylan, Mr Kinahan, Mr Wilson, Mr Buchanan.

### **3. Planning Bill – informal clause by clause consideration – Parts 1 - 4**

The Committee continued informal clause by clause consideration of the Planning Bill with discussion on Clauses 17 – 129.

1.58p.m Mr Weir rejoined the meeting.

2.03p.m Mr McGlone rejoined the meeting.

2.13p.m Mr Willie Clarke rejoined the meeting.

Mr Willie Clarke declared an interest as a member of Down District Council.

Mr Kinahan declared an interest as an owner of a Grade A listed building.

The main areas of discussion were areas of townscape character, simplified planning zones, subordinate legislation, guidance, the definition of regional significance, permitted development rights for minerals, local development plans, the Department's reserved powers in the Bill

Agreed: That the Department provides the Committee with examples of monitoring reports in relation to Clause 21.

Agreed: That the Department reports back to the Committee with details of discussions with DSO regarding the wording of Clause 25. Officials also agreed to consider the inclusion of criteria for determining regional significance in subordinate legislation and ways in which cumulative impact will be taken into consideration for regionally significant developments.

Agreed: That, in relation to Clause 25, the Department considers the possibility of changing the wording form 'community consultation' to 'community participation' and to report back to the Committee with a definition of 'consultation' and 'community'.

Agreed: That the Department provides the Committee with an example of a scheme of delegation.

Agreed: That the Department considers an amendment to Clause 53 to include landfill and to report back to the Committee on how aftercare conditions will be delivered in the event of insolvency.

Agreed: That the provides the Committee with further clarification on Clause 75 in relation to a Community Infrastructure Levy and how it would work in practice.

2.42p.m Mr McGlone left the meeting.

2.50p.m Mr Willie Clarke left the meeting.

3.12p.m The Chairperson suspended the meeting due to loss of quorum.

The meeting resumed at 3.30p.m with the following members present: Mr Boylan, Mr Buchanan, Mr Weir, Mr Wilson, Mr Kinahan.

Agreed: That the Department reports back to the Committee on the need in Clause 97 for, and provision of, arbitration in relation to listed buildings and conservation.

3.38p.m The Chairperson suspended the meeting due to a division in Plenary.

3.55p.m The meeting resumed with the following members present: Mr Boylan, Mr Weir, Mr Wilson, Mr Kinahan.

4.02p.m Mr McGlone rejoined the meeting.

Agreed: That the Department reports back to the Committee on the possibility of criminalisation being included in Clause 116.

Agreed: That the Department reports back to the Committee with further thoughts on the issues raised by the submissions on Clause 121, particularly the approach to dead or dying trees. Members also requested that the Department reports back on the need for arbitration on this issue.

Agreed: That the Department considers the possibility of codifying the two offences in Clause 125 in a way that would retain the flexibility but make the law applying to trees stronger.

Agreed: That the Department reports back to the Committee on the need for centralised expertise in this area in Clause 128 as there was a feeling that the expertise is not required on a frequent basis and may be costly for councils.

Agreed: That the Department will consider the points made in submissions to the Committee in relation to Clause 121 and report back to the Committee.

Agreed: That the Department will speak to its legal advisors in relation to Clause 125 and report back to the Committee.

Cathal Boylan  
Chairperson, Committee for the Environment  
3 February 2011

[EXTRACT]

## **Thursday 3 February 2011, Room 144, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)  
Ms Sian Woodward (Bill Office Clerk)

Apologies: Mr Alastair Ross  
Mr George Savage

### **4. Planning Bill – Informal clause by clause consideration – Parts 5 - 15**

The Committee continued informal clause by clause consideration of the Planning Bill – Parts 5 – 15.

The main areas of discussion were guidance, enforcement, resources, level of fines, fixed penalty notices, stop notices, the Department's oversight role, compensation, liability arrangements, historic buildings and listed buildings.

The Chairperson informed members that, due to time constraints, it would be necessary to suspend informal clause by clause consideration until later in the meeting.

10.48a.m Mr McGlone left the meeting.

Agreed: That the Department provides the Committee with details on enforcement practices to date including the number of staff transferred from Planning Service to the enforcement section and a response on how the issue of legal costs influences decisions on enforcement action. Members also requested figures on the number of enforcement cases that have arisen and how many of these the Department has considered 'expedient' to pursue.

11.00a.m Mr Kinahan left the meeting.

11.06a.m Mr Weir left the meeting.

11.14a.m Mr Dallat left the meeting.

Agreed: That the Departmental officials consider the issue of reducing the timescale for change of use from 10 years to 4 years.

11.15a.m Mr McGlone rejoined the meeting.

11.15a.m Mr Wilson left the meeting.

11.20a.m Mr Dallat rejoined the meeting.

Agreed: That the Departmental officials consider an amendment to raise the level of fine in Clause 133(4) from level 3 to level 5.

Agreed: That the Departmental officials provide further information on the number of stop notices that have been issued with an indication of how many of these were temporary stop notices that were followed by final notices. The Committee also requested a response to the concerns raised by the South Belfast Resident's group and how they may be addressed in the Planning Bill.

11.25a.m Mr McGlone left the meeting.

Agreed: That The Departmental officials consider an amendment to raise the level of fine referred to in 148(5).

11.35a.m Mr McGlone rejoined the meeting.

11.35a.m Mr Weir rejoined the meeting.

Agreed: That the Departmental officials provide further clarification on ownership in relation to this clause and also any legal implications that may be associated with urgent works to preserve building.

Agreed: That the Departmental officials agreed to provide information on the total number of applications that have been revoked and the amount of compensation paid. Officials also agreed to look at a possible amendment to require the Department to pay any compensation due where it overrides a council decision not to revoke or modify planning permission.

12.12p.m Mr Kinahan rejoined the meeting.

12.30p.m Mr Wilson rejoined the meeting.

Agreed: That the Departmental officials provide information on the current system for dealing with listed/historic buildings.

12.51p.m Mr McGlone left the meeting.

Agreed: That the Departmental officials provide clarification on whether councils will be charged for technical expertise services provided by NIEA, and/or any statutory body or agency. The Committee also requested information on who would be responsible for a national register of trees.

Agreed: That the Departmental officials liaise with OFMDFM to consider an amendment to stop the practice of new information being presented at appeals.

1.00p.m Mr Trevor Clarke left the meeting.

## **7. Planning Bill – Informal clause by clause consideration – Parts 5 – 15 cont**

The Committee continued informal clause by clause consideration of the Planning Bill.

The main areas of discussion were the potential for councils to set planning fees in the future, pre application community consultation, third party appeals, PPS1, developer contributions, community investment levy, spatial planning, award of costs, simplified planning zones, statutory consultation and public inquiries.

Agreed: That the Departmental officials contact DFP to discuss the possibility of removing its oversight role under this Clause and officials agreed to consider the following amendment to strengthen the clause:

221(1)(a)

Insert after 'understanding' the words 'of planning policy proposals and'

Agreed: That the Departmental officials report back to the Committee on the compatibility of council and Departmental IT systems.

3.10p.m Mr Weir left the meeting.

Agreed: That the Departmental officials report back to the Committee on discussions with the Office of Legislative Council in relation to the commencement of the Bill being linked to local government reform.

3.20p.m Mr McGlone left the meeting.

Agreed: That the Departmental officials consider an amendment in relation to award of costs and also to consider an amendment that would require a review of the implementation of the Bill after a set period such as 2 years.

Agreed: That the Departmental officials consider an amendment to strengthen clause 1(1) by extending the purpose of the Department beyond 'securing orderly and consistent development'.

Cathal Boylan  
Chairperson, Committee for the Environment  
10 February 2011

[EXTRACT]

**Tuesday 8 February 2011,  
Senate Chamber, Parliament Buildings**



Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)  
Ms Sian Woodward (Bill Office Clerk)  
Ms Eilis Haughey (Bill Office Clerk)  
Mr Michael Potter (Assembly Research)

#### **4. Assembly Research briefing on equality measures in the Planning Bill**

10.30am Mr Dallat joined the meeting

An Assembly Research official briefed the Committee and answered members' questions on the equality measures in the Planning Bill.

#### **5. Planning Bill – Formal clause by clause consideration**

Agreed: That an Assembly Research paper is requested on how vulnerable groups are represented in community planning in other UK jurisdictions.

Agreed: That the Committee requests that length of tenure is included in the review of the Historic Buildings Council.

11.12am Mr Kinahan joined the meeting.

11.15am Mr Trevor Clarke joined the meeting.

11.17am Mr Weir joined the meeting.

The Committee commenced formal clause by clause consideration of the Planning Bill.

#### **Clause 1 - General functions of Department with respect to development of land**

Agreed: That the Department considers the possibility of including 'wellbeing' at Clause 1 (4)(A).

11.33am Mr Weir left the meeting.

## **Clause 2 - Preparation of statement of community involvement by Department**

Agreed: That the Committee is content with Clause 2 as amended by the Department to produce and publish its statement of community involvement within one year of the section coming into operation.

## **Clause 3 - Survey of district**

11.37am Mr Weir rejoined the meeting.

11.37am Mr Wilson left the meeting.

Agreed: That a draft Committee amendment to Clause 3 is brought back for further consideration.

11.46am Mr Ross joined the meeting.

## **Clause 4 - Statement of community involvement**

Agreed: That the Committee is content with Clause 4 as drafted.

## **Clause 5 - Sustainable development**

Agreed: That a decision on Clause 5 is deferred until the Committee makes a decision on the obligation to sustainable development in Clause 1.

## **Clause 6 - Local development plan**

Agreed: That the Committee is content with Clause 6 as drafted.

## **Clause 7 - Preparation of timetable**

12.06pm Mr Willie Clarke left the meeting.

Agreed: That the Committee is content with Clause 7 as drafted.

## **Clause 8 - Plan strategy**

Agreed: That the Committee is content with Clause 6 as drafted.

## **Clause 9 - Local policies plan**

Agreed: That the Committee is content with Clause 6 as drafted.

12.11pm Mr Willie Clarke rejoined the meeting.

12.15pm Mr Dallat left the meeting.

Agreed: That the Committee is content with Clause 9 as drafted.

## **Clause 10 - Independent examination**

Agreed: That a decision on Clause 10 is deferred until The Departmental officials report back on who will pay the costs if an independent examiner is appointed.

12.30pm Mr Kinahan left the meeting.

12.33pm The Chairperson suspended the meeting. for lunch.

1.45pm The meeting resumed. with the following members present: Mr Buchanan, Mr Boylan, Mr Wilson, Mr Trevor Clarke, Mr Weir.

## **Clause 11 - Withdrawal of development plan documents**

Agreed: That the Committee is content with Clause 11 as drafted.

## **Clause 12 – Adoption**

Agreed: That the Committee is content with Clause 12 as drafted.

## **Clause 13 - Review of local development plan**

Agreed: That the Committee is content with Clause 13 as drafted.

## **Clause 14 - Revision of plan strategy or local policies plan**

Agreed: That the Committee is content with Clause 14 as drafted.

## **Clause 15 - Intervention by Department**

Agreed: That the Committee is content with Clause 15 as drafted.

## **Clause 16 - Department's default powers**

Agreed: That the Committee is content with Clause 16 as drafted.

## **Clause 17 - Joint plans**

Agreed: That the Committee is content with Clause 17 as drafted.

## **Clause 18 - Power of Department to direct councils to prepare joint plans**

Agreed: That the Committee is content with Clause 18 as drafted.

## **Clause 19 - Exclusion of certain representations**

Agreed: That the Committee is content with Clause 19 as drafted.

## **Clause 20 – Guidance**

Agreed: That the Committee is content with Clause 20 as drafted.

## **Clause 21 - Annual monitoring report**

Agreed: That the Committee is content with Clause 21 as drafted.

## **Clause 22 – Regulations**

Agreed: That the Committee is content with Clause 22 as drafted.

## **Clause 23 - Meaning of “development”**

Agreed: That the Committee is content with Clause 23 as drafted.

## **Clause 24 - Development requiring planning permission**

Agreed: That the Committee is content with Clause 24 as drafted.

## **Clause 25 - Hierarchy of developments**

Agreed: That the Committee is content with Clause 25 as drafted.

## **Clause 26 - Department’s jurisdiction in relation to developments of regional significance**

Agreed: That the Committee is content with Clause 26 as drafted.

## **Clause 27 - Pre-application community consultation**

Agreed: That the Committee is content with Clause 27 as drafted.

2.09pm Mr Willie Clarke rejoined the meeting.

## **Clause 28 - Pre-application community consultation report**

Agreed: That the Committee is content with Clause 28 as drafted.

2.12pm Mr Weir left the meeting.

## **Clause 29 - Call in of applications, etc., to Department**

Agreed: That the Committee is content with Clause 29 as drafted.

## **Clause 30 - Pre-determination hearings**

Agreed: That the Committee is content with Clause 30 as drafted.

2.15pm Mr McGlone rejoined the meeting.

The Bill Office Clerk briefed members on the Committee's draft amendment to Clause 247 of the Bill.

2.17pm Mr Weir rejoined the meeting.

Agreed: That the Bill Office explores the drafting of a Committee amendment to make certain sets of regulations within the Planning Bill subject to draft affirmative resolution.

### **Clause 31 - Local developments: schemes of delegation**

Agreed: That the Committee is content with Clause 31 as drafted.

### **Clause 32 - Development orders**

Agreed: That the Committee is content with Clause 32 as drafted.

### **Clauses 33 – 38 - Simplified planning zones; Making and alteration of simplified planning zone schemes; Simplified planning zone schemes: conditions and limitations on planning permission; Duration of simplified planning zone scheme; Alteration of simplified planning zone scheme; Exclusion of certain descriptions of land or development**

Agreed: That decisions on these clauses are deferred until further discussion at the meeting on 10 February 2011.

2.35pm Mr McGlone left the meeting.

### **Clause 39 - Grant of planning permission in enterprise zones**

Agreed: That the Committee is content with Clause 39 as drafted.

### **Clause 40 - Form and content of applications**

Agreed: That the Committee is content with Clause 40 as drafted.

### **Clause 41– Notice, etc., of applications for planning permission**

Agreed: That a decision on Clause 41 is deferred until the Department clarifies if neighbour notification will be made compulsory.

### **Clause 42 - Notification of applications to certain persons**

Agreed: That a decision on Clause 42 is deferred until the Department reports back on the number of occasions Planning Service has used the powers under this Clause.

### **Clause 43 - Notice requiring planning application to be made**

Agreed: That the Committee is content with Clause 43 as drafted.

2.38pm Mr McGlone rejoined the meeting.

### **Clause 44 - Appeal against notice under section 43**

Agreed: That the Committee is content with Clause 44 as drafted.

### **Clause 45 - Determination of planning applications**

Agreed: That the Committee is content with Clause 45 as drafted.

### **Clause 46 - Power of council to decline to determine subsequent application**

Agreed: That the Committee is content with Clause 46 as drafted.

### **Clause 47 - Power of Department to decline to determine subsequent application**

2.50pm Mr Kinahan rejoined the meeting.

2.52pm Mr Weir left the meeting.

2.59pm Mr McGlone left the meeting.

### **Clause 48 - Power of council to decline to determine overlapping application**

Agreed: That the Committee is content with Clause 48 as drafted.

### **Clause 49 - Power of Department to decline to determine overlapping application**

Agreed: That the Committee is content with Clause 49 as amended by the Department.

3.06pm The Chairperson suspended the meeting.

3.30pm The meeting resumed. with the following members present: Mr Boylan, Mr Kinahan, Mr Trevor Clarke, Mr Willie Clarke, Mr Wilson.

### **Clause 50 - Duty to decline to determine application where section 27 not complied with**

Agreed: That the Committee is content with Clause 50 as drafted.

### **Clause 51 - Assessment of environmental effects**

Agreed: That the Committee is content with Clause 51 as drafted.

## **Clause 52 - Conditional grant of planning permission**

Agreed: That the Committee is content with Clause 52 as drafted.

3.35pm Mr Willie Clarke left the meeting.

3.35pm The Chairperson suspended the meeting. due to lack of quorum.

3.55pm The meeting resumed. with the following members present: Mr Boylan, Mr Willie Clarke, Mr Kinahan, Mr Wilson, Mr McGlone.

## **Clause 53 - Power to impose aftercare conditions on grant of mineral planning permission**

Agreed: That the Committee is content with Clause 53 as drafted.

3.57pm Mr Trevor Clarke rejoined the meeting.

## **Clause 54 - Permission to develop land without compliance with conditions previously attached**

Agreed: That the Committee is content with Clause 54 as drafted.

## **Clause 55 - Planning permission for development already carried out**

Agreed: That the Committee is content with Clause 55 as drafted.

## **Clause 56 - Directions etc. as to method of dealing with applications**

Agreed: That the Committee is content with Clause 56 as drafted.

## **Clause 57 - Effect of planning permission**

Agreed: That the Committee is content with Clause 57 as drafted.

## **Clause 58 – Appeals**

Agreed: That the Committee is content with Clause 58 as drafted.

## **Clause 59 - Appeal against failure to take planning decision**

Agreed: That the Committee is content with Clause 59 as drafted.

## **Clause 60 - Duration of planning permission**

Agreed: That the Committee is content with Clause 60 as drafted.

## **Clause 61 - Duration of outline planning permission**

Agreed: That the Committee is content with Clause 61 as drafted.

### **Clause 62 - Provisions supplementary to sections 60 and 61**

Agreed: That the Committee is content with Clause 62 as drafted.

4.03pm Mr Buchanan rejoined the meeting.

### **Clause 63 - Termination of planning permission by reference to time limit**

Agreed: That the Committee is content with Clause 63 as drafted.

### **Clause 64 - Effect of completion notice**

Agreed: That the Committee is content with Clause 64 as drafted.

### **Clause 65 - Power of Department to serve completion notices**

Agreed: That the Committee is content with Clause 65 as drafted.

### **Clause 66 - Power to make non-material changes to planning permission**

Agreed: That the Committee is content with Clause 66 as drafted.

### **Clause 67 - Revocation or modification of planning permission by council**

Agreed: That the Committee is content with Clause 67 as drafted.

### **Clause 68 - Aftercare conditions imposed on revocation or modification of mineral planning permission**

Agreed: That the Committee is content with Clause 68 as drafted.

### **Clause 69 - Procedure for section 67 orders: opposed cases**

Agreed: That the Committee is content with Clause 69 as drafted.

### **Clause 70 - Procedure for section 67 orders: unopposed cases**

Agreed: That the Committee is content with Clause 70 as amended by the Department.

### **Clause 71 - Revocation or modification of planning permission by the Department**

Agreed: That the Committee is content with Clause 71 as drafted.



## **Clause 72 - Orders requiring discontinuance of use or alteration or removal of buildings or works**

Agreed: That the Committee is content with Clause 72 as drafted.

## **Clause 73 - Confirmation by Department of section 72 orders**

Agreed: That the Committee is content with Clause 73 as drafted.

## **Clause 74 –and Power of Department to make section 72 orders**

Agreed: That the Committee is content with Clause 74 as drafted.

## **Clause 75 - Planning agreements**

Agreed: That the Committee is content with Clause 75 as drafted.

## **Clause 76 - Modification and discharge of planning agreements**

## **Clause 77 –Appeals**

Agreed: That the Committee is content with Clause 77 as drafted.

## **Clause 78 - Land belonging to councils and development by councils**

Agreed: That the Committee is content with Clause 78 as amended by the Department.

## **6. Date, time and place of next meeting**

10.00am The next meeting will be held on Thursday 10 February 2011 in the Room 144, Parliament Buildings.

4.15pm The Chairperson adjourned the meeting.

## **Cathal Boylan**

Chairperson, Committee for the Environment  
10 February 2011

[EXTRACT]

**Thursday 10 February 2011,  
Room 144, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr Danny Kinahan

Mr Patsy McGlone  
Mr Alastair Ross  
Mr George Savage  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)  
Ms Ellis Haughey (Bill Office Clerk)

Apologies: Mr John Dallat

## **5. Planning Bill – Formal clause by clause consideration**

The Committee continued formal clause by clause consideration of the Planning Bill.

The Chairperson informed that a number of documents relating to the Bill had been received since members' papers were issued and these were tabled for members' attention.

Letter from 5 MLAs requesting that the Committee takes evidence on the Planning Bill from the South Belfast Resident's groups.

The Chairperson reminded members that they already discussed the possibility of the South Belfast Resident's groups giving evidence on the Bill and that the Committee asked for further information in writing from the group due to lack of time.

Agreed: That a letter is sent to the 5 MLAs stating that, due to lack of time, it would not be possible hear oral evidence from the South Belfast Resident's Groups but that their concerns had been addressed during clause analysis.

Members noted the following papers and agreed to incorporate the papers into the final Committee report:

- Departmental response to QUB Research Briefing papers 1 and 4
- Research paper on Simplified Planning Zones
- Note of Chairperson's meeting with Professor Gregg Lloyd
- Draft Committee amendments
- Departmental response to Committee queries relating to Clauses 160, 196-197 and 237 and issues raised by Belfast Residents' Groups
- Departmental response to Committee queries relating to Clauses 130, 134-136, 149-150, 184, 186 and 237
- Departmental response to Committee queries relating to Clauses 1, 10, 33, 133, 148, 178, 202, 221, neighbourhood notification and awarding costs at papers and the listing process.

Clause 79 - Lists of buildings of special architectural or historic interest

Agreed: That the Committee is content with Clause 79 as drafted.

Clause 80 – Temporary listing: building preservation notices

Agreed: That the Committee is content with Clause 80 as drafted.

Clause 81 –Temporary listing in urgent cases

Agreed: That the Committee is content with Clause 81 as drafted.

Clause 82 - Lapse of building preservation notices

Agreed: That the Committee is content with Clause 82 as drafted.

Clause 83 - Issue of certificate that building is not intended to be listed

Agreed: That the Committee is content with Clause 83 as drafted.

10.38a.m Mr McGlone left the meeting.

Clause 84 - Control of works for demolition, alteration or extension of listed buildings

Agreed: That the Committee is content with Clause 84 subject to a Committee amendment to raise the level of fine.

Clause 85 - Applications for listed building consent

That the Committee is content with Clause 85 as amended by the Department.

Clause 86 - Notification of applications for listed building consent to certain persons

Agreed: That the Committee is content with Clause 86 as drafted.

10.50a.m Mr McGlone rejoined the meeting.

Clause 87 - Call in of certain applications for listed building consent to Department

Mr Kinahan declared an interest as an owner of a listed building

Agreed: That the Committee is content with Clause 87 as drafted.

Clause 88 - Duty to notify Department of applications for listed building consent

Agreed: That the Committee is content with Clause 88 as drafted.

Clause 89 - Directions concerning notification of applications, etc.

Agreed: That the Committee is content with Clause 89 as drafted.

Clause 90 – Decision on application for listed building consent

Agreed: That the Committee is content with Clause 90 as drafted.

10.52a.m Mr Wilson left the meeting.

Clause 91 – Power to decline to determine subsequent application for listed building consent

Agreed: That the Committee is content with Clause 91 as drafted.

Clause 92 – Power to decline to determine overlapping application for listed building consent

Agreed: That the Committee is content with Clause 92 as drafted.

Clause 93 - Duration of listed building consent

Agreed: That the Committee is content with Clause 93 as drafted.

Clause 94 - Consent to execute works without compliance with conditions previously attached

Agreed: That the Committee is content with Clause 94 as drafted.

Clause 95 - Appeal against decision

Agreed: That the Committee is content with Clause 95 as drafted.

Clause 96 - Appeal against failure to take decision

Agreed: That the Committee is content with Clause 96 as drafted.

Clause 97 - Revocation or modification of listed building consent by council

Mr Savage declared an interest as a member of Craigavon Borough Council

10.55a.m Mr Ross left the meeting.

Clause 98 - Procedure for section 97 orders: opposed cases

Agreed: That the Committee is content with Clause 98 as drafted.

Clause 99 - Procedure for section 97 orders: unopposed cases

Agreed: That the Committee is content with Clause 99 as drafted.

Clause 100 - Revocation or modification of listed building consent by the Department

Agreed: That the Committee is content with Clause 100 as drafted.

Clause 101 - Applications to determine whether listed building consent required

Agreed: That the Committee is content with Clause 101 as drafted.

Clause 102 - Acts causing or likely to result in damage to listed buildings

Agreed: That a decision on this clause is deferred until the meeting on 15 February 2011.

Clause 103 - Conservation areas

Agreed: That the Committee is content with Clause 103 as drafted.

Clause 104 - Control of demolition in conservation areas

Agreed: That the Committee is content with Clause 104 as amended by the Department.

Clause 105 - Grants in relation to conservation areas

Agreed: That the Committee is content with Clause 105 as drafted.

11.03a.m Mr Ross rejoined the meeting.

Clause 106 - Application of Chapter 1, etc., to land and works of councils

Agreed: That the Committee is content with Clause 106 as amended by the Department.

Clause 107 - Requirement of hazardous substances consent

Agreed: That the Committee is content with Clause 107 as drafted.

Agreed: That the Department provides the Committee with clarification of the roles of the Planning Authority and NIEA in relation to hazardous substances.

Clause 108 – Applications for hazardous substances consent

Agreed: That the Committee is content with Clause 108 as drafted.

Clause 109 – Determination of applications for hazardous substances consent

Agreed: That the Committee is content with Clause 109 as drafted.

Clause 110 – Grant of hazardous substances consent without compliance with conditions previously attached

Agreed: That the Committee is content with Clause 110 as drafted.

Clause 111 – Revocation or modification of hazardous substances consent

Agreed: That the Committee is content with Clause 111 as drafted.

Clause 112 – Confirmation by Department of section 111 orders

Agreed: That the Committee is content with Clause 112 as drafted.

Clause 113 - Call in of certain applications for hazardous substances consent to Department

Agreed: That the Committee is content with Clause 113 as amended by the Department.

Clause 114– Appeals and Effect of hazardous substances consent

Agreed: That the Committee is content with Clause 114 as drafted.

Clause 115 - Change of control of land

Agreed: That the Committee is content with Clause 115 as amended by the Department.

Clause 116 – Offences

Agreed: That a decision on this Clause is deferred until Departmental officials provide a list of the substances in the regulations, the level of fine in the Republic of Ireland, how often the fine has been used and clarification on who keeps the fines.

Clause 117 – Emergencies

Agreed: That the Committee is content with Clause 117 as drafted.

Clause 118 – Health and safety requirements

Agreed: That the Committee is content with Clause 118 as drafted.

Clause 119 – Applications by councils for hazardous substances consent

Agreed: That the Committee is content with Clause 119 as drafted.

11.22a.m Mr McGlone left the meeting.

Clause 120 - Planning permission to include appropriate provision for trees

Agreed: That the Committee is content with Clause 120 as drafted.

Clause 121 - Tree preservation orders: councils

Agreed: That the Committee is content with Clause 121 as drafted.

Clause 122 - Provisional tree preservation orders

Agreed: That the Committee is content with Clause 122 as drafted.

Clause 123 - Power for Department to make tree preservation orders

Agreed: That the Committee is content with Clause 123 as drafted.

11.26a.m Mr Trevor Clarke joined the meeting.

11.28a.m Mr Buchanan left the meeting.

Clause 124 - Replacement of trees

Agreed: That the Committee is content with Clause 124 as drafted.

Clause 125 - Penalties for contravention of tree preservation orders

Agreed: That the Committee is content with Clause 125 subject to a Committee amendment to raise the level of fine.

Clause 126 - Preservation of trees in conservation areas

Agreed: That the Committee is content with Clause 126 as drafted.

Clause 127 - Power to disapply section 126

Agreed: That the Committee is content with Clause 127 as drafted.

Clause 128 - Review of mineral planning permissions

Agreed: That the Committee is content with Clause 128 as drafted.

Clause 129 - Control of advertisements

Agreed: That the Committee is content with Clause 129 as drafted.

Clause 130 - Expressions used in connection with enforcement

Agreed: That a decision on this clause is deferred until Departmental officials provide information on how many closed breaches were brought to a conclusion or dropped and an indication of the types of open cases

Clause 131- Time limits

Agreed: That a decision on this clause is deferred until Departmental officials provide clarification on when a breach would occur, would this clause apply to open cases and an indication of the types of open cases.

11.48a.m Mr McGlone rejoined the meeting.

Clause 132 - Power to require information about activities on land

Agreed: That the Committee is content with Clause 132 as drafted.

Clause 133 - Penalties for non-compliance with planning contravention notice

Agreed: That the Committee is content with Clause 133 subject to amendments proposed by the Department to raise the level of fine from level 3 to level 5 and to ensure a consistent approach throughout the Bill.

Clause 134 - Temporary stop notice

Agreed: That the Committee is content with Clause 134 as drafted.

Clause 135 - Temporary stop notice

Agreed: That the Committee is content with Clause 135 as drafted.

Clause 136 - Temporary stop notice: restrictions

Agreed: That the Committee is content with Clause 136 as drafted.

Clause 137 - Temporary stop notice: offences

Agreed: That the Committee is content with Clause 137 as drafted.

Clause 138 - Issue of enforcement notice by councils

Agreed: That the Committee is content with Clause 138 as drafted.

Clause 139 - Issue of enforcement notice by Department

Agreed: That the Committee is content with Clause 139 as drafted.

Clause 140 - Contents and effect of enforcement notice

Agreed: That the Committee is content with Clause 140 as drafted.

Clause 141 - Variation and withdrawal of enforcement notices by councils

Agreed: That the Committee is content with Clause 141 as drafted.

Clause 142 - Variation and withdrawal of enforcement notices by Department

Agreed: That the Committee is content with Clause 142 as drafted.

Clause 143- Appeal against enforcement notice

Agreed: That the Committee is content with Clause 143 as drafted.

Clause 144 - Appeal against enforcement notice - general supplementary provisions

Agreed: That the Committee is content with Clause 144 as drafted.

Clause 145 - Appeal against enforcement notice - supplementary provisions relating to planning permission

Agreed: That the Committee is content with Clause 145 as drafted.

Clause 146 - Execution and cost of works required by enforcement notice

Agreed: That the Committee is content with Clause 146 as drafted.

Clause 147 - Offence where enforcement notice not complied with

Agreed: That the Committee is content with Clause 147 as drafted.

Clause 148 - Effect of planning permission, etc., on enforcement or breach of condition notice

Agreed: That the Committee is content with Clause 148 as amended by the Department.

Clause 149 - Enforcement notice to have effect against subsequent development

Agreed: That the Committee is content with Clause 149 as drafted.



Clause 150 - Service of stop notices by councils

Agreed: That the Committee is content with Clause 150 as drafted.

Clause 151 - Service of stop notices by Department

Agreed: That the Committee is content with Clause 151 as drafted.

Clause 152 - Enforcement of conditions

Agreed: That a decision on Clause 152 is deferred until the meeting on 15 February 2011.

Clause 153 - Fixed penalty notice where enforcement notice not complied with

Agreed: That a decision on Clause 153 is deferred until the meeting on 15 February 2011.

Clause 154 - Fixed penalty notice where breach of condition notice not complied with

Agreed: That a decision on Clause 154 is deferred until the meeting on 15 February 2011.

Clause 155 - Use of fixed penalty receipts

Agreed: That the Committee is content with Clause 155 as drafted.

Clause 156 – Injunctions

Agreed: That the Committee is content with Clause 156 as drafted.

Clause 157 - Issue of listed building enforcement notices by councils

Agreed: That the Committee is content with Clause 157 as drafted.

Clause 158 - Issue of listed buildings enforcement notices by Department

Agreed: That the Committee is content with Clause 158 as drafted.

Clause 159 - Appeal against listed building enforcement notice

Agreed: That the Committee is content with Clause 159 as drafted.

Clause 160 - Effect of listed building consent on listed building enforcement notice

Agreed: That the Committee is content with Clause 160 as amended by the Department.

Clause 161 - Urgent works to preserve building

Agreed: That the Committee is content with Clause 161 as drafted.

Clause 162 - Hazardous substances contravention notice

Agreed: That the Committee is content with Clause 162 as drafted.

Clause 163 - Variation of hazardous substances contravention notices

Agreed: That the Committee is content with Clause 163 as drafted.

Clause 164 - Enforcement of duties as to replacement of trees

Agreed: That the Committee is content with Clause 164 as drafted.

Clause 165 - Appeals against section 163 notices

Agreed: That the Committee is content with Clause 165 as drafted.

Clause 166 - Execution and cost of works required by section 163 notice

Agreed: That the Committee is content with Clause 166 as drafted.

Clause 167 - Enforcement of controls as respects trees in conservation areas

Agreed: That the Committee is content with Clause 167 as amended by the Department.

Clause 168 - Enforcement of orders under section 72

Agreed: That the Committee is content with Clause 168 as drafted.

Clause 169 - Certificate of lawfulness of existing use or development

Agreed: That the Committee is content with Clause 169 as drafted.

Clause 170 - Certificate of lawfulness of proposed use or development

Agreed: That the Committee is content with Clause 170 as drafted.

Clause 171 - Certificates under sections 168 and 169: supplementary provisions

Agreed: That the Committee is content with Clause 171 as drafted.

Clause 172 - Offences

Agreed: That the Committee is content with Clause 172 as drafted.

Clause 173 - Appeals against refusal or failure to give decision on application

Agreed: That the Committee is content with Clause 173 as drafted.

Clause 174 - Further provisions as to appeals under section 172

Agreed: That the Committee is content with Clause 174 as amended by the Department.

Clause 175 - Enforcement of advertisement control

Agreed: That the Committee is content with Clause 175 as drafted.

Clause 176 - Rights to enter without warrant

Agreed: That the Committee is content with Clause 176 as drafted.

Clause 177 - Right to enter under warrant

Agreed: That the Committee is content with Clause 177 as drafted.

12.27p.m Mr Buchanan rejoined the meeting.

Clause 178 - Rights of entry: supplementary provisions

Agreed: That the Committee is content with Clause 178 as drafted.

Clause 179 - Compensation where planning permission is revoked or modified

Agreed: That the Committee is content with Clause 179 as drafted.

Clause 180 - Modification of the Act of 1965 in relation to minerals

Agreed: That the Committee is content with Clause 180 as drafted.

Clause 181 - Compensation where listed building consent revoked or modified

Agreed: That the Committee is content with Clause 181 as drafted.

Clause 182 - Compensation in respect of orders under section 72, 74 or 111

Agreed: That the Committee is content with Clause 182 as drafted.

Clause 183 - Compensation in respect of tree preservation orders

Agreed: That the Committee is content with Clause 183 as drafted.

Clause 184 - Compensation where hazardous substances consent modified or revoked under section 115

Agreed: That the Committee is content with Clause 184 as drafted.

Clause 185 - Compensation for loss due to stop notice

Agreed: That the Committee is content with Clause 185 as drafted.

Clause 186 - Compensation for loss or damage caused by service of building preservation notice

Agreed: That the Committee is content with Clause 186 as drafted.

12.33p.m Mr Ross left the meeting.

Clause 187 - Compensation for loss due to temporary stop notice

Agreed: That the Committee is content with Clause 187 as drafted.

Clause 188 - Compensation where planning permission assumed for other development

Agreed: That the Committee is content with Clause 188 as drafted.

Clause 189 - Interpretation of Part 6

Agreed: That the Committee is content with Clause 189 as drafted.

Clause 190 - Service of purchase notice

Agreed: That the Committee is content with Clause 190 as drafted.

Clause 191 - Purchase notices: Crown land

Agreed: That the Committee is content with Clause 191 as drafted.

Clause 192 - Action by council following service of purchase notice

Agreed: That the Committee is content with Clause 192 as drafted.

Clause 193 - Further ground of objection to purchase notice

Agreed: That the Committee is content with Clause 193 as drafted.

Clause 194 - Reference of counter-notices to Lands Tribunal

Agreed: That the Committee is content with Clause 194 as drafted.

Clause 195 - Effect of valid purchase notice

Agreed: That the Committee is content with Clause 195 as drafted.

12.34p.m Mr McGlone left the meeting.

Clause 196 - Special provision as to compensation under this Part

Agreed: That the Committee is content with Clause 196 as drafted.

12.40p.m Mr McGlone rejoined the meeting.

Clause 197 - Historic Buildings Council

Agreed: That the Committee is content with Clause 197 as drafted.

Clause 198 - Grants and loans for preservation or acquisition of listed buildings

Agreed: That the Committee is content with Clause 198 as drafted.

Clause 199 - Acquisition of listed buildings by agreement

Agreed: That the Committee is content with Clause 199 as drafted.

Clause 200 - Acceptance by Department of endowments in respect of listed buildings

Agreed: That the Committee is content with Clause 200 as drafted.

Clause 201 - Compulsory acquisition of listed buildings

Agreed: That the Committee is content with Clause 201 as drafted.

Clause 202 - The Planning Appeals Commission

Agreed: That a decision on Clause 202 is deferred until the meeting on 15 February 2011.

12.50p.m Mr Kinahan left the meeting.

12.52p.m Mr Willie Clarke left the meeting.

Clause 203 - Procedure of appeals commission

Agreed: That the Committee is content with Clause 203 as drafted.

Clause 204 - Assessment of council's performance

Agreed: That the Committee is content with Clause 204 as drafted.

Clause 205 - Assessment of council's decision making

Agreed: That the Committee is content with Clause 205 as drafted.

Clause 206 - Further provision as respects assessment of performance or decision making

Agreed: That the Committee is content with Clause 206 as drafted.

Clause 207 - Report of assessment

Agreed: That the Committee is content with Clause 207 as drafted.

Clause 208 - Application to the Crown

Agreed: That the Committee is content with Clause 208 as amended by the Department.

Clause 209 - Urgent Crown development

Agreed: That the Committee is content with Clause 209 as drafted.

Clause 210 - Urgent works relating to listed buildings on Crown land

Agreed: That the Committee is content with Clause 210 as drafted.

Clause 211 - Enforcement in relation to the Crown

Agreed: That the Committee is content with Clause 211 as drafted.

Clause 212 - References to an estate in land

Agreed: That the Committee is content with Clause 212 as drafted.

Clause 213 - Applications for planning permission, etc. by Crown

Agreed: That the Committee is content with Clause 213 as drafted.

Clause 214 - Service of notices on the Crown

Agreed: That the Committee is content with Clause 214 as drafted.

Clause 215 - Correction of errors in decision documents

Agreed: That a decision on Clause 215 is deferred until the meeting on 15 February for the Department to consider a possible amendment to the wording.

Clause 216 - Correction notice

Agreed: That the Committee is content with Clause 216 as drafted.

Clause 217 - Effect of correction

Agreed: That the Committee is content with Clause 217 as drafted.

Clause 218 – Supplementary

Agreed: That the Committee is content with Clause 218 as drafted.

Clause 219 - Fees and charges

Agreed: That the Committee is content with Clause 219 as drafted.

Clause 220 - Grants for research and bursaries

Agreed: That the Committee is content with Clause 220 as drafted.

Clause 221 - Grants to bodies providing assistance in relation to certain development proposals

Agreed: That the Committee is content with Clause 221 as amended by the Department.

Clause 222 - Contributions by councils and statutory undertakers

Agreed: That the Committee is content with Clause 222 as amended by the Department.

Clause 223 - Contributions by departments towards compensation paid by councils

Agreed: That the Committee is content with Clause 223 as amended by the Department.

Clause 224 - Duty to respond to consultation

Agreed: That a decision on Clause 224 is deferred until the meeting on 15 February 2011 to allow the Department to consider an amendment that a non reply from a statutory consultee is deemed as an approval.

Clause 225 – Minerals

Agreed: That the Committee is content with Clause 225 as drafted.

Clause 226 - Local inquiries

Agreed: That the Committee is content with Clause 226 as drafted.

Clause 227 - Inquiries to be held in public subject to certain exceptions

Agreed: That the Committee is content with Clause 227 as drafted.

Clause 228 - Directions: Secretary of State

Agreed: That the Committee is content with Clause 228 as drafted.

Clause 229 - Directions: Department of Justice

Agreed: That a decision on Clause 229 is deferred until the meeting on 15 February 2011 in anticipation of a response from the Department.

Clause 230 - National security

Agreed: That the Committee is content with Clause 230 as drafted.

Clause 231 - Rights of entry

Agreed: That the Committee is content with Clause 231 as amended by the Department.

Clause 232 - Supplementary provisions as to powers of entry

Agreed: That the Committee is content with Clause 232 as drafted.

Clause 233 - Supplementary provisions as to powers of entry: Crown land

Agreed: That the Committee is content with Clause 233 as drafted.

Clause 234 - Service of notices and documents

Agreed: That the Committee is content with Clause 234 as drafted.

Clause 235 - Information as to estates in land

Agreed: That the Committee is content with Clause 235 as drafted.

Clause 236 - Information as to estates in Crown land

Agreed: That the Committee is content with Clause 236 as drafted.

Clause 237 - Planning register

Agreed: That the Committee is content with Clause 237 as drafted.

Clause 238 - Power to appoint advisory bodies or committees

Agreed: That the Committee is content with Clause 238 as drafted.

Clause 239 - Time limit for certain summary offences under this Act

Agreed: That the Committee is content with Clause 239 as amended by the Department.

Clause 240 - Registration of matters in Statutory Charges Register

Agreed: That the Committee is content with Clause 240 as amended by the Department.

Clause 241 – Directions

Agreed: That the Committee is content with Clause 241 as drafted.

Clause 242 - Regulations and orders

Agreed: That the Committee is content with Clause 242 as drafted.

Clause 243 – Interpretation

Agreed: That the Committee is content with Clause 243 as drafted.

Clause 244 - Further provision

Agreed: That the Committee is content with Clause 244 as drafted.

Clause 245 - Minor and consequential amendments

Agreed: That the Committee is content with Clause 245 as drafted.

Clause 246 – Repeals

Agreed: That the Committee is content with Clause 246 as drafted.

Clause 247 – Commencement

Agreed: That the Committee is content with Clause 247 subject to a draft Committee amendment.

Clause 248 - Short title

Agreed: That the Committee is content with Clause 248 as drafted.

Schedule 1 - Simplified planning zones

Agreed: That the Committee is content with Schedule 1 as drafted.



Schedule 2 - Review of old mineral planning permission

Agreed: That the Committee is content with Schedule 2 as drafted.

Schedule 3 - Periodic review of mineral planning permissions

Agreed: That the Committee is content with Schedule 3 as drafted.

Schedule 4 - Amendments to the Land Development Values (Compensation) Act (Northern Ireland) 1965 (c. 23)

Agreed: That the Committee is content with Schedule 4 as drafted.

Schedule 5 - The Historic Buildings Council

Agreed: That the Committee is content with Schedule 5 as drafted.

Schedule 6 - Minor and consequential amendments

Agreed: That the Committee is content with Schedule 6 as drafted.

Schedule 7 – Repeals

Agreed: That the Committee is content with Schedule 7 as drafted.

1.35p.m. The Chairperson suspended the meeting for lunch.

2.25p.m Mr Weir joined the meeting.

2.25p.m. The meeting resumed with the following members present: Mr Boylan, Mr Savage, Mr Willie Clarke, Mr Buchanan, Mr Weir.

The Chairperson informed members they now needed to consider Clauses that had been deferred from the meeting on 8 February 2011.

2.29p.m Mr Wilson rejoined the meeting.

Clause 1 - General functions of Department with respect to development of land

Agreed: That a decision on Clause 1 is deferred until the meeting on 15 February 2011 to allow the Department to consider amendments.

Clause 3 – Survey of district

The Chairperson informed members that they had been provided with a copy of a draft Committee amendment to Clause 3 to put climate change on the face of the Bill.

The Committee divided:

**AYES NOES**

Mr McGlone Mr Buchanan  
Mr Boylan Mr Weir  
Mr Willie Clarke Mr Savage  
Mr Wilson

The Committee amendment was therefore agreed.

Clause 5 - Sustainable development

Agreed: That the Committee is content with Clause 5 subject to a Committee amendment.

Clause 10

Agreed: That the Committee is content with Clause 10 as amended by the Department.

3.07p.m Mr Weir left the meeting.

Clauses 33 – 38 – Simplified Planning Zones

Agreed: That a decision on Clauses 33 – 38 is deferred until the meeting on 15 February 2011 to allow the Department to consider an amendment to include thresholds, business cases and time periods with simplified planning zones.

3.10p.m Mr McGlone left the meeting.

Clauses 41 – 42 - Notice, etc., of applications for planning permission; Notification of applications to certain persons

Agreed: That the Committee is content with Clauses 41 – 42 as drafted.

### **Clause 44 - Appeal against notice under section 43**

Agreed: That a decision on Clause 44 is deferred until the meeting on 15 February 2011.

3.20p.m Mr McGlone rejoined the meeting.

3.20p.m Mr Weir rejoined the meeting.

Agreed: That the Departmental officials report back to the Committee on the possibility of including a two year review on the face of the Bill.

3.53p.m Mr Savage left the meeting.

Agreed: That information on planning agreements is forwarded to the Committee.

Agreed: That the Departmental officials report back to the Committee with further information on the Department's arrangements for paying for legal advice.

4.15p.m Mr Weir left the meeting.

Cathal Boylan  
Chairperson, Committee for the Environment  
17 February 2011

[EXTRACT]

## **Tuesday 15 February 2011, Room 144, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)  
Ms Eilis Haughey (Bill Office Clerk)

### **2. Planning Bill – Formal clause by clause consideration**

The Chairperson informed members that they had been provided with a tabled letter from the Minister in relation to mineral extraction fees.

Agreed: That a copy of the letter is forwarded to QPANI.

The Chairperson informed members that they now needed to consider the remaining Clauses of the Planning Bill which members had agreed to defer at the meeting on 10 February 2011.

Clause 1 - General functions of Department with respect to development of land

The Chairperson asked members if they were content to agree the Committee amendment to require the Department to promote or improve social wellbeing.

The Committee divided:

### **AYES NOES**

Mr Boylan Mr Ross  
Mr Willie Clarke Mr Buchanan  
Mr McGlone  
Mr Kinahan

Agreed: That the Committee is content with Clause 1 subject to a Departmental amendment to further sustainable development and a Committee amendment to require the Department to promote or improve social wellbeing.

1.08p.m Mr Weir joined the meeting.

1.09p.m Mr Trevor Clarke joined the meeting.

## **Clauses 33 -38 – Simplified planning zones**

Agreed: That the Committee is content with Clauses 33 – 38 as drafted.

Mr McGlone wished it to be noted that he did not agree with these clauses.

## **Clause 58 – Appeals**

The Chairperson reminded members that they were content with Clause 58 as drafted at the meeting on 10 February 2011 but that during informal clause scrutiny of Clause 202 the Committee asked the Department to consider an amendment to stop the practice of new information being presented at appeals. The Department had replied to state that the amendment to bring about this requirement will be made with a new clause after Clause 58.

Agreed: That the Committee is content with a new clause after Clause 58 to prevent any new material being presented after an appeal has been lodged unless it could not have been presented at the time or there were exceptional circumstances for it not being presented.

Clauses 84 and 125 - Control of works for demolition, alteration or extension of listed buildings and Penalties for contravention of tree preservation orders

Agreed: That the Committee is content with Clauses 84 and 125 as drafted and that it should make a recommendation in its report for Tree Protection Orders to be put in place quickly to avoid trees being destroyed in the interim period before fines were raised.

## **Clause 102 - Acts causing or likely to result in damage to listed buildings**

Agreed: That the Committee is content with Clause 102 subject to a Departmental amendment to raise the level of fine from level 3 to level 5 and subject to a Committee amendment to provide for an option of conviction on indictment.

1.28p.m Mr Willie Clarke left the meeting.

## **Clause 107 – Requirement of hazardous substances consent**

The Chairperson informed members they were previously content with Clause 107 as drafted but had asked for further information from the Department clarifying the respective roles of the Planning Authority and NIEA in relation to its enforcement.

Agreed: That the Committee is content with the Department's response.

## **Clause 116 – Offences**

Agreed: That the Committee is content with Clause 116 subject to The Departmental amendment to raise the level of fine to £100,000.

Agreed: That although it has already agreed the clauses as drafted, the Committee is content with the Departmental amendments to raise the level of fine to £100,000 in Clauses 136, 146 and 149 if tabled as Consideration Stage by the Department.

1.33p.m Mr Willie Clarke rejoined the meeting.

Clauses 130 and 152 - 154 - Expressions used in connection with enforcement; Enforcement of conditions; Fixed penalty notice where enforcement notice not complied with; Fixed penalty notice where breach of condition notice not complied with

Agreed: That the Committee is content with Clauses 130, 152, 153 and 154 as drafted.

### **Clauses 131 and 44 - Time limits and Appeal against notice under section 43**

The Chairperson asked members if they were content to agree a Committee amendment that would make both time limits 4 years for breaches of planning control.

The Committee divided:

#### **AYES NOES**

Mr Boylan Mr Weir  
Mr Willie Clarke Mr Ross  
Mr McGlone  
Mr Buchanan  
Mr Kinahan

The Departmental officials stated that the Department would be prepared to introduce an amendment to make both time limits 5 years for breaches of planning control.

Agreed: That the Committee is content with Clauses 131 and 44 subject to a Departmental amendment to make both time limits 5 years for breaches of planning control.

### **Clause 202 - The Planning Appeals Commission**

The Chairperson informed members that they deferred this clause pending an amendment from the Department that would allow costs to be awarded where a party has been put to unnecessary expense and where PAC has established that the other party has acted unreasonably.

The Chairperson further informed members that they had been provided with the Department's response which indicated that two new clauses would be brought forward after clause 202 to allow for the awarding of costs.

Agreed: That the Committee is content with the Departmental amendment introducing new clauses to allow for the awarding of costs by the appeals commission where a party has been put to unnecessary expense.

Agreed: That the Committee is content with Clause 202 as drafted

### **Clause 215 - Correction of errors in decision documents**

Agreed: That the Committee is content with Clause 215 as amended by the Department.

### **Clause 224 - Duty to respond to consultation**

Agreed: That the Committee is content subject to a Committee amendment to insert a new Clause after Clause 187.

Agreed: That the Committee is content with Clause 224 as drafted.

### **Clause 229 - Directions: Department of Justice**

Agreed: That the Committee is content with Clause 229 subject to a Departmental amendment to refer to the Attorney General.

Two Year Review of the implementation of the Bill:

The Chairperson informed members that the Committee had asked the Department to consider an amendment to introduce a mandatory review period of the new planning system once it has been devolved to local authorities.

The Minister had stated he would not be bringing forward an amendment on this issue.

The Chairperson informed members that they had been provided with a draft Committee amendment which suggested introducing a new clause which will require the Department to review the system within 3 years of the Bill commencement and at least once every 5 years thereafter.

The Chairperson asked members if they were content to agree the Committee amendment requiring the Department to conduct a review within 3 years of the Planning Bill being implemented and thereafter every 5 years.

The Committee divided:

### **AYES NOES**

Mr Boylan Mr Trevor Clarke  
Mr Willie Clarke Mr Buchanan  
Mr Ross  
Mr Kinahan  
Mr Weir

The amendment was not agreed.

Community Amenity Level:

The Chairperson asked members if they were content to agree an amendment to provide powers for the Department to introduce a Community Amenity Levy if and when it deems appropriate.

The Committee divided:

### **AYES NOES**

Mr Kinahan Mr Weir  
Mr Boylan Mr Ross  
Mr Willie Clarke Mr Buchanan  
Mr Trevor Clarke

The amendment was not agreed.

Agreed: That the Committee makes a recommendation in its report that the Department explores in more detail the opportunities that might be available through an infrastructure/amenity levy.

2.28p.m Mr Kinahan left the meeting.

The Committee considered the possibility of an amendment to require the Department to prepare a land use strategy to be used to provide a template and give consistency for major/regionally significant planning decisions made at the centre.

Agreed: The Committee agreed not to make an amendment or recommendation on this issue.

The Chairperson informed members they had been provided with a Departmental amendment to Schedule 2.

Agreed: That the Committee is content with Schedule 2 as amended by the Department.

The Chairperson informed members they had been provided with a submission on the Planning Bill from Belfast Civic Trust.

Agreed: That the submission is included in the final Committee report with a note that it arrived after the closing date for submissions.

Cathal Boylan  
Chairperson, Committee for the Environment  
17 February 2011

[EXTRACT]

## **Appendix 2**

### **Minutes of Evidence**

**13 January 2011**

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Alastair Ross

Mr George Savage  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Ms Suzie Cave	Research and Library Services
Dr Ken Sterrett	Queen's University Belfast
Ms Irene Kennedy	
Mr Angus Kerr	Department of the Environment
Ms Catherine McKinney	
Ms Maggie Smith	

1. The Chairperson (Mr Boylan): I remind members that this evidence session is being recorded. If any member needs to use their mobile phone, I ask that they go outside the room to do so, because mobiles interfere with the system.

2. I welcome back Suzie Cave from the Assembly Research and Library Services and Dr Ken Sterrett from Queen's University Belfast. They will give us a briefing on Part 1 and Part 2 of the Bill, which deal with planning functions and local development plans.

3. Ms Suzie Cave (Research and Library Services): The research paper has been produced on behalf of the Assembly Research and Library Service by the School of Planning, Architecture and Civil Engineering at Queen's University Belfast. I will introduce Dr Ken Sterrett, a senior lecturer at Queen's who specialises in areas of participatory planning, community planning, integrated planning and urban design. He will take you through the paper and respond to any questions that you may have.

4. Dr Ken Sterrett (Queen's University Belfast): Thank you very much for inviting me here. This is one of four papers that we have been asked to prepare and deliver to you over the next couple of weeks. As the Chairperson said, this paper deals directly with the functions of the Department of the Environment (DOE) and development planning. Those are covered in Part 1 and Part 2 of the Bill. I will go through some of the key points that we have identified as being important. We will then raise some questions that may help you to investigate and interrogate the legislation a little bit more.

5. With your indulgence, Chairperson, I will preface my comments by saying something about the shift from land use planning to spatial planning. That will underpin a lot of what I will say today. We are seeing a major shift from traditional land use planning, which we all know and love and have had for a number of years, to a new way of looking at planning that is known as spatial planning.

6. I should say that we are assuming that that is what the Department is doing with the Bill, and we are making that assumption because a good part of the Bill has been lifted almost directly from the Planning and Compulsory Purchase Act 2004 that covers England and Wales. That Act effectively introduced spatial planning into those jurisdictions, and it was followed by all sorts of policy and guidance. Therefore, it is in that context that I will identify a number of points.

7. The first point relates to the planning functions of the DOE. That is dealt with in clause 1, which states that the planning function of the DOE is to:

"formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development."



8. That is traditionally what the Department does, and it was part of the old legislation. Therefore, if we are moving to a different sort of system and are looking at a new way of planning that is bringing about a change and whole new culture, the question is: should that not be reflected in what the Department describes as its planning functions? That is the first point.

9. Secondly, and I think that this is one of the key points, the Bill does not include an explicit reference to the important links between the local development plan and the council's community plan. That is key, because if you look at the systems in places where spatial planning has been introduced, they have been about keeping strong links between the broader community plan, which is prepared by the local authorities, and the eventual spatial plan, which is the local development plan. That is not in the Bill, so you may want to ask the Department about that, because it has been a key factor in the delivery of spatial planning in other jurisdictions.

10. Mr Weir: Are you suggesting that there should be a degree of leverage, with cross-referencing in the Bill?

11. Dr Sterrett: Yes.

12. Mr Weir: It is not normal to have commitments in legislation to particular timetables.

13. Dr Sterrett: I appreciate that. For example, the Planning and Compulsory Purchase Act 2004 in England and Wales has a requirement relating to local development plans, which means that people "must have regard to" the local community plan, for example. Therefore, that linkage is in legislation.

14. If the new legislation is the beginning of a process to introduce spatial planning to Northern Ireland, as I said earlier, it represents a radical change to the planning system. Of course, it will need a lot of supportive policy and guidance. A lot of additional material will be needed above and beyond what is in the Bill to explain how it might work and how to advise local authorities about that and about the linkages and community involvement and so on. I think that it is important to have a sense of what the timetable for that might be on the back of the Bill, because one will not work effectively without the other.

15. The new legislation and the overall approach to spatial planning will require substantial training for stakeholders. That is important, because research shows that where similar legislation has been introduced elsewhere, such as happened in England and Wales in the past six years, any problems have been in adapting people to the new system and about addressing the culture change. We have done some research on this at Queen's University, but on reading other research reports, it has been found that adequate training is the main issue. A colleague of mine refers to a process of learning and, more importantly, unlearning; in other words, unlearning previous processes and learning new ones. Therefore, that is key. It applies not just to professional planners, but to officials and politicians, and, critically, to other stakeholders, given that this is a more integrative process.

16. The new legislation, together with follow-up policy and guidance, will necessitate the creation of a set of intra-government relationships that should be carefully considered. The proposal is that the councils will be the local planning authority, the Department of the Environment will be the central government body with responsibility for planning, and the Department for Regional Development (DRD) will have responsibility for strategic planning. On top of that, there is the role of the Office of the First Minister and deputy First Minister (OFMDFM), so there is a whole set of relationships. I think it is important that we as a public and you as members give some thought to that.

17. The relationship of the local development plan to the regional development strategy needs to be carefully considered. Currently, when a local area plan is being prepared, the legislation requires it to be "in general conformity with" the regional development plan. That is being downgraded to "having regard to". The lawyers among you will know all the little nuances of language in phrases such as "taking account of", "having regard to" and "must be in conformity with", but during the planning consultation process, people were concerned about what was effectively a downgrading of the regional development strategy.

18. When councils prepare local area plans in the future, it will probably be very important that, for all those plans, there is that regional coherence that the regional development strategy provides so that there will be a framework within which they are set. You may want to consider the specific language that is to be used about the relationship between the local development plan and the regional development strategy.

19. When looking at the package of legislation and at what is proposed by way of the development plans, another important point to note is that we have the plan strategy for each area, which is the broad, strategic ambition of the plan. Moving on from that, there is the local policies plan, which is the more site-specific part of that process. In England, there is a facility known as an area action plan. In other words, if specific actions need to be taken in some areas, such as a regeneration area or a town centre or just somewhere where change is going on, those can be identified in a broad strategy plan. If the focus is on the delivery of development in those areas, area action plans are used, and they have been quite effective.

20. The Bill does not provide that facility, and I suggest that, if we are thinking ahead to getting a better marriage between planning and regeneration, which are activities that for years here have been separated here, this might be one facility that you might want to think about having included in the Bill.

21. The next point is that the Department is not bound by the recommendations of the independent examination. I put that in, because when I read through the consultation responses, the report on planning reform and the Department's response to that, there was some concern that the Department of the Environment would retain overall control over most things, meaning that whenever a local authority prepared its local development plan and it went to independent examination, the outcome would be controlled by the Department, rather than the local authority simply being bound by the outcome. Some people asked during the consultation whether that dilutes the devolved powers of local authorities.

22. The next point is about the Department having the power to direct councils to produce joint development plans. Elsewhere, that is largely voluntary. However, in this case, the Bill says that the Department will have the power to direct councils to work together. Many of you will see the benefit of that, particularly in semi-strategic areas and so on. It has all sorts of other implications that the Committee might want to explore. For example, in the case of greater Belfast, a number of local authorities were asked to come together to produce a plan for that area. Is that just a strategy plan? Could each local authority go ahead after that and build up the detail of that plan through the local policies plan? There might also be an issue with who becomes the planning authority: having prepared a plan for a number of different council areas, do we assume that each council will effectively be the planning authority in charge of development management from thereon in? What way will that work out? You may want to get a better understanding of that.

23. The last point is about implementation and delivery. The literature and the research over the past number of years about the move from land use planning to spatial planning has, centrally, been about delivery. We can look back at the origins of spatial planning in the UK and even in the rest of Europe. In the UK, that has been driven by the Treasury. Therefore, the move has

not been some grand scheme by planners. It has been driven by the Treasury, because it saw planning as potentially the vehicle through which it could deliver infrastructure on the ground and create place at a local level. Delivery is at the heart of the matter, and the concern that I think we all have about the new planning system is whether that delivery system will be centrally attached to the new planning functions at a local level.

24. Those are some of the key points. We only have five minutes, so we should perhaps take some questions. Is that what you want to do?

25. The Chairperson: Do you have anything to add, Suzie?

26. Ms Cave: No.

27. The Chairperson: As we have only five minutes, we will finish the rest of the business when we move to room 21. Anybody who has a contribution to make can return to room 21 at 2.00 pm, and we will continue.

The meeting was suspended at 1.32 pm.

On resuming —

28. The Chairperson: We are restarting, and I thank Ken for his presentation, which I enjoyed; there was a lot in it. I have a few questions to ask, and then I will open the session up to members.

29. Ken, you mentioned spatial planning, which I want to touch on. The fact that it looks as though the Bill makes provision for the involvement of the community is obviously great, as is the idea of giving local councils more power, because they will then be more accountable. As you know, there has been a lot of criticism through the years of the way that the council system implements planning.

30. Do you think that a spatial planning element, which you mentioned, is underlying in the Bill? Is that the notion and idea that the Bill proposes? If that is the case, I want you to talk about the implementation and roll-out of that planning. When do you think that will happen? If we go down the route of spatial planning, how long will the process take, including the training and support that local councils will need, and how long will it take to roll out the subordinate and complementary legislation that will need to follow?

31. Dr Sterrett: When we were asked to do this work, we looked at the Bill, the background papers, the consultation on planning reform and so on. More specifically, after looking at the Bill, we thought that it was introducing spatial planning into Northern Ireland, given that a good part of it has been lifted from the 2004 English and Welsh legislation, which effectively introduced spatial planning into England and Wales. A lot of research has been done in England and Wales about how effective the introduction of spatial planning has been. For example, was it right to move away from regulatory land use planning to spatial planning? What were its origins? Where did it come from? How effective has it been? What have been the problems? A lot of work has been done on all that. We might come back to that at some stage, because it may be useful for the Committee to hear about it from someone else.

32. At heart, introducing that planning was about delivering on the ground. For all its good points in Northern Ireland, planning has not necessarily been about delivery. As a colleague of mine once said, it is about proposing, not disposing. In other words, we propose and set up a development plan, and we then leave it to the market or whoever else is responsible to

implement it. Spatial planning is very different. It is about putting together a plan for an area, creating a place, which is also a very important concept, and then setting in place its delivery. The community plan has to be connected to that, because it provides the context. For example, a community plan prepared for a local authority will look at what the broad vision of that area might be in all its dimensions by drawing in health, education, environment, transport and so on. In effect, a good development plan is the spatial expression of that plan. However, there are other parts to that community plan that are not spatially expressed. Therefore, the development plan is the spatial expression, meaning that development planning is knitted into a wider process and into service delivery.

33. That was at the heart of the new system in England and Wales. There is no doubt that they have had problems with it, but it seems to be working reasonably well. Until now, because of the way that government is structured here, we did not have the opportunity to introduce such planning. However, with the new local government structures and a new set of responsibilities at local government level, there is the potential to introduce such planning in a way that has not been the case in the past.

34. The Committee will probably hear the Department say that one of the advantages of the system is that community consultation is front-loaded, meaning that people are involved in shaping the plan in the first place. That reduces the amount of objection and problems involved in implementation and in making planning applications for specific sites and so on. The idea is to get a broad agreement about the vision for the area right at the beginning of the process and then to set in place the set of strategic principles that will guide development thereafter.

35. Therefore, it is a very different process. The one point of reflective criticism that I heard from across the water is that they did not prepare themselves enough for the new system. I did some work a few years ago in a couple of local authorities in England, and I asked them plainly how the system was working. They said that their greatest difficulty is the culture change, that is, getting people who have traditionally worked with mainstream planning to change the way that they look at the planning system. That is much easier for younger people coming in and so on, as it always is. However, for people who operated the system for years, making that change has been very difficult. Therefore, we know that about that system, and if we are introducing it here, we could perhaps factor that in at this stage.

36. The Chairperson: That leads me to a couple of points. On the face of it, front-loading is a good way to go. However, you have heard the talk — I have to throw this in — about the third-party appeals issue. Some people may say that front-loading and back-loading at the same time gives everybody an opportunity, but, that at the end of the day, there is a mechanism to allow somebody to stop the whole process. We all understand that. You talked about a culture change and so forth, but, until the system is properly rolled out and is fit for purpose, there needs to be a mechanism to make sure that the right result, that is, economic benefits, is achieved. We will go through a transition period in which we try to roll out the system through all the necessary training and so forth. You talked about joint plans and councils. That is the way it is and the way it will be for a time. Will you now touch on the third-party appeals issue, without necessarily giving your personal views?

37. Dr Sterrett: We have a paper coming up next Tuesday, I think, on third-party appeals.

38. The Chairperson: OK; we will leave it at that. You mentioned the front-loading of the system, but we will get to that again.

39. I have another point to make before I let members in. The whole idea behind area plans, gathering information and spatial planning is to include everybody, including those from the

private sector and everywhere else. Is the experience in England that there have been private sector contributions and so forth, and is it working?

40. Dr Sterrett: Do you mean the levy?

41. The Chairperson: Yes. There needs to be buy-in. Land should be zoned not just for certain purposes; consideration should be given to economic benefits as the system is rolled out. That is what we want to try to get to.

42. Dr Sterrett: I cannot remember the name of the levy, but there is a process in England for collecting levies from developers to feed in to their infrastructure budget and so on. I will be honest and say I do not know too much about it, but it would be interesting to ask the Department about that.

43. An important point is that there could be a new spatial planning system that operates through the new local authorities where there is responsibility for areas such as regeneration and where other sectors buy in to that through the community plan. There used to be a joke doing the rounds about development plans — I hope that I am representing this in the right way in front of the departmental officials — that they were where you put the houses, but that was about all. In a sense, those plans were very narrowly defined. However, if you were employing a spatial planning system to develop, say, Newcastle, you would look at the place in the round. You would ask what is distinctive about the place. What does it need? How well structured is it? What about its educational and health needs?

44. Good examples of local development frameworks across the water are those where the area plans have factored in and addressed issues such as obesity through a network of pedestrian paths. Therefore, it is about joining all those things together in a way that we have not done previously.

45. A few years back, I did some work for the Welsh Assembly Government, which introduced spatial planning as a new concept in their national spatial plan. To launch the plan, the Minister at the time purposely brought in the Ministers responsible for education and health and another Minister to demonstrate to the public that what they were doing was an entirely new way of looking at overall planning in Wales. In future, we want to look at the spatial implications of a whole range of policies in a way that we do not at present. Therefore, it is about drawing all that together. However, I know that that will be difficult, because the Department has limited resources to take it forward. Nevertheless, it is potentially a very exciting way of taking planning forward.

46. The Chairperson: It is just a pity that you talked about Newcastle; that was a bad example.

47. I am glad that you mentioned the resource element. That issue obviously came up this morning when members discussed the budget and the transfer of this whole process. A lot of ongoing work on area plans is ongoing. I know that you have worked on that, and, certainly, a lot of that work can be used. There is no point in saying that we need to totally start again. That is something that we need to look at as part of the resource issue.

48. Dr Sterrett: Again, I think that the work that has been done on service delivery, for example, in England and Wales shows that some savings have been made there. However, I am saying that without having the figures in front of me. Nevertheless, it would appear that the new model is delivering a better product, as it were, and that there have certainly been some savings for the public and private sectors.

49. Mr Savage: It was interesting to hear you talk about planning in Wales. I sit on Craigavon Borough Council, and the village beside mine has taken on a new image altogether. Anybody who came back to it after being away for 10 years would not recognise it. A big development will be taking place. However, the big issue is that the schools have not moved with any of the developments, and that is a major problem. I know of people who live not 20 yds away from a school but cannot get their kids into that school. One area has not developed with the other. Those major issues have to be addressed.

50. Change is very important, and I welcome it. I spend half my time working with planners, and I must say that I appreciate the work that they do, and I have a good working relationship with them. I cannot see who is sitting behind me, but I am sure that I know some of them. Over the years, this has gone on, but change has to come about. Since the boom time, massive houses have been left derelict right around the country, because people cannot afford to take them to the next stage. However, I mean no disrespect to anybody.

51. You said that new planners would have different ideas about how to do things. I totally agree with that. However, those changes need to come about, because it is all very nice having big houses, but, to me, they are just big square concrete slabs. There is nothing imaginative about them. It is all very well if people built them for purpose in the boom time, but that has not happened.

52. A person who wants to build — I am talking about a first-time buyer — has a job getting on to that ladder and getting permission for a house. Planning Policy Statement (PPS) 21 is a very useful paper, but a lot of our planners have to read into it a wee bit more. It was good, but there needs to be changes. I am not talking about massive changes and letting things go the way they used to. To give an example, a small farm was handed down to a chap, and, all of a sudden, there was a bit of a feud between the family and there were legal matters to deal with. The neighbour had to get the drains cleaned out. As the fella was going in with the digger, the side slipped out of the old house. The digger man would not leave and the insurance would not cover him until he demolished the whole thing, because there was a housing development just up the road a bit. When the fella came to get planning permission for a replacement, the planner said that there was nothing to replace. I can see their point of view and his, but he is left in limbo now. Therefore, there are issues to be dealt with. I am glad to see a change coming about, but I do not want to see change just for the sake of it; it has to be change that will be sustainable. The days have passed when an architect simply threw a plan in to the planners in the hope that it would be approved. He has to do something more about it. I welcome the change. I hope that it comes about, and I will be watching very carefully.

53. The Chairperson: Can you see how we do not get parochial in this Committee? Mr Kinahan, do you want to comment?

54. Mr Kinahan: Yes. I have one or two comments to make.

55. The Chairperson: I will let you in, but I have a point to make before we go off the matter of spatial planning. At the minute, we have the regional development strategy, area plans and a suite of PPSs. Mr Savage reminded me about this when he mentioned PPS 21. That is the system that is in place, and that is how it works at the minute. As regards the connection with the spatial plan and how all that is complemented, do we need to move away from part of the approach? If we go down the line of spatial planning, could you touch on what needs to be amended to roll out the legislation?

56. Dr Sterrett: In England and Wales, spatial planning is manifested at local authority level with the local development framework (LDF). That is a loose-leaf approach that has a number of components, some of which are compulsory, while others are optional. The compulsory

components are the core strategy and the adopted proposals map, which is the equivalent of our local policies plan. There are also the area action plans, which I talked about earlier and which are very important.

57. There is also a facility at local authority level to produce other supplementary material, some of which does not have to go through that process. In addition, there is all the supportive policy and direction that comes from central government. There is a proposal to review all that. The Department will talk today about how it intends to put in place all the policy and guidance that is needed to support the Bill. That is key, and it is important that that comes as soon as the resources will allow.

58. Where the sequencing is concerned, one would almost want to see that material before the legislation. That is not the way, but it gives the broader explanation of what people are trying to do, and the Bill will put that on statute. We hope to see that soon.

59. All that supportive policy and guidance would be at central government level, presumably largely with the Department of the Environment. However, I assume that the Department for Regional Development will retain its strategic regional responsibility; in fact, it is legally obliged to. Therefore, that is also in place. We need to get the balance right between the two.

60. The Chairperson: You do not have to answer today, but perhaps you could look at possible amendments to the Bill to ensure that, if we go down the line of spatial planning, we know how to make amendments. Perhaps you could come back to us on that.

61. Dr Sterrett: We could certainly do that. I am sure that the Department is quite open-minded about this.

62. The Chairperson: It will get an opportunity to speak on that later. However, I ask you to bear my point in mind.

63. Mr Kinahan: I will be as quick as I can. I am intrigued. Two or three times you mentioned the English and Welsh model, on which ours is based. I would love to know more about the lessons that we have learned about how they put their system in place. We need to get those types of amendments into the Bill so that it will work at another stage.

64. You also said that training is a key element. We are rushing the Bill through. Although we will scrutinise it as thoroughly as we can, councils will need to know how much time they need to get everyone on board. Will they need a year, six months or whatever?

65. My final query is about how England and Wales dealt with the definition of "community". In one way that is easy, because there are community groups, but there are all sorts of other elements as well. How will you get that broad message out to everyone?

66. Mr B Wilson: We have a situation where the culture of individual planning applications will change. How will an individual planning application be different? For example, if someone wants to build 10 town houses, what difference will the plans make between how we look at that now and how we will look at it in a new culture?

67. Dr Sterrett: That is a very interesting question. Sometimes it is good to ask how changes will affect matters on the ground. Most people in Northern Ireland understand planning to be planning applications for a site, be it an extension to their house or some new development down the road. Thankfully, the Bill will deal with that in a much broader and more strategic way. However, when it comes to a development for a set of new town houses on a brownfield site in

an urban area, if the process is working well, a local development plan would be in place. That would include the strategy plan and the local policies plan. If that came through a process that bought in to the whole community plan, there would be, if you like, public endorsement for shaping that place.

68. In your case, the example would be Bangor. We would need to identify the key characteristics of Bangor, what we want it to look like, how we want it to function and what sort of place we want it to be. If that is sorted out in strategic terms and manifested through certain proposals, and if certain policies are put in place, when it comes to dealing with that sort of development on the ground, it could be said that that is what the community wants for that place. Therefore, the decision on a particular site would be made on the criteria that come out of that. That means that there is a link with good, strong community involvement in shaping a place through a process that ends up being tested at a very local site-specific level whereas, at the moment, everyone is detached from the policy. Somebody makes a policy here, somebody makes a policy there, and they are interpreted in different ways. The process could be more community owned. It is owned by the local authority anyway, but it is also owned by the local community. It was asked what the local community is, and that is a good point. It is about not just a series of community groups, but a range of communities, one of which is the business community.

69. Mr B Wilson: The planners tell us all the time that every case should be considered on its own merits.

70. Dr Sterrett: That is the difference, if you do not mind me saying.

71. Mr B Wilson: We now have a situation where four new change-of-use planning applications have been made for coffee houses on Main Street, even though we already have a dozen. Each application is considered on its merits. However, if we had an overall strategy, we could say that we do not want any more coffee shops.

72. Dr Sterrett: Absolutely; that is the difference. One point that is often made about the difference between land use planning and spatial planning is that land use planning is really just a collection of individual decisions about a place; it does not think about the place itself. The old mantra of planning, which I used to be part of, is that each decision about a particular site should be made on its merits. Under the new system, planners do not do that, because they are looking at the place. They ask how that fits with their vision for the place in question. If that vision is about Main Street in Bangor not coming down with coffee shops, they could refuse an application on those grounds.

73. The Chairperson: Are you finished, Mr Wilson?

74. Mr B Wilson: Yes.

75. The Chairperson: Mr Clarke, you are next. Let us try to keep South Down and Newcastle out of this.

76. Mr W Clarke: I could think of worse things than coffee shops.

77. First, I thank you and your team for your excellent paper. Most of the issues have been covered; however, my points are about community participation and getting that kind of agreement. A lot of the time there is the situation where retired people, who are well educated, able and vocal about what they would like to see in a community plan, perhaps do not want to see any sort of change and do not take into account the needs of young people, such as leisure



facilities. How would you ensure that everybody had an equal and balanced input and that that was valued? Who would decide its value?

78. Dr Sterrett: That is a good point, Mr Clarke. We actually have a paper coming up next Tuesday that is almost entirely devoted to that issue. It is one of the central themes in planning literature. It is about how to get consensus on key decisions in public consultation. A theory known as collaborative planning is about getting everybody together in the one room until some consensus eventually emerges. That sounds great, but it does not happen that often in practice, because you cannot get everybody to agree to the same thing. However, you can certainly give everybody a sense of being involved, and people then have to compromise to some degree. Not to bore you with academic literature, but that is known as agonistic planning, because of the agony that is involved.

79. At the end of the day, the process is about trying to draw groups in to plan-making and about making sure that those groups that are normally excluded from such situations, in fact, included. You pointed out that there are some very articulate groups that turn up at everything and get their views heard, but there are other groups that do not have the facility. Therefore, it is about making sure that all those groups are involved, that their views are heard and the relevance of those ideas is seen.

80. Quite often, in some of the work that we have done in the past, we have been able to achieve a consensus. If we want to move the project forward, at some stage, we have to say that everyone's views have been heard and that the matter now rests with the local authority. It is no longer with the DOE, the planners or anyone else, so that is the way that we intend to take it forward. That might compromise some people's views a bit, but, at the very least, something would have been reached that can be broadly signed up to. That is important.

81. Mr McGlone: Thank you for your work and research. I came in at the tail end of your discourse. You were talking about including people in the planning process. One thing that I noted is absent from the paper is the fact that exclusivity kicks in as a consequence of the decision-making process in planning. I did not see any reference to the importance of that in the research paper, particularly in the context of the North and of where we have come from with planning, housing and local government. Do you have any views on that?

82. Dr Sterrett: What do you mean by "exclusivity"?

83. Mr McGlone: I mean discrimination.

84. I will explain where we are coming from. We have a history of housing powers being stripped from local government, and given our history and where we come from, that was done for good and valid reasons. I thought that that would have been at least touched on in the paper.

85. Dr Sterrett: A paper that we will discuss on Tuesday will deal with that. Is that right, Suzie?

86. Ms Cave: Yes. It deals with community involvement.

87. Dr Sterrett: It deals with what you are talking about.

88. Mr McGlone: That is good.

89. Dr Sterrett: We tried to separate the issues so that each paper would have a number of themes. That one comes up on Tuesday.

90. Mr McGlone: Will you expand on the concepts of spatial planning and development planning that you discussed? How do you see that in comparison with what the Department proposes?

91. Dr Sterrett: I think that that is what the Department is proposing, but we will hear in due course. I tried to distinguish between what we call land use planning and spatial planning, which is what now underpins the Bill and, hopefully, the policy and guidance that is to follow.

92. Traditionally, Northern Ireland and, indeed, everywhere else had land use planning, which is centrally about the regulation of land. It has a narrow focus, in that it is about the orderly development of land. Arguably, the move to spatial planning kicked off with the European spatial development perspective in 1999, which was when the European Union decided that it needed to look at the delivery of some of its programmes in a different and more integrated spatial way. In turn, that led the EU to look at how planning could be developed around the same principles. Therefore, spatial planning, as such, was introduced to England and Wales in the Planning and Compulsory Purchase Act 2004, from which, as the Committee will see, a good part of the Bill before us is lifted. In effect, that Act introduced spatial planning to England and Wales. We assume that, because that legislation is being used here, spatial planning will be introduced here.

93. Where do we start with spatial planning? Books have been written on the subject —

94. Mr McGlone: I know.

95. Dr Sterrett: Let us narrow it down to a few key points, one of which is that it is centrally about delivery. In the past, planning has been about simply setting out a plan and leaving it to the market or whoever to deliver and then regulating it through development control. Spatial planning starts with what we want to deliver on the ground. We want to bring the service providers together, and we want the private sector bought in. We want that to be central to the planning process and to the development plan process. Therefore, delivery is right at the heart of it.

96. The second difference between spatial planning and land use planning is that spatial planning is about creating place. I made the point earlier that if we take any given place, for example, some town or area of Northern Ireland, and say that we are preparing a plan for it, we need to ask what sort of vision we have for it and what sort of place we want it to be. Planning is then used to deliver that, instead of having the situation that Mr Wilson described, where individual decisions are made on the merits of individual applications for individual sites that do not make up a collective good place, because we have not started with objectives for a place.

97. The Chairperson: You talked about the independent examination. Will you tell me a wee bit more about that?

98. Dr Sterrett: The Bill proposes that the local development plans go to independent examination. That is more or less the case now. The recommendations from that independent examination would then go to the Department. Therefore, the Department would decide whether to accept those recommendations before it directs the council. There were some objections to that in the consultation. People thought that a process that involved the Department meant that there was already guidance for local councils on what they could do. If the local council were to meet its requirements and a plan were to go to independent examination, people were asking why it should go back through the Department rather than the council. I raised that matter because it was brought up in the public consultation. However, that may be something about nothing.

99. The Chairperson: I was listening; I just wanted clarification. Thanks very much. There are no other questions. The Committee looks forward to working with you over the coming weeks.

100. For our final evidence session today, I welcome Maggie Smith, Irene Kennedy, Angus Kerr and Catherine McKinney from the Department of the Environment. They will brief us on Parts 1 and 2 of the Planning Bill.

101. It is a big subject, but we will try to stick to Parts 1 and 2 if we can. We may veer off the point now and again, but we do not need to worry about that. I will hand over to Maggie to make a presentation, after which I will open the session up for questions. I should point out that we will not be able to make any decisions until we are quorate.

102. Ms Maggie Smith (Department of the Environment): Thank you very much for inviting us today to give a presentation. As you said, with me are Irene Kennedy, who, in a few minutes, will take the Committee through Parts 1 and 2 of the Planning Bill. Angus Kerr and Catherine McKinney are also here. Before I pass over to Irene, it is probably worth reminding ourselves that the Bill has come through a long process and that the Committee has had a lot of involvement in that. Therefore, this is the final stage of the development of the framework, and a lot of research and consultation has gone into developing that policy framework. However, there is more to come in secondary legislation, and I think that the Committee already has the memorandum of delegated powers, which sets out all the secondary legislation that we will bring forward. The Committee also has the timetable within which we will consult on that secondary legislation. We can refer to secondary legislation, if you need clarification on any points on our way through the discussion.

103. Ms Irene Kennedy (Department of the Environment): We have talked about a lot of the issues already, so I will briefly take members through Parts 1 and 2 of the Bill.

104. Part 1 maintains the Department's role in formulating and co-ordinating planning policy. Clause 1 remains mostly unchanged from the Planning (Northern Ireland) Order 1991 and includes the provision that any of the Department's policies must be:

"in general conformity with the regional development strategy".

105. Planning policy statements, together with the regional development strategy, will continue to provide the robust planning framework within which the new councils will be able to prepare their local development plans and manage development.

106. Clause 1(2)(b) will carry forward the duty in the 1991 Order for the Department to contribute to the achievement of sustainable development. That will ensure that the Department fulfils its policy formulation and co-ordinating role with the objective of contributing to the achievement of sustainable development. The Department considers it necessary to retain its ability to undertake surveys or studies to gather evidence on any planning issue. Members should note that the matters that the Department may survey at clause 1(4) have been expanded to include social and environmental characteristics, as well as physical and economic ones. Part 1 will also re-enact a duty on the Department to prepare a statement of community involvement that sets out the Department's policy for involving the community in the planning process. That duty concerns Part 3 of the Bill, and we will, of course, come to the detail of that later in the scrutiny process.

107. Part 2 will introduce a new local development plan system. District councils will prepare local development plans for their council areas. Those plans will replace the current Department of the Environment development plans. I should say at the outset that the Minister is confident that councils will carry out all their development plan duties. However, the Bill needs to cater for

the unlikely event that a council is unable to fulfil its responsibilities. As a safeguard, it therefore provides for the Department to intervene at various points in the development plan process, should it need to. However, we will come back to that later.

108. As we discussed, local development plans will comprise two documents: a plan strategy and a local policies plan. Those must be prepared, examined and adopted separately. Preparation of both must take account of the regional development strategy, of policy or advice containing guidance issued by the Department, and of any other matter that the Department may prescribe in subordinate legislation. The plan strategy will be prepared and adopted first. It sets the council's strategic vision for the future of the area, along with strategic objectives and policies and a strategy for growth. The local policies plan will then be prepared. It has to be consistent with the plan strategy, and it will set out the details. It will incorporate the detailed site-specific plan policies and the proposals for various topic areas, such as housing, commercial or industrial growth, as well as probit maps to show where the various activities may be developed.

109. That approach has three key benefits. First, it allows the plan strategy document to be adopted quickly, that is, within approximately two years. That will ensure that there is a very early strategic direction in place for an area, and it will provide a level of certainty on which to base development decisions. Secondly, the adopted plan strategy will provide an agreed framework within which the local policies plan can be prepared. That will make the preparation of the local policies plan document easier and faster. Thirdly, the approach will ensure that representations are more focused by being submitted and examined at the appropriate stage in the plan process.

110. Under clause 3, councils will be required to keep under review issues that may affect development and planning in district council areas. Those issues include: key physical, economic, social and environmental characteristics of the district; how land is used; population distribution; and communications and transport. Those are matters that will inform the production of the local development plan.

111. Engagement with the public is integral to the development plan process. Before the district council commences public consultation on its plan strategy, it must set out in a statement of community involvement when and how it will involve the community in the plan process. That allows community groups, the voluntary sector, businesses and the public to understand how they can contribute to the formulation of the plan. The council will also have to prepare a timetable setting out the key milestones, ranging from the preparation to adoption of its local development plan, as well as a time for when each will be achieved. The timetable will assist in programme management and will help to ensure faster plan production. It will help the public, stakeholders and consultees to plan their involvement with the process.

112. The council must attempt to agree the statement of community involvement and the timetable with the Department. As a safeguard in the event of disagreement, the Department can specify the terms of either document. Once agreed, the statement of community involvement and the timetable together set the framework for the local development plan preparation.

113. Clause 5 will require the council and others involved in the development plan process to exercise those functions with the objective of contributing to the achievement of sustainable development. Clauses 8 and 9 will require a sustainability appraisal to assess the environmental, social and economic effects of development plans. That will run throughout the plan preparation process.

114. Clause 10 will require the council to submit the plan document to the Department when it is complete. The Department must then arrange for an independent examination to be carried out

by the Planning Appeals Commission (PAC) or by independent persons appointed by the Department. The flexibility to appoint independent external examiners will be invaluable should a number of plans be submitted for independent examination at the same time.

115. The examination process will test the soundness of the plan. The criteria for soundness will relate to how the development plan document has been produced; the alignment of the plan document with departmental plans, policies and guidance; and the coherence, consistency and effectiveness of the plan document. The assumption will be that a plan document is sound unless it is shown to be otherwise as a result of evidence considered through the independent examination. Those who make representations to the examination will need to demonstrate how the plan does not meet the criteria for soundness and should suggest what needs to be done to make it sound.

116. Any person who makes representations seeking to change a development plan document must, if they so request, be given the opportunity to appear before, and be heard by, the person carrying out the examination. The independent examiner will submit their report to the Department, which will then issue a direction to the council to adopt the development plan document.

117. At present in Northern Ireland, there is nothing in legislation that requires the monitoring and review of development plans. Better monitoring and regular reviews of local plans will enable district councils to keep plans up to date by readily reflecting and adapting to changing circumstances. It will serve a useful purpose in improving the transparency of the planning process and will help keep the council, the community and business groups informed of development plan issues facing the area. Therefore, clauses 13 and 21 will ensure that local development plans will be reviewed at five-yearly intervals and will be monitored annually. District councils will be required to report annually to the Department on the degree to which the objectives in their plans are being achieved. The monitoring and review of plans are seen as essential elements in establishing how plans are being implemented and whether any changes are required.

118. Clause 17 will introduce powers for councils to work jointly in preparing local development plans if they so wish. That means that two adjacent councils can combine resources and prepare either a plan strategy or both plan documents jointly.

119. Clause 18 will give the Department the power to direct two or more councils to prepare a joint plan. That power is required in the event that councils may be so closely linked functionally and spatially that it will be necessary for them to work together. The Department will consult the affected district councils on such a course of action before issuing the direction. As was mentioned earlier, the Department also proposes powers of intervention, which are an important safeguard as part of the new local development plan regime. Similar to our counterparts in other jurisdictions, ensuring that central government has an appropriate oversight role means that policies and objectives that the Executive and the Department set for the region as a whole will be effectively delivered at a local level.

120. Clause 15 will allow the Department, if it thinks that a plan, strategy or local policies plan is unsatisfactory, to direct a district council to modify the plan, strategy or local policies plan at any time before it is adopted. The district council must comply with the direction.

121. The default powers in clause 16 will also allow the Department to intervene by taking over the preparation or revision of a district council's strategy or local policies plan if it thinks that the district council is failing to properly carry out those functions. The district council must reimburse the Department for any expenditure that it incurs in exercising those powers.

122. Overall, the Bill will deliver a faster development plan system with more effective public engagement. Councils will be able to use the new local development plans to provide a clear and realistic vision of how places should change and what they will be like in the future. The plan will support that vision by clearly indicating where development, including regeneration, should take place and what form it should take. In addition, it will be possible to link the development plan with the council's new community planning responsibilities.

123. That completes our presentation, which is aimed at familiarising members with the key aspects of Part 1 and Part 2 of the Planning Bill. We welcome any questions that members may have.

124. The Chairperson: Thank you, Irene, for your presentation. That is the first 22 clauses out of the road. Before we lose our quorum, I have to ask a question. Members have been provided with a paper on the delegated powers of the Bill. Are members content to forward that paper to the Examiner of Statutory Rules for comment?

Members indicated assent.

125. The Chairperson: Are members content for the research paper to be made publicly available on the Assembly website?

Members indicated assent.

126. The Chairperson: You heard the previous presentation, which was about spatial planning. The key element of that is land use, which is what we are looking at. Would you like to comment on that? Planning seems to be going down the route of spatial planning. When the Bill rolls out, there will be subsequent subordinate legislation to deal with most of that. Do you have any comments to make on spatial planning?

127. Mr Angus Kerr (Department of the Environment): The spatial planning approach is the direction in which the Department wants to move. We feel that it is very much facilitated in any case by the transfer of those and other functions, such as regeneration and community planning, enabling the achievement of the broader spatial planning approach that Ken Sterrett outlined. Subordinate legislation and the ongoing development of policy and guidance is the direction in which we will encourage councils to move so that they have an ability at local level to shape how places develop. They can also have the vision for how those places move forward, and they can then incorporate that into the plan to allow it to become a delivery document that incorporates the wider elements that community planning has enabled councils to get involved in.

128. The Chairperson: Thanks very much for that clarification. That is the right way to go. The valid question was asked earlier about the definition of "community" and who is included in it. It is important that that definition be totally inclusive. I mentioned the private sector and so forth when I gave the example of contribution. Overall, however, everyone should be included, and I welcome that.

129. There are a couple of elements to consider. For example, training is a key element. Hopefully, we will get through this Bill in the time frame that is available in this mandate. We need to look seriously at the transition period, the training period and the roll-out of all that. It is all right to say that we have this wonderful document, but, as we all know, there is the question of its practical implementation to consider. When you next come back, the Committee will perhaps need to see something on how that will roll out. I know that that is resource bound as well, but it is a key element of the process.

130. I am trying not to stray into Part 3 or Part 4. If we propose to roll out the implementation, for example, from the summer, and assuming that we get the legislation through, how long will it take to get the subordinate legislation through? Do you have a time frame in mind for all that?

131. Ms Smith: We do. We are working on the preparation of the subordinate legislation in parallel. The Committee has the delegated powers memorandum, which sets out all the subordinate legislation that will flow from the Bill. We are preparing that in parallel with a view to going out to consultation as soon as the Bill is passed. Some of it is far advanced, and, in fact, we have sent you some excerpts of the secondary legislation for your next meeting. Other pieces are also in preparation.

132. The Chairperson: Will you clarify one point? I am trying to get my head around the training approach. Is there a suggestion that, apart from whatever training is required for individual members, there will be an adviser to councils? Is that the road that we are going down? Has anything been set in train already, or do you have any ideas on where to go after that?

133. Ms Smith: We have. In his statement of 30 November 2010, the Minister talked about the pilot projects that he intends to involve councils in. That will be a major part of the preparation and capacity-building elements. Those projects will begin early in the new financial year, and they will be rolled out to all councils by April 2012. In addition, the Northern Ireland Local Government Association (NILGA) and the Royal Town Planning Institute (RTPI) are talking about more specific training.

134. The Chairperson: Thank you for reminding me about the pilot programmes. I want to move to the question of independent examination. We will be handing down powers, and we want councils to look seriously at what they want to develop in their own areas. However, there will be independent examination of that. It then comes back to the Department. It is all very well to hand down powers and tell the councils to go ahead and develop whatever they want and bring back strategies and plans to the Department, but the next thing that the Department may do is look at them and say that they are not right and that they have to be tweaked. It is a mechanism to check those strategies and plans. Do you see where I am going with this? It is OK to say that the process is independent, but that independence leads back to the Department itself.

135. Mr Kerr: It is, I suppose, a check and balance or a safeguard to ensure that the direction set at regional level by the Department will be carried through to where it can be implemented at local level. The examination itself and the report will be independent of the Department. In practice, given the way that such things operate, it is unlikely that the Department would get involved in anything at local level in a local development plan. The concern is really with the alignment with central government direction on policies.

136. The Chairperson: It could go back to the PAC for examination. However, you have heard about some of the problems that have come up with that issue over the past 12 to 18 months. The independence of that body has moved from the DOE to the Office of the First Minister and deputy First Minister. The issue is about the independence of those challenges. If, for example, it goes to an appeal, the policy and guidelines will simply be followed. When we are proposing amendments, we will need to look seriously at whether that is the right way to go and at whether the process is independent, regardless of whether the PAC is involved, because that is open to question. I will come back to that point again.

137. I am mindful that Mr Savage has to leave. Mr Savage, would you like to ask a question before you go?

138. Mr Savage: I have one question to ask. Do you hope to get the Bill through in the lifetime of this Assembly?

139. Ms Smith: The Bill will go through the Assembly in this mandate.

140. Mr Savage: That is fine. I am sorry that I have to leave.

141. The Chairperson: I do not think that we have any more decisions to make today.

142. Mr McGlone: I have a couple of questions to ask. The political context, through the local government review —

143. The Chairperson: Excuse me for one minute. We are now inquorate, so we have to stop recording. The hearing will now be informal.

## 18 January 2011

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

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

144. The Chairperson (Mr Boylan): We will now receive a briefing on the Planning Bill from the Assembly's Research and Library Service. I welcome Suzie Cave from the Research and Library Service and Dr Geraint Ellis from Queen's University. We normally give about 10 or 15 minutes for presentations, but this may take a bit longer. We need proper and formal scrutiny of the Bill.

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



Dr Ruth McAreevey from Queen's will look at the remaining Parts of the Bill at next Thursday's meeting.

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

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

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

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

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

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

152. Significantly, the Bill reduces the time for appeal on a planning application from six months after the first decision to four months. The idea is to reduce the number of appeals, but it is useful to reflect on the experience of England and Wales, where this was introduced in 2003. They had to return to six months for most appeals after the number of appeals actually increased. People would put appeals on before the issue was sorted out, just to safeguard their position. It would be well worth asking the Department about that.

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

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

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

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

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

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

159. Finally, in consultation, the issue was raised of a provision to be able to award costs for unreasonable action in planning appeals. Under such a provision, the costs incurred by the other

party could be awarded if the Department or even an applicant acted unreasonably in an appeal. The Department decided not to go ahead with that, and it might be worth talking to the Department about why.

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

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

162. Dr Ellis: I have not seen that paper.

163. The Chairperson: Would you like to comment on that for the benefit of members?

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

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

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

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

168. There are differences; the Minister here has maybe more control over some decisions compared with the Republic. However, the PAC is far more independent than, for example, the

Planning Inspectorate in England and Wales, which is appointed by the Minister. There is always a difficult question: they are really acting on behalf of the Minister, so there is less independence in England and Wales.

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

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

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

172. The Chairperson: That issue also came up last week with regard to the PAC looking at a matter and its going back to the Department. We maybe need seriously to look at the whole independence of that, and whether it is correct.

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

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

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

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

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

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

179. The Chairperson: Do you think that, if we roll out the secondary legislation, there is a case — and I am speaking in general now — that it will need to go to consultation, or can we include whatever we want on the face of the Bill, in the knowledge that secondary legislation will flow from it subsequently? As opposed to going down the road where we understand that we need

secondary legislation, rather than getting into the whole process of consultation. Will we still need to consult on that, or is it an issue that we need to look at?

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

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

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

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

184. Dr Ellis: Under the new system, where most planning decisions will be made by district councils, one of the key roles left to the Minister is to ensure reasonable consistency. It becomes his prime role then. It is a matter of degree, because part of the emphasis of this Bill is to give local democratic control to district councils. That control will involve slight political interpretation of things.

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

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

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

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

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

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

191. Mr McGlone: It will.

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

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

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

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

196. However, if we have local councillors under tremendous local pressure from local developers, how will that be dealt with? How does that operate in, say, Scotland? How are

councillors protected? I assume that when you go into a council meeting to hear a planning application you have no contact with the applicant before you deal with the application — you go in with a clean, clear mind, having no interest or bias. How can that situation be retained and protected? What safeguards are in the Bill to protect the integrity of the planning system?

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

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

199. That clause is a genuinely good idea, because councils will then be making decisions with a fullness of information. However, if you look closely at the Bill, it says that the council can exclude the public if need be. So, there may be something in that provision to keep openness, and that it is not just the developer who goes in to meet the council, but everything has to be public. At the minute, it is going to be at the council's discretion who attends those meetings.

200. Mr B Wilson: Will the decision be made by the full council?

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

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

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

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

205. Mr B Wilson: We need a total change in culture.

206. Mr Weir: We do.

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

208. Mr Weir: Councillors will have to say that they cannot take the calls, or whatever.

209. Mr B Wilson: The constituents are used to that culture —

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

211. Mr B Wilson: Is there anything about that in the legislation?

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

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

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

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

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

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

218. The Chairperson: That is fine. What are your views on the timing of completion notices?

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



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

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

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

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

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

Members indicated assent.

225. The Chairperson: Are members also content for the papers to be posted on the Assembly website?

Members indicated assent.

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

227. Ms Maggie Smith (Department of the Environment): Thank you very much.

228. The Chairperson: No doubt you were listening in with great interest.

229. Ms Smith: We were.

230. The Chairperson: Obviously, the research papers will go to you.

231. Ms Smith: Thank you very much, Chairperson. We have two papers, the first on development management and the second on enforcement, so we have thorough coverage of those aspects of the Bill. We will probably change cast between the two papers. Lois will deliver

the development management paper. Would you prefer that we stop for discussion after that paper?

232. The Chairperson: We will do one paper at a time.

233. Mr McGlone: Do we not have copies of those papers?

234. The Chairperson: They are only speaking notes, and are in members' packs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

250. Ms Jackson: A safeguard is provided to allow the council to determine an application by itself which would otherwise fall to be determined by an appointed officer. That will provide

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

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

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

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

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

255. The Chairperson: Gentlemen, do you want clarification on which are clauses it is before we ask any questions, or are you happy enough with the notes you have? Lois, you can provide clarification by reading out the clauses that you referred to. Can you do that quickly, please?

256. Ms Jackson: Certainly.

257. The Chairperson: Members can be following their files on the Bill.

258. Ms Jackson: It is clause 25, in relation to the hierarchy; clause 26, in relation to the Department —

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

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

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

262. Ms Smith: The provisions will not be commenced until after the local government reorganisation Bill is made in the next Assembly. This Bill sets out the new planning system and

prepares everything for the transfer of powers to councils. However, it will be the local government legislation that allows the powers to transfer. Importantly, that Bill will have the new governance and ethical standards arrangements, including the code of conduct for councillors. That is all being consulted on at the moment.

263. The Chairperson: So it is based on the governance as opposed to the number of councils.

264. Ms Smith: Yes, the governance has to be there first.

265. The Chairperson: Obviously, the reorganisation Bill will now be in the new mandate.

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

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

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

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

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

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

272. The Chairperson: Yes.

273. Ms I Kennedy (Department of the Environment): There are provisions to carry forward any work that has been carried out jointly. The Bill protects and retains work that has already been carried out.

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

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

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

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

278. Ms Smith: We have seen some of the papers that have been sent in, and we look forward to seeing the research papers that were discussed this morning. Would you like us to talk about completion orders?

279. The Chairperson: Yes.

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

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

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

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

284. Ms Smith: We understand.

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

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

287. The Chairperson: OK. We are running short of members.

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

"general conformity with the regional development strategy".

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

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

291. Mr McGlone: I am just starting at the beginning and working my way through.

292. Ms Smith: May I make a substitution? Would you mind awfully if Angus came forward?

293. The Chairperson: Yes, certainly.

294. Mr McGlone: You are off the bench, Angus.

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

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

297. Mr McGlone: There are major issues at stake here.

298. The Chairperson: I totally agree.

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

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

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

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

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

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

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

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

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

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

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

308. The Chairperson: Yes.

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

310. Ms I Kennedy: We propose to talk about those briefly on Thursday.

311. Mr McGlone: I will leave that stuff until then. There is some unusual stuff there.

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

313. Clause 38(2) states:

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



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

315. Are we dealing with clause 39?

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

317. Mr McGlone: I am happy enough to wait for the answers.

318. The Chairperson: As long as you indicate.

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

320. Mr McGlone: Does that also include the enterprise zone stuff?

321. Ms Smith: Yes. We can shape our presentation —

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

323. Mr McGlone: Are we dealing today with the form and content of planning applications?

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

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

326. Mr McGlone: Are we dealing with clause 44?

327. Ms I Kennedy: No.

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

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

330. Mr McGlone: Clause 47, Irene? No?

331. Ms I Kennedy: No.

332. The Chairperson: Will you clarify again the clauses that you are dealing with?

333. Mr McGlone: What about clause 54?

334. The Chairperson: Just read them out, please.

335. Ms Jackson: The clauses that I am looking at under development management —

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

337. Ms I Kennedy: Lois, perhaps you want to read the development management clauses that we are looking at today.

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

339. Mr McGlone: So, probably not everything.

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

341. Mr McGlone: We will leave those until later on.

342. The Chairperson: Now the valid clauses that Mr McGlone asked about.

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

344. Mr Kerr: Do you want me to come back on some of the points on the earlier one?

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

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

347. The Chairperson: Yes.

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

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

350. Secondly, there was a desire to have a relatively simple system for councils in the future so that, if they were preparing a plan, they would not have to have recourse to different Departments, going to Regional Development about the regional development strategy and

maybe being told something different by Environment. Therefore, the idea was to come up with a simple, standard approach that will take account of where it came into effect. When councils are doing their plans, they will have to take account of the regional development strategy, PPSs and other central government plans, policies and guidance. In that sense, the move was twofold.

351. Mr McGlone: Will they still have to comply with it?

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

353. Mr McGlone: When is that guidance likely to be available, Angus?

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

355. Mr McGlone: When did that work start?

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

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

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

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

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

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

362. Mr McGlone: That should have already been in that.

363. Mr Kerr: In what way?

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

365. Mr Kerr: You will have a local development plan with a plan strategy and local policies plan in place. The issue is just when you are coming to bring forward a new one. There could be the potential for an existing plan strategy that has been through all the processes and been adopted,

and the council is then working on a subsequent plan, their next one, for the following 15 years. That is to clarify that that plan would have a determinative weight.

366. Ms Smith: We need to tease that out in the guidance to make it clear to people.

367. Mr McGlone: It is not clear at all, to be honest.

368. Mr Kerr: It is quite convoluted wording.

369. The Chairperson: I remember asking at the last presentation about existing plans and how those will impact on new councils, whether in this format or the 11-council model. A body of work is already done on that. We just need to be clear about the challenges. Obviously, things have changed over time. We said that the review process is for five years. Is it?

370. Mr Kerr: That is correct.

371. The Chairperson: That needs to be clear, and clear guidance needs to be given to councils on that.

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

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

374. Mr Kerr: Do you mean comparing it with development plans that we do today in the Department?

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

376. Mr Kerr: It is not a massively new concept. At the moment, our development plans have elements of the plan strategy. There are then local policies plans — the zonings and detailed design criteria that we have in existing plans. The legislation formally separates those out to enable the development plan process to be faster. The idea was not to wait for the whole thing, which takes a long time to process, and then taking the whole thing through independent examination. There are clearly two elements to the plans that we do anyway, the more strategic stuff and the local stuff. Why not just separate those out, take the first strategic stuff through quickly and get agreement on that, and let that inform the local policies plan, which will then follow up with all the details?

377. Mr McGlone: Does that mean that you do not have a conflict?

378. Mr Kerr: That is why it has to be consistent with that.

379. Mr McGlone: Back to the original point.

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

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

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

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

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

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

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

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

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

388. So, it really applies to any type of local development application when an appointed officer, who in the majority of instances is likely to be a principal planning officer, can sign off a

straightforward, uncontentious planning application without having to go to a committee or full council. That is the purpose behind that. It is a follow on from our current streamlining.

389. The Chairperson: Did we ask about clause 31?

390. Mr McGlone: Are we coming back to that one?

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

392. Ms Jackson: Yes, the details.

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

394. Mr McGlone: Will we be coming back to the issues around clauses 36 and 38?

395. Ms Jackson: Yes, absolutely.

396. Ms Smith: On Thursday.

397. Mr McGlone: Thank you, Chairperson.

398. The Chairperson: No problem. That is fine, Mr McGlone, you are welcome.

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

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

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

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

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

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

405. The Chairperson: Yes, that is on today. That is correct.

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

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

408. Mr Dallat: No.

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

410. Mr Dallat: I need a copy of that badly.

411. Ms Jackson: Yes. That will —

412. Mr Dallat: Now, just one other wee question, Angus —

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

414. Mr Dallat: Exactly; that is why I am asking the question.

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

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

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

418. Ms I Kennedy: We have already mentioned the provision in the Bill that deals with consultation arrangements — the duty to respond to consultation.

419. Mr Dallat: I fully appreciate the work that has been done; do not get the impression that I am trying to rubbish it or dismiss it in any way. I just feel that I am surrounded by a forest of paper. I really want to make a positive contribution but at the moment I am inundated.

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

421. Mr Dallat: OK.

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

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

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

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

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

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

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



429. Mr W Clarke: Were third party appeals discussed?

430. The Chairperson: That is coming later.

431. Mr W Clarke: What about enforcement?

432. Ms I Kennedy: That will be discussed shortly.

433. Mr W Clarke: What about sustainable development?

434. The Chairperson: That was last week.

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

436. The Chairperson: That is fine.

437. Mr W Clarke: Those issues should drive plans, instead of the other way about.

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

439. If members need any other briefing on the matter, we will certainly go down that route. The staff and the research team have put in a lot of work, as has the Department. It is not for me to tell people what they should do with the papers, but a format is clearly outlined. If members need any more information, we will certainly facilitate that. That is the way I am prepared to go. Sustainability is a big issue. Maggie, you and your team are aware of all that in the responses, so we will look at that.

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

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

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

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

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

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

446. Mr W Clarke: I appreciate that, and we will come back to that issue.

447. The Chairperson: We certainly will.

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

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

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

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

452. Ms I Kennedy: Yes, and every applicant can make that case.

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

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

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

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

457. The Chairperson: We are doing that in the afternoon.

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

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

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

461. Ms Jackson: I think that we are looking at that this afternoon.

462. The Chairperson: We are dealing with this issue in the afternoon.

463. Ms Jackson: That is under the issue of community involvement.

464. The Chairperson: Third party right of appeal.

465. Mr B Wilson: It is beyond that.

466. Ms Jackson: There is an opportunity for objectors at pre-determination hearings.

467. The Chairperson: We will deal with that in the afternoon. We come to the issue of enforcement.

468. Ms Smith: Irene will introduce the clauses that are of particular interest.

469. The Chairperson: Yes, please clearly indicate what clauses it is.

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

471. The Chairperson: OK, gentlemen, do you have all those clauses written down?

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

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

474. All enforcement functions delegated to councils will be restricted to their council area. The Department's powers will cover all council areas. The Bill also introduces powers to strengthen

enforcement in the planning system. Clauses 152-154 introduce the use of fixed penalty notices as an alternative to lengthy prosecution through the courts where an enforcement notice or a breach of condition notice has not been complied with. They give a person the opportunity to pay a penalty as an alternative to prosecution. The use of fixed penalty notices provides a more cost-effective, less time-consuming and more flexible means of enforcing the legislation. The short, sharp remedy is a proportionate and effective response in line with the Department's better regulation agenda.

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

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

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

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

479. Clause 104 also clarifies the position regarding the demolition of unlisted buildings in conservation areas. It has always been departmental policy that demolition of unlisted buildings in conservation areas without consent should be an offence. A legal ruling removed partial demolition from within the definition of demolition and reclassified it as structural alteration. Thus, partial demolition of an unlisted building in a conservation area no longer requires conservation area consent. In turn, unauthorised partial demolition is no longer a direct offence.

That has been addressed in clause 104(8) by establishing that any reference to demolition in the relevant conservation area clause should also include a reference to any structural alteration where that alteration consists of partial demolition. In practice, that has the effect of creating a new offence of unauthorised partial demolition of an unlisted building in a conservation area.

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

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

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

483. Ms I Kennedy: Yes.

484. The Chairperson: Those are obviously delegated to local councils.

485. Ms I Kennedy: Yes.

486. The Chairperson: So the whole responsibility of enforcement will go to local councils.

487. Ms I Kennedy: Yes.

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

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

490. The Chairperson: So, you have an opportunity at the first stage.

491. Ms I Kennedy: Yes.

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

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

494. Say that you get the 28 days, and we are moving to the certificate of lawful use and development. At that point, you may well make an application, or you have 28 days to verify the

bona fides of your certificate of lawful use and development. At what point does the appeal kick in? Does the person still have their four months to lodge an appeal? I am unclear after reading that last night. Maybe I was reading it too late.

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

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

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

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

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

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

501. Mr McGlone: So, in other words, just for complete clarity on clause 44:

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

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

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

504. Ms I Kennedy: Any person:

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

505. That refers to the 28 days.

506. Mr McGlone: So it is 28 days, not four months?

507. Ms I Kennedy: Yes.

508. The Chairperson: Obviously, the four-year and 10-year rules still apply. The enforcement actions will go from buildings which have no planning permission to failure to comply with conditions. Is that correct? It goes right across the scope. In some cases that may not have happened. It is still there; the enforcement act is there. Is that better clarified in the new legislation, or is it just a continuation of what is there already?

509. Ms I Kennedy: It carries forward the range of powers and instances that we currently have.

510. The Chairperson: So it goes from lack of compliance or condition to no permission?

511. Ms I Kennedy: Yes. That is right.

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

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

514. Mr Kinahan: I am not sure. I will come to it again.

515. The Chairperson: It will come back. Just on that, it can be an enforcement situation. At the minute, developers can put in developments under a certain threshold and they do not have to provide recreation or open space in certain situations. That has happened. I know that that should be down to the plan itself, and it may be a matter for the plan and local policies. However, is there going to be some scope, if they do not comply, for an enforcement action there? It has happened before now. Do you understand where I am going? They do it in phases and there is no provision for a play facility or open space or recreation. I am not saying that this is a way around that; the policy is being used, it is being complied with. It is something, perhaps, that we should take into consideration. If that is taking place, it is non-compliance. That is just another example. You may not have had that up to now, but it is a policy that we need to look at and change.

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

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

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

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

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

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

522. Ms I Kennedy: Yes. Parallel powers will apply.

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

524. Ms I Kennedy: An application would have to be submitted to reinstate.

525. Mr W Clarke: To reinstate the facade?

526. Ms I Kennedy: And to carry out any other works that may be necessary to bring the property back to where it was.

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

528. Ms I Kennedy: The property owner would have to look at all the other obligations that he may have under other legislation relating to the safety of the property. It is unlikely that we would place a requirement on the property owner to put in an application within a certain period. We would have to sit down and take a pragmatic approach to each case.



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

530. Ms I Kennedy: I am not sure whether that would necessarily be a planning issue.

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

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

533. Mr W Clarke: I would like to see guidance for that process.

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

535. Mr W Clarke: My other point is about tree protection orders, which is a big issue. Developers can take mature trees away, and then just take the hit in whatever fine comes along. Is there anything in the Bill about that?

536. Ms I Kennedy: The responsibility for tree preservation orders will very much pass to councils.

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

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

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

540. Ms I Kennedy: I think that the fine is in the region of £30,000.

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

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

543. Mr W Clarke: We need to look at that.

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

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

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

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

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

549. Mr Mullaney: That would come down to the expertise that each council employs to make those assessments.

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

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

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

## **18 January 2011**

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr Danny Kinahan

Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

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

553. The Chairperson (Mr Boylan): We will receive a briefing from Research and Library Services on the community involvement aspects of the Planning Bill. I welcome Ms Suzie Cave of Research and Library Services and Dr Geraint Ellis of Queen's University Belfast. I will hand over to Geraint for the briefing, and I will then open up the meeting to members.

554. Dr Geraint Ellis (Queen's University Belfast): I will take the Committee quickly through the third Planning Bill research paper, which is on community involvement.

555. I am sure that members do not need reminding of the importance of community involvement to the planning process. One of the stated planning reform objectives of the Department of the Environment (DOE) is to bring forward a system that allows:

"full and open consultation and actively engages communities".

556. The success of the Bill clearly depends on those, and they are important for a number of reasons. They clearly help the legitimacy of the planning system, and they help the quality and efficiency of the decisions. They promote social cohesion and so on. Therefore, they are a really vital part of the system. However, key barriers have to be balanced with them, because they impose costs on the stakeholders, applicants and the Department. As you know, some planning issues get overly complex, and articulating that in a simple form can be something of a challenge.

557. As we said earlier, the Bill essentially consolidates existing legislation and prepares to pass it forward to district councils. That in itself will enhance opportunities for consultation. Decisions will be made by local councillors who understand local communities that much better. That is part of the context.

558. Specifically, the Bill will introduce four new aspects of community involvement. Clause 4 will extend the duty to produce statements of community involvement. At the minute, that duty is on just the Department, but the Bill will extend that to district councils. However, I will come back to that.

559. Clause 27 will introduce a requirement for pre-application consultation. We said a little bit about that in this morning's session. Applicants for major development have to initiate all the consultation themselves before they make the application. That, therefore, represents the front-loading of consultation.

560. Clause 30 will provide for pre-determination hearings at council level. That allows the applicant and any other person to appear and be heard by the committee making the decision.

561. Clause 224 will introduce a duty to respond to consultation. Anybody covered by the legislation, which is primarily the Department and councils, has a duty to provide a substantive response to any consultation.

562. Those are the four key innovative or new elements of consultation. However, a number of things that the Department seemed to commit to in its response to the public consultation do not seem to appear in the Bill. It might be worth getting clarification on whether those matters will lead to legislation and on what the Department intends to do.

563. The first matter, which I think the Committee discussed last week, is about making a statutory link between local development plans — the land use-based plan — and community plans brought by the community planning element, that is, all the other functions of councils. The Department committed itself to creating a statutory link between those plans, but that link does not appear to be in the Bill.

564. The Department also noted that it wanted to change the first part of the plan-making process. At present, it produces what it calls an “issues paper”, which is its idea of the key issues to be included in a plan. It wanted to push that along to something called a “preferred options paper”, which cuts down the options for consultation but moves the process on a little bit. That does not appear to be in the Bill.

565. Public inquiries into development plans have traditionally been held on an objection basis, meaning that any landowner or other interested party has objected to something in the plan. The Department wanted to move to a situation whereby those public inquiries were really testing the soundness and sustainability of the plan in question. That meant that any objections to the plan or any representations had to contribute to the testing of the soundness and sustainability. That largely removes the rights of someone who felt that their property rights were being infringed, meaning that their representation could be sidelined by the Department. That proposal, which was in the consultation and which seemed to be committed to in the Department’s response, has not made its way into the Bill.

566. As we discussed this morning, the Department intended to allow the Planning Appeals Commission (PAC) to award costs. However, that does not seem to be in the Bill. The issue of third-party planning appeals, which we have also discussed, was raised throughout the consultation, but the Department noted that it does not want to proceed with that at this time.

567. I do not know whether the Department committed to those elements in its response to the public consultation, but it is probably worth clarifying whether they require provision in legislation, and, if so, it should be asked why they are not in the Planning Bill and if they will be included in something else. Those are absences from the Bill.

568. In the paper, we highlighted what we call nine contentious areas that might focus the questions to the Department. The first is a general comment on the Department’s claim to want to move the planning system to one that actively engages communities and that is very open. If we look at the Bill, however, we will see that only very minor changes have been made in the consultation provision. Is that actually active engagement? Usually, the opportunities for consultation are still very reactive. That essentially means that communities and other stakeholders respond to something that the Department issues. It can therefore be questioned whether the Bill lives up to the expectations that the Department was raising when it said that it wanted a very open and actively engaged planning system.

569. The next contentious issue is related to the requirements for statements of community involvement. That requirement is in clause 4 and contains a number of elements. The statement

of community involvement is one of the key elements of the consultative provisions, and a number of points need clarification.

570. The first, which may be the most critical, is that, although there are a lot of provisions in the Bill for reviewing and monitoring all sorts of things, there does not seem to be any requirement or duty to review or monitor the effectiveness of the statement of community involvement. For example, there is no monitoring of the effectiveness of a statement for section 75 groups or other vulnerable groups. Once a statement is set up, it might stay as it is in perpetuity. Therefore, there might be a need for a duty to monitor and review a statement's effectiveness.

571. Secondly, a statement of community involvement must explicitly refer to the plan-making process and to development management. However, it seems that the requirement for a statement of community involvement does not apply to all the other provisions in the Bill, many of which people will want to be consulted on. Those other provisions include tree preservation orders, listed buildings, conservation and mineral planning. Therefore, a big part of the Bill does not seem to be picked up by the requirement for a statement of community involvement. Perhaps the provision should just refer to all planning functions.

572. There is also a question of how the statements of community involvement are aligned to the equality provisions. In the equality impact assessment (EQIA) of the Bill, the Department raised a number of issues about getting effective information and monitoring equality. Statements of community involvement would be a way of securing those.

573. A pre-consultation procedure will be introduced under clause 27. It is interesting to note that the same procedure has been active in England and Wales for a number of years. As a consequence, the Government have brought forward new proposals, which apply particularly to England, to strengthen the duties on applicants. The procedure makes the applicants carry out all the consultation. The experience in England seems to have been that the wording used there, which is the same as that in the Bill, has not been that effective in pinning down applicants to carry out a thorough consultation. Therefore, through the new Localism Bill, the Government will introduce much more stringent requirements for applicants, such as a duty to respond to the consultation and a much stronger duty to ensure that everybody in an area, or at least the majority of residents who live there, is consulted. It is a way of putting more of an onus on applicants.

574. There is a new provision for pre-determination hearings. As I mentioned this morning, that allows a council to exclude some interests from a hearing. The provision does not put an onus on a public hearing, so a council can invite who it wants to a pre-determination hearing. In the interests of openness, that provision should be in the Bill.

575. We mentioned third-party appeals. That was a common issue that was raised in the consultation, and some members have been very interested in it. The Department noted in its response to the consultation that:

"there does not appear to be any immediate compelling reason to proceed in the public interest towards making provision for third party appeals".

576. As members probably know, the third-party appeal is one of the key elements of the planning system in the Irish Republic. Third-party appeals can come in a number of variations, from those that are very limited to those that are very open. Therefore, it might be worth questioning the variations that the Department has explored, the evaluations that it has done and the impacts that third-party appeals will have. There may be an impact on delays; indeed, the Department has admitted that there might be some impact on speed. However, it may be

worth finding out the impact that not having such types of appeal will have on public confidence, community involvement and the quality of the decisions that are made. Third-party appeals can bear some relation to those issues.

577. The sixth contentious issue is an attempt to get developers to make some broader contribution to community benefits as a result of development. That happens in England and the Republic of Ireland. Therefore, although the Department has existing powers through planning agreements, they are rarely used. In England and Wales, a community infrastructure levy was recently introduced. We found that, in England in Wales and in other jurisdictions, such a levy allows local authorities to gather contributions from developers to pay for elements of the local infrastructure, such as water supplies, transport, schools, health centres and so on. The levy is based on the assumption that, when development goes ahead, there is some cost to the public purse in upgrading the infrastructure to facilitate such a development. It also recognises that, whenever someone gets planning permission, there is a sudden uplift in the value of the land. That uplift is in some ways unearned, because it is just the planning permission that has caused that increase. It is a way of getting a broader contribution from the developer to meet some of the local costs. The Department said that it does not want to take that forward at this time. One could ask whether any assessment has been done on the impact of the community infrastructure levy and whether it would work in Northern Ireland.

578. Community involvement is a popular area for legislative activity. In the rest of the UK and in the Republic of Ireland, a number of provisions have been introduced recently that are absent from the Bill. It might be worth asking whether this is an opportunity to look at those as well. The first thing that I want to highlight is a relatively radical idea that has recently been introduced into the Localism Bill. That is the provision for neighbourhood development plans and neighbourhood development orders. It is a very localised plan that is being put on a statutory footing. There can be local referenda for local neighbourhood plans, and, when those are informed, local residents might be able to get automatic permission for development if the majority of local residents want it. It is a very grass-roots approach to planning. That is in the Localism Bill, which is proceeding through the House of Commons.

579. In Scotland there are things called good neighbour agreements. The idea behind those is that, if a major development causes local residents some concern, the provision of good neighbour agreements allows local community groups to come to an arrangement with developers to limit operating hours or to take other measures to give confidence to local residents. In Scotland there is also a provision to allow the public availability of information once a planning application has been dealt with. That is an openness and transparency issue. We noted in other sessions that the provisions that result from a lot of those issues are very basic, and that raises questions over whether further guidance is needed. For this to be successful, that needs to be flushed out.

580. Almost all the comments on the equality impact assessment relate to the procedure of community involvement. The EQIA notes that there is poor evidence for evaluating equality impacts where monitoring and so on are concerned. The Bill might therefore be an opportunity to make some provision for regular and effective monitoring in the future.

581. Those are the key issues.

582. The Chairperson: Thank you very much. You talked about third-party appeals, and we will come to that in a minute. Indeed, a lot of respondees talked about them.

583. I want to talk about a key element of the Bill. As you know, the research paper that we received in the previous presentation talked about the notion of spatial planning. The key element of that is not only land use, but place. One of its key factors is community engagement.

You mentioned proper, active engagement. Will you expand on how the various jurisdictions try to include the entire community? Perhaps you can give us a definition of "community"?

584. Dr Ellis: The definition of community that is given at the beginning of the paper is taken from the English guidelines for community involvement. In the overview of themes element of the research paper, there is a definition of what community involvement in planning could mean. Essentially, there is no definition of it; it is an open process. It refers to the ability of everybody, perhaps excluding Government and statutory providers, to engage. It is about the involvement of business, the voluntary sector and local people of all sorts. It is not useful to provide a very narrow definition of "community" because you start excluding people. If we have an open process, the people who are interested and might be affected by development can then engage.

585. The Chairperson: I will come on to that. That is front-loading the process by getting everyone involved. That is why there is some recognition that, if we have a front-loaded process, we may not necessarily need third-party appeals. We have seen how that has worked in other jurisdictions. Sometimes it has been positive, but, at other times, they have got it wrong. Do you feel that there needs to be some kind of appeals mechanism to ensure that people get the proper result?

586. Dr Ellis: Front-loading refers to two key elements. The first is having full involvement in the local plan and having a plan-led system. That means that when a decision is made on a development application, it is made on a plan on which there has been full consultation. However, as we heard this morning, the Department has not commenced the plan-led system. Therefore, that little element of front-loading is not quite there.

587. The second part of front-loading is the idea of the pre-application consultation, which I just talked about. That refers only to major development. As far as I can see, those are the two key elements, but the Department may have other ideas about front-loading. We are not quite there with the plan-led system, which is why it is so important to have the commencement of the plan-led element.

588. The Chairperson: You said that there are models of appeals that may suit the Bill. That is certainly something that we could look at.

589. Dr Ellis: It has been suggested that pre-application consultation may be advantageous in ironing out a lot of the issues before they occur. However, it has been argued that third-party appeals will mean that the developers will fully take into account the consultation, because, if they do not, there may be an appeal afterwards. The pre-application engagement could strengthen the local community. Therefore, front-loading could be strengthened if third-party appeals are introduced.

590. The Chairperson: You also mentioned the community infrastructure levy. On one occasion, we talked about developer contributions, but —

591. Dr Ellis: It is essentially the same thing.

592. The Chairperson: It would certainly be welcomed, and it would encourage participation.

593. Dr Ellis: Development would certainly be more acceptable if local communities felt that it would lead to new open space or enhanced infrastructure. Clearly, it can help. People welcome development if they do not think that they are subsidising it or if they think that they will get something out of it.

594. The Chairperson: The matter of equality and section 75 is a major issue for us and a lot of the respondees. It is about being inclusive. Do you have any comments to make on that, or do you think that the Bill stands up?

595. Dr Ellis: As the Department states in the EQIA, it is very difficult to know that, because there is very poor monitoring information. That can be answered only by ensuring that there is future monitoring and review. When the relevant information is collected, a more objective stance can be taken on whether those groups are being disadvantaged.

596. The Chairperson: How do you propose to place that mechanism in the Bill? Will it be done in guidelines?

597. Dr Ellis: In the statement about community involvement, there could be a requirement to collect information on section 75 groups and to have a specific section of the community involvement that would reach out to those groups.

598. The Chairperson: Thank you very much.

599. Do members have any questions about community involvement? This is an important subject.

600. Mr B Wilson: If a developer wanted to knock down a couple of Victorian houses and put up apartment blocks or that sort of thing, what pre-consultation would they be required to do?

601. Dr Ellis: If it is a major development — the difference between local and major was discussed this morning — they will have to undertake a pre-application consultation. The requirements at the minute are quite loose. The Localism Bill proposes that there be an onus on the developer to take reasonable steps to include the majority of people in the area, and it puts a duty on them to take into account the responses. That may mean not going ahead with the scheme.

602. The duty in the Planning Bill is much weaker, in that it asks the developer to carry out only consultation. The Department may specify some strong guidelines, but there is an argument that the duty should be in the legislation from the start, because that is what happened in England. The developers have tended to go through the procedure without taking it into account and have proceeded anyway. In some ways, that is a waste of everyone's time, and it is not the purpose of the duty.

603. Mr B Wilson: Would knocking down two big houses and putting up a few apartment blocks be considered to be a minor or a major development? Who would deal with that type of development?

604. Dr Ellis: I did not see the definition that the Department circulated this morning, but I would not have thought that two apartment blocks would be considered to be a major development. I would have thought that it would be considered to be a minor development. In that case, I think that it would be dealt with as it is now.

605. Mr B Wilson: Does that mean that no consultation would be involved?

606. Dr Ellis: There would be no additional consultation. There would be the statutory six weeks during which people could object to the development, but there would be no difference between now and then.



607. Mr B Wilson: Does that mean that there would no obligation on the developer to consult the local community on those sorts of schemes?

608. Dr Ellis: No, I do not think so. In England, that has been opened up so that a pre-application consultation can be asked for not only for major developments, but for any application. The Bill isolates that to major developments, but in England, the position moved away from that, meaning that any application could be asked to go through that process.

609. Mr B Wilson: Who decides who to consult, and how do they decide?

610. Dr Ellis: If it is a major development, the applicant must contact the Department 12 weeks before they make the application, and they must agree the nature of the consultation with the Department. That is all that the Bill says on that. It is up to the Department to agree the nature of the consultation with the applicant.

611. Mr B Wilson: Would the applicant be expected to consult, for example, the Helen's Bay residents association?

612. Dr Ellis: That would be up to the Department. It seems a reasonable thing to ask for, and the Department —

613. Mr Weir: It depends on whether the development is for Helen's Bay.

614. Dr Ellis: The Department does that already, and it is in the guidelines.

615. The Chairperson: Members are being very local. You do not have to answer that question.

616. Dr Ellis: That is in the guidelines that are to come.

617. Mr B Wilson: Are you saying that it will be in the guidelines?

618. Dr Ellis: Yes; it will be in the guidelines that are to come. However, they have not been specified.

619. Mr B Wilson: I am worried about whether the guidelines, when we actually see them, will be specific.

620. Dr Ellis: I do not know.

621. Ms Cave: That question will have to be asked of the Department.

622. The Chairperson: That is a question for the Department. You are correct to raise that point, because it is important to have it included and to get it answered now. We will have a chance to ask it of the Department. Please try not to mention Helen's Bay or South Down. Here comes Mr Clarke, one of the South Down MLAs.

623. Mr W Clarke: On Brian's point, surely weight must be given in a planning application to any clear willingness or understanding on the community's part, including the council and developers at the early stage, to preserve a row of houses that may not be listed.

624. Dr Ellis: It goes back to the idea of the system being plan led. If the community had been consulted on the plan and the plan designated the area as a conservation area, it would be unlikely that, in a plan-led system, the community would go against the plan.

625. Mr W Clarke: You mentioned the Localism Bill in England. How does the neighbourhood element of that work?

626. Dr Ellis: It is an idea, but it has not happened yet, because the Bill is not on the legislative books.

627. Mr W Clarke: What if people in a neighbourhood were to say that they wanted to preserve certain types of houses in their neighbourhood?

628. Dr Ellis: It looks as though they can do that. There is provision in the new English Bill for local referenda. That means that if more than 50% of the people in a designated area were to vote in that way they could bring forward plans. There is a lot to be seen on how that will work. It is an idea that is being brought forward, and there are a lot of questions about it.

629. Mr W Clarke: Obviously, people have bought properties looking to speculate, and there may be compensation aspects to the Bill. However, I am not sure. Do you have any views on that?

630. Dr Ellis: There is currently no compensation for planning policies.

631. Mr W Clarke: If a swathe of legislation were introduced to change how we do planning, and that is what the Bill is about, and if the recession meant that people did not develop, would there be moves towards including elements on compensation?

632. Dr Ellis: I would find a change in policy very unlikely, but you would have to ask the Department. I am sure that you would need legal advice.

633. Mr W Clarke: That is dead on.

634. Following on from Brian's point, will the likes of established community groups be part of the consultation process in the initial stages?

635. Dr Ellis: I would have thought so. However, a district council would, for example, have to prepare a statement of community involvement. At that level, they would state who they would involve for what sort of policies. You would have thought it reasonable that, if there were a load of established community groups in a town, a statement of community involvement would specify that they should be involved. However, the Bill does not get down to that level; it just provides for the statement of community involvement.

636. Mr W Clarke: Would that include sporting and youth groups?

637. Dr Ellis: It is reasonable to suggest that such groups would be included. There are guidelines to be issued, and that is where some of that detail will appear.

638. Mr Weir: I presume that community consultation will also depend on the scale of the planning application. To take Brian's example of something that would have a major impact on, say, Helen's Bay, it is reasonable to look at the groups that are affected, whereas a one-house development up a cul-de-sac may affect a handful of neighbours, who would have to be notified. Presumably, the level of consultation and community involvement will, to some extent, depend on the level of the application, even setting aside the division between a major application and what would be considered to be more local.

639. Dr Ellis: The Department would deal with major applications, and it would have its own statement of community involvement.

640. Mr Weir: I presume that it is likely that the council will take a graduated response, depending on whatever falls to it.

641. Dr Ellis: That would be up to the council to decide, because there are no guidelines. All that the Bill provides for is that the council must have a statement of community involvement; it does not say whether it separates different developments.

642. The Chairperson: You mentioned neighbourhood development plans and neighbourhood development. That happens elsewhere.

643. Dr Ellis: It has not been introduced in England, but it is in the Localism Bill.

644. The Chairperson: I think that you are right to say that the definition of community should be as open as possible.

645. Mr Buchanan: How is the community infrastructure levy worked in other jurisdictions? I think that it is important that some community benefit as a result of a big developer coming into an area. I am thinking especially of those who are developing wind farms, for example. It is a question of getting that community development. I know that in that situation there is a mechanism whereby developers pay into a fund. However, that is not really related solely to the community that is affected by the wind farm. I worked with a couple of developers in my area to secure much greater community benefit. Do you have any examples of how that works in other areas, and do you have any suggestions about how the mechanism that is used to harness it in other areas could be reflected in the Bill?

646. Dr Ellis: It has been on the books in England, but I do not think that it has commenced. Therefore, there is very little experience of how it is working. That might be an area for more research, if needs be. There is legislative provision for such a mechanism, but I do not think that it has been introduced as yet.

647. Mr Buchanan: I would like to see some direct community benefit resulting from a huge development in a particular area being introduced into the Planning Bill. Given their effect on the landscape and so forth, wind farms are a typical example of where there should be a greater community benefit.

648. Dr Ellis: A lot of wind farm developers provide community benefits. However, that is voluntary at the minute.

649. Mr Buchanan: Yes, but it is very sparse.

650. The Chairperson: Thank you very much.

651. We are going to move on to our final presentation, which is a departmental briefing on community involvement in the Planning Bill.

652. Ms Maggie Smith (Department of the Environment): Angus Kerr is going to talk about community involvement, and he will cover the subject in three stages. The first stage is about the statement of community involvement. That is covered in clauses 2 and 4. Secondly, he will talk about the consultation as part of the development plan process. That is covered in clauses 10 and 22(2)(e). Thirdly, he will talk about consultation in development management. Four clauses are involved: clauses 27, 28, 30 and 50. Angus will name the clauses as he goes through his paper.

653. Mr Angus Kerr (Department of the Environment): A key objective of planning reform is to ensure that the planning system allows for a full and open consultation and actively engages communities throughout the planning process. That is part of the change in the culture of the planning system that is being introduced through the Bill, whereby citizens will have a more effective input into planning decisions that will affect them.

654. I will first talk about statements of community involvement, through which the Department and councils will show when and how they will involve the community in the planning process. I will then discuss how the community can become involved in the local development plan process and development management.

655. The Department regards community in its widest sense, and that includes everyone with an interest in the area. As well as people who live in the area, it can also include those who work or invest there or who visit it. It is envisaged that the whole community will have the opportunity to engage in the planning process.

656. The Department and councils, as public authorities, will continue to be expected to meet their obligations under sections 75 and 76 of the Northern Ireland Act 1998, as well as their obligations under the Human Rights Act 1998 and anti-discrimination legislation. It is in that context that the statement of community involvement will be developed.

657. The Committee is aware that planning powers will transfer to councils only after appropriate governance arrangements and an ethical standards regime for councillors have been put in place. The ethical standards regime will have a mandatory code of conduct that will include a section on planning. As members are aware, the Minister launched consultation on those issues on 30 November 2010 with a view to bringing forward legislation in the next Assembly.

658. I mentioned earlier that the Planning Bill contains powers for the Department to intervene if necessary in a council's delivery of planning functions. Those powers are included as safeguards in the unlikely event that a district council is unable to fulfill its responsibilities under the legislation.

659. The first provisions of the Bill that relate to community engagement are clauses 2 and 4, which will require the Department and each council to prepare a statement of community involvement. Clause 2 will require the Department to prepare a statement of community involvement that will set out the Department's policy for involving the community in the exercise of the remaining development management functions that are under Part 3. The Department's statement of community involvement will set out methods by which the public can express their views at the various stages of processing the regionally significant applications, which will be the ones that the Department will process.

660. Under clause 4, district councils will be required to prepare a statement of community involvement. That is defined in the Bill as a statement of the council's policy for involving interested parties in matters relating to the development in its district. Clause 4 will also require the district council and the Department to attempt to agree the terms of the council's statement, and it will provide a power of direction for the Department where agreement is not possible.

661. The fundamental purpose of the statement of community involvement is to set out the council's procedures for involving the community in both the preparation and the revision of its local development plans, as well as the processing of planning applications. That will ensure that community groups, the voluntary and business sectors and the wider public are aware of what community involvement will take place and of how and when they can become involved.

662. The statement of community involvement will allow councils to demonstrate clearly their commitment to community involvement, and it will help to promote equality of opportunity and community relations through increased awareness of community participation and involvement.

663. Where the local development plan process is concerned, councils must have a statement of community involvement in place before any consultation on that local development plan can begin. The statement will be a fundamental tool in enabling district councils to deliver more inclusive and effective community consultation for their plans. It will set out arrangements for community involvement throughout the plan process, going from the early stages of plan preparation through to adopting the plan. It will indicate the proposed methods of involvement that are relevant to the community, the stage of plan preparation at which that involvement will take place and the scope of community involvement. The statement will also set out the methods by which the public can express their views at the various stages of processing a planning application.

664. The Department will prepare guidance to assist councils in the preparation of a statement of community involvement. That will address such matters as its purpose, content and preparation process, and it will include information on best practice. Councils will be encouraged to involve the community and key stakeholders in the preparation of the statement of community involvement. That said, however, councils will have the flexibility to take their own approach to community consultation to reflect local circumstances.

665. I will now outline the methods by which the community can become involved in the local development plan process. As we discussed last Thursday, the local development plan will comprise a plan strategy, which will set out the strategic objectives and policies, as well as the much more detailed local policies plan, which will include maps showing what development is acceptable and where.

666. The public and stakeholders will have the opportunity to become involved in the local development plan preparation process at a number of stages: at preferred options stage; at publication of the draft plan strategy stage; at publication of the local policies plan stage; and during the independent examination. The Committee should note that much of the detailed requirements for consultation in the local development plan process will be in subordinate legislation.

667. The first opportunity for public consultation in the plan preparation process is at preferred options stages. The preferred options paper will replace the current issues paper and will inform interested parties and individuals of the matters that may have a direct effect on the plan area. The paper will contain a series of options for dealing with the key issues in the plan area, and it will set out the implications of those options, as well as the district council's preferred options and a justification for its preferred options. It is envisaged that the preferred options paper will help interested parties to become involved in a more meaningful way at that earlier stage of the plan preparation process and will provide them with an opportunity to put forward their views and influence the final local development plan.

668. The Department considers that front-loading the plan preparation process with community and stakeholder involvement will have two main benefits. First, more meaningful engagement should help to gain a consensus earlier in the process with the community about the plan. Secondly, it should help to reduce the volume of representations at the next stage of consultation when the draft development plan documents are published. Requirements regarding the preparation of the preferred options paper and public consultation will be set out in subordinate legislation.

669. After the preferred options stage, the public and stakeholders will be further consulted when the draft plan strategy and the draft local policies plan are published. After the publication of the draft plan strategy and the local policies plan, there will be a consultation period to allow for receipt of representations. Requirements regarding publicity and availability of documents will be set out in subordinate legislation.

670. After the close of the consultation period for both draft development plan documents, councils will consider all representations before submitting the plan document for independent examination. Under clause 10, when the development plan document is being independently examined, those who made representations during the consultation period will be given the opportunity to appear before and be heard by the examiner if they so request.

671. I will now outline the methods by which the community can become involved in the development management process. Applicants bringing forward proposals for major or regionally significant development are required to engage with the community before they submit their applications.

672. Pre-application community consultation, as set out in clause 27, will provide an opportunity for communities to get involved before the application is submitted. The early involvement of communities can bring about significant benefits for applicants, communities and planning authorities. It allows developers to resolve issues that are raised by the community and to include mitigating measures as necessary. That will improve the quality of the application and, ultimately, the development.

673. Community involvement is a crucial feature of the new development management system. Consequently, pre-application community consultation will be a mandatory requirement for all major and regionally significant proposals. The minimum period of consultation is 12 weeks. Certain requirements will be necessary, such as the information that is to be contained in the proposal of application notice. In addition, to ensure the consistency of approach across all council areas, subordinate legislation will contain minimum requirements, such as the holding of at least one public meeting, and it will outline advertising arrangements.

674. Clause 28 will introduce a requirement on applicants to prepare a pre-application consultation report. That report will need to demonstrate how the developer approached pre-application consultation and what they have done to amend their proposals in the light of that consultation. If the district council or Department do not feel that the applicant has carried out adequate consultation, they can request additional information. In addition, a new power is being introduced in clause 50, 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 pre-application consultation. That is to ensure that, rather than its being a case of just following a set of procedures, the community has been consulted in a meaningful way and its views are properly taken into account about what the developer proposes.

675. Clause 30 will give councils the power to hold pre-determination hearings. Those will aim to make the planning system more inclusive by allowing the views of applicants and those who have made representations to be heard before a planning decision is taken. Subordinate legislation will set out the instances where a pre-determination hearing will be mandatory. Those are likely to include applications for major developments that have been subject to a direction for call-in but have been returned to the council for it to determine. The district council will have discretion over how those hearings will operate in their area. They may, of course, wish to consider other types of development application for which they could hold pre-determination hearings.

676. That completes the presentation, which was aimed at familiarising members with the key aspects of the Planning Bill that deal with community involvement. I welcome any questions that members may have on those issues.

677. The Chairperson: Thanks very much. We will start with the statement of community involvement. I listened to Dr Geraint Ellis's comments about what happens in other jurisdictions. Perhaps we can learn from best practice elsewhere. Are there proposals in the Bill to monitor or review the statement of community involvement, or are there options or guidelines about that?

678. Mr Kerr: There are no proposals in the Bill to do that, but we could look at some of the more detailed requirements through subordinate legislation.

679. The Chairperson: As regards the requirement in the statement of community involvement — we will call it the SCI — to engage with all sectors, especially section 75 groups, what mechanism is in place to ensure that that will happen? Is there such a mechanism?

680. Mr Kerr: Detailed guidance will indicate that. Obviously, the Department and councils will be obliged to comply with section 75 and section 76 and so on.

681. The Chairperson: OK. Does the SCI relate to all the planning functions in the Bill or just to certain elements of it?

682. Mr Kerr: For the Department, the statement relates only to the planning functions that remain with the Department. That refers to regionally significant applications. As for councils, the statement relates primarily to the development plan process, which is, of course, the key element, as it sets the policy framework for making all the planning decisions in the area. It also applies to the mainstream development management process for the councils. At this stage, that is the extent to which the SCI applies.

683. The Chairperson: That all depends on whether there is good governance and codes of conduct and practice in councils. Those are key elements.

684. Mr Kerr: Absolutely.

685. The Chairperson: I want to talk about the development plans. At the minute, we have an area plans process. Should there not be some form of community plan? Is there no statutory requirement in the Bill to link community plans with development plans?

686. Mr Kerr: Do you mean lower-level neighbourhood plans?

687. The Chairperson: Yes. Let us say that we are looking at a spatial plan. It is fine to have an area plan that will basically designate or zone areas, but surely at that point, we should be looking at what is best for the area, community or town. Should that not be incorporated? Should there not be a duty to inform people about that process or to have some input from the community from that point of view, as opposed to just zoning land and saying that it is for industrial use, a housing development, recreation or whatever? The local community should have a say in such plans.

688. Mr Kerr: Absolutely. We talked about spatial planning on Thursday. It is important that there is a link from the local development plan to the wider community plan so that, in effect, it becomes a spatial manifestation of the wider community plan. That is the intention, and, if possible, it will be done either through subordinate legislation or a local government Bill. We will look into that.

689. Ms Smith: I think that you are perhaps talking about planning at a more detailed level. Is that right?

690. The Chairperson: The issue is about being inclusive. We are in a situation where we zone land; the process is all about land use on its own. We have to get to a point where there is proper community consultation about the benefits of development schemes, whatever they happen to be. The process should be about more than business. When talking about housing developments, for example, the community interest should be included.

691. Ms Smith: The approach is that "the community" means anyone who has an interest in the area. It does not just mean the people who live in the area or those who do business in it. That definition is wider in the Bill than it is in existing legislation. The statement of community involvement will set out how and when people will be consulted. Anybody who is part of the community will be able to look at the statement and see when the consultations and so forth will take place so that they can plan ahead. They will have the opportunity to contribute at those stages and to each of the development plan documents. That means that they can contribute not just once, but all the way through the process.

692. The Chairperson: Obviously, the statement of community involvement is an important part of the process, because it indicates who is included and who is not.

693. I suppose that we should move on to the small matter of third-party appeals. It is a minor matter that keeps rearing its head. We talked about this in the Assembly Chamber, and we are talking now about community involvement and front-loading the system. Unfortunately, there have been examples elsewhere, where, with the best will in the world, things have not gone to plan. There needs to be a mechanism to allow challenges to ensure that things are right. You are proposing not to introduce third-party appeals. Can you explain to the Committee within the next half hour why you believe that there is no call for a third-party right of appeal in the Bill?

694. Ms Smith: As you say, the whole ethos and approach of the Bill is about front-loading. It is about getting things right from the beginning. Through the development plan process and the statement of community involvement, the community is involved in shaping the development plan through the community planning system. The wider shaping of the place and the clear linkages between the other issues that are involved in the community plan and the development plan are also important. Planning applications will need to be shaped in the context of the development plan.

695. In major and regionally significant applications, the responsibility is on the applicant to make sure that the community has the opportunity to input to the application. Therefore, there is a requirement on people to bring forward applications to consult the community before they produce their application. They have to set out what they intend to do, listen to the issues that the community raised, and then take them on board and discuss with the community how they will change the application. When it comes to application stage, they have to be able to demonstrate that they have gone through the process of community involvement, and they have to be able to show that they have done it right. If the planning authority, that is, the council or the Department, feels that the applicant has not done the consultation either properly or at all, it can decline to determine the application.

696. The idea behind including the community all the way through the development plan process and in the lead-up to important applications that are going to impact on people's lives is that the products that come forward will have been shaped. That means there should not be a need for third-party appeals.



697. During the consultation on the policy that went into the Planning Bill, views were taken on third-party appeals, and the decision that the Ministers took at that time was that the focus should be on strengthening front-loading and making sure we get that right. However, there was no focus on third-party appeals.

698. The Chairperson: That decision was made by the Minister, wrongly in my opinion.

699. On the face of it, that is fine, because everyone is included. However, you could also argue that making an objection is only a paper exercise. I am not saying that everyone should be able to make an objection or challenge any decision for any reason; their reasons should be correct. However, that is not in the Bill. At the end of the day, a person may make a reasonable objection to a development, and that objection could challenge policy. In most cases, the development or whatever it is could be tweaked. The question is about whether the proposal will result in a proper consultation process. Will it be a material consideration, or will it just give people a voice and then that is it? That is why I think there needs to be some check or some appeals mechanism in the Bill.

700. For example, someone could live 10 miles away from an area and drive through it and see that a major infrastructural route is being put through that place. The next thing they will find is that their journey has increased by half an hour, but they never had a say. I use that only as an example of someone's not having an opportunity to contribute. People should be given a proper opportunity to contribute. We do not want to get to a point where front-loading gives everyone a chance, but, at the end of the day, people are at meetings about developments just so that they can just put up their hands to ask questions. I believe that there has to be some mechanism to ensure that that whole process is correct and that it is not just about correcting someone's homework. Any application or development plan has to be conducted within proper criteria and be properly assessed and followed. There needs to be some mechanism for that. I have said that from day one, but other Committee members will have different views on that. It is a big issue. A number of respondents raised it before now, and it certainly is not going to go away.

701. One other important point has come to the Committee's notice. It is not for the Committee to support one group or another. A lot of groups out there, such as Community Places and Disability Action, have lost funding but have contributed to the planning process and have given good advice. The Department has depended on those organisations. I am mentioning those two examples, but I am sure that there are others. How will you ensure that, through this Bill and this practice, there will be proper mechanisms to deal with that situation and with the added value that those groups have brought? How do you cover that? Are the consultations and bringing in the expertise and so forth all passed down to local councils so that they can deal with them? If that is the case, are the resources leaving central government and going to local government to cover all that?

702. Mr Kerr: In a sense, the communities out there resource themselves in that, as you rightly say, they engage very well with the planning system, as many of us planners have found out to our cost on various occasions. I do not see any reason why that will change in the transfer of some of the functions to councils. I am sure that those groups will be as keen as they have always been to engage in the planning process, and the various different elements of the Bill that will enhance and increase the ways that the community can engage in the planning system will probably make them more keen. I imagine that that will continue.

703. The Chairperson: In essence, are you saying that all those problems connected to that will be passed down to local councils?

704. Ms Smith: When the councils become the planning authorities and draw up their own plans, the most fruitful engagement on a development plan, for example, will be that between the

councils and the community, whether the community is organised into groups, business or the wider public. Therefore, it will be appropriate for the groups to deal directly with the council.

705. The Chairperson: If something is being devolved downwards, a level of expertise obviously needs to be available. Do you say the Bill includes the facility to ensure that that happens? The groups that I cited have a high level of expertise. Such expertise needs to be in place for the implementation of the Bill. Would you like to comment on that?

706. Ms Catherine McKinney (Department of the Environment): Are you asking how they will engage with the local community?

707. The Chairperson: At present, there is a level of expertise in the Planning Service's operations that is outside that of the Department. Funding is now being cut, and the funds that are available for that engagement are being reduced. If we are saying that that function is being transferred down to local government, will all that goes with that be the responsibility of local government, or will resourcing that and trying to support local government to get that in place before the Bill is implemented be looked at?

708. Ms Smith: We are working to ensure that, when planning powers and the staff and resources transfer, councils have the resources that they need. As you know, we are looking at the structure of the Planning Service and preparing it for the transfer. We are also looking at the fees. The idea is that there will be a sound resource that will transfer to the councils.

709. The Chairperson: Does that mean that, inclusive in the level of funding for those groups, a resource will be passed down to local councils?

710. Ms Smith: Sorry, funding of what?

711. The Chairperson: I mean funding of the likes of Disability Action and groups that have the level of outside expertise that the Department has access to. Does that carry as well?

712. Ms Smith: That is not included.

713. The Chairperson: It is a resource issue, obviously.

714. Ms Smith: Yes, but it is not covered in the Bill. Councils would have grant-making powers. That does not need to go into the Bill, because councils already have the power to fund community groups.

715. The Chairperson: Are you saying that the training issue should be in the Bill?

716. Ms Smith: Training?

717. The Chairperson: Should training and giving the expertise to local councils so that they can take on that responsibility be incorporated in the Bill?

718. Ms Smith: We are looking at training in capacity building for councillors, council employees and our planning staff. The pilot programmes that the Minister mentioned in his statement are central to that.

719. Mr Weir: We may need to make a clear recommendation about that in our report on the Bill. I am not sure that training can be legislated for, but we need to get commitments on the issue from the Department and flag it up strongly as a Committee.

720. The Chairperson: As I said, these issues start to arise, and we need to find out about it. You may be correct to say that it is something that we cannot include in the Bill.

721. Ms Smith: It is not really something that can be put in the Bill.

722. The Chairperson: It is OK to transfer the functions when the legislation is being put in place, but we need to have the actual ability to carry out those functions. That is important. We have not seen the magic model that we have been asking for, that is, the workforce planning model that we were supposed to get six months ago that would outline how planning will roll out in local government. Perhaps that is something that we should just keep in mind.

723. Mr Kinahan: I have a large number of questions to ask. Your definition of community is enormous; it includes everyone who touches the patch. Are you going to give guidance to people so that they know how to get to the community? At the moment, having watched one or two council debates on master plans, they really only half do it, and they need guidance to know how to get to everybody. Sometimes it is just about knocking on doors, but I think that the councils need guidance as to who the community is. You have given us a broad definition, but within that, we need the same again. Even when the Department goes out to consultation, it has to constantly rethink whether it is including everyone. Are you planning to produce some form of guidance?

724. Equally, will there be a publicity campaign that will explain to the public that they are now the community that is going to be consulted? Most people will not know that this is going on, because they do not read the papers. There needs to be a campaign to inform the public about what is going on. Again, I foresee a huge cost coming with that, and I wonder whether we have the resources for it. We cannot just throw it at the councils. That is my first question.

725. Mr Kerr: The answer is yes, we are going to produce guidance that will assist in all that. One of the great advantages of transferring planning functions to councils is that they are closer to the ground in their areas and they have a better understanding than the Department could ever have about what is going on locally. The councils understand the ways to involve the community, and they know better than us who the community is. They know which groups are representative and which to steer clear of. All that gives the councils a fundamental advantage, given where we are going with planning.

726. The statement of community involvement will be a great tool, because it will allow councils to set everything out. It would be quite innovative to use the Internet and other methods of consultation and to look at different ways of publicising things. It has, perhaps, been difficult over the years for civil servants in the Department to be more proactive locally in that sense. I see this as a big opportunity to address some of your concerns. To some extent, the measures do not always have to be massively expensive, but it will be the councils' responsibility to take that on. I am sure, as is the case in other jurisdictions, that the responses will be varied and that some are better than others.

727. Mr Kinahan: I have other questions, but I will let others have a turn.

728. Mr McGlone: Before we get into the computer business, it might be an idea to employ a different computer firm from the one that got the e-PIC project. That is a sheer disaster in accessibility and consultation. It is important that we got that on the record. You need to be a whizz kid to get in there and even when you do.

729. You talk about community consultation. Issues that come up regularly with elected representatives are neighbour notification, which is the most basic form of notification and

consultation, and the lack of compulsion on an agent to be legally bound to notify those who are most likely to be impacted by a planning application. That is what drives most people batty.

730. Whatever about your consultation on the Internet or sticking up posters or signs here and there, if that bit is not right, the rest will fall. An application comes in, and people know nothing about it; an amended application comes in, and, again, they know nothing about it. That is the stuff that can literally drive people to tears. They are forced most of the time to chase their tails and make sure that they are fully engaged with the Planning Service. In other words, the consultation is stood on its head and, in fact, does not exist.

731. What ideas do you have to ensure that that most basic form of consultation is adhered to? Should there, in fact, be some sort of legal compunction to ensure that those properties and the surrounding addresses that are impacted by a planning application are notified?

732. Ms Lois Jackson (Department of the Environment): I will try to explain it to you. Obviously, you know the way that it currently works. That duty would be transferred and placed on the planning authority, which would be the councils themselves. Other jurisdictions have moved away from applicants notifying neighbours. You cannot expect applicants to notify, because it may not be in their own best interests. Therefore, the planning authority is best placed to issue neighbour notification. That is what we currently do. Therefore, we will look at each application as it comes in and carry out the neighbour notification ourselves.

733. Mr McGlone: That is what you currently do. However, that is the bit that is deficient, because not everybody is notified.

734. Ms Jackson: It is not in statute.

735. Mr McGlone: I will explain the situation as I see it. I may be wrong, but I do not think so. Who you notify is entirely dependent on what the agent puts on the application form. In other words, it could be said at the time that a particular application will affect neighbour x, y and z or a, b and c.

736. Ms Jackson: We will look at that ourselves; we will not go on just what is in the application form. We will be able to pick up the dwellings that are on the electronic map system. Say that house number 32A, 32B or 32C has been built, but it is not on the form, we may be able to pick that up from the maps and from what is on the ground.

737. Mr McGlone: Sorry, but that is consistently missed. If that is in operation in some places, it is clearly not in others. I am talking not about recent dwellings being missed on the electronic mapping device, but about houses that have existed for 50 years. I had one shortly before Christmas that was not neighbour notified about the original or the amended application. That is just one example. The house that should have been notified has been there in its present form for 70 years, with people living in it. That gives you an example of how the system does not work, and that is what really causes people a lot of grief and emotional problems, especially if their problems and difficulties are neighbour-type disputes. Indeed, that can happen even within families.

738. Ms Jackson: I understand that.

739. Mr McGlone: That can exacerbate a situation. In fact, I can think of another case that happened just a week before Christmas when notification was not issued. In that case, we are talking about a house that has been there for 40 years. Those are two examples straight off the top of my head where neighbour notification was not done. In both cases, that caused a lot of

grief. I can understand an agent being told not to put that on the form and not to mention it or worry about it because it would only cause trouble.

740. Ms Jackson: That is where the planning officers' duty should come in, and it should also apply when the officers are carrying out site inspections. It should happen; it is remiss that it does not, but I appreciate your point. However, we have not gone down the route of making neighbour notification a statutory requirement.

741. The Chairperson: I am sorry, could you speak into the microphone, please.

742. Two points have been raised. Obviously you can use Google Earth. We talked about neighbour notification, and we raised that issue before. That needs to be put in statute. Notification is discretionary at the moment, so we need to look at it. Mr McGlone raised the issue before. Could we look at that?

743. Mr McGlone: I want to go back to resources and financing, which we discussed earlier with Maggie. The Department's permanent secretary was before the Committee last Thursday. When I specifically asked him whether the transition would be smooth and cost neutral to local authorities, he said that he could not give that guarantee. I have already spoken to a number of my council colleagues and party colleagues about this. They have consistently been given assurances through the Northern Ireland Local Government Association (NILGA), various local government fora, and, indeed, the Assembly. Straight off, it appears that the matter is not on as solid ground as it was once upon a time. Therefore, the matter will clearly have ramifications for any transition, smooth or otherwise, to local authorities.

744. Those of us who have served and, indeed, still serve, on councils do not want another bill to be heaped on us — a bill that ratepayers will have to cough up for. Likewise, the big concern with a transition that would not be as smooth as planned would be that there would be excess staff about the place. That would be one of the first problems facing local government. Therefore, in many ways, the exercise could become academic, especially for the 26 councils, if the transition is not smooth and cost neutral.

745. Ms Smith: I will go back to what I was saying about how we are working in two ways to tackle that. On the one hand, we are looking at the fees structure. At the moment, that structure is quite odd in lots of ways, because the fees do not necessarily cover the costs of processing planning applications. Therefore, we are looking at that very carefully. We consulted on that quite recently, and we are preparing the papers as a result of that consultation. The idea and the aim are very much to make sure that there is a proper match between the structure of fees and the amount of fees coming in and the cost of processing an application so that the income is there to support the planning system.

746. On the other side, we are looking very carefully at the structure of the Planning Service. As you know, de-agentisation will happen at the end of March, so we will go into the new financial year with planning functions being part of the core Department. We have already looked at management structures and have done some restructuring and de-layering there. We are also looking at the wider structures and are making sure that we have the right number of people in the right places to service the new councils when they come into being.

747. Therefore, the approach is two pronged, and we are aiming to hand over a planning system that is properly resourced and able to carry out the functions that the councils need it to carry out.

748. Mr McGlone: You are aiming for it, but the permanent secretary cannot guarantee it. That is the dilemma that I am in, Maggie.

749. The Chairperson: I know that you explained the fee, but, let us be honest, a range of fees needs to be looked at. The delivery model needs to be part of the whole process. It is being worked on.

750. Ms Smith: Yes.

751. The Chairperson: Obviously, that will also be done through the fees structure. I do not agree with you that there will be proper fees for proper planning services in that structure. When things were good in the Planning Service, a lot of money was made. It was not all about wages or covering, because, let us be honest, a lot of that money went back to the Treasury. We all know about the argument that money was made, the workforce was increased and so forth; we have talked to the permanent secretary about that. What we asked for, as a Committee, was a proper model for delivery. That is the model that has to be handed down to local councils so that they can deliver development control.

752. I know that you are looking at the fees to deliver that. Mr McGlone's point is that councillors see exactly what is coming down the tracks. All the processes need to be in place before any council can take them over. It may be outside the Bill, and work on fees, for example, may have been done; however, it is totally incorporated into what we are trying to achieve, which is reorganisation and so forth. This is a part of the whole process.

753. Ms Smith: It is absolutely, Chairperson. Your point is important. A whole package of work is being done on this, and the Bill is a part of that package. If we are thinking about where the Bill will fit with the future fees structure, I should say that it continues the power to charge the fee. However, the fees themselves are in separate regulations. The consultation, which we have finished and which you will see the outcome of before very long, will feed in to some subordinate legislation. There will be an opportunity for the Committee to look in detail at the proposals for the changes of fees.

754. The Chairperson: There needs to be a proper range of fees. Just because there are more applications for, for example, single housing, does not mean that we arrange the fees to suit that. It has to be in proportion and provide VFM, that is, value for money. The Committee has discussed some of the bigger developments and the range of fees that was charged in the past. That certainly needs to be looked at.

755. Ms Smith: Absolutely. The report that we will bring to you aims to do exactly that. It aims to put in place a fees structure that is realistic and fair to everybody.

756. Mr Kinahan: Would you consider getting a council to sit down and think it through from its point of view, now that it knows what is coming? It could assess what it needs to have in place, so that we know the costs from the other end. That is my concern. We know that a fees structure is needed to pay for it. However, I feel that we are moving into the dark and that we will not be ready for this.

757. Ms Smith: I am sorry, are you talking about the fees?

758. Mr Kinahan: I am just suggesting running a pilot scheme in one council; however, you may have an alternative plan that can tell you, from a council's point of view, what extra resources councils feel they will need to take this on. Councils know what is coming from planning. If you were to sit a council's chief executive down and ask them what they need to have in place in personnel and average running costs, you may find that the costs are much higher than we are estimating.

759. Ms Smith: The pilot scheme that the Minister is planning was one of the things that he announced in his statement at the end of November. That will kick in at the beginning of the new financial year.

760. The purpose of those programmes is to start looking at how all this will work when powers transfer to councils. Therefore, it will involve the councils and the Department testing the arrangements to make sure that we get the functional parts of the arrangements absolutely right before the powers transfer. The idea is to start with two or three programmes in different council areas and then to roll them out so that, by the end of the financial year, every council will, to some extent, be involved in a project working with the Department to test the new arrangements. All of us will be learning about exactly how the new powers will work in practice as we go along. It will be as close as we can get to the future scenario, without actually transferring any functions.

761. Mr McGlone: I am sorry; I may have been a wee bit distracted, but did you refer to the end of the incoming financial year?

762. Ms Smith: I was talking about the incoming financial year. The pilot programmes will start some time after May —

763. Mr McGlone: I am sorry, Maggie, what will be the extent, anticipated role and functions of those pilot programmes? What will they do? What does the Department anticipate those pilot schemes will do?

764. Ms Smith: They are there to involve councillors, council employees and planning staff in starting to look at and to test out the arrangements that will apply after the powers go to councils. It is a sort of practice run; it is almost a dry run. The details of how each pilot programme will work will need to be worked out between the council and the Department. Clearly, the programmes are there to benefit the councils.

765. Mr McGlone: Are we talking about pilot programmes running in shadow form? Will they not be making decisions?

766. Ms Smith: They will not be able to make any decisions, because they will not have the power to do so. However, they will be able to work towards a situation where they feel that they are acting as though they had that power. Therefore, it will build up over time.

767. Mr McGlone: That sounds like local government group therapy of some kind.

768. Ms Smith: That is an important point, because it is really about helping everybody to have the opportunity to learn about the new system, to understand it, to feel that they have the confidence, ability and capacity to act on the new system and to practise all that before it comes into effect.

769. Mr McGlone: OK. Thank you.

770. The Chairperson: I hope that you got some of the answers that you were looking for, Mr McGlone.

771. Mr B Wilson: On the first of a number of points that I want to discuss, we talk a lot about consultation and pre-consultation. However, it has largely been my experience that we are consulted and then ignored. How extensive will the consultation be? Are there guidelines about who must be consulted?

772. Ms Jackson: There will have to be. The local authority will set out to the applicant who they should consult about planning applications. That will be part of the statutory requirements of pre-application consultation. Lists need to be put in place, and there must be guidance that is well circulated and well understood in the area. We are fully aware that the matter does not rest in just one piece of legislation, and there will be more guidance to explain the process more fully. Councils will be able to advise applicants, who will then be required to carry out that consultation. The test then becomes whether they have consulted with them in the first place, the extent of such consultation and what was done to take on board community views. They have to explain that in the report that is submitted with the planning application. The planning authority involved has that strong power to decline to determine a planning application if it feels that the full duties of pre-application community consultation have not been met or if elements that it requested were not carried out.

773. Mr B Wilson: Evidence from Scotland suggests that pre-consultation is not working and that it has had to be strengthened because it has not been particularly effective. Do you have any thoughts on that?

774. Ms Jackson: The process is in its infancy there too. That is an area that is evolving and developing across the whole of the UK. It is certainly an area that everyone is very interested in. We are learning from any experiences that we have seen and that are happening in the other jurisdictions and from which we can gain. We have taken all that on board in devising our own requirements for community consultation and how we will explain that in subordinate legislation and detailed guidance.

775. Mr B Wilson: Will you take into consideration what is happening in the rest of the UK and then —

776. Ms Jackson: Absolutely, and that is all that is part of our research.

777. Mr B Wilson: Many of us are disappointed that you have decided to exclude the right to third-party appeals from the Bill. At present, there is a perception that, because applicants can appeal, the system is biased towards them, and, because of that, there is no public confidence in the planning system. Have you looked at that? Obviously, you have done some research on third-party appeals. Do you not feel that public confidence could be increased by including in the Bill the right to such appeals?

778. Ms Smith: It may be worth saying something about the way that the Planning Appeals Commission would conduct appeals under the new system. That is a concern. I know that you want to talk about a wide range of issues, so I do not want to repeat too much of what I said earlier, but the whole ethos of the system, which is set out in the Bill, is to focus on making sure that there is proper and intense involvement for everybody early in the process. As we go through the process, either of making the development plan or of a developer bringing forward a major application, we must also make sure that the public have the opportunity to contribute and that issues will be dealt with at those stages.

779. In the interest of public confidence, the statement of community involvement will give people the information that they need to prepare for and contribute to the process. From the beginning, someone who lives or works in the area should, by looking at the statement of community involvement, know that they are part of the process, that there is an opportunity for them to contribute, should they wish to do so, and that they should be able to plan well ahead for that contribution. As a result, the public can have confidence that they have a role in the process. That is one of things that is lacking at the moment.



780. Mr B Wilson: There is a great lack of public confidence in the planning system, particularly in the bias towards development. Sustainable development in particular should be taken into consideration. Everyone knows what they are doing as they go through the planning process at every stage, and they get as much information as possible. However, if the applicant does not like the result, he can appeal, but the objectors cannot.

781. I am concerned about what is not in the Bill. Things have been developing in the past few years in England and Wales. For example, there is the Localism Bill, the good neighbourhood agreements and, obviously, the developer's contribution. How extensively do we use the developer's contribution at present?

782. Ms Smith: The Bill gives us the opportunity to use it a lot more. One of the changes that the Bill will introduce is that there will be a greater opportunity for developer contributions to be made. At the moment, through planning agreements, the Department of the Environment can accept contributions from developers, but we cannot pass them on to anyone else. Therefore, any contribution that was received could be used only to support activity that was within the Department's responsibility. The difference that the Bill will make is that it will allow the planning authorities to bring contributions in to the planning authority, that is, the council or the Department. That is covered in clause 75(1)(d) and 75(1)(e). However, it will also allow for a contribution to be paid by a developer via the planning system to another Northern Ireland Department. That changes the whole scenario, because it means that we can bring in developer contributions and use them for a function that is not a DOE function.

783. We are working on an example of that. In fact, the Minister will shortly be putting to the Executive a planning policy statement (PPS) that deals with developer contributions. Our Minister did that piece of work with the Minister for Social Development. The purpose of the developer contribution is to support social housing.

784. Therefore, on the one hand, you have a new social housing policy that the Minister for Social Development has developed, and, on the other, we are introducing a planning policy statement that will allow the planning authority to collect a sum of money from developers who are bringing forward housing developments and to make sure that that gets to the Department for Social Development (DSD). Clearly, that can come into effect only with this Bill, but we will be consulting on that very soon.

785. Mr B Wilson: That money can go to local Departments. Is that correct?

786. Ms Smith: Through this Bill, the PPS, which we are bringing in, and the social housing policy, which the Minister for Social Development is bringing forward, will operate together to require developers to hand over to the Department for Social Development some money that comes from housing developments. That money can then be used to provide social housing.

787. Mr B Wilson: Does that mean that a council could not use that money for, say, a new community centre?

788. Ms Smith: That could be done in other ways.

789. Mr B Wilson: The council, as the planning authority, would get that money. Does that then mean that they should not be able to use it as they feel fit?

790. Mr Kerr: That is what that clause facilitates.

791. Ms Smith: That clause allows for that.

792. The Chairperson: For clarification, did you say that there will be another planning policy statement?

793. Ms Smith: Yes, PPS 22.

794. The Chairperson: OK, that makes PPS 22, 23, and 24 — I think that that is enough. Can you please clarify what clause you are referring to?

795. Ms Smith: Clause 75(1)(d) states:

“requiring a sum or sums to be paid to the authority”.

796. Clause 75(1)(e) continues:

“requiring a sum or sums to be paid to a Northern Ireland department”.

797. The Chairperson: Mr Wilson, are you cleared up on that subject?

798. We will still go back to the issue of third-party appeals. The issue is about whether there are meaningful contributions and what people think of that where objections to planning applications are concerned. There still needs to be some mechanism to deal with that.

799. We received more responses today, and there seem to be more and more about that issue. Therefore, I think that you will be hearing a wee bit more about third-party appeals, and perhaps we will try to influence the Minister to look at that. In all the processes, it seems on the face of it that it is fine to be inclusive, but I think that there needs to be a proper appeals mechanism. However, we will no doubt come back to that.

800. Mr Kinahan: I am certainly concerned about the timing. You raised lots of matters that need to be clarified by the end of the year. I thought that, during Question Time in the Assembly Chamber, the Minister indicated that he wanted this Bill to come in within six months. We need to try, at some stage, to get a handle on when we are going to get these provisions in place.

801. My next concern is about the hearings. Your submission states who a council could ask to a hearing and who it could not. Sometimes in councils things are not quite as fair as they should be. Is there an appeals system to make sure that people are being included and that they can appeal to somebody?

802. My last question is about equality issues, but I may have missed any discussion about that when I went into the Assembly Chamber. How will you put robust guidance or rules in place so that a council that is very much one sided, from, say, a sectarian point of view, does not exclude the minority but still works democratically? I do not know how you square that, but I have seen it happen in council. I am not sure that the issue is always necessarily sectarian, but there are lots of different ways that someone can be left out.

803. Ms Smith: Picking up on the equality point first, a council is a public authority under the Northern Ireland Act 1998 and is bound by section 75. Therefore, in carrying out its functions, it must carry out the equality and community relations duties in section 75.

804. I think that you were also touching on the function of the council itself.

805. Mr Kinahan: Yes.

806. Ms Smith: That is covered in the consultation on governance that is going on at the moment.

807. The Chairperson: I am sorry to interrupt, but is there anything in the Bill to ensure that local councils carry out their section 75 duties?

808. Ms Smith: That is not in the Bill. All that is covered in the Northern Ireland Act 1998, under which councils, similar to the Department, are bound. Therefore, they operate under the same provisions as other public authorities.

809. The Chairperson: Peter may know the answer to this, but how is that monitored to ensure that those provisions are met?

810. Ms Smith: Angus may want to say something about the monitoring process that we are committed to.

811. Mr Kerr: As you know, from Thursday there will be a requirement to monitor the local development plan. That will end up being an annual requirement to show how the development plan is being implemented. It will include looking at any impacted flow from equality requirements and suchlike. Of course, as we talked about, we have the facility for the Department to intervene at various different points if needed. That may be the case if something is going awry with how a council is carrying out its section 75 duties, and the Department may, for example, take over a planning preparation or call in a planning application. Therefore, those facilities are there.

812. The Chairperson: Obviously, we need to look at this now because it is a major function that councils will carry out. Do you wish to raise another point, Mr Kinahan?

813. Mr Kinahan: No. I raised the issue of hearings and whether a system was in place.

814. Ms Jackson: Are you talking about the pre-determination hearings, as they are referred to in the Bill?

815. Mr Kinahan: I cannot remember whether you cleared up the point about someone's being excluded.

816. Ms Jackson: The pre-determination hearings are dealt with in clause 30. As I was going to mention earlier in response to something that you said, those hearings are the facility to allow objectors to have their case put forward to a council or a committee of the council before an application is determined. Therefore, it is another route and another facility for objectors. The details of that and to whom it will be open will, again, be prescribed in subordinate legislation. The issue is one for councils, in the sense of finding resources to allow hearings on all planning applications or on just certain types. At the moment, we envisage that there would be mandatory and discretionary hearings, and it would be for the discretion of individual councils to decide what to hold a hearing for.

817. Mr McGlone: For Mr Kinahan's benefit, I should point out that I asked earlier that full details of any equality evaluation that had been carried out either by the Department or on its behalf be provided to the Committee for scrutiny. The issue of monitoring came up in a previous document on local government reform, and it seemed to be that where the monitoring role should kick in was quite loosely thought out, if at all. There was a suggestion about having independent monitoring officers, and questions were asked about where they should come from. That is because if those officers were employed by the council, they would clearly not be independent of

the council, and nor could they be. I am trying to get a handle on how, in practice, this monitoring would be done. If the Department does it purely on an annual basis, things could be happening. I want to get a bit of a handle on the practicalities of the outworkings of this. How, in fact, would this be done?

818. Mr Kerr: I am talking about monitoring the local development plan. I am not talking about the local government monitoring functions, such as the centre audit, that would be carried out. It is envisaged that the monitoring would be done against indicators that would be set in the plan. The locally developed plan would have objectives and achievement targets. That is particularly true of the new style of plan that we are trying to move to, which has a more spatial planning approach. The annual monitoring would be done against those indicators to determine the extent to which the plan is or is not being delivered. That would allow the council to make changes, as and when required, to allow the plan to deliver effectively if there is a problem.

819. Mr McGlone: I want to tease this out. Is it the case that, if the monitoring officer or whoever discovers that something is askew, the sequence will be that there will be an edict from the Department asking that it be put right?

820. Mr Kerr: That is not necessarily the case. The council will carry out the monitoring. Let us say, for example, that it is monitoring the housing issues of the plan —

821. Mr McGlone: This goes back to the point of whether the councils will monitor themselves.

822. Mr Kerr: Yes. The councils will monitor the implementation of the plan and will have to report to the Department. There will be no heavy-handed approach from the Department, because there is nothing specifically in the Bill about the Department's saying that a council must do x, y or z. Therefore, it will adopt a light touch in those circumstances. However, it could be clear from a council's monitoring that, for example, there was a problem with housing and that much more housing was being built in the planning area than was originally envisaged in the plan. In that unlikely situation, the council itself would probably want to take action and review the plan to add further land to it. However, in a scenario where the council is not doing anything about a particular situation, the Department will have the opportunity to contact that council. It is also important to realise that, in the development plan approach, there should be close links between the councils and the DOE, just as happens in other jurisdictions all the time. A lot of this should not be a surprise.

823. Mr McGlone: What I am trying to say is that, if the council is monitoring itself, it is not going to be critical of itself to the point where it has to invite the Department to become involved.

824. Mr Kerr: We are talking only about the implementation of the development plan.

825. Mr McGlone: I am thinking out loud. The only point at which I can see something like that happening is, for example, where there was not enough compliance with the regional development strategy and not enough land was allocated for a specific purpose and had been kept. We went through all that earlier. Is that the sort of thing that is envisaged, or is it meant to deal with situations where, for example, land is inappropriately zoned and is picked up in a monitoring exercise? I will say no more than that, other than to say that that is land that should not have been zoned. Is that the point at which the Department's involvement would kick in?

826. Mr Kerr: If land were inappropriately zoned, one would think that it would be picked up during the independent examination. Hopefully, a sound plan emerges from the independent examination with a set of clear objectives and a policy direction that the council wants to go in. The council is responsible for monitoring that. The Department has agreed broadly with those

directions. The council monitors how well it is achieving the set objectives. Presumably, because the council itself sets those objectives, it will be keen to see that they are met. The Department is always in the background, but, essentially, we are handing the local development plan powers to the councils. It is their responsibility to ensure that they achieve whatever it is they want to through their local development plans. That is the new direction in which we want to go. We hope and trust that the councils will take on that responsibility and deliver on it. I am sure that they will.

827. Mr Buchanan: I want to return briefly to the issue of the developer contribution and levy. You said that the Minister is bringing in PPS 22 on the back of this Bill to deal with that.

828. However, I am not so sure that the community will still be the beneficiary. Will this still be under the Department's control, or will it be under that of the council? I just want to make sure that the community that is affected will benefit from the developer's contribution. That is where there is a difficulty, in that no community benefit is coming from some of the huge developments that are going into some areas. We must ensure that the right mechanism is there so that the community that is affected will be the beneficiary. The benefit could be a sporting facility or something that is lacking in the area and that needs to be put in place. You mentioned social housing. That is one part of community benefit, but it is only one. A lot more could be done.

829. Ms Smith: Can we break that down? The Bill provides the mechanism for the transfer of the resource. What is done with that resource is a different matter in lots of ways. The work that our Minister and the Minister for Social Development have done and that I talked about is one way in which developer contributions can be used. That does not limit it only to social housing; it is just that the policy happens to have been brought forward for that purpose. There could be other ways that developer contributions can be used. Mr Kerr, do you want to add to that?

830. Mr Kerr: No. I think that you are absolutely right. Councils could use developer contributions to provide facilities, of whatever nature, that are required locally. Indeed, councils are best placed to know what those are.

831. Ms Smith: By broadening the range of authorities that can receive money, the Bill provides opportunities that people will be able to use in the future.

832. The Chairperson: Can I ask for clarification on whether the main body of the planning policy statement refers to social housing? Is that correct?

833. Ms Smith: The planning policy statement that the Minister has been working on is written specifically for social housing.

834. The Chairperson: Obviously, clause 75 is about contributions.

835. Ms Smith: Clause 75 will allow for the money to be transferred from the developer to the planning authority or to a Northern Ireland Department. It does not say anything about how it should be used. It provides an opportunity — it is enabling.

836. The Chairperson: I wanted clarification on another planning policy statement. I look forward to going through that one as well.

837. Thank you for your time. No doubt we will be seeing you soon.

**20 January 2011**

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Ms Suzie Cave  
Dr Ruth McAreavey      Research and Library Services Queen's University Belfast  
Ms Lois Jackson  
Ms Irene Kennedy  
Mr Angus Kerr      Department of the Environment  
Mr Peter Mullaney  
Ms Maggie Smith

838. The Chairperson (Mr Boylan): We welcome back Suzie Cave from the Assembly Research and Library Services. I also welcome Dr Ruth McAreavey from Queen's University Belfast. Members have been provided with a copy of today's submissions.

839. Ms Suzie Cave (Research and Library Services): Today we are going to look at the research paper that deals with the enforcement elements of the Bill. However, before we do that, I will give the Committee a quick recap. Last Thursday, Dr Ken Sterrett took you through the first research paper, which deals with the first two Parts of the Bill. On Tuesday morning, Dr Geraint Ellis looked at the second research paper, which dealt mainly with Parts 3 to 14 of the Bill. That afternoon, he took you through the third research paper, which looked at community involvement as a general theme throughout the Bill.

840. This morning, we will look at the final research paper. With us is Dr Ruth McAreavey, who is also from Queen's. The paper looks at the remaining parts of the Bill, which deal with implementation, performance and decision-making. Dr McAreavey will take you through the paper, and we can then open the meeting up for discussion.

841. Dr Ruth McAreavey (Queen's University Belfast): Thank you very much, Suzie. As Suzie said, this is the final paper in a series of four. I will highlight issues of implementation, performance and decision-making while thinking about capacity, delivery and quality as they relate to the Bill.

842. The delivery mechanism represents the core aspect of the Bill, and, for the Bill to be successful, it is crucial that that mechanism is appropriate and effective. In other words, is the plan for implementation fit for purpose? That is the question that needs to be thought through throughout the Bill.

843. Some of my colleagues highlighted how the Bill expands our understanding of planning from one of land use to one that encompasses a wider set of issues that affects areas such as social well-being and general quality of life. That will require a paradigm shift, that is, a major sea change, for the many and varied stakeholders with which the Bill will need to engage. Delivery, which is at the heart of effective implementation, is key, and I think that success will be

achieved only through an integrated system. Integration across all the stakeholders and institutions that will be engaged will be a critical aspect of delivery.

844. I highlighted in the paper other matters that will feed in to those delivery mechanisms. I will discuss those in a bit more detail. I will mention briefly the key stakeholders' buy-in and participation. In a sense, stakeholders will be much more diverse and varied and will encompass a much wider suite of interest groups, simply because of the sea change that the Bill embraces. There are questions in those elements to do with leadership and vision. To create places, we need to think about leadership. Who is going to create the vision? What will success look like? What is it that we are ultimately striving for?

845. Some attention needs to be paid to the quality of the built environment. Issues of quality are fundamental to communities' well-being. People value quality buildings and a quality built environment, because it creates a sense of community. Therefore, that needs a little more consideration.

846. Some thought needs to be given to the scheduling of subordinate legislation and of any supplementary guidance that is coming through, because, again, that is at the core of delivery, and it will be at the core of the way the institutions are integrated.

847. More transparency and clarity in the roles and responsibilities throughout the process of changing the new system will be necessary. I think that particular opportunities are arising with the reform to local government and in the proposed new council responsibilities. Some connections can be made with that. The Bill will engage with an increased number and increased diversity of stakeholders, so it is clear that there will be resource requirements in skills development, education and capacity building.

848. Therefore, issues of process relating to equality, transparency and impartiality are at the core of delivery and implementation, as are issues to do with the cultural shift that will be needed in the interest groups. The issue of general understanding and interpretation of what planning is, as well as buy-in from the new interest groups, must be considered. Therefore, a cultural shift in mindsets will be needed. The third issue to consider is practice. What are the delivery mechanisms to support the action?

849. I suggest that there are a number of barriers that might impede effective delivery. If the establishment of the new organisational structures is not done correctly, it could cause problems. There are issues to consider with what the new relationships are, how collaborations are encouraged and what the framework is for future collaborations. That could perhaps be done in joint council working, for example. There are potential barriers in the adoption of the new functions and powers, as well as in expertise, personnel and the technical aspects of planning. We are dealing with an increasingly complex landscape, and there are increasingly complex issues to consider.

850. I want to talk about three major themes that cut across the ideas of implementation, performance and delivery mechanisms. As I said at the outset, integration is completely key to the success of the Bill, and issues of governance are related to that. I think that significant opportunities may have been missed in making connections to the emerging functions and activities in councils. Some useful examples might include the idea of the partnership panel and the power of well-being that is proposed in the reform of councils. There are questions about how the Department of the Environment (DOE) can ensure that an overly complex process is avoided and that we achieve an integrated approach to governance structures.

851. Creating a vision is another area to consider. Who will be in a position to be able to assume a professional leadership role? In England and Scotland, the position of chief planning officer has

been created, and that person provides a professional leadership role that complements administrative leadership. Therefore, there is a question about who has the power to provide leadership through a strategic and integrated approach. Is anyone in a position to provide a similar sort of role?

852. Clearly, stakeholders will be pivotal in helping to adapt to this new, enhanced understanding of what planning is about. Questions may be asked about how to build the capacity and competency of many different stakeholders; how to achieve their buy-in; how to educate stakeholders to understand that they are a part of this wider planning process; and how the Committee and the Department can ensure the advocacy and competency of local communities or, indeed, vulnerable groups, so that they are able to participate fully and extensively in the planning process.

853. As I move to issues about capacity and transparency, I will ask whether the new operating arrangements have been fully thought through. If we consider departmental intervention and direction, there are questions about the extent of the Department's powers to direct councils to work together. In England and Wales, legislation has provided for joint committee working that gives statutory recognition to that work. Therefore, potential opportunities exist in that area.

854. There is a degree of vagueness in performance management. Although it is clear enough in development management, the wider activities and responsibilities that are associated with this wider understanding of planning seem to be lacking in clarity and detail. For example, who has the expertise and capacity to evaluate performance? What is the chain of accountability and assessment? Who measures which organisation? There are questions about the de-agentisation of the Planning Service. How will that affect the management and performance of the Department's planning functions?

855. There is a lot of interest in the scheduling, timing and content of the subordinate legislation and supplementary guidance. A lot of the details about delivery mechanisms and an integrated approach will follow in supplementary subordinate guidance and legislation. Is there a planned timetable for that? What is the form and content of that supporting legislation and guidance?

856. An increased level of skills will be necessary to implement the Bill. When planning reform was done in England and Wales, it was recognised that there was limited expertise. A planning delivery grant was introduced to incentivise performance and support capacity. Further powers were awarded to organisations such as Planning Aid to provide assistance and advice on all aspects of planning. That greatly augmented the process and helped to develop the skills and capacity of the wider stakeholders. Therefore, the question is about how the gaps in expertise and skills will be managed through the Bill. What measures will be taken to fill any gaps that may exist? There are also questions of resources to consider, because it is clear that building skills and developing capacity will require more money. Given that we are facing budgetary cuts, these are real issues for implementing the Bill.

857. If we consider the quality of the built environment, as I said at the outset, individual well-being is very closely correlated with that. Increasingly, the public judge planning outcomes on the quality of the built environment. Therefore, the Bill has a very important role to play in that. However, it has not provided for good design, and insufficient attention has been paid to the design and quality of the built environment.

858. The Committee may wish to consider some of the issues that were raised in the consultation responses. Those are included in the paper but have not been dealt with fully in the Bill. I talked already about issues of timing and the practicality of the transition. Another issue is the different roles and responsibilities and the potential for power imbalances between the key players. There are questions on quality, standards, probity and accountability in local councils,



and some of those issues are under consultation through the reform of local government. However, planning is particularly prone to corruption, and that has certainly been shown to be the case in other jurisdictions. Tightening up issues of probity in the Bill should be an area for consideration.

859. The issue of balancing and accommodating locally led plans while ensuring a consistent quality approach was also raised in the consultation responses. How will any tension between those be managed while ensuring that local areas are able to articulate their needs and take a lead role?

860. As I highlighted, another issue that was raised was the resources for the implementation of the Bill. I think that that will be critical.

861. I mentioned the joint planning committees in England and Wales. That is a good example of practice elsewhere that may help to inform the implementation and delivery mechanism here. In England and Wales, communities are also incentivised through measures outside the Planning Act 2008. That may have resonance here, as we are currently consulting on the reform of local government. Most recently, the UK coalition Government's Localism Bill will ensure spending at a local level through the community infrastructure levy. That will directly address issues of resources and ownership by incentivising key stakeholders. Interestingly, that Bill will allow the community the right to challenge when dealing with issues of accountability and transparency. Through that mechanism, therefore, communities can scrutinise the councils' performance.

862. With regard to supporting organisations, I have already mentioned Planning Aid in England, which is supported directly through planning legislation. Such organisations could have a key role in the process of developing skills and capacity, ensuring stakeholder buy-in and broadening the range of stakeholders that become engaged with the Bill.

863. The final part of the paper highlights further contentious issues, which relate to collaboration and policy integration. That will be a challenging aspect of the Bill; ensuring this interpretation so that other sectors are engaged. Other sectors, such as health, education and wider social care, feel that they have a legitimate role to play in that planning process.

864. I have probably said enough already about budgets. With regard to delivery and equality, there is the question of ensuring effective, appropriate community engagement. My colleague Geraint Ellis spoke about that on Tuesday. The question is how the Department will ensure that expectations are fulfilled and that true community engagement has been achieved by local councils. I will stop there. There is a lot to consider.

865. The Chairperson: There is a lot to consider. On behalf of the Committee, I thank Queen's University for breaking this down. You have concentrated mainly on the new parts and have, obviously, taken into consideration the elements of the legislation. We have a lot of food for thought. There is a short time frame, and we need to look at it. Over the past couple of days, members have gained a better understanding. A big issue for us now is that we are receiving responses to the consultation. They are being mixed in with some of the things that you have highlighted. I will pick up on a few things. You have certainly posed a lot of good questions to the Department on the Committee's behalf. We will forward the research papers. Hopefully, we will get a written response. I will discuss that when the officials come to the table.

866. Governance is key to this in terms of the other legislation that is coming forward. There is a commitment to have the governance in place before it is rolled out. You mentioned leadership issues. I want to expand on how that works in other areas. There is a serious need for capacity building and training and everything that goes with that. You say that there will be a sea change

not only for stakeholders, but for all those involved. Not only will the Bill be a major piece of legislation, but policies that support it and how it rolls out on the ground will be significant. Perhaps you can expand on how it happens elsewhere, what you have learnt, what we can learn from it and what policy we need to bring to it.

867. Dr McAreavey: We have looked at Scotland and England. From a legislative perspective, Northern Ireland has a chief medical officer. That is a professional leadership role. It is like the old saying: if you do not know where you are going and you do not have a vision, you will end up lost and without direction. Strategic vision, understanding and professional legitimacy are needed. A chief planning officer could fulfil that role: setting a precedent, taking planning in new directions and trying to engage with the range of stakeholders and ensure that there is direction. In the absence of that, it is more of an administrative leadership role. It does not necessarily get the same extent of institutional buy-in. It may not gain the support of other stakeholders in the health and education sectors. The role of chief planning officer could play a major part in strategic direction, engaging across the Departments in order to achieve the cross-sectoral integration and collaboration that is needed while also having legitimacy in that profession. There are two functions.

868. The Chairperson: I have had indications back from local councils about performance management. That has been an issue, even in central government with the Planning Service. How can we get that right, and how do we go about the terms of reference and the checks and balances to ensure that that is happening? I firmly believe that there should be a degree of performance management.

869. Do we also need to look at a review of that whole process after a number of years? Once the legislation and policies are rolling out, do we say that after two or three years we should look at all that? Perhaps you could talk about performance management first, and then a review process.

870. Dr McAreavey: The Localism Bill has some interesting examples of possible good practice. Obviously, that is in the very early stages, but if we are thinking about performance management then the community right to challenge could give that degree of transparency for councils to be directly and openly accountable to their communities.

871. Performance management should be ongoing, not a one-off thing that happens with the report filed away but something that becomes part of the process so that there is constancy. One measure used in England and Wales is a test of deliverability. Questions such as "What is the deliverability of this?" and "What is the evidence indicating?" are constantly asked. Those tools can be used as part of an ongoing review of performance.

872. The Chairperson: I remind members that the research has been done on behalf of the Committee. I know that in some cases members have set only questions in respect of the work of the Committee. We welcome the three elements that your paper mentions: collaboration and policy integration, budgets and resources, and delivery and equality. Those are key elements that we need to be asking the Department about. You have touched on them broadly, but within that there are a number of questions. I thank you for your paper.

873. Mr Kinahan: The task that we have ahead of us of trying to get all this in place worries me. Did England and Wales start in a similar manner in that the intention is right, what we are trying to do is right, but they then learned so much over time that they had to keep bringing in reviews and new legislation to get it right? Will the route that we are going down work? There are lots of different things that we have to get in place, including other legislation. Can you see all that falling into place in time? You have given us lots of points to be concerned about, but it looks as though England and Wales had something similar but learned and got it all working in time.

874. Dr McAreavey: There are areas that can be dealt with now: for example, under what conditions councils will work together creating plans. That can be tightened. There is also room to tighten the line of accountability. England and Wales introduced additional Bills retrospectively. We could avoid going through that process by addressing some of the difficulties that they had: for example, by joint committee working.

875. Mr B Wilson: We have clear planning rules and regulations, based on fairly rigid criteria. In the Bill, we are talking about involving issues such as social well-being and quality of life. Does that mean that planning decisions will be much more subjective and open to interpretation?

876. Dr McAreavey: The Bill will introduce a lot more debate about what the community wants to see when it is contributing to statements of community involvement or the local planning process, because it is subjective. However, that does not remove the fact that there are still technical aspects of planning. The Bill will bring the subjective and objective approaches to planning together. It is much more around collaboration, building agreement and creating place, which obviously engages with a sense of well-being and community.

877. Mr B Wilson: The legislation appears to discuss the councils' role, but it does not actually state how the councils will fulfil that role. There are no guidelines as to how those decisions should be made within the councils, and perhaps by the chief planning officer. Is there no need for some stricter guidelines?

878. Dr McAreavey: Do you mean individually on planning —

879. Mr B Wilson: No, I am talking about the legislation. At the moment, councils seem to be totally free to decide how they are going to make decisions on a particular planning application. On that basis, do we not require some guidance on, for example, a separate planning committee, the role of the chief planning officer or the potential conflicts between the chief planning officer and the council?

880. Dr McAreavey: There is room for more clarity on those different functions and relationships. Ken Sterrett talked about the local plans last week. Individual planning applications will have to relate back to the strategic plans that areas and councils will agree on. There is something in there, but I agree that there is a need for more clarity on the relationships and the issues of probity. That is where connections can be made with local government reform, because that is clearly about governance and accountability.

881. Mr W Clarke: I think there is a danger that we are sleepwalking through the whole process of delivery. Many senior people in Departments are not taking it on board at all, because they are thinking that they will be getting a pension in a couple of years, so they are not going to give much thought to it because it is not going to impact them. The Bill needs to focus on identifying the personnel in all the Departments who will bring about the change. It might be a senior planning officer who is designated to do that. What are your views on that?

882. It is a bit like the reform of policing. The main consensus of the Patten reforms was that we wanted good community policing, but when it came to the delivery of that, that is not what happened. There was community policing to a certain extent under neighbourhood teams, but they got it seriously wrong in relation to the amount of resources they put into community policing. It is the same sort of thing; we all know where we want to get to, but how do we deliver that?

883. I see a role for transitional committees, yet the funding for those committees has been cut. I think there is a job to be done in looking at community strategies and community plans. Resources should be made available now to start doing that work without holding back. You can

guarantee that, if England and Wales failed and made serious mistakes, we will certainly fail if we do not learn the lessons of what happened there. It may be a matter not for you but for the Department, and I will probably put the same questions to the officials. We need to up the ante slightly.

884. Dr McAreavey: I agree that that is where we need the professional leadership of a chief planning officer. In order to achieve the major changes that will be required, the shift in mindset and the cultural change will have to come from the top. You are right. Someone needs to provide that direction and ensure that the institutional capacity is there to deliver, or that is not going to happen. There will be a vacuum of direction, vision and leadership. That is a missing piece of the puzzle which is urgently needed.

885. Mr McGlone: Thank you for your paper. I read it last night, and a number of things struck me. I will deal with them in no particular order.

886. Do you have any thoughts on the issues of equality, transparency and implementation? In the course of your research, have you encountered other aspects of local government where safeguards and procedures are inbuilt to insure against and prevent lack of transparency, discrimination or inequality in the implementation and decision-making processes?

887. I have a number of questions, and I will go through them in order. I do not expect you to have answers on the tip of your tongue, but presumably you have looked at these things as a part of your research.

888. You mentioned a very important point which is key to all that: the timing, context and detail of the subordinate legislation. We can sign off on a Bill here, but, if there are so many aspects of it that impact in a very substantial and material way on the implementation of it with regard, not exclusively, but particularly to those issues which I have just outlined, we need to get detail and a time frame for that.

889. A big theme of what you talked about was the quality of the built environment and the well-being issue. You are an academic with a lot more experience of those things than any of us have, including me. Perhaps you can just tease out for me how that quality of the built environment is rolled out. Do you envisage it as based exclusively or mainly upon a series of PPSs from regional government, or do you envisage a role for local government in that? Many of us have concerns about a degree of latitude being offered to local government in its interpretation of policies as given out by regional government.

890. The well-being issue is a bit like grandma and apple pie. "Well-being" sounds great. I know the general concepts of it that there can be about the place: how communities and housing estates develop and that type of thing. Can you give us any more pragmatic examples of how that concept has been implemented in a meaningful, tangible and beneficial way in other jurisdictions which will give us a flavour of it? This is the sort of stuff that we will be asked about at community and local level.

891. The Chairperson: If there is any other information, you can supply it in writing.

892. Dr McAreavey: Yes. I will provide examples of well-being in writing.

893. As to the quality of the built environment, the Bill is setting a framework for what we mean by quality. Sufficient attention has not been paid to that. It is not accounted for in the Bill. I can give you an example. In English planning law, "sustainable development" was defined to include good design. The Planning and Compulsory Purchase Act 2004 was amended so that in:

"contributing to the achievement of sustainable development",

894. a planning body:

"must (in particular) have regard to the desirability of ... achieving good design."

895. So it needs to come from the top, from within the Bill, and then be imbedded throughout the process. Again, an important function for a chief planning officer would be to have regard to good design and ensure that that permeates the system and the process.

896. Mr McGlone: I am not sure where the design guide is, but I think that it is close to completion. I am thinking outside the box. You touched on the sustainability aspect, which is a very important issue. I do not know whether that is intended to be included in the design guide, but it could be a read-across for us from the Bill to be incorporated in the design guide. Is that an idea?

897. Dr McAreavey: Yes, but I also think that it needs to be included in the Bill, because that gives it gravitas across the rest of the legislation and supplementary guidance. Your other question on implementation —

898. Mr McGlone: On implementation, you mentioned the equality and transparency aspects and subordinate legislation.

899. Dr McAreavey: Sorry, can you remind me of the question?

900. Mr McGlone: My first question was on the transparency issues and consistency, and the impact that the equality aspects have on that. There may be another model that works exceptionally well in other jurisdictions or local government areas, not necessarily in these islands but somewhere in mainland Europe. I do not expect to have that off the top of your head.

901. Dr McAreavey: I will come back to you on that.

902. Mr McGlone: Finally, you will probably repeat what you said earlier, because I picked up on your point. How does subordinate legislation impact on key thematic aspects of the Bill?

903. Dr McAreavey: It impacts massively, and there needs to be more transparency and clarity around that. There needs to be a clearer idea of what is going to happen around that, including what resources have been allocated for that and all of the issues that I touched on.

904. Mr Weir: These may be more comments than questions, but you may wish to respond. First, we need to keep in mind what Brian said about some of the issues — some of the wider concepts of well-being, broad community input and seeing what is good for the community in the broader sense. There is almost a differentiation in that a large number of those aspects are particularly significant when you are looking at a more strategic plan for an area, but may be less directly relevant and there may be less room for manoeuvre in the case of an individual planning application. There is a difference between the wider vision side of planning and direct development control. I suspect that that will be more restricted in the case of someone wants to build an extension to their house.

905. Secondly, you stressed the importance of subordinate legislation, but the problem with looking at the Bill is that a lot of the vital stuff will not be dealt with by legislation at all. That is more to do with where the Committee will make recommendations. A lot of it is about

implementation issues. For example, you stressed, quite rightly, the need for capacity building. My guess is that capacity building will not be laid down in the Bill or even under subordinate legislation. It is actually a range of things that will have to be done. Although there is focus on other groups, I suspect that it will be done particularly by councils and councillors. That is probably the biggest single aspect of capacity building, but it goes a lot wider than that. We have to recognise that, whatever recommendations we make, it goes well beyond what is in the legislation or even things that will potentially appear in subordinate legislation.

906. The third aspect will be very difficult to crack. Clearly, there will be protections in terms of governance, for example. With all aspects of planning, it is a question of where you find yourself on the balance of a necessary tension that has, on the one hand, pure consistency and equality to ensure that every decision is done exactly the same way. In theory, if that were taken to its extreme, there would simply be a rigid set of policies, applications would be made to one central planning body in Belfast or wherever and there would be no other involvement anywhere. That would give a computer-type, consistent approach. On the flip side of the coin, you want people to have a wee bit of consistency and certainty in that regard, but there has to be a bit of localism and flexibility, which is where the tension will lie.

907. For example, there may be some communities that say that their major problem is a lack of housing and that they need additional building. On the flip side of the coin, there may be other areas and other councils that feel that the most important thing is the protection of the environment, and they do not want any additional building lines or additional bits within that but want to go a slightly different route. There will be those tensions. If everything is absolutely consistent and there is equality across the board, there will not be a one-size-fits-all solution.

908. There is a tension between ensuring that somebody as an applicant has a consistent and equal approach and that localism and flexibility. In the broader sense, irrespective of whether it is councils or the Planning Service doing it, trying to get that balance absolutely right will always be a very difficult thing to do. You need to bear both those issues in mind when looking at how you design a structure. I suppose that is more of a comment than a question.

909. Dr McAreavey: I agree that there is that tension between ensuring a strategic approach with degrees of consistency and also paying attention to issues of localism. There is going to be a bit of tension. However, the beauty of this approach to planning is that it does provide for local approaches. It is about engaging with the community and ensuring that there is a locally based approach. That just reinforces the importance of having a wide breadth of stakeholder buy-in, so that education, health and other interest groups are part and parcel of the process.

910. Your second point was about subordinate legislation and capacity building. I agree that there is going to be a lot of detail in supplementary guidance, but I also think that there is potential for the Bill to be a bit more direct about the type of organisations and the type of resources that it might provide to other agencies, as is the case in England and Wales.

911. Mr Weir: Again, I question whether that will be directly in the Bill. Obviously we are going to have to produce a report, and it strikes me that there may or may not be a whole load of amendments. It is too early to tell at this stage. However, it strikes me that, irrespective of that, there will be a chunk of stuff that we will have to put in as general recommendations on how it is implemented and brought about, which will fall outside the direct wording of any piece of legislation. That is the point that I was making.

912. The Chairperson: You mentioned flexibility, and I think that is key. We will have rigid policies, but we certainly need an element of flexibility.

913. Mr Buchanan: Collaboration and policy integration are challenging and interesting concepts, but it is about getting agreement from the various bodies on locally based solutions. Are there any models of that type of collaborative working in England or Wales that point to the effectiveness of it and which we could obviously tap into?

914. Dr McAreavey: Do you mean across sectors?

915. Mr Buchanan: Yes.

916. Dr McAreavey: That is about to happen here if community planning goes through. Councils are charged with engaging with their communities through the reform of local government. There are certainly examples of cross-sectoral working through other partnerships in Northern Ireland, but also in England, Wales and Scotland, where strategic partnerships have come together and worked through strategic issues. We could provide more on that.

917. Mr Kinahan: I want to ask a little supplementary question. You said that we need someone with vision. Do you think that we need to have someone with vision in each council as well? I get the impression that we will need to have someone to direct matters from councils, given that we are to have local plans.

918. Dr McAreavey: Yes, we need someone to feed in to the chief planning officer. There needs to be strategic vision from the councils.

919. The Chairperson: Thank you very much. No doubt we will be in touch.

920. Gentlemen, we move on to the departmental briefing on the Planning Bill. I welcome Maggie Smith, Irene Kennedy, Angus Kerr, Peter Mullaney and Lois Jackson.

921. Maggie, you have heard all the research briefings. We have a series of questions to ask. We do not propose to go over all the questions that the research team at Queen's University put together, but you will have a chance to respond to them in writing. You have heard some of the key elements.

922. The Committee has been receiving more responses, and it is key that members take them all on board. We may consider breaking them down and writing to you for responses. I will open up the meeting to you so that you can give your presentation.

923. I have to nip out for a couple of minutes — I will be back soon — so while I am out, another member will take over the role of Chairperson.

924. Ms Maggie Smith (Department of the Environment): Thank you very much, Chairperson. The Committee asked us to look at the provisions of the Bill that remain to be discussed, and members should have a copy of our speaking note.

925. There are a number of remaining provisions. Irene will use the speaking note, which members have a copy of, to highlight those, and we have tried to include in that the issues that you raised at the previous meeting and that we said we would return to today. We have also given the Committee a table that includes some further provisions and gives a little summary of each. If members want to ask questions about those, we are more than happy to answer, but in view of the time constraint, we felt that that might be the most efficient way of giving you the information. If there are further questions, we will be happy to come back to answer those. We will do whatever suits the Committee.

926. I will ask Irene to go through the speaking note.

927. Ms Irene Kennedy (Department of the Environment): At our 13 January and 18 January presentations on the Planning Bill, we briefed the Committee on the new local development plan, development management, enforcement and community involvement provisions that are in the Bill. As Maggie outlined, today's presentation considers additional departmental oversight, audit and intervention powers. It also highlights any remaining new or significant amendments that will be brought forward by the Bill. As Maggie indicated, a list of other minor amendments is attached in members' papers. We propose to pick up on any other points that were raised at Tuesday's briefing.

928. I will begin by outlining the Department's new audit role, which is in Part 10 of the Bill at clauses 203 to 206.

929. Members appreciate that a key way to demonstrate the effectiveness and integrity of the planning system is through governance and performance management arrangements. The role of audit, inspection, performance management and monitoring will be critical in ensuring that planning functions are carried out, and are seen to be carried out, in a clear, fair and consistent manner and that best practice is applied across the new district councils. Those functions will also be important in providing a quality assurance service for the councils.

930. The Planning Service created its own audit team to examine the handling of planning applications, application of policy, development plan process and so on to identify areas where advice, guidance or clarification is needed to ensure best practice. As a unitary authority, the Planning Service did not need the audit or assessment functions to be legislatively based.

931. To enable audit and assessment work to continue in an effective and consistent way following the transfer of planning functions to councils, it is considered necessary to obtain the legislative cover through the Planning Bill. Those powers are planning specific and are in addition to other local government audit powers.

932. Part 10, therefore, will introduce new powers for the Department or other appointed persons to assess councils' performance in carrying out some or all their planning functions and to assess their decision-making on planning applications. Recommendations for improvement will be published. If a council does not implement the recommendations, the Department may issue a direction requiring it to do so.

933. As part of the Department's oversight role, it is proposed that a small number of functions transferring to councils will require confirmation by the Department before they take effect. That approach is in line with what happens in other jurisdictions.

934. A council may issue a completion notice under clause 63 requiring a development that has a time-bound permission and that has been commenced to be finished within a specified time. Such orders will require confirmation by the Department under clause 64. The Department will also be able to modify the notice if it thinks fit. In addition, the Department will retain the power at clause 65 to issue completion notices but only after consultation with the relevant council.

935. Council orders made under clause 67 revoking or modifying permissions require confirmation by the Department under clause 69 before they can take effect in cases where the proposed council order has been opposed. The Department will be able to modify the orders if required. The Department will also retain the power at clause 71 to revoke or modify planning permission but, again, only after consultation with the relevant council.



936. Likewise, discontinuance orders made by councils under clause 72 will have to be confirmed by the Department under powers made available by clause 73. Again, the Department will retain the power at clause 74 to issue discontinuance notices but only after consultation with the relevant council.

937. Safeguards have been built in to the provisions governing additional planning controls in Part 4 of the Bill. That Part provides the powers for specialist planning functions for buildings of special architectural or historic interest. Those are listed buildings, conservation areas, hazardous substances, tree preservation orders, review of old mineral permissions and control of advertisements.

938. The listing of buildings of special architectural or historic interest will remain a departmental function. However, the Department must consult with the appropriate council before compiling or amending any list. Councils will determine the vast majority of listed building consent applications and will be required to consult the Department and to notify it under clause 88, which deals with applications for listed building consent, thereby giving the Department the opportunity to call in, under clause 87, certain applications if it considers that appropriate. Furthermore, orders by councils to revoke or modify listed building consent under clause 97 will require confirmation by the Department under clause 98 before they can take effect.

939. Council orders to revoke or modify hazardous substances consent will also require departmental confirmation under clause 112. An additional requirement has been placed on councils to have regard to the advice of the Health and Safety Executive when determining applications for hazardous substances consent. It will be possible to require councils to delay granting hazardous substances consent in specified instances, such as cases where they are minded to grant consent against the advice of the Health and Safety Executive. That would give the Health and Safety Executive time to consider a request for a departmental call-in. The power to make the necessary regulations to enable that is in clause 108.

940. The Department will retain the power to discharge certain additional planning controls in the rare event that it should be required. Thus, the Department will still be able to modify or revoke listed building consent under clause 100, designate conservation areas under clause 103, apply tree preservation orders under clause 123 and create or revoke areas of special control for the display of advertisements under clause 129. There will, however, be a requirement for the Department to consult the relevant council before exercising those powers.

941. Finally, the Department will be able to call in certain applications from councils for its own determination if it considers that appropriate, although it is expected that such powers will be used sparingly. We discussed call-in powers for planning applications at the previous Committee meeting. Powers of call-in are also in the Bill at clause 87, which deals with listed building consent applications, clause 113, which deals with hazardous substances consent applications, and in paragraph 13 of schedule 2 and paragraph 10 of schedule 3, where reviews of old mineral permission are dealt with.

942. I will turn now to other provisions in the Bill that will add new powers or make significant amendments to existing powers. The powers relating to simplified planning zones, in clauses 33 to 38, will be largely unchanged. However, I shall take this opportunity to provide some details, because members have expressed interest in them. A simplified planning zone is a tool for stimulating and encouraging economic growth, investment and job creation. It achieves that by granting blanket planning permission for particular types of development, often industrial or commercial. Any conforming development proposed in the zone will not require a separate planning application, thereby ensuring speed and certainty for firms that wish to locate there. Clauses 33 to 38 will transfer the powers to make or alter a simplified planning zone to councils. Those powers can be modified when necessary to reflect the two-tiered planning system.

943. A statutory provision will be introduced at clause 66 to provide a simple and quick mechanism for allowing non-material amendments to be made to planning permission. Recent case law has been interpreted by many as restricting the potential for developers and planning authorities to agree even the most minor changes to a planning permission. The proposed change will ensure that there is a legal basis for doing so. The Department will be required to prescribe the form and manner of applications, as well as the notification and representation arrangements.

944. Councils will have to make planning applications in the same way as other applicants for planning permission. Clause 78 will enable councils to grant planning permission for their own development, for a development carried out jointly with another person and for a development that is to be carried out on council-owned land. Similar provisions will apply to listed buildings and hazardous substances consent applications, and that is dealt with at clauses 106 and 119.

945. If we move on to conservation areas, members may wish to note that clause 103 specifies that special attention be paid to the desirability of enhancing the character or appearance of a conservation area where there is an opportunity to do so. There may be instances where a development by a Crown body is of such public importance and urgency that the planning application needs to be determined more quickly than permitted by councils' processing procedures. Clause 209 will provide for the direct submission of such applications to the Department. Clause 210 will cover a similar procedure for urgent works to a listed building on Crown land.

946. On financial provisions, clause 219 will provide the Department with the powers that it needs to make regulations to allow fees and charges to be set for the various planning functions. The principal amendment here will be to extend fees and charges to take account of councils' actions. Clause 219(8)(b) will allow the Department to make the necessary regulations to give councils the ability to set their own fees. That said, the Minister's current intention is that DOE should set fees centrally for the first three years and then review the situation. New financial powers will be taken under clauses 222 and 223 to provide a measure of additional financial support to councils. Clause 222 will provide discretionary power to allow a statutory undertaker or another council to contribute to a council's costs in certain circumstances. Finally, clause 223 will allow Departments to contribute to a council's compensation costs in cases where the liability arises from planning decisions made on behalf of a particular Department.

947. A number of amendments are made to the legislation dealing with public inquiries and related clauses. Those amendments will be made under clauses 227 to 230. The amendments relating to existing provisions of articles 123A and 123B of the Planning (Northern Ireland) Order 1991 result mainly from the recent devolution of policing and justice powers to the Department of Justice. Clause 227 will continue the general rule that any inquiry or independent examination required to be held under the Bill must be held in public and that documentary evidence relating to it must be open to public inspection. However, it will provide an exception to that general rule in instances where certain categories of sensitive information are involved. In such cases, it will enable the Secretary of State or the Department of Justice to direct that access to that information be restricted. Clause 230 contains procedures for the certification by the Secretary of State or, in certain cases, the Department of Justice, of applications for planning permission or other consents or approvals, under what will be the Planning Act, where first, consideration may raise issues of national security or matters relating to the security of Crown or other properties and, where secondly, the public disclosure of that information would be contrary to the national or public interest.

948. Various other provisions of the Bill ensure that a public local inquiry will be held in circumstances where an application has been certified under that clause. Holding such an inquiry will enable a direction to be made under clause 227 restricting access to certain information at

that inquiry and could lead to the appointment of someone to represent the interests of any person who, as a result of the direction, is prevented from inspecting or hearing evidence to which the direction relates.

949. That completes the Department's briefing on the remaining new provisions in the Bill. We welcome any questions that members may have.

950. The Chairperson: Are you positive about that, Irene? Has the Minister agreed those minor amendments?

951. Ms I Kennedy: Yes, they are in the Bill as it stands. We thought that we would focus on the more significant elements.

952. The Chairperson: As I said at the outset, responses are now coming in and we are looking at them. We said that the consultation was on the principle. However, we are now down to the detail, and the key elements will be the subordinate legislation, the guidelines, the recommendations that will come from the Committee and any amendments. I want to touch on a few points about this morning's briefing. You have the paper from Queen's University and the Research and Library Services team and will be responding in writing to the questions. Obviously, we will have more questions.

953. We heard this morning about the power of well-being, which I know is also a governance issue. Could something about that be put into the Bill or into subordinate legislation, or, indeed, into policy or guidelines? We want to touch on the quality of the built environment. That subject keeps raising its head, especially where capacity building and placing resources are concerned.

954. Preparing the stakeholders is the other issue to consider. It is all about a change of mindset for everybody and about everybody being inclusive. We spoke at the previous meeting about active engagement, and that subject raised its head again today. I have to go in a couple of minutes, so Mr McGlone will take over. However, perhaps you could touch on those issues. Where would you like to start?

955. Ms Smith: We will start with the quality of the built environment. The researcher is correct in saying that the quality of the built environment is not mentioned in the Bill.

956. I go back to Mr Weir's point that not everything is necessarily a matter for the Bill; indeed, Mr McGlone mentioned the design guide. When talking about influencing the quality of the built environment, I should say that it is important to bear in mind that different people and councils will have different views about how they want the quality of their built environment to be. That is the sort of thing that councils would probably want to bring out through policy. They would also have the option of writing their own design guides if they wanted.

957. Departmental policies already relate to the quality of the built environment. I am thinking about general issues that we included in the planning policy statements (PPS) that refer to the building itself and how it sits in its context. Therefore, that policy framework is in place, and councils themselves would have the option to develop their ideas within that general policy framework.

958. The Chairperson: What about the other matters that I raised?

(The Deputy Chairperson [Mr McGlone] in the Chair)

959. Ms Smith: We talked at the previous meeting about the capacity building pilot studies that are being undertaken. We see those as being absolutely central to the building of capacity. The pilot studies will allow councillors, council employees, the Planning Service, staff and others who will be involved in the new system to work together to test out the arrangements. The studies will also allow those people to think about how they will work together and how the new powers will impact on the way that they operate in their daily lives. The studies will also allow them to develop an understanding of their new responsibilities and to practise the outworkings of those new responsibilities without having the powers devolved but to the extent that, by the time that the powers are transferred to councils, everyone who is involved will understand what they mean and how they will work together to implement them.

960. The plan is to start the first pilot studies very early in the new financial year, and by April 2012, there should be a pilot study at some stage of progress in every council area. Clearly, each of the new council structures will have its own culture and character. Therefore, there will be differences, and that will help one council to learn from another.

961. Those pilot studies are crucial. Alongside those studies, it is important that individual councillors and employees have opportunities for training and capacity building. The Department is in conversation with the Royal Institution of Chartered Surveyors (RICS), the Royal Town Planning Institute (RTPI) and the Northern Ireland Local Government Association (NILGA) about capacity building.

962. The Deputy Chairperson: Thank you, Maggie. Sustainability is a pretty big issue. I do not think that any Department can afford to ignore it or even to delegate it sideways.

963. Ms Smith: No.

964. The Deputy Chairperson: Could you put a bit more meat on the bones of that and how it relates to the Bill?

965. Ms Smith: Would you like us to talk about sustainability now or to finish answering the Chairperson's questions?

966. The Deputy Chairperson: I am sorry; I did not realise that you had a few more questions to answer.

967. Ms Smith: Would you like me to answer the Chairperson's questions first?

968. The Deputy Chairperson: Yes. Perhaps we had better park that matter until he comes back.

969. Ms Smith: Would you like us to talk about sustainability now?

970. The Deputy Chairperson: Yes, please.

971. Mr Angus Kerr (Department of the Environment): We have been asked to look at sustainability and to prepare comments on the requirements in the Bill for sustainable development. I will start with the context for the sustainable development duty. There is a general duty on all Northern Ireland Departments to contribute to the achievement of sustainable development. That was brought in by a piece of legislation from the Office of the First Minister and deputy First Minister (OFMDFM), namely, section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2006.

972. In addition, Northern Ireland has relatively recently published a sustainable development strategy entitled 'Everyone's Involved: Sustainable Development Strategy'. Along with the general duty on Departments, that was developed as a high-level enabling document designed to provide a framework that can support and inform decisions and actions taken by individuals, groups and organisations in progressing the sustainability agenda in Northern Ireland. That will apply, notwithstanding what is in the Bill.

973. The Deputy Chairperson: Therefore, are you reliant entirely on another Department to inform the Bill?

974. Mr Kerr: No. We are just saying that that is the context and that that strategy is there, so that duty exists. In the Bill, however, we are directly addressing that duty for planning. Therefore, it is like copper-fastening the duty that exists already in that other legislation.

975. Clause 1(2)(b) should ensure that the Department fulfils its role in exercising its function under planning:

"with the objective of contributing to the achievement of sustainable development."

976. Therefore, there is a duty in the Bill that will be on the Department after the transfer of functions. That means that all the planning functions that remain with the Department are, in a sense, caught by that clause. In carrying out that duty, the Department must also have regard to policies and guidance issued by the Office of the First Minister and deputy First Minister and the Department for Regional Development (DRD).

977. Similarly for councils, clause 5(1) requires any person who exercises any function with local development plans to do so:

"with the objective of contributing to the achievement of sustainable development".

978. That person must have regard to the policies and guidance when preparing their local development plan. That also applies to any independent examiner during the independent examination process. We believe that those requirements will ensure that all relevant authorities take sustainable development properly into account in the decision-making process and in the exercising of their planning functions.

979. Clauses 8 and 9 require councils to prepare to a sustainability appraisal to assess the environmental, social and economic effects of their local development plan. That appraisal should run throughout the development plan process and should assess the policies, provisions and proposals of the plan, as well as the extent to which they meet sustainable development objectives. Detailed guidance will be prepared for councils about what the form and content of sustainability appraisals should be.

980. The Deputy Chairperson: When is that detailed guidance likely to be issued? Is there a time frame for that?

981. Mr Kerr: It should be in place before councils take on that responsibility.

982. The Deputy Chairperson: I would hope so.

983. Mr Kerr: Work is ongoing in parallel with what we are doing on the Bill.

984. The Deputy Chairperson: Is sustainable development guidance, or whatever you call it, being prepared at the moment?

985. Mr Kerr: Yes, work on it is ongoing, but it is in its early stages.

986. The Deputy Chairperson: Does that mean that it is still in its infancy?

987. Mr Kerr: Yes. It is building on guidance that is in the other jurisdictions.

988. The Deputy Chairperson: Maggie, if I picked up your point correctly, you touched on design guides and the option of councils developing their own design guides. To my mind, that would create utter chaos, because people in one district council area would look down the road and ask why some people in another council area can get bay windows, hip roofs or whatever, yet, a couple of miles up the road, they cannot get them. Will you expand on that thematic aspect of design guides? What aspects of design guides is the Department thinking of individual councils having, and what leeway would they have to develop their own?

989. Ms Smith: The point that I was making, and perhaps I did not make it clearly enough, was that the detail of the quality of the built environment will come forward in policy. As you know, policies in the PPSs, for example, refer to the quality of a building in its setting and how it fits in with that. That policy framework would be there on a regional basis, that is, on a Northern Ireland-wide basis. Councils would then reflect that framework as policies in their development plans. If they wished, they would also have the option of producing design guides.

990. The Deputy Chairperson: Where does consistency, that old chestnut that pops up time and again, fit in?

991. Ms Smith: When the powers are transferred, councils will have the latitude in their development plans to expand or to put their own flavour on the policies that operate in their areas as they would wish to so that they can implement their plans. There will be differences between councils, because they will interpret things in different ways. They will have different priorities, and the communities in their respective districts will want different things reflected in the plan. Therefore, there will be some distinctiveness between the different plans.

992. Mr Kinahan: I am afraid that I have quite a few little questions arising from what you said. You said that the Department will have an oversight role. My concern is about speed. We do not want arguments between councils and the Department sitting for a long time. There needs to be something to make sure that decisions are taken and there is action. Will a mechanism with a time frame be put in place? I can see things sitting for ages if they do not agree.

993. My second question is about the power to revoke. If the Department holds the power to revoke, yet we are talking about the community having a say, has the council then got a chance to go back and talk to the community? It would seem strange that we listen to the community, develop a plan, come up with an idea, and the Department says "No, that does not fit in with our overall planning". There needs to be a way to go back to the community when there are no third party appeals. Will a mechanism be put in place for that?

994. My next question is about the Department/council relationship with regard to compensation. Again, I can see that getting bogged down, with a council saying that it is the Department's fault and the Department saying that is a council's fault. Again, that needs a time frame, or will an arbitration system be put in place?

995. Lastly, we have heard endless talk about legislation, guidance or policy. Can the Committee have a list of all the different things that we need to be sure of what is coming up behind or with the Bill, whether legislation, guidance or policy?

996. Ms Smith: I will answer the last point first. We sent to the Committee a long memorandum that sets out all the subordinate legislation that will be coming forward. It explains what a particular part of the primary legislation does, and then identifies what the subordinate legislation will be. We also gave the Committee a timetable that shows the rate at which we will be progressing the secondary legislation, and when we will be consulting on it.

997. Mr Kinahan: Have I just missed that or has it not got to us yet?

998. The Committee Clerk: It is in the master file.

999. Mr Kinahan: OK, thank you.

1000. Ms Smith: If you need more details we will be more than happy to provide those.

1001. The Deputy Chairperson: OK. Are there further issues with regard to those questions?

1002. Ms I Kennedy: Yes. The oversight powers will be used very sparingly and very rarely, looking at the experience of other jurisdictions, if we can find such experiences. The Department will intervene in only a handful of the types of cases that you mentioned. So, nothing in the Bill refers to time frames. However, these cases are so rare that you would not necessarily expect to see that. It is not a regular occurrence or process, so there is no need to put in those checks and balances. Such cases will be very rare and individual, and there will be discussion between the Department and a council about how best to take them forward.

1003. Mr Kinahan: So, you do not see an arbitration scheme as necessary.

1004. Ms I Kennedy: No, not at this point. These will be such rare and exceptional cases that it will not be necessary.

1005. Mr Kinahan: I hope that you are right.

1006. Ms Smith: In the way that the legislation is drafted, you can see how the Department can intervene. We refer to "directions". The councils will be carrying out their responsibilities under the Act once they have the powers. However, the safety net has to be there. We all need to recognise the possibility of such cases occurring. That is why the legislation refers to "directions" because if such issues arise the response will be to that particular case.

1007. The Deputy Chairperson: I was reading through some stuff from the Planning Appeals Commission. I am trying to get my head around where that might be the case. Say, for example, that the Department calls in an individual — a person, the agreed person or whatever they call it — to look at the call-in power. If there is any potential conflict with the Department doing that in circumstances where it could be — say, for example, that a person raised an issue and it was referred back for call-in powers, and the council may not have interpreted departmental policy correctly. Does the Department's appointing the person who will be looking into what is its own policy lead to a conflict of interest? I picked up on something in papers from the PAC last night that referred to that. I think that it was making a case for its absolute independence in such cases and in what circumstances there would be a need for the Department to appoint a body other than the PAC to look at such issues.

1008. Ms Smith: The Bill provides for the Department to appoint an independent person to carry out an independent inquiry. The purpose of that is to assist in situations in which a large volume of work needs to be done and the PAC does not have the resources to cope with it.

1009. The situation that I always think of is when the development plans start to come through. We will have 11 councils producing 11 development plans, albeit according to their own timetables. However, we expect those timetables to be roughly similar. It would be a terrible shame if we got to the stage when those plans were coming through for inquiry and we did not have the capacity to take them through that process. You would have to have a queuing system. This provision allows the possibility of appointing a properly qualified independent person to carry out that inquiry. That is not replacing the PAC. The PAC is there and it is clear in the Bill that its functions continue. It is a backup for the PAC.

1010. The Deputy Chairperson: The PAC's advice seems to be that the independent examiner may not be binding on the Minister.

1011. Ms Smith: That is correct.

1012. The Deputy Chairperson: Where does that leave us?

1013. Ms Smith: The PAC makes recommendations to the Minister.

1014. The Deputy Chairperson: So there is no change from the existing situation.

1015. Ms Smith: There is no change.

1016. Mr W Clarke: I want to touch on the pilot schemes and building capacity. What criteria will be used to decide what areas will have pilot schemes? I can clearly see that the areas that begin their pilot schemes later will be at a disadvantage. Why is the rationale not to set them up everywhere, why are you going for maybe one or two areas, and how will you decide on those areas?

1017. Ms Smith: The pilot projects are really for the benefit of the councils. There is an open invitation to councils to become involved. Preliminary conversations are going on with councils, but it is not our intention to hold back the development of pilot projects. We are willing to work with councils as they are ready to engage in pilot schemes.

1018. Mr W Clarke: So there is nothing holding councils back.

1019. Ms Smith: No.

1020. Mr W Clarke: Should there not be a directive from the Department to councils saying: "Set up your pilot schemes under the transitional committees, and start that work now", rather than waiting for people to come to the table?

1021. Ms Smith: We are talking to various councils that are interested in becoming involved in the pilot schemes at different stages during the year. It is a partnership.

1022. Mr W Clarke: But you know where I am coming from, Maggie. The Department should be telling councils quite clearly that they need to be setting up pilot schemes in their areas and be involved in them, rather than telling councils to come to the table when they are ready.

1023. Ms Smith: We are certainly encouraging councils to come forward.



1024. Mr W Clarke: Different councils and councillors have different views on planning. Planning for some councils means infrastructure, and for some councillors it is a couple of replacement dwellings in their townland. You need to bring those people to the table now. You cannot sit back. There will be a culture shock on councils. I declare an interest as a councillor. There will be a major shock to the system, and the sooner that that work is started the better.

1025. Bringing the community on board probably fits neatly into that. What measures and resources will be put in place for people from deprived backgrounds? Will that tie in, for example, with neighbourhood renewal? How will the Department ensure that those people have a voice? In my experience of the planning process, the articulate, the middle classes and the retired middle classes are competent with regard to planning and can make their voices heard. People from deprived backgrounds are reluctant or maybe have more pressing issues. What will the Department put in place for them?

1026. Mr Kerr: The statement of community involvement is maybe the key to that. That is a new provision that enables councils to address the issues of hard-to-reach groups. It will also contain the information that councils need about how to reach section 75 groups under their equality obligations. That is an opportunity that is not there at the moment for councils to say up front who it is appropriate to involve and how some of those groups are reached, and then to put down for everyone to see how they are inclusive and include the widest community possible so that those issues do not arise. It tends to be the same well-resourced people coming forward on lots of planning issues. Hopefully, when the local development plan comes forward it will have the widest possible consensus from all those groups.

1027. Mr W Clarke: I appreciate that. What I am getting at is whether resources will be provided to an organisation to take those views forward — the likes of Planning Aid? Will those resources be made available to those groups?

1028. Ms Smith: The statement of community involvement will be the statement of the individual council, and that council will set out in that statement how it will do its consultation. As part of that, the expectation will be that the council will detail how it will get to different sections of the community. It is the councils' responsibility to —

1029. Mr W Clarke: So the councils will have to get the resources.

1030. Ms Smith: Yes. It is councils' responsibility to engage with their own communities, and "community" is described in a very wide way. Certainly, section 75 underpins that whole process.

1031. Mr W Clarke: That has more implications for councils. We will raise that with NILGA and hear its response. Again, councils will require more financial resources to deliver that, but we will come back to that.

1032. Danny touched on the stuff about the Department intervening in tree preservation orders and suchlike. When or why will that happen? Is it because certain councils may not designate conservation areas, townscape character or tree preservation orders?

1033. Ms I Kennedy: Very rarely is a case made to the Department when a tree preservation order is needed in a particular area. Those powers provide for consultation with councils, so the Department will consult with a council in the first instance, and the council itself may well decide to place a tree preservation order on an area. This is just a failsafe — an additional reserved power, in line with other jurisdictions, for exceptional cases. We do not envisage those cases happening very often.

1034. Mr W Clarke: A point was made about examples of good practice elsewhere. The research people said there was major flaws in planning reform in England and Wales. Did the Department take that on board and looked at best practice there and in Europe? I think that the Chairperson spoke about that as well.

1035. Ms I Kennedy: Yes, we looked at how planning operates elsewhere. Planning has been evolving over many years and is one of those areas of policy that constantly changes, reflects and moves on. The Bill will set the framework now, but it will obviously be reviewed for many years to come.

1036. Mr W Clarke: I am not saying that England and Wales are the benchmark. There are good practice models throughout Europe, especially with regard to sustainable development and good planning, particularly in Austria and Germany.

1037. The Deputy Chairperson: There is one interesting aspect of the Bill, and maybe you can explain it to me. Clause 1(3) states that: "the Department must have regard to ... policies and guidance issued by ... the Department for Regional Development".

1038. The regional development strategy automatically springs to mind. However, clause 8(5) states that:

"In preparing a plan strategy, the council must take account of ... the regional development strategy".

1039. Will you explain the difference in the emphasis of the wording in that the Department "must have regard to, whereas a council "must take account of"? There has to be some reason for that nuance. When these things wind up judicially reviewed, those nuances can mean an awful lot.

1040. Mr Kerr: Absolutely. The reference in clause 1(3) is a duty in relation to the Department for the functions that the Department retains. The other is a duty on a council for what it needs to take into account when preparing its plan. They are slightly different because one is in relation to what the Department has to take account of when preparing PPSs or other policy and guidance, and the other is what councils take into account when preparing a local development plan.

1041. The Deputy Chairperson: The problem, Angus, is that the Bill does not say, as you just said, that the Department "takes it into account". It says "must have regard to", whereas it states that councils "must take account of". Those sorts of things can be challenged. Why are there two forms of wording rather than consistency of vocabulary, and what is the subsequent interpretation of that likely to lead to?

1042. Mr Kerr: The legal view is not definitive in these areas. We took legal advice on the differences between the general conformity of "have regard to" and "take account of". All the jurisdictions in these islands have slightly different approaches to that.

1043. The advice we were given was that "have regard to" and "take account of" are broadly similar. In our negotiations with the Department for Regional Development we discussed how the regional development strategy in particular should be taken into account by councils. The preference was that "must take account of" was slightly clearer about what was required with the regional development strategy. In other words, it put the onus on councils to demonstrate evidentially how they actively took the regional development strategy and other policy and guidance into account. The "have regard to" requirement does not convey that as clearly, although they are similar legally in terms of the requirement.

1044. The Deputy Chairperson: I am just puzzled as to why they are not similar wording.

1045. Mr Weir: I can understand, legally and logically, that "have regard to" and "take account of" are more or less the same thing. In light of what the Deputy Chairperson said, would it not make sense to use one or the other consistently? I understand that if you wanted to convey a slightly different meaning elsewhere, you might want to use a completely different phrase. However, you should simply use one of those phrases consistently. That seems to be a drafting issue.

1046. Ms Smith: We will be happy to suggest that to the Minister if you want that drafting changed.

(The Chairperson [Mr Boylan] in the Chair)

1047. Mr Weir: In your absence, a couple of points that you raised were not answered because you were out of the room.

1048. The Chairperson: Do you want to pick up on those, or do I need to repeat them?

1049. Ms Smith: We talked about the quality of building, capacity building, pilot schemes and the involvement of the RICS and RTPI. You also asked about stakeholders, and we touched on that a little. The statement of community involvement makes it very clear that the people who councils have to engage with are the people in the community. That is the broadly defined community that we talked about last time, not just the people who live in the area but the people who work and invest there. They all have an interest.

1050. This is not about a council communicating with only community groups or organisations. It is about a council communicating with its public. That is an important point. It is also worth saying, expanding that point slightly, that the vision that a council is engaging on with the public will, of course, be set out in the first plan document, which is the plan strategy.

1051. The Chairperson: What about that minor matter of resources?

1052. Ms Smith: Resources in terms of stakeholders?

1053. The Chairperson: No, resources in terms of capacity building and the whole lot. Obviously, that issue is raising its head. The likes of NILGA are responding today or tomorrow. We have given respondents until tomorrow to respond. We are going through this process but also trying to go through the responses. The issue of resources keeps raising its head, and we certainly need to look at that. Is there, as I mentioned earlier, an opportunity to review the whole process to see how it goes through the transitional period and rolls out? Will there be a mechanism checking to see how it is all going? Will that be built in?

1054. Ms Smith: The pilot projects were introduced to make the transfer and the transition as smooth as possible. We can work out before any powers transfer to the councils exactly how the arrangement will work for each council. It is about councillors, council employees, the people in the Department who will transfer to the councils, and everybody else who is involved working together to test the arrangements, come to a greater understanding of the arrangements and figure out how they will work together in a particular council area, so that when we come to the day when the powers transfer everybody will know and understand their roles.

1055. The Chairperson: So there will be a review.

1056. Ms Smith: No, I am talking about —

1057. The Chairperson: No, that is OK.

1058. Ms Smith: You asked about transition.

1059. The Chairperson: We will put in a recommendation.

1060. Mr Kinahan: Will there be guidance for councils on how to consult the public? As I said in the Chamber the other day, through master plans and everything else councils seem to have a set way of doing things. If that fails, they do not review it. I am concerned that we are not good at consulting people. We have to keep looking at new ways and new ideas.

1061. Mr Kerr: That is absolutely right. There will be guidance, and it should focus on best practice. To some extent, it is not necessarily the case that the Department has all the best practice. A lot of work that already goes on at council level is often put up to us as the proper way to consult.

1062. Mr Kinahan: You will keep reviewing that.

1063. Mr Kerr: Yes.

1064. Mr Weir: Presumably, if you are setting out guidance, in one phrase it should be guidance on consultation that makes a floor rather than a ceiling.

1065. Mr Kerr: Exactly.

1066. Ms Smith: Yes.

1067. Mr Kerr: There should be flexibility for local councils to consult in the way that they see as appropriate, rather than a one-size-fits-all for every council.

1068. The Chairperson: We are out of quorum again.

1069. Mr Weir: I think that Alastair will be back shortly.

1070. The Chairperson: I will have to put it to members when they come back in, but we have discussed the research paper and the questions that it raised. We will also have certain questions by the time we are finished with all the responses, and we will send those to the Department. We thank you for going through this part of the Bill. I think that Committee members are getting a better understanding of the legislation. Most of what we discussed over the four days has been the new elements of the Bill, and we need to discuss the existing elements.

1071. Thank you very much, and no doubt we will be calling you again.

1072. Ms Smith: Thank you, Chairperson, and the Committee members for the time that you have given to us. We will send you Angus's notes on sustainable development, because they were not in the pack that we sent last night. We will get back to you very quickly on the responses to the research questions. If there is anything else that we can do, we will be more than happy.

1073. The Chairperson: OK. Thank you very much.

## 26 January 2011

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

Witnesses:

Councillor Jack Beattie  
Councillor Arnold Hatch Northern Ireland Local Government Association  
Mr David McCammick  
Councillor John O’Kane  
Ms Catherine Blease Northern Ireland Housing Executive  
Ms Esther Christie  
Mrs Maire Campbell Planning Appeals Commission  
Mr Trevor Rue  
Ms Laverne Bell Quarry Products Association (Northern Ireland) Limited  
Ms Diana Thompson  
Mr David Worthington Royal Town Planning Institute  
Mr Ben Collins  
Liam Dornan  
Ms Diana Fitzsimmons Royal Institution of Chartered Surveyors  
Mr Bill Morrison

1074. The Chairperson: (Mr Boylan): Our first presentation is from the Local Government Association. I welcome David McCammick, chief executive of Antrim Borough Council; Councillor Jack Beattie; Councillor John O’Kane and Councillor Arnold Hatch. I have met you all before. I apologise for the fact that we are running late, what with the traffic and everything else. I will open it up to you, and then I will open it up to members for questions. Perhaps you can highlight the key points in your paper; that will leave more time for members to ask questions.

1075. Councillor Jack Beattie (Northern Ireland Local Government Association): We have it written down in some sort of order.

1076. Thank you for seeing us again. Each of us will present one or two key issues that we want to highlight from our written evidence. The comments on specific clauses are in our written response. We are happy to answer queries on those comments, but we have decided to present our strategic concerns.

1077. My first concern is timing. The Planning Bill is vital to local government and is another stage of a long policy development process. The Northern Ireland Local Government Association (NILGA) has facilitated local government to develop policy positions and responses since the beginning of the reform process and is keen that that process comes to satisfactory fruition. However, local government is deeply concerned by the time frame in which the Bill is expected to pass through the Assembly, and we need time to undertake a comprehensive and detailed study of the Bill.

1078. Many of the reforms that are proposed in the Bill may be good reforms, but the extreme time pressure is hampering our ability to properly scrutinise and examine the implications of the legislation. That increases the risk that large parts of the legislation will need to be amended in the early stages of the next Assembly. Local government would value the opportunity to go through the Bill in greater detail, but time has not permitted us to do that.

1079. We are consulting with the sector on how it wants to proceed, as the view has been expressed by many of our members and officers that the process of the Bill should be suspended until local government reform legislation can be introduced. Although it would be preferable to have a wider context in which to progress the Planning Bill, we realise that that may not be possible and that there is a very tight timescale. Local government does not believe that the legislation should be rushed and, if the Environment Committee shares that concern, proposes that, at the very least, a review mechanism should be built into the Bill as a safeguard.

1080. NILGA is meeting on Friday to assess the strength of feeling on a potential suspension of the legislative process until the local government reform legislation is introduced. Of course, we realise that such a delay could cause consistency issues between this Assembly and the next Assembly and would impact on the reform programme for both planning and local government. However, a wider discussion within the sector is needed before we can give you a definite view on the proposed approach.

1081. Councillor Arnold Hatch (Northern Ireland Local Government Association): Thank you for the opportunity to present this evidence today. I will concentrate on resources and capacity, because there is a big concern about how much this is going to cost.

1082. I want to highlight the principle of cost neutrality. In other words, the reforms should not cost the ratepayer any more money. The cost may be adjusted in terms of the regional rate and the district rate, but whatever that cost is, it will be coming off the regional rate and going on to the district rate so that, in total, it makes no difference to the ratepayer. That is the principle under which we have always operated: cost neutrality. We also need to build up the capacity of our members.

1083. One of the main concerns about the whole programme of local government planning reform is about ensuring that the cost is neutral to the ratepayer. We are not satisfied that sufficient funding will be provided or that the new fees system will be appropriate or adequate to cover the cost of the service, once transferred. The service will not be self-supporting through fees, because that would make fees far too high for people to operate.

1084. We are not sure that satisfactory work has taken place to estimate costs or to develop a business case. Fees, even if increased, will be insufficient to cover costs. We note that enforcement and local government planning will not be covered by fees and are left to wonder how those services will be paid for.

1085. Of additional concern are the proposals for compensation arrangements. Local government totally rejects clause 184(7), which leaves councils liable for bad decisions by the Department. That is reminiscent of the Northern Ireland Water situation and the gritting of footpaths; an attempt was made to put liability on councils. We reject that entirely. We feel that, if we do the job sufficiently well and within the rules and parameters, we should not be liable for bad decisions that may result from policies set by the Assembly.

1086. NILGA argues strongly that the transfer of this service should be cost neutral to the citizen. Although we would value discussions with the Department and the Committee as to how cost neutrality will be assessed, we are not sure that there will be an independent assessment of

those costs. That is because we have been trying since March 2009 to elicit good, reliable figures for costings from the Department and the Planning Service.

1087. We are also concerned about the potential implications of the Department of the Environment's (DOE) budget plans, given that £4.9 million of savings have been identified as coming from planning, in addition to the severe reduction in staffing that the Planning Service experienced this year. Local government would value an early conversation with senior departmental officials on the funding of planning. Much greater transparency is needed on the finances of the planning system. We need an evidence base as a matter of priority to ensure that we build a sustainable system.

1088. Preparation for the transfer of planning to councils needs to take place. As part of that, a huge capacity-building exercise is needed for elected members, officers who will transfer and existing local government officers to develop understanding and expertise in running the new system. At the very least, a training programme and scenario role-playing events are needed, and it is not known where funding will come from to facilitate that necessary aspect of transfer. We are aware that the Minister has suggested pilot programmes to start in April, but there is no detail on those as yet and there is substantial concern about the governance of such pilots.

1089. Councillor John O'Kane (Northern Ireland Local Government Association): Local government considers governance to be a key issue in ensuring confidence in the post-transfer planning system. There are two aspects to our concerns. First, there is the structural governance that will cover decision-making responsibilities, structures and accountability of officers and members, which involves things like the change from six district offices to five area offices, etc. The second aspect of concern is the behavioural governance, to cover a mandatory code of conduct, ethical standards and other safeguards. Incidentally, a mandatory code of conduct was to have been introduced by 2011. That, of course, did not happen, although some good work by engaging with policy development panel (PDP) A. An interesting part of that was that there was a section in it that was to deal with planning. That section is blank — it never happened. I can let members see that if they wish.

1090. NILGA cannot overemphasise the importance of the new governance policy to local government. As I said, the document on local government reform policy proposals is out for consultation at the moment. That deals with all the governance issues of the new councils. If and when they come into being, there will be a section specifically on planning. Therefore, we cannot overemphasise the importance of the new governance policy, and we are deeply concerned about how the proposed pilots will operate from March or April this year, in the absence of appropriate governance codes and legal protections.

1091. We are also concerned about the lack of clarity on the demarcation between the Department and the councils' responsibilities, and how issues such as the development planning system and staffing responsibilities will operate should councils agree to work in clusters. There has not been enough engagement on those issues between local government and the Department. NILGA would value engaging with the Department to develop regulations, guidance and protocols to ensure that consistency in approach across local government is achievable and operational from the date of transfer.

1092. We are unable to assume that such engagement will automatically take place, because all engagement with local government ceased when the strategic leadership board (SLB) ceased to meet in April 2010. The PDPs also ceased to operate from that date. We appreciate that there was meaningful engagement beforehand with departmental officials, but all of that has ceased.

1093. More clarity is needed on the Department's role post-transfer. It is very clear from this Bill that the Department will hold a great deal of power over councils and an ability to intervene in

some areas of work, even though councils will be financially responsible for the service. Again, engagement with the sector is necessary to obtain clarification on these issues of concern.

1094. We must ensure that the legislation strengthens democratic accountability and that councils are the driver within the new system. Some kind of check on departmental powers is required, particularly given the financial implications for councils. We ask the Committee to ensure that Planning Service determinations, rulings and their outcomes, and any associated liabilities, will be retained as the sole responsibility and liability of the Planning Service as a government department. We believe that that can be enshrined in legislation. It is worth noting that, in the handover from councils to the Planning Service in 1972-73, liability for incomplete planning determinations was passed on to the service.

1095. In conclusion, we welcome and look forward to the opportunities for place-shaping, etc that the return of planning powers to councils will give us, but we have a lot of concerns, particularly about the lack of meaningful engagement over the past year or so in the run-up to this. We think that the local government reorganisation Bill should have come before this Bill. That would include all the governance issues that I have raised.

1096. Mr David McCammick (Northern Ireland Local Government Association): I have been asked to speak on some of the implementation issues, and I will pull together some of the things that have been said.

1097. Local government is pragmatic and capable of implementation when provided with the relevant information and resources. That does not appear to be readily available for the Planning Service at the moment. We are responding in a partial vacuum, and, as a result, we may have more questions about planning than answers. We believe that development planning should be integrated with the local government reform, particularly the community planning provisions, but they will be provided for through separate proposed legislation — the reorganisation Bill, which is currently out for policy consultation.

1098. How do we deal with the queries about the integration and implications between the Bills, when the two key pieces have not been launched together? That is particularly important in respect of the governance issues, their arrangements and structures that Councillor O'Kane has just spoken about. Local government may have its own view on some structures, particularly delivery structures.

1099. I will talk a wee bit about communication on the development of this between the parties, and by parties I mean the sector and the Department. During communications about plans, facts and figures and so on, it helps to develop an understanding and confidence about what is planned. It is difficult to sustain confidence in the absence of that. For local government to confidently consider the implementation of a new planning regime, a number of things need to be dealt with initially, such as information about the old and new finance and funding models for the Planning Service. We are looking at that from a point of view of risk to the council.

1100. There are questions about human resources (HR). What is the staffing complement, the structures, skills, expertise, location, contractual entitlements and industrial relations issues? I could go on; HR is very complicated. What about IT hardware and software? What are the specifications and performance requirements, and what are the contractual considerations there? Clarity is required on those issues and others, including assets, office accommodation, contractual issues around which we have no information on, and generally speaking, liabilities.

1101. What are the transitional arrangements to move to this new regime? What is the time frame, and is there a transfer plan or a project plan for the new way of development? That is important when you remember that we are concerned about the current status of area planning



systems. Plans in council areas are at different stages; mine is in critical need of a plan, as it is way out of date. There needs to be some clarity about how existing plans will merge into the new planning regime, and how local policies are going to integrate into regional policy. The regional development strategy (RDS) has just been released for its 10-year review consultation, which is a material consideration.

1102. We are worried about the practicalities of introducing a stringent new regime into a system that is in serious arrears. We suggest that additional resources are put by the Department into the area planning team in the run-up to transfer to ensure that plans are moved on a bit, but we acknowledge the economic conditions that we are operating in.

1103. There are other issues, including developing the understanding and demarcation between the roles and responsibilities of councils and Departments, especially around the powers of intervention and scrutiny. There are other implications that have been mentioned in respect of the Planning Bill and the compensation requirements, and clarification on what that might mean for local government.

1104. As a council chief executive, I am required to produce an annual governance statement, supported by various papers and business plans, covering the affairs of the organisation at the time, including risks. I am unable to make an informed judgement about the implications of the transfer of planning to councils, due to the inadequacy of the relevant business information. A due diligence exercise is required, and for that I need information.

1105. In respect of capacity building, we do not have the skills and understanding required to deliver the service at the moment, which makes it difficult to design delivery arrangements suitable for councils. Therefore, regard must also be given to a new role for local government and council officers and the cultural implications of that.

1106. In conclusion, we welcome the proposals, but we need more time to get the sector to a position where there is sufficient confidence to take on and deliver an acceptable standard of service based on the new regime. With the right resources and arrangements designed in partnership between the sector and the Department, I am confident that local government can deliver a new, improved planning service. We are not familiar with the legislative process and how to set back the Bill, or whatever the proper term is, and we are not rejecting it. We simply want more time, and we want to consider it in the context of the reorganisation Bill.

1107. The Chairperson: OK. Thank you very much. On the Floor of the House, all parties agreed to take the Bill on board, and it has now come to the Committee. We have a process to go through, and we will report on it. Then the Bill will go to the Floor of the House, and it will be down to the parties what decisions can and will be made. Therefore, the Committee needs to take on as much information as possible to try to influence the outcome of the Bill. There is no doubt that there are some good parts to the Bill; it is clearly evident. However, from the responses that we have received, there are a lot of questions to be answered. NILGA and many other organisations have raised a number of issues.

1108. For clarification, we propose to take all the points on board, and we will ask the Department to respond before we make any decisions. As you know, there will be an opportunity through the clause-by-clause phase to change and ask questions.

1109. With regard to your presentation, I agree that timing is an issue, but there is a process to follow through. I will ask the Committee to support me in respect of a review, whether it is a two-year review or a transitional period or whatever. We will ask the Department to ensure that there is a review and to see how it will operate and how it will be implemented. I do not think

that members will have any issues or concerns about that, and I am sure that we will get support for that.

1110. You also mentioned the lack of communication in respect of the planning issue. Our understanding is that until the governance arrangements are in place, the Bill will not be implemented, which is fine. You said that we should have had the governance in place before the planning.

1111. There was a lot of good communication and a lot of work done with the strategic leadership board, but you said that it stopped in March or April. Is there anything that we can bring forward from those talks? Did you make any progress in relation to that in partnership, or has that all gone?

1112. Cllr Hatch: That evidence is still available and can be picked up on.

1113. The Chairperson: Are you going down the right route with that? Are you content with that?

1114. Cllr Hatch: Yes.

1115. The Chairperson: OK.

1116. Cllr Hatch: Would it be helpful if we sent that to the Committee?

1117. The Chairperson: It certainly would, but I know that, unfortunately, that part was exclusive of planning. There may have been some talk, but this process was clearly not talked about.

1118. Cllr Hatch: The principles are similar.

1119. The Chairperson: Yes, they are. There has been consultation, but that has been on the broad principles as opposed to the fine detail that we have today. You brought up the communication issue in your presentation.

1120. Cllr O'Kane: In the past, there were regular meetings. Now that the SLB is not meeting, the paths have ceased meeting, although the work and the evidence is still there and can be looked at again. There used to be regular meetings between the Department, for instance, and NILGA, which is the voice of local government. It is impossible to go around all the different councils. As far as I know, there used to be a regular quarterly meeting between NILGA, as the voice of local government, and the Department. That is when issues could be tabled. That has not happened. There may be some sort of ad hoc communications, but they are no substitute for regular structured meetings.

1121. The Chairperson: Like I said, we will ask the planning officials who are here about how that communication gap will be sorted out over the next period depending on what happens with the Bill. The message should be that communication is needed now, and the issues in the Bill need to be addressed.

1122. Resources and capacity building are major issues for us. All of the responses that we have had to date have highlighted that. As a former councillor, I agree that there needs to be capacity building in terms of councils and how they propose to go through all of that.

1123. David talked about the funding model, and the Committee has asked about that on a number of occasions. To be honest, and I will say this to the planning staff, even when we talked about budgets here, the money from planning receipts during the good period was certainly not pumped back into planning. It should not be regarded as being on planning receipts only. We would like to see a proper funding model for the delivery of planning. That needs to be done in tandem with local government.

1124. Cllr Hatch: Local government is not afraid to make its contribution and to utilise building control services and the regulatory side of council functions to get some sort of synergy when planning does come over. However, getting a properly agreed funding model on which there is clarity is of key importance.

1125. The Chairperson: You talked about cost neutrality.

1126. Cllr Beattie: Yes.

1127. The Chairperson: I am just picking up on points that were made. We will pass all of those points on.

1128. You also mentioned governance. We have talked to the Department about that when its officials have come up. Certainly, the local government reorganisation Bill will have to be moved forward, and hopefully that will happen in the next mandate. As I said, this will not be implemented, but there is a body of work to be done in this Bill to get that all ready to go.

1129. You highlighted the issue of the independent examination. David, you talked about local policies and development plans and even an element of community planning. There has to be a connection between this process and the governance process in statute to make sure that there is complete tie-in. With regard to the independent examination, where the plans go back to the Department and are sent to the Planning Appeals Commission (PAC) and then brought back again, have you any comments on that?

1130. Mr McCammick: I will get back to you on that, Chairman. I do not have all the papers on it with me.

1131. The Chairperson: No problem; you can come back to us on whatever we need you to.

1132. You mentioned the pilot schemes. The Committee is asking the Department about its proposals for the pilot schemes. Does NILGA have any indication about or information on those schemes?

1133. Cllr O'Kane: Absolutely not. At one stage away back, I think that three pilot schemes were in operation. I do not know whether those are the three that will come about. There have been so many changes since then, such as those in the Planning Service, and the three pilots were mooted about a year ago. I do not know what they are now or how they could run without governance arrangements.

1134. Cllr Hatch: That illustrates the lack of communication that exists. As an organisation, we should know where it is proposed the pilots will be run, how governance arrangements will be tackled and whether we will use the principles that are used for other governance issues. Those principles are fairly good, because they safeguard minorities and so on.

1135. The Chairperson: I totally agree, and obviously, the sooner we see that, the better. However, you made an interesting point when you said that, wherever those pilot schemes may

be rolled out, the issue is about governance. I know that planning officials are here, and the Committee will put that across to them.

1136. I will mention two other issues. You picked up on the hierarchy in development management here. We received a copy of a document that shows how the planning hierarchy is split into major, regional and minor development, but I do not think that you received that. Do you have any comments to make on that?

1137. Cllr Beattie: I have chaired NILGA for four or five years, and I know that changes take place in the Planning Service regularly. We go from dealing with one group of people, and another then comes in after them, and we are sort of on the outside. I think that we should have been on the inside, because, at the end of the day, we councillors will deliver all this. We have to know what money we have to deliver, what it is that we are delivering and how to resolve all the issues, such as those that the questions in our submission raise. I feel frustrated by sitting on the outside and by not being part of the process. In other words, things have been done to us instead of with us. I feel that that is a view that NILGA has held. It would like to have been more deeply involved. If NILGA had been involved earlier, some of these issues may have been addressed and may not have arisen at the last moment.

1138. Cllr Hatch: On the hierarchy issue, we have not had sufficient figures about the levels of staffing and so on, what their skills are and what it is proposed will be transferred. At my council meeting on Monday night, I received some figures that were produced by the Northern Ireland Public Service Alliance (NIPSA), not by the Department. Obviously, therefore, the figures are available, and it would help if they were made available to everybody.

1139. The Chairperson: Arnold, I think that you touched on enforcement. Are we saying that that should be in the model? Is it to be outside the model? Do councils have any views on that element?

1140. Cllr Hatch: We would like enforcement to be part of the model. However, the history to date has been that it has never been funded or implemented sufficiently well. That is an area that we need to consider so that we can make sure that it is properly resourced.

1141. The Chairperson: I think that you highlighted part of clause 184(7), which states of stop notices:

"Claims under this section shall be made to and paid by the council".

1142. Would you like to expand on or make any comments on that?

1143. Mr McCammick: The degree of risk that is involved for local government is a concern. Talking about something in theory is fine, but what will be the practical implications of all this coming home to roost, in a manner of speaking? There needs to be more information to support it.

1144. The Chairperson: As Chairperson, I thank you for your presentation. I will invite questions from other members. The Committee will seek answers from the Department to the many questions that you brought along. We will pass on those answers and liaise with you through the Committee staff, as we have in the past. That should not be a problem.

1145. Mr Kinahan: Thank you for your presentation. We have a mass of information to raise and follow up. However, my concern is that we are trying to implement this too fast. This is the first of five questions. Given that we went slowly and did not get anywhere with the RPA, do you

believe that we could do this better if we were to do the best that we can now and put in the structures that we had for the RPA, but condense it into a shorter time frame, such as six months? The bulk of the work would then go to the new Assembly. Is it manageable, and would we be doing it better if this were the first task of the next Assembly, assuming that the next Assembly, the Minister and the Department will want to take it through?

1146. We seem to be going round in circles about the resources. We all know that the way that it is coming at us means that we need more resources. Councils have a whole lot more to deal while they are dealing with this. From your end, is there any way that we could get a best guess of what it would cost, even if a few councils told us, so that we would have something to work with both ways? We will push the Department if we can one way, but we need some guidance from the other side

1147. You said that you thought that the review of public administration (RPA) or local government reorganisation should be in place first. That again pushes me back to my first question of whether we should wait until the reorganisation of councils was done. You mentioned liability and governance. As the Department seems to have a mass of power, do you have any suggestions as to what sort of checks should be put in place?

1148. Finally, do you have anything to add that we have not touched on already? Is there an extra mechanism that we should put in place with the strategic leadership boards (SLB) or policy development panels (PDP) if we were to try to do things quickly? I have asked a mass of questions, and I know that we could discuss the matter for ages.

1149. Cllr Beattie: We are happy with the Bill and do not want to lose it. As the Chairperson said, a review will be built into the process, which will please some of us. You referred to the fact that a council may give permission for something to go ahead, but the Department decides to put a stop to it. Who would pick up the bill for that decision? Would it be the council, or would it be the Department, because it had decided that the project in question should stop? Also, when the Department intervened, should it have done so earlier? There is also the matter of the power that the Department has over local government. All those things need to be looked at in more detail.

1150. Mr McCammick: The cost issue is difficult, and we have been asking for information on it for a couple of years. To some extent, it is not helped by the fact that local government and central government account for things differently. I have experienced some of that, as my council is looking at the possibility of a business plan for planning because we are so badly out of date. However, that is only part of the formula. We are looking at ways of bringing forward part of the new regime, although not all of it. We need information from certain services.

1151. Cllr Hatch: Where introducing parts of it now is concerned, I presume that there would be some form of consultation as to what you were proposing to put through now and that it would be left for further clarification, development and engagement when the new Assembly is set up. My gut feeling is that that would probably be wiser.

1152. May I be excused? I have a bus to catch.

1153. The Chairperson: It is good to see that you are using public transport.

1154. Cllr O'Kane: The RPA was dragged out — very much so — although a lot of good work was done. Of course, as everyone says, the devil is in the detail, and, to prevent problems from arising in the future, you must get the details right and not rush things. However, we all have a tendency to take things to the ultimate and then debate and deliberate and so on.

1155. There needs to be some mechanism for debating these issues. At the moment, there is no partnership between central and local government. Without being offensive to anyone, the partnership is a bit like that between Fianna Fáil and the Green Party, where the communication was absolutely nil and was done through the media. That is the type of communication that we have.

1156. I do not know what the mechanism would be. There could be reluctance to set it. The SLB and its predecessor, which was a policy panel whose name I forget, was a useful interface, and many proposals came forward from those panels. When people got down to teasing the proposals out, changes were made, and that delayed the process. The process was probably dragged out because of uncertainty about the local government reorganisation Bill and the boundaries, etc, and inertia set in.

1157. There needs to be an interface between local government and central government. Along with dealing with all the governance issues, the PDP was to be a central/local government partnership forum. That was one of the last things that never got done, because everything stopped. It was envisaged that Departments would meet with representatives from local government on a need-to basis every quarter. In Wales, Departments meet on a statutory basis with local councils every so often. I think that that happens in Scotland, but I am not sure about England.

1158. A lot of good work was done, and a lot of it can be picked up again. For instance, there was a lot of detail in the mandatory code of conduct, and the Department suggested proposals to that. When we got our teeth into it, quite a lot of things were amended. There used to be a quarterly interface between NILGA and the Department, which seems to have ceased, but I stand to be corrected. I am not a member of NILGA's officers group, but I think that that may be a starting point for exploring the issue. If it is going to be a partnership, there must be engagement. That is what we are looking for.

1159. I pay tribute to the departmental officials who serviced those PDPs. Two members from each political party were also on the panel, and we spent some time deliberating all those issues, including the code of conduct and council constitutions. However, planning was the issue that we never got our teeth into. That section on that was blank, but we got some papers from the Convention of Scottish Local Authorities (COSLA) about what should be in it.

1160. The Chairperson: I do not think that we will follow the Fianna Fáil/Green Party model, to be honest with you. I think that it is time to move on from that. I did not think that that would be mentioned in this Committee.

1161. Cllr O'Kane: Every council, even under the new regime here, will have to have a code of conduct, which the Department may set. In Scotland and England, councils devised their own template for a code of conduct for planning, and I know that COSLA did the same.

1162. The English model is very bureaucratic, and we do not envisage adopting it. The COSLA model has been in place for several years, but it has been regularly amended. Therefore, there are obviously teething problems with those models.

1163. The Chairperson: There definitely are. However, we will get the right model in the end.

1164. Cllr O'Kane: People will have to be educated. For example, in the new dispensation, how will planning agents approach councillors? How will the public approach councillors? How will councillors respond if a planning agent or a member of the public comes to them? For instance, if somebody said something about the incinerator in Glenavy, and a decision had to be made on it, that person would have to absent themselves. The English have a ridiculous situation whereby

if one person lived in a row of terraced houses and a second person at the end of the street applied for an extension, the first person would have to exclude themselves because giving the other party a decision might be an advantage to the first.

1165. The Chairperson: We can argue about the issue all day. Governance and reorganisation are key elements of the issue, but we will stick to the Planning Bill for now.

1166. Mr W Clarke: Thank you for your presentation. I declare an interest as a local councillor in Down District Council.

1167. This system will obviously be a major culture shock to a lot of people and different organisations, including councillors and the Department. There are lessons to be learned about planning reform from England and Wales, as well as from the South. Have you engaged with your equivalents about their experiences, how they have coped and what they would do differently?

1168. I agree with what you said about partnership and communication. I have gone through a number of Bills now, and I can see that, in this instance, partnership and communication are not good enough. This is not a criticism of the Department, but I think that there needs to be an equal footing whereby both parties can sit down at an early stage and work through the process. They could even do that on a fortnightly basis. That sort of relationship needs to be built up. Coming to this Bill was a culture shock to the Committee in trying to get our heads around what we are trying to deal with. Therefore, I think that lessons need to be learned. People need to sit down regularly to work through all this. It is as though we legislate and you then do what we tell you. That is not going to work; we need to come together. Therefore, we need to tell the Department that that must happen.

1169. A lot of work on capacity building training for our councillors needs to be done. Councils are very weak on training for councillors. I will not go into my personal experiences, but I know that any time that someone tried to do a training course, they were refused because of cost or some other reason. That is a serious issue that NILGA needs to examine.

1170. I also asked the Department about the pilot schemes. We need to manage that change. We need to get all the agencies round the table, and we need the resources to do that. That has to happen in all areas, not just in three. There is no way that some councils can be discriminated against and left behind in the process.

1171. We have been told that councils had to come forward to the Department and declare that they wanted to do a pilot scheme, either through the transitional committee or through a cluster. The onus was on the councils to come forward and say that they wanted to take part. That was the first I had heard of that, and I am a councillor, so I was a bit alarmed. In reality, we need to sit down and work through this for a couple of years.

1172. The other issue is that of third-party appeals. What is the membership's opinion about that? It is obviously pretty divided.

1173. Cllr O'Kane: There is no settled view as yet. That is a contentious issue, and there are difficulties about it even within parties. It could become a begrudgers' charter as opposed to being a protection for the community. That is an issue that NILGA has not had time to discuss yet, but I envisage that we will be discussing it on Friday. Jack knows more about it, because he is on the planning committee. I envisage that it will be carefully considered. I do not know what the actual decision will be. There are pros and cons to the matter.

1174. Cllr Beattie: There has been consultation with others. We went across to Scotland and saw the model operating there. For example, there was a guy who wanted to build a golf club, and there was an issue when a councillor went along to meet him at some sort of presentation but was debarred from whatever else happened. That shows that the code of conduct is very strict.

1175. Third-party appeals are a contentious issue. I believe that you have to take on board third-party concerns, but, at the same time, they can be an impediment to good decisions going forward that need to do so quickly. Trying to strike that balance is very difficult. As I said, we have looked at what is going on elsewhere. England and the model that is used there were mentioned. However, the English model is a wee bit too restrictive. The problem is trying to get something that can work.

1176. There are questions about the process. Where communication is concerned, I would have liked to have seen the Department working with us along the way, but, for different reasons in the Department, that did not happen. For example, the Department was not expecting the downturn in the economy. It wanted us to take on around 300 staff in local government, which we could not have done. Problems occurred that were beyond our control, but, nevertheless, I think that we should have been consulted more often. We are still consulting with the Department; we have a meeting with Ian Maye on 2 February, so I think that perhaps now we are getting down to the nitty-gritty. However, I would have been happier if we could have done that earlier.

1177. Mr W Clarke: What is NILGA's position on the pilot schemes? Is it calling for councils to come forward to get involved in the pilot schemes?

1178. Mr McCammick: I understand that the Minister called for volunteers when he made his announcement just before Christmas. The timing in trying to deal with this has not been brilliant. There are so many aspects to it, and I understand there has been no joined-up conversation about which councils the pilot schemes could or should be run in. A call for volunteers was made, and, at this point in time, I am not aware that any hands were put up. However, I am sure that some will.

1179. Mr W Clarke: It is important that all councils are involved in the pilot schemes, even if there is just a representative group. A pilot scheme is no good to me, to tell you the truth, because there is so much work to be done that I am afraid that we will sleepwalk into it.

1180. Cllr O'Kane: Back when pilot schemes were first mentioned, the problem was that the Planning Service would not have had the capacity to service a lot of them.

1181. Mr Ross: I would point out that, if the scheme were rolled out everywhere, it would not be a pilot.

1182. Mr W Clarke: No, we could have them in clusters.

1183. Mr Ross: If it were everywhere, it would not be a pilot.

1184. Mr W Clarke: If we had big enough pilot schemes, we could have three that could be clustered.

1185. Mr McCammick: In calling for three or four councils to volunteer to run the pilot schemes from April this year, I understand that the Minister had a notion to roll it out across all councils by April 2012. The Minister wants to try to do it quite quickly and to tease out what problems



there may be in managing the new system. However, as I said, I am not aware of any volunteers.

1186. Mr W Clarke: I want to make a point about capacity training for councillors. In my opinion, a training course for councillors must be set up now for community planning and planning responsibilities.

1187. Cllr O'Kane: Community planning is a huge issue, and different people have differing definitions of what it is. The expectations that everybody, including councillors, has of community planning are away up there somewhere. The requirement to engage with the community is also a serious issue that has to be addressed.

1188. The Chairperson: I know that, and we will. I am mindful of the time and that we are going over issues that we have talked about already. We will ask the Department about the pilot schemes. There have to be clear pilot schemes, but the key to all that is the review period and how that is rolled out.

1189. Mr Savage: Thanks for your presentation, gentlemen. All the delegations that I have heard present evidence to the Committee have welcomed the proposals. I am speaking now as a councillor on Craigavon Borough Council. When I joined the council, all the councillors were looking for more power. Now that power is within our grasp, we have to realise one thing, which is that with power comes responsibility.

1190. I can understand the position that you are in, Mr McCammick. At present, councillors can shirk their planning responsibility and leave it to the planners. That responsibility will now rest with the councillors, and, ultimately, it will rebound back on to chief executives such as yourselves. You are quite right to be concerned about that.

1191. However, I will come back to Mr O'Kane's point. You said that there has been a breakdown in communication over the past months, or for however long. You also said that there used to be quarterly meetings, so if there has been that breakdown in communication, the stage has been reached where quarterly meetings are not much use. There would need to be monthly meetings so that everybody can keep up to speed with what is going on. I think that time is important in all this.

1192. When we listen to all that is being said about the Bill, which is only one aspect of local government reorganisation, we see why it has not taken place. I think that it is because so many people have been shirking their responsibilities. Whoever is in place after the next elections will have a responsibility, and the code of conduct will have to be adhered to. Training may be involved in the process.

1193. There will be a big responsibility on whoever is going to be elected. If we look to give more power to local government, we cannot shirk those responsibilities. We have to face up to them. I do not envy you your job, Mr McCammick.

1194. Cllr Beattie: I agree. I know that that is the case, and I said at a meeting in Craigavon that we are now in the driving seat. However, the question is about what we are driving. If I can get that sorted out, we will know exactly where we are, including with the code of conduct and everything else.

1195. The Chairperson: It is a big job and a big undertaking, but you are up for it.

1196. Mr B Wilson: I declare an interest as a member of NILGA and as a councillor for North Down. I am interested in how the council will deal with the planning applications. A lot of applications will be decided by the planning officer, and a percentage will come to the council. What percentage will be determined automatically by the planning officer?

1197. When applications come to the council, will a specific committee be set up to deal with planning, or will the full council be involved? If the full council will be involved, councillors will perhaps be unable to get involved in campaigns against planning applications.

1198. The Chairperson: Excuse me, Mr Wilson, I will just interrupt you. As Councillor O'Kane outlined, influence means that a corporate council cannot be involved. If the application is for somewhere in your area, for example, you would have to step out of that decision-making process.

1199. Cllr O'Kane: You are talking about the new arrangement. At present, planning officers deal with non-contentious planning applications in the streamlined system. That is working, and an increasing number of planning applications are going through that system. When the Bill comes in, councils will be required to introduce a scheme of delegation. In other words, they will delegate powers to planning officers, or a streamlined planning committee could deal with planning applications. That planning officer or streamlined committee with delegated powers will be able to make decisions, and they will not have to go back through the council's body corporate.

1200. Every council will have to have a standards committee to protect people against abuses. If there are complaints, every council will be required to have a standards committee and a monitoring officer. However, there is an issue about whether every council can afford to have a monitoring officer. Complaints will then be assessed and dealt with.

1201. Mr B Wilson: Will the streamlined procedure take 80% of the applications, or will it take 20%?

1202. Cllr O'Kane: I am not sure how many it will take, but it is taking an increasing number, and it is working very effectively.

1203. The Chairperson: I am mindful of the question, but we are getting into the specifics of the Bill. The issue is that councils, like everybody else, will have to adhere to planning policy statements (PPS), area plans and the regional development strategy. That is all in the criteria. I do not mind the question being asked, but I do not want to get into the specifics, because there is no way that any council can tell whether it is taking 80% or 60%.

1204. There is going to be a formula, and you mentioned the schemes of delegation. If you see anything in that that we need to amend, or if you have any questions about it, we will need to clarify the issues from the Department's point of view. If you are not happy with it, we will need to look at amending it.

1205. I want to reiterate your earlier point, Councillor O'Kane. It is a valid point about whether councillors can influence decisions. The public will ask who they are voting in and why.

1206. Cllr O'Kane: They will ask what is going on.

1207. The Chairperson: Exactly. To move it up a further stage, it is the same as MLAs also being councillors. They are up here making regulations and decisions, and then they are up and down to councils. However, we will not get into that argument today.

1208. Thank you for your presentations, gentlemen. No doubt we will be in contact with you.

1209. Cllr Beattie: Thank you for listening to us. We have a meeting on Friday, and we will forward some of the outcomes from that to you.

1210. The Chairperson: Thank you.

1211. We will now receive oral evidence from the NI Housing Executive. I welcome Esther Christie, who is the assistant director of corporate planning in the Northern Ireland Housing Executive, and Catherine Blease. You are both very welcome. The procedure is that you make a presentation, after which I will invite members to ask questions.

1212. Ms Esther Christie (Northern Ireland Housing Executive): I have copies of my presentation if you would like us to hand them out.

1213. The Chairperson: If you have enough copies, please send them around.

1214. Ms Christie: It is a slightly more condensed version of our submission, which might be helpful.

1215. Thank you very much for the invitation to give the Housing Executive's response to the Planning Bill. There are detailed comments and summarised recommendations on the Planning Bill in our handout. In view of the time constraint, if you do not mind, I will try to focus on our nine recommendations, which are listed in the handout. If I have any further time at the end, I may come back to some of the supporting comments, if that is alright with you.

1216. The Housing Executive is generally content with the majority of the proposals in the Planning Bill. Our comments relate to Part 1 of the Bill, which deals with functions of the Department of the Environment with respect to the development of land; Part 2, which deals with local development plans; and Parts 3 and 4.

1217. In the handout, you will see an outline of the Housing Executive's role as the strategic housing authority and as a key stakeholder in all levels of the planning system in Northern Ireland. The Housing Executive looks forward to developing a close working relationship with the new planning authority in Northern Ireland, particularly in the areas of community planning, local development plans and planning application matters.

1218. In general, we are content with Part 1. We offer supporting comments on Part 1 in the handout; I do not intend to dwell on those now.

1219. Our first recommendation relates to Part 2, which deals with local development plans. The Housing Executive would like clarification on clause 6(3). That clause states that, where there is a conflict between two plan policies within one development plan, the previous adopted plan should be referred to for the resolution. That may not be appropriate; it may be preferable to defer to the Department to resolve any conflicting matters. We have some details of that in our submission, which I can return to if you would like.

1220. The second recommendation on Part 2 is on clause 8(5), which we would like to see amended. That clause states that the council must take account of the RDS when preparing the plan strategy. Our view is that it would be preferable to retain the requirement for development plans to be in general conformity with the RDS.

1221. Clauses 13 and 14 legislate for the council to review and revise local plans at such time as the Department describes or when the council deems necessary. Our third recommendation is that a standard time frame for the lifespan of a development plan and plan review would be preferable, particularly to stakeholders, who should then be expected to engage in the development plan revision process.

1222. Fourthly, the Planning Bill does not seem to require a statutory link between the community plan and the development plan. In England and Wales, according to the Planning and Compulsory Purchase Act 2004, there is a duty that the:

“planning authority must have regard to— ...

(f) the community strategy prepared by the authority”.

1223. The Housing Executive supports the inclusion of such a clause in the Planning Bill, to ensure that any community strategies are closely tied-in to the development plan process.

1224. Moving on to Part 3 of the Bill, which is about planning control, our fifth recommendation is around clause 24(2), which states:

“Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used”.

1225. The Housing Executive’s view is that that clause is widely open to interpretation, and we feel that further clarification is required.

1226. Our sixth recommendation is that we feel a definition and further details of what constitutes local and major developments should be set out in regional policy, possibly in the review of PPS 1. The Housing Executive would like to highlight that an agreement was made with the Planning Service that planning applications for social housing would be defined as major developments, and would, therefore, have pre-application discussion and performance agreements, which would apply to all social housing applications. We would like the Department to confirm that that agreement is still in place and will be addressed in secondary legislation and policy guidance.

1227. Our seventh recommendation relates to clause 58, which states that an applicant may appeal a planning decision if their application for planning permission is refused or to remove a planning condition. The Housing Executive feels that clause 58 should revisit the potential for third-party appeals to be introduced, as was pointed out in the reform of the planning system report.

1228. Our eighth recommendation relates to clause 60(1), which states that, where planning permission has been granted, development must be started within five years of the date on which permission was granted, or another period that may be longer or shorter, as specified by the council or the Department. The Housing Executive is concerned that any longer duration of planning permission may encourage land banking, which could lead to a shortage of development in the future as well as price inflation. It could also result in a lack of revenue for planning authorities if timescales for planning applications are too long and drawn out.

1229. Our final recommendation relates to the fact that the Planning Bill is silent on developer contributions. In the ‘Reform of the Planning System in Northern Ireland’ report, the Department

argued that it is right that developers contribute to the provision of infrastructure. We feel that the Planning Bill should revisit that particular aspect.

1230. That concludes our recommendations. If I have the time, I could go over some of the supporting comments.

1231. The Chairperson: Go ahead.

1232. Ms Christie: Thank you very much.

1233. I return to Part 1, which refers to the functions of the Department of the Environment. The Housing Executive supports clause 1, which states that the Department will retain responsibility for formulating planning policy, which should be in general conformity with the RDS. We also support the idea that all planning policy should contribute to the achievement of sustainable development. Secondly, the Housing Executive supports clause 2, which requires the Department to prepare a statement of community involvement.

1234. With regard to Part 2, which deals with local development plans, the Housing Executive supports clauses 4 and 5, which require a council to prepare a statement of community involvement when preparing development plans. The Housing Executive welcomes the fact that the development plan should contain two parts: a plan strategy and a local policies plan. Together, clauses 6, 8 and 9 state that the plan strategy should be adopted before the local policies plan is prepared.

1235. The Housing Executive welcomes clause 17, which facilitates the joint working of two or more councils on a joint development plan. It also welcomes legislation supporting the Department's monitoring, production, examination and review of development plans, which would ensure consistency in approach across all council areas.

1236. Finally, the Housing Executive supports clauses 46 to 49, which provide powers to decline to determine applications. A planning authority would be able to send back applications that are, in essence, duplicate, as there are no significant changes to material consideration. We feel that that is a very good efficiency measure that should facilitate the delivery of more efficient working practices for the planning authority and consultees.

1237. That concludes my presentation, which I hope was helpful.

1238. The Chairperson: Thank you for your presentation. You have raised a lot of questions, and we may be asking the Department more questions. However, I want to go over one or two of your points. You have clarified your first recommendation, which relates to clause 6(3).

1239. You referred to land banking, which has been a problem. Given the current economic situation, people have come to the Committee and asked about single houses as opposed to what you are talking about. Do we need to narrow down the type of development to stop the process of land banking, or are we looking at a front-loading system where everyone is involved and, hopefully, we will have community involvement?

1240. Ms Christie: The Housing Executive is looking at it from the perspective of supply and demand at a general level. We encountered an enormous problem before the market crash when land was in scarce supply. That meant that prices were very inflated, and that pushed the cost of developing social housing in particular, which is our main concern, through the roof. If the duration of planning permissions were to be widely extended beyond the five years, there could be an opportunity to lose control over the land supply issue. At least it is one measure that local

planning authorities could enact to ensure that there is an adequate supply of land in their local area. We ask the Committee and the DOE to look seriously at that matter again.

1241. The Chairperson: For clarification, am I right in thinking that the identified need for housing will play a big role in that?

1242. Ms Christie: Yes. Under its statutory remit, the Housing Executive is there to assess housing need, and it carries out that function. The Planning Service and the new planning authority will be there to identify sufficient supply of development land. The difficulty arises when it does not have any control over the supply of land that exceeds a reasonable statutory period of approval, and land banking, thereby, takes place. A scarcity of land in any council area will impact on the ability to supply much-needed social housing in particular, which is our main concern, and we ask the Department to look seriously at that issue again.

1243. The Chairperson: Thanks for bringing up that point. I am trying to pick up points that have not been addressed by other respondents. The land banking issue certainly needs to be looked at. A lot of people are now offering their land for social housing, which may be a sign of the market conditions, but it is something to think about.

1244. I want to talk about your recommendation concerning the link between the community plan and the development plan. We talked earlier about reorganisation and governance and the whole tie-in. That needs to be in statute or tied-in in some way.

1245. Ms Christie: Absolutely. We thought that it was very interesting that the Planning Bill did not have specific reference to that, unlike the English and Welsh example. There may be an opportunity for the Department to look at that again to see whether there could be some sort of linkage there. That is our fourth recommendation.

1246. The Chairperson: That is a valid point. In respect of recommendation six, obviously PPS 1 will change. Will you expand on that?

1247. Ms Christie: Our particular interest is in ensuring that social housing is defined as major development in the regional policy plan guidance. That is very important because we have a protocol with the Planning Service whereby there are pre-application discussions for all social housing scheme applications. We feel that that is extremely helpful because it ensures that a planning application is right the first time, and it saves time at the end of the process.

1248. We would like an assurance that social housing will be a major development category that will be taken forward in secondary legislation and policy guidance. We would like the Department to reassure us that that will happen. A number of social housing schemes are in the size threshold below that set for major planning developments as outlined in the reform of the planning system report of July 2009. It is imperative that the protocol that we have with the Planning Service in respect of pre-application discussions for social housing schemes continues into the future.

1249. The Chairperson: Funnily enough, I think that yours is the first response that I have read that mentions performance agreements, which is an issue that needs to be looked at. However, I want to talk about pre-application discussions. The Planning Service can direct applicants, but it cannot say one way or another in those discussions whether someone is going down the route of an approval. Some people have told me that they have had those discussions, but they were only discussions. In your experience, is there any way that we can open that up a bit more?

1250. Ms Christie: We looked at the pre-application discussions as focusing in on the planning application and giving an indication as to whether an application needed to be improved in its

design or form or whether there were access issues that needed to be addressed. That allows the detailed planning application to be improved and enables the planning officer to have all the relevant material to handle the application once it is formally submitted to them. It is an efficiency measure because it saves the planner time, and there is less toing and froing between the applicant and the planning officer. We have found that social housing schemes, even if they are small, are never easy. Therefore, anything that saves time for the planning authority and for us is definitely to be welcomed.

1251. The Chairperson: Do you want to expand a bit on the performance agreements? What do you see in them? Where do you think that they should go?

1252. Ms Christie: Performance agreements are extremely important. Resource planning is certainly going to be a critical issue for the planning authorities. The pre-application discussion and performance agreements help to project-manage the entire workload. Therefore, planning applications that fit the category and are permitted to have pre-application discussions and performance agreements are going to fare best, I would think. I certainly think that pre-application discussions and performance agreements are a fundamental part of the resource management of the new planning authorities.

1253. The Chairperson: Clause 10 deals with independent examination. How does that fit with your social housing proposals, that the decision on the development of land use should go back to council?

1254. Ms Christie: In the development plans?

1255. The Chairperson: Yes. It is OK having a pre-application discussion, but, ultimately, if we are trying to include everybody, it will come back to the council. Will you expand on how you see that?

1256. Ms Christie: In the development control framework we are seeking agreement that when a planning application is made for a social housing scheme, it will conform to the major scheme category. That would mean that it is facilitated by pre-application discussions, in order for the planning application to be of the right standard to enable the planning authority to make a decision on it, whether that is approval or refusal. All of the right elements should be in the planning application to enable an appropriate decision to be made on a social housing scheme. Therefore, it may well be that a better planning application goes through to the council from the planning officers with a suitable recommendation; either approval or refusal. We see it within the resource management stream in the development control side.

1257. The Chairperson: I have one final point. You spoke about developer contributions, and in some of the responses and presentations there has been some discussion about a community infrastructure levy.

1258. Ms Christie: The 'Reform of the Planning System in Northern Ireland' report from July 2009 looked at developer contributions. The Department put forward the argument that it was right for developers to contribute to the provision of infrastructure, and it put forward two options. One was the community infrastructure levy, and the other was taking an article 40 planning agreement process through. The Housing Executive is on record as preferring the latter, as we feel that it is a more direct link to a social housing scheme and that it would be more in line with section 106 in England.

1259. The Chairperson: I want to talk to you about the whole idea of the planning policy statements, the area plans and the regional development strategy. I know that there is another planning policy statement on its way — PPS 22 — which will have an element of social housing.

1260. Ms Christie: Draft PPS 22, as we understand, deals with developer contributions and is being prepared at the moment.

1261. The Chairperson: So, we are going to have a series of planning policy statements.

1262. Mr W Clarke: Thank you for your presentation. The Chairperson has touched on most of the points that I wanted to raise. You mentioned article 40 in relation to community infrastructure provision; will you expand on that?

1263. Ms Christie: An article 40 planning agreement is a legal document drawn up between a developer and the planning authority that specifies what measures should be contained within the development. It is stronger than a planning condition because it is legally enforceable. That is what attracts the Housing Executive to that particular measure. It can be specifically directed to the provision of social or affordable housing. It would be equivalent to section 106 in England, which is a type of legal planning agreement. It is a contract signed by the developer and the planning service, and is, therefore, legally enforceable. It is a much more attractive proposition from the Housing Executive's perspective.

1264. Mr W Clarke: Would you be looking at that for community provision such as community centres?

1265. Ms Christie: Yes; the community infrastructure levy is very much directed towards that type of infrastructure. We understand that, in England, they are looking at hospital and education provision; we are much more interested in an article 40 planning agreement because it can be directed to the provision of social and affordable housing. We are very focused on that.

1266. Mr W Clarke: In some area plans, land is zoned for social housing and for mixed tenure. You spoke about land banking, but do you think that there is an opportunity to include provision in the Bill for capping an amount, say 25% or 30%, of that land at a lower rate for social housing, so that there has to be some social housing? There is a stigma around it; I have found as an elected representative that there are a lot of objections to social housing, just because it is social housing and for no other reason. People have bought homes in an estate and do not want social housing beside them. It is different from in mainland Europe where most people rent their homes, but there is this culture of buying homes in Ireland. Do you think that there is an opportunity to say that of all zoned land, a certain amount must be made available for social housing? I know that there is affordable housing, but I want to draw a distinction between them.

1267. Also, in relation to land banking, you mentioned a five-year development period. I would welcome that as well. Would you like to see a situation where the Housing Executive or housing associations would have first option of taking that land? Perhaps they could buy it at a certain value.

1268. Ms Christie: To take the first question, it is our understanding that the aim of the regional development strategy was to produce mixed and balanced communities throughout Northern Ireland. We feel that the PPS 12 housing settlements policy was one of the vehicles for ensuring conformity with the RDS and the delivery of that objective, which is very important. Certainly, draft PPS 22 may help that and may include reference to a percentage allocation being given over to social or affordable housing, as Mr Clarke suggested. However, if development plans are to be able to deliver the aims of the regional development strategy and enable people to live in a mixed and balanced way, there need to be measures to address and deliver that.

1269. Therefore, PPS 12 housing settlements was one aim. Perhaps, PPS 22 might help establish that as well. However, the planning system exists to try and deliver the regional development



strategy's aims and objectives, which are, effectively, to have a balanced and mixed community. There should be no ghettoisation.

1270. Our view is that land banking is about supply and demand. It is about ensuring that land banks are not created to the point where land becomes in such short supply that prices are inflated and, from our point of view, social housing delivery cost becomes extremely difficult to meet. A measure to enable planning approvals to be held within a five-year period would be helpful in trying to avoid land banking. Planning authorities will have to address that. To have a need is one thing, but the hardest thing is for planning authorities to have sufficient land to deliver on that need. Otherwise, we will have terrible difficulties in the future.

1271. Mr W Clarke: Thanks. There are probably legal implications for the issue, although not for what I will say, but just to tease this out: in respect of the zoning of land for social housing, we all went through the period when no land could be bought by housing associations. Should there be provision for social land to be bought at 25% or 30% below its valuation? Should such land be made available at that price? I know that there is legal stuff regarding that, but —

1272. Ms Christie: It is hard for me to say.

1273. The Chairperson: No, we could not.

1274. Ms Christie: Land and Property Services places a valuation on the land and the social sector buys at that valuation. Whether, because it is for social housing, that valuation is less than for other —

1275. Mr W Clarke: Is there a reduction?

1276. Ms Christie: In that sense, it may take care of itself, but that is outside my brief.

1277. The Chairperson: To follow up on that: if there is clearly identified need, is it not better for a council to be inclusive by looking towards a process of finding land that can be zoned for development? I do not agree with ghettoisation, but I have seen examples of where that has not happened. I have seen people paying £200,000 for a house in a development and the next thing is that people are renting the house next door. At the moment, the market is dictating that properties should be rented. Would it not be better — although I know that the Housing Executive already does this — for you to work alongside councils in identifying need and looking at where land should be zoned for housing development? I hope that will be the approach, as opposed —

1278. Ms Christie: We work with Planning Service and look forward to working with the new planning authorities to look at issues of that nature.

1279. Mr Savage: I have a quick question. I listened carefully to what Ms Christie said about the land bank. I am a councillor in Craigavon, where the Housing Executive has a pile of land — we have to be careful about calling it a land bank, or whatever. I welcome your suggestion about having pre-application discussions with planners. However, in all your discussions you will have to start to build houses in which people want to live.

1280. Far too many houses have been built in which people do not like to live. You must change that type of house. I see far too many of them boarded up. Change has to take place, and I hope that it happens through pre-application discussions. People no longer accept that anything will do.

1281. Modern houses are being built in the Craigavon area. So much experimenting was done, but those houses are not better than — I do not want to say anything about that. We want to see modern houses in which people are proud to live. You have gone a long way down that road, and you should continue in that way.

1282. The Chairperson: Design is certainly an issue. Thank you very much for your presentation. You raised some new points, certainly about land banking. It is not about people buying land as opposed to a period of time. We need to look at that. We will put those questions to the Department and then come back to you.

1283. Ms Christie: Thank you very much for your time.

1284. Mr W Clarke: Could Research Services prepare a paper about the zoning of social housing elsewhere?

1285. The Chairperson: No problem.

1286. We will now receive an oral evidence session from the Planning Appeals Commission. I welcome Mrs Maire Campbell, the chief commissioner, and Mr Trevor Rue, the principal commissioner. Marie, you are very welcome. Is this your first time in front of the Committee?

1287. Mrs Maire Campbell (Planning Appeals Commission): It is my first time before the Environment Committee, but it is not my first time before a Committee.

1288. The Chairperson: No problem. I was referring to just the Environment Committee. Please make a presentation, after which members will ask questions.

1289. Mrs M Campbell: Thank you for inviting the commission to attend this session on the new Planning Bill. As I am sure that everyone is aware, the commission is the independent appellant body in the planning system. That position will not change with the review of public administration and the transfer of planning powers to local councils. We have a range of statutory functions: to decide appeals; and to hear and report with recommendations on a range of matters referred to us, mostly by the Department of the Environment. Those include objections to draft development plans and major planning applications.

1290. I intend to refer briefly to some of the comments in my letter to the Committee about the Bill and then respond to any issues that members want to raise, if that is OK with the Committee.

1291. The Chairperson: That is fine.

1292. Mrs M Campbell: I will make reference to matters referred to the commission. There are a number of instances of those throughout the Bill, but I will refer in particular to clauses 10, 16, 26 and 29, which deal with examinations into development plans and public inquiries and hearings into major planning applications. To date, only commissioners of the Planning Appeals Commission have conducted such examinations, inquiries or hearings. We have reported to the Department of the Environment, which makes the final decision about the plan or application. The Bill proposes that the DOE should be able to appoint other persons to do that work. I have queried whether that is appropriate, whether those people would be independent and whether the examination, inquiry or hearing that they conduct would be fair and independent. That is because the other persons involved would be appointed by the DOE, and the Bill retains a significant role for it in adopting new development plans and deciding major planning applications. It also has other functions throughout the Bill.

1293. We have also said something about submission notices, which are addressed in clauses 43 and 44. They are a bit like enforcement notices but require the submission of a planning application if something is built or the use of a building is materially changed without consent. The DOE policy statements include that as an aspect of enforcement. For that reason, it should be included in Part 5 of the Bill, which deals with the whole topic of enforcement.

1294. However, we have a further point about submission notices. The grounds of appeal against a submission notice are limited, compared with the grounds of appeal against an enforcement notice. Someone who gets a submission notice cannot argue that they should not have got it because they are not the owner or the occupier, nor can they argue that the notice was not correctly serviced.

1295. The most critical factor is that the person can only argue that the matters in the notice do not amount to development. What constitutes development is explained in clause 53. In addition, the Planning (General Development) Order 1993 permits a person to, for example, enlarge or improve their dwelling house or erect a building on their site within their curtilage. If a person is a farmer, the Order permits him to erect certain agricultural buildings. Those are all subject to specified restrictions. If his building is within those specified restrictions, what he has done is development, as defined by clause 23, but it is permitted development under the Order and he does not need to submit a planning application for it because he has express consent for it.

1296. However, if a person is served with a submission notice about such a building, he cannot appeal to the commission on the grounds that what he has done is permitted development. He can only argue that it does not amount to development. We have had a number of appeals on that point. We pursued the point at a judicial review application and lost before the courts. That problem should be rectified to stop people's only recourse being the possibility of an expensive judicial review. People ought to be able to argue, in response to a submission notice, before the commission that they do not need to submit a planning application for the development, because it is permitted development under the Planning (General Development) Order.

1297. We have also said something about clause 75, which deals with planning agreements. A planning agreement is required to ensure that a developer does or does not do something that could not be covered by a planning condition attached to a planning approval. It is an agreement between the developer and the DOE, and it takes a very long time to complete. For example, one took four years after an appeal.

1298. If developers could draw up unilateral obligations, they would be volunteering to do something to facilitate their developments. If developers submitted unilateral obligations to the DOE, for applications, or the commission, for appeals, the long delays in negotiating and drafting agreements could be avoided, which could speed up the process of delivering appeal decisions.

1299. The final issue that we said something about was costs. The Bill contains no provision for applications for costs in an appeal context, so parties have to bear their own costs. However, applications for costs could arise — and this is the situation in England and Wales — where one participant in an appeal has been put to unnecessary expense by the unreasonable behaviour of another. The provision applies in GB and the Republic of Ireland. We suggested it because we thought that it would be an important restraining influence on a party's behaviour in an appeal and encourage all to approach appeals in a reasonable, cost-conscious manner.

1300. If the Bill were to make provision for cost applications, those would be considered by the commission, as in England and Wales and the South of Ireland, and they may be successful if, for example, a proposal were to be amended or partly withdrawn at the last minute or if an

additional reason for refusal was to be suggested at the last minute. Those are the main points that I want to talk about.

1301. The Chairperson: You are very welcome. I wish to seek some clarification. [Inaudible due to mobile phone interference.] Obviously, there is concern about how the four- and ten-year rules help you, as regards enforcement. It is a problem. What other way could we deal with that? Obviously, you are well aware of the four- and ten-year rules, because they come to council a lot in relation to enforcement. What exactly are you saying?

1302. Mrs M Campbell: What I am saying does not affect the question of immunity from enforcement. All I am saying is that when one is served with a submission notice, one ought to be able to argue that — [Inaudible due to mobile phone interference.]

1303. Presently, one can only argue that it does not amount to development. One cannot argue that it does amount to development but that one is permitted to do it under the GDO. People cannot argue that before the commission. The only way that they could argue that would be by seeking a judicial review of the Department's action in serving a submission notice on them.

1304. Mr T Clarke: Would your suggestion close the opportunity to use the four- and ten-year rule?

1305. Mrs M Campbell: No, it does not affect the four- and ten-year rule in any way.

1306. The Chairperson: The issue of the independent examination has raised its head, so I want to hear your views on that. I want some clarification. We are trying to get a process, and, through some of the presentations that we have had, we have talked about spatial planning. The Bill indicates the way in which we should get everybody involved in the front-loading system. If we take it to the extent of developing a plan that goes back to the Department for independent assessment, people may look to you or to an independent body to consider it. In setting down the criteria to deal with the Planning Appeals Commission — having gone through council in the past number of years, I have seen some change in the percentage of applications that are upheld — is the process supposed to assess applications to ensure that the Planning Service has done its job correctly? It is run along almost the same lines as the ombudsman. One is allowed to appeal, but is the problem that you are still using the same criteria to assess whether it has been carried out? Do we need to look again at whether there will be a proper, independent check, and do you believe that the criteria laid down for you to process or independently check the system are adequate?

1307. Mrs M Campbell: My points related to the referred work. If the commission is deciding an appeal, its approach is to decide whether the Department has sustained the reasons for refusal that have been raised or whether the objections to the proposal have been sustained. I am not suggesting that there should be any change to that approach.

1308. The Chairperson: I have seen that it has not been that way, and there have been changes. Do we need to look at that process, or are you happy with it?

1309. Mrs M Campbell: I am not quite sure what changes you have in mind.

1310. The Chairperson: I am only asking you. I have gone to appeals, and the criteria and process used in an independent examination are practically the same as those used by the Planning Service when assessing an application. If a council comes along with a whole development process and an idea of what it wants for its area and the plan goes to the Department, the Department might say that that needs to be independently checked. Do the

proper processes exist to independently check or assess plans? If it were to go outside the commission, would others assessing a plan be properly qualified to do so?

1311. Mrs M Campbell: If the commission is making a decision on an appeal, it must take account of the development plan and all other material considerations, namely the planning policy statements produced by the DOE. We must interpret and apply those, and, in making a decision, we must decide whether the Department's reasons for refusal are sustained or whether the objections are sustained. That is our role in an appeal, and we issue a decision on an appeal. Our decision on the appeal is final other than on a point of law, and that is where judicial review of a decision of the commission comes in, as our appeal decisions are subject to the scrutiny of the courts.

1312. With our referred work, which involves looking at the conduct of an examination to consider objections to a development plan or the conduct of a public inquiry or a hearing into a major planning application, what we do is gather all the evidence. We consider evidence from everyone who wants to make representations about a development plan and everyone who wants to make representations both for and against any major planning application. We weigh the evidence and report to the Department on it, with a recommendation as to what the outcome should be. The final decision is made by the Department.

1313. We are saying that the process that we carry out is a rigorous and independent analysis of the objections to a development plan or of all aspects of a major planning application. That rigorous process should continue. If that process is sought to be conducted by persons who are appointed by the DOE and who report to the DOE, which makes the final decision on the application or on how a plan should be adopted, that will not be a fair and independent process.

1314. The Chairperson: I do not want to get bogged down in it, but that is something that this Committee needs to look at. That is what I am concerned about. It is fine saying that it is an independent process, but if somebody brings in any material information or consideration, what weight is given to that? We have seen in the past where decisions have gone one way or another. Do you understand me?

1315. Mrs M Campbell: As in all aspects of planning, there has to be an element of judgement.

1316. The Chairperson: I agree. So long as it is consistent, that is all that I am saying. But what we are teasing out in this —

1317. Mr T Clarke: Chairman, if you do not mind my interrupting you, I would like to make a point about that. Like you, I have been at a few Planning Appeals Commission hearings, and there is something that I have always found strange about them, particularly when I consider the bit in the submission about the Bill's omission of a provision on costs. Sometimes, applicants bring evidence late in the day that the commission will consider. I have always found that strange, because that can actually change a decision.

1318. I sat in on a recent case where that happened. If the evidence had not been allowed, it would be fair to say that the Planning Appeals Commission would have found in favour of the Planning Service. However, the late submission was allowed and accepted, and it actually changed the decision. Nevertheless, I welcome your suggestion about a provision on costs, because I think that that would be a very useful tool. It would prevent some cases from going to the PAC and would prevent the Planning Service from pushing people to that expense and prolonging applications. The only bit that worries me is that late submissions are sometimes accepted.

1319. The Chairperson: We can only use our own experiences as examples. In one case, an application was turned down because of a lack of integration. However, by the time the appeal came round and we went out to look at the site, the site had been substantially changed. I am only using that as an example.

1320. What are saying is that we want to have a process where applications are properly assessed. Obviously, the Planning Appeals Commission goes through that process and does that body of work. However, I do not want it to be an exercise where people present evidence but do not actually get an opportunity to present a strong and robust challenge to the system in the proper way. It comes back to the third-party right-of-appeal issue. That is all that I am saying.

1321. Mrs M Campbell: Certainly, commissioners are trained to be investigators, and they play that role. They do not merely sit and listen to evidence. Rather, they investigate the evidence and pursue the issues with all parties involved in an appeal. They then apply their expertise and experience to the issues presented in the appeal and make a judgement after having gathered all the information, including their own input. We want to ensure that that system is as rigorous as possible.

1322. The Chairperson: That is fine, Marie. However, we, as public representatives, want to ensure that applicants are being properly represented by those whom they pay to represent them. In the past, we have seen exactly what representation people are getting. People are going down the road of appeals, which costs them a substantial amount of money. We need to look at that as part of the whole process.

1323. If the Department were to assign the process to the Planning Appeals Commission, would you have the capacity to deal with that?

1324. Mrs M Campbell: We should be able to deal with it. We are currently dealing with three development plans — Belfast, Magherafelt and Banbridge — and are just about to start work on the northern area plan. That is a fairly significant involvement from commissioners. We are also attempting to process six major planning applications throughout the year. However, a number of those have been delayed, primarily because either the applicant or the Department is simply not ready to go ahead. A lot of the applications are getting bogged down by the need to provide further environmental information. When we start to process those applications, we find that they are being continually delayed.

1325. The Chairperson: I would like your view — and I am not asking whether it is your personal opinion — on where we are with existing local development plans. How will they impact on councils over the next three or four years when it comes to considering the whole notion of local policies, planning policy statements, development plans and the regional development strategy, as well as what is actually best for communities, what the councils' input will be and what local communities want? Where does that sit with the existing plans and the plans that you are looking at?

1326. Mrs M Campbell: Once we have reported to the Department on the plans that we are looking at, it will go through the process of adopting those plans. Once adopted, a plan will be the plan for an area until it is replaced by another plan.

1327. The Chairperson: I understand the process. What I am saying is that we are going down the route of spending money now to adopt a plan that could be in next year or the year after, and then once the powers transfer to councils, they are operating in two years' time and they look and they go. Then there is a period of time, obviously, when they cannot review it. I would like your opinion on that.

1328. Mrs M Campbell: We will look at the statutory provisions. There is still provision that, in determining planning applications, account must be taken of the development plan and all other material considerations, which is the policy. That provision will apply to councils as it applies to the Planning Appeals Commission in determining appeals.

1329. The Chairperson: Most of those who have responded to the Committee raised that as a problem. It is fine saying that you look to the regional development strategy, area plans and bottom-up planning policy statements, but that issue has been raised and we may need to look at it.

1330. Obviously, do you see the need for the Department to appoint independent —

1331. Mrs M Campbell: No, we do not see a need for that. We suggest that the commission should continue to do that. There are alternatives to appointment by the Department of the Environment, such as appointment through the Office of the First Minister and deputy First Minister to work to the commission. There is precedent for that. It would, in effect, be appointment by the commission almost, more or less, through OFMDFM.

1332. Mr T Clarke: I share the commission's opinion. I am struggling to understand why the Department would want to appoint someone, and I can see the problems that it would create. Can you see why the Department wants to do that?

1333. Mrs M Campbell: I have not had detailed discussions with the Department about it. However, I have certainly had hints that it is due to a resources issue in the commission that might relate to the position a couple of years ago when we were dealing with a large number of development plans and a large backlog of appeals. That backlog has now been cleared, the development plans will be delivered shortly and I am confident that the commission has the resources to deal with development plans and major planning applications. If the resources are not in place when matters are referred to the commission, it should be able to acquire them. For example, the commission has part-time panel commissioners who also work for the Planning Inspectorate in England, An Bord Pleanála in the South and the Directorate for Planning and Environmental Appeals in Scotland.

1334. Mr W Clarke: Is the point about the planning obligations for the developer — presenting those draft obligations — in regard to temporary sewerage and road infrastructure or flood-prevention measures?

1335. Mrs M Campbell: Many of those issues can be covered by conditions attached to a planning approval. You would need planning agreements or planning obligations. The main difference is that a planning agreement must be an agreement that is reached between two parties, which takes time to negotiate, while a planning obligation is a unilateral — [Inaudible due to mobile phone interference.] — this is how I propose to contribute to education in the area, those kinds of things. That cannot be covered by a planning condition, because it is not sufficiently related to the development.

1336. Mr W Clarke: Dead on; thanks for that. My other point relates to the awarding of costs for unreasonable behaviour. Is that where there is no planning policy and you are bringing a case that you have no chance of winning? Is that what you are saying? It is my experience as a councillor that a lot of stuff is sent in your direction when there is not a hope in hell of it being successful, and that certainly clogs up the system.

1337. Mrs M Campbell: That is true. It there is clearly not a hope in hell of it being successful, that might justify an award of costs. Applications for costs in England and Wales are where there has been unreasonable behaviour and unnecessary expense.

1338. The best example is where someone who is pursuing a very extensive application involving, say, housing, shopping and industry and there is a lot of objection to the shopping aspect of it. They pursue it right until the very last minute and then, at the very last minute, when everyone has prepared objections and appointed consultants to deal with the shopping aspect, they withdraw it. That would be unreasonable behaviour leading to unnecessary expense. They could have withdrawn at a much earlier stage in the process.

1339. It could also apply in instances where the planning authority suddenly decides at the last minute that it had better have a land contamination survey, when it has not been mentioned before. If it were an issue, it should have been mentioned before. It works both ways, and if the planning authority introduces an additional reason for refusal at a late stage.

1340. It is all about parties revealing their hands earlier in the process, rather than trying to wait tactically to try to catch out the other person. Planning appeals do not work like that anyway. They are about gathering the information and making a decision. Tactics do not really work because we have to find the information anyway.

1341. Mr W Clarke: Dead on. Thank you.

1342. Mr T Clarke: Is it not more than that? Those are very extreme examples. Most of us have experience of where planners try to make a decision at an early stage that they do not want a particular application to succeed. It may be something more minor, a house, a bungalow or whatever it might be, and the Planning Service puts the applicant to the expense of going to the PAC. I have seen that often, and I am sure that other members have seen it in council. Perhaps the majority of people withdraw, but a stubborn applicant will decide that he will go ahead because he has the money to pay an architect the £2,500 or £3,500 to get it to PAC. The figures are sometimes staggering. Many of the appeals are won. Planning Service deliberately pushes people right to the wire to get them to withdraw or to see how many of them are prepared to go to the PAC. You have outlined very extreme cases where huge amounts of money are involved, but other people are put in an invidious position where they have to put up their money to take the challenge.

1343. I enjoy seeing the figures from the PAC. At certain times of the year, you can have a third of decisions being overturned, which suggests that the Planning Service does not necessarily make the right decisions. If there were more checks and balances, your workload would probably be less.

1344. Ms M Campbell: I used the extreme examples to illustrate where costs can arise. They apply where there has been unreasonable behaviour and unnecessary expense. That is the way they are assessed. The figure of appeals allowed runs at about 30% to 33%, which is commensurate with the figure in England and Wales. It is around about the same there. There have been times when it has been higher, depending on policy issues.

1345. Costs are not usually awarded simply because the Department is unsuccessful in determining an appeal. It has to be unnecessary expense, as a result of unreasonable behaviour. It is not a pure winner-takes-all situation.

1346. Mr T Clarke: It should be.

1347. Ms M Campbell: Well, that is a point of view. I am just saying what is the system in England, and that is the system I advocate here.



1348. The Chairperson: It still brings us back to the agent issue. There are more issues to be brought forward there. It is ridiculous that we have not dealt with that at all in this Bill. Some of the applications being put in have been absolutely ridiculous.

1349. Mrs M Campbell: I will allow you to take that up with the agents.

1350. The Chairperson: Having better agents obviously means less work for you. Thank you very much for your presentation. We will now take oral evidence from Laverne Bell of the Quarry Products Association (QPA). You are very welcome. You have been before the Committee on a number of occasions, so you know the process.

1351. Ms Laverne Bell (Quarry Products Association (Northern Ireland) Limited): On behalf of our members, thank you for giving QPA the opportunity to respond to the Planning Bill. Planning is vital to our industry, so we are very interested in the transfer of powers to councils. Our industry has a part to play in helping to deliver planning reform by submitting high-quality applications informed by community views. As I go through the clauses that we comment on, I will be optimistic about adding in the after-uses of quarry applications. Given the number of clauses, I will only deal with the key areas of concern to the minerals industry.

1352. There should be a definition of "sustainable development". We have seen that in many Departments, in council strategies and even in the industry's own strategies. Some people have different definitions, and that should be added to the interpretation section of the Bill. The definition in the Government's sustainable development strategy could be used.

1353. Clauses 6 to 22 relate to local development plans. We are concerned that local development plans do not include minerals or their safeguarding. We spoke to the Committee before about a minerals mapping programme for Northern Ireland, to analyse supply and demand, and zoning to safeguard minerals. Areas have been zoned as areas of no constraint in previous local development plans. That did not look at where our future minerals supply will come from.

1354. We are pleased to note that a minerals mapping programme is listed as an environmental programme in the DOE budget. However, we are concerned that funding has not been secured for that. We will make the same point at the regional development strategy review. We suggest that an amendment be made for mineral mapping and safeguarding to be included in each council's local development plan. It would also be beneficial for neighbouring district councils to work together on local development plans.

1355. We support clause 27 and clause 28 but ask for a definition of "community", because it can sometimes be difficult to identify who the defined community is. That should be in the interpretation section of the Bill. Under clause 32, there are no permitted development rights for the minerals industry in the general development order. We have reported on previous consultations on this. We would like assurances that that will be in the Bill.

1356. I turn to planning applications. In clause 40, there is no mention of performance agreements and pre-application discussions. That is a core element of planning reform and something we supported in the consultation paper. Performance agreements should be in place before submission of an application. That is a central part of pre-application discussions. Again, that is down to the front-loading of the development management system. We suggest that performance agreements alongside pre-application discussions for major and regionally significant projects be included in the Bill.

1357. On determination of planning applications, we have commented under clause 45 and clause 52 on conditions that are applied to planning approvals. We have brought that up with

the Planning Service before. We believe that it would be good practice for the Department and councils or the planning authority initiate a practice of informing developers or agents of the draft planning conditions that are imposed before they stamp and approve the forms. That practice would be beneficial to the industry and to the Department and councils in processing mineral planning applications, as it would highlight any unworkable conditions before the decision notice is issued.

1358. We have evidence of industry having permissions approved with unworkable conditions. Asphalt plants have been given approval with conditions of working hours of 7.00 am to 7.00 pm. You will be aware that that is not commercially viable for the industry. An asphalt plant would possibly have to open at 5.00 am for lorries to be going out the gate at 7.00 am. Those conditions have sometimes been applied as a mistake by a planning officer. It is difficult for a client to go back and take it out. In some cases, the company might just decide to leave it there. Therefore, we are suggesting a clause to provide that the Department or councils consult the developer on conditions prior to planning approval. However, we recognise that the planning authority is the decision-maker.

1359. On clause 53, which deals with the power to impose aftercare conditions on the grant of mineral planning permission, I will give you a few paragraphs to back my suggestion that nature conservation be added. The three stated aftercare conditions in the current legislation and in this Bill relate to agriculture, forestry and amenity. I am proposing that nature conservation should certainly be added either alongside amenity or as a fourth aftercare condition.

1360. I am sure that you are all aware of the significant opportunities that this industry can give in creating new habitats and protection of species. The industry is doing that, and it has been put forward in restoration objectives, but there is an opportunity to have it in legislation. Therefore, I have suggested that nature conservation be added as a fourth aftercare condition, and that a definition of nature conservation be added to the interpretation provisions. We believe that the developer should take advice, whether from the Department of Agriculture, the Forest Service, the Environment Agency, councils or a relevant NGO on such matters under those aftercare conditions. Again, we are looking at local priorities in those areas. In clauses 53 to 55, on restoration and aftercare, steps may be specified in aftercare conditions. Again, a natural succession is regeneration. It is an opportunity to create biodiverse habitats on site. That should be added.

1361. We have comments on duration of planning permission. Again, the comments on the clauses relate to changes in permissions, conditions or modifications. We have stated that if any changes are made, it should be done in consultation with the developer. If any conditions are made in error by the planning authorities, there should be no fee to change them because that is their mistake. We raise again the issue of consultation prior to approval of imposing conditions.

1362. The review of old minerals permissions is included in the Bill. We have read through both schedules, and we are content that it is what has been communicated to us. However, our concern is that there is no mention of the timescale for delivery.

1363. We support increased fees and charges for respective planning permissions, but we question what is meant by "a multiple of the charge or fee".

1364. In respect of the duty to respond to consultation, we feel that statutory consultees should be required to respond to planning authorities within a specified time frame. Any extension to the time frame should be agreed with the applicant. This has caused our industry significant delays in the planning system, and we responded to the matter in the previous consultation. We suggest an amendment to the Bill to set a specified time frame of 21 days for comment. We are content with the guiding principles in clause 225, which relates to minerals.

1365. The Chairperson: OK. Thank you very much. You suggested a time frame of 21 days. Would that be for all applications? On some of the major application, would you expect statutory consultees to respond within that time frame?

1366. Ms L Bell: We feel that with pre-application discussions, the industry will be front-loading the system. Any reports to be carried out will be done with the application, and, if there is an issue, the operator will be notified and a new time frame agreed. However, experience within the industry shows that planning officers might wait for months for statutory consultees to come back. Sometimes, their applications are sitting in somebody's in-tray, and, regardless of whether a response is made, they are put back to the consultees and there is a specified time frame for them to respond.

1367. The Chairperson: OK. Thank you. You said that minerals should be looked at in terms of the local development plans. In the absence of mineral mapping and identification, are you suggesting that councils or council clusters should look at that?

1368. Ms L Bell: Yes, indeed. It is about the geology of the minerals and the location. Therefore, they are of interest in council boundaries. It has not been considered before in local development plans, and it is something that the industry feels very strongly about.

1369. The Chairperson: OK. What about PPS 19?

1370. Ms L Bell: PPS 19 should be published in advance of this.

1371. The Chairperson: You talked about conditions, and I just want to clarify a point about aftercare conditions. Many sites are not properly maintained, and I would look at the nature conservation. You asked for guidelines on the conditions of planning approval. Is it not standard practice to consult the developer on the conditions prior to planning approval?

1372. Ms L Bell: No. I spoke to my affiliate agents in the association about that, and they said that it is not standard practice. Article 31 applications are dealt with by a notice of opinion indicating that the Department proposes to grant or refuse planning permission. A similar procedure could be recognised in the Bill.

1373. The Chairperson: If you have received approval for a house, you must comply with where it goes and different things, although there may be a wee bit of scope. However, if you apply to extract minerals, are you just given an area and that is it? Are there no conditions? Are the conditions or some guidance not clearly outlined in the planning approval?

1374. Mr T Clarke: What Laverne is saying is about the time when you can expect to get those.

1375. Ms L Bell: The Department has a set list of model conditions that it uses and applies. Approvals are set with a number of conditions, and aftercare, for instance, is one of them. However, there are conditions that we see as unworkable; for example, a time condition. It may not have been raised as an issue in the pre-application discussion by the community or the environmental health officers, but the condition may have gone ahead.

1376. The Chairperson: Thank you. I was just seeking clarity.

1377. Mr T Clarke: Although it is the same for any application — obviously, mineral extraction is different — are they not all article 31 applications?

1378. Ms L Bell: Some are pulled in under article 31, but others could be extension to plant or smaller areas.

1379. The Chairperson: Clearly, that is the problem, because of the policy.

1380. Mr T Clarke: If that were changed, the danger is that it would slow down the process again, because the authority would be going back out to consult the applicant again. If you did it for them, you would have to do it for private dwellings as well, because they come under the same category.

1381. The Chairperson: Yes, but Laverne is talking about the list of consultees and the response, and that all of that should be included in the discussions — the pre-application discussions in particular.

1382. Ms L Bell: Yes, in that process. However, it is the case where it has gone through without any issue of using the time one. Then, when the operator receives his approval and an unworkable condition is listed, the agent will have to go back through the legislation process to get that condition taken off.

1383. The Chairperson: That is fine.

1384. Mr W Clarke: Is the time condition coming from the councils' environmental health perspective in relation to the noise and stuff like that? Where is that coming from?

1385. Ms L Bell: From my knowledge, the planners have a set list of model conditions, and the time one — from 7.00 am to 7.00 pm — is one of those model conditions. Sometimes, that can be applied.

1386. The Chairperson: You have mentioned the statutory consultees, and we will look at that area. Thank you.

Committee suspended.

On resuming —

1387. The Chairperson: We will now receive a briefing from the Royal Town Planning Institute (RTPI). I welcome Diana Thompson and David Worthington.

1388. Ms Diana Thompson (Royal Town Planning Institute): Good afternoon, and thank you for facilitating our request to provide further evidence in support of the Royal Town Planning Institute's written observations on the Planning Bill. I am the incoming chair of the local branch of the institute. With me is David Worthington, who is a past chair and a current member of our policy and practice committee, which meets quarterly at our London headquarters.

1389. I will deliver the principal presentation, and, following that, David will assist me on any points of clarification or additional information that the Committee may seek.

1390. You probably know that the RTPI is the leading professional body for spatial planners in the United Kingdom. We are a charitable organisation that has the purpose of developing the art and science of town planning for the benefit of the public as a whole. We have over 20,000 members, 500 of whom reside in Northern Ireland. They are drawn from the Planning Service, local government, the public sector, the community and voluntary sector, and the private sector.

The reforms are of great interest to our members, who work in and use the system on a daily basis.

1391. As a general proposition, the RTPI supports the reform of the planning system in Northern Ireland and the devolution of planning powers to the lowest level of government. On the whole, we welcome the Bill. Rather than repeat the content of our written response, however, we want to use our time this afternoon to explain in more detail our main concerns with the Bill as it is presently drafted.

1392. We have identified four topics to discuss: the acceleration of the process and its consequences; whether the reform will be adequately resourced; the timing of an introduction of the plan-led system; and the role of the Department. The Committee will also be aware that the RTPI is taking part in the stakeholder event tomorrow, when we will address three of the four topics that you have invited some comments on.

1393. As we indicated in our submission, we are uncomfortable about the Bill's being launched in the mouth of the Christmas break. We are also uncomfortable about the Bill's anticipated expedited passage in the Assembly's current term. The Bill is a complex document, and our members are concerned that the amount of time that has been set aside for its scrutiny, particularly at Committee Stage, could well be construed as an underestimation of its intricacy and of its importance for the future of Northern Ireland. That said, the institute fully appreciates the need to reform the planning system in Northern Ireland. Reform is overdue, and we support the current impetus and enthusiasm for delivering positive change to the system.

1394. It is unfortunate, however, that the timetable appears to be dictated by the looming dissolution of the Assembly in the spring. The institute supports openness and transparency in the process and is keen to avoid any perception that the acceleration will undermine meaningful consultation with the planning profession. We do not want the acceleration to result in an underdeveloped framework that stymies, rather than stimulates, sustainable economic growth and that lacks public confidence.

1395. There are two particular issues of concern. The first is the reliance on much subordinate legislation and many other regulations to give effect to the proposed reforms. We do not see any commitment to their production and content or to a timetable for implementation. Our legal associates, who are also members of the institute, tell us that the detail may well be unworkable in our particularly litigious environment. They raised concerns about how the drafting will stand up to scrutiny. They urge that careful attention be paid to the final drafting and wording of clauses.

1396. Secondly, it is far from clear how or through what mechanisms the new legislation will be delivered by newly created planning authorities. There seems to be a lack of integration between the planning reform and the parallel reform of local government and the transitional arrangements. In our view, the Committee must seek clarification on both points from the Minister.

1397. Our second topic is about resourcing the reform. Our members have highlighted the need for the reform to be adequately resourced. The issue is not just the financial consideration; it raises personnel and staffing issues, as well as the capacity of councillors to embrace the full suite of planning powers that are to be devolved.

1398. As far as the training and education of councillors is concerned, the RTPI can provide significant assistance and can offer links to other councillors in the UK through our politicians in the planning association, which is administered through our headquarters. We are keen to take a proactive and participatory role in the development of professional training sessions for

planners and councillors, and we intend to raise the matter directly with the Minister in the near future.

1399. It is clear to us that the proposals will require major cultural change and additional funding. The institute fully understands the budgetary pressures that are on the Department, given the significant fall that there has been in application receipts over the past 18 months. For that reason, we accept that it is necessary that a review of planning fees takes place. However, we were disappointed that the consultation paper that emerged late last year did not contain a comprehensive overhaul of fees and that wider funding issues remain for future consultation. The institute has already warned that planning fees should not be the sole source of funding and that there must be a public funding base that might come through rates, for example. We think that the review should be completed swiftly so that a situation of certainty and stability in the planning profession and the wider development industry can be created. In the meantime, we are certain that the Department must keep a balanced view of efficiency savings, the maintenance of a professional and fit-for-purpose service and the ability of a development management to levy fees to match costs without jeopardising the potential for economic recovery. If fees are to be increased, our members are certain that that must be matched by a quality service for its customers and a service that supports economic recovery.

1400. The institute has another concern in that area because of the loss of professional expertise in the Planning Service through redeployment and the very recent announcement on potential future redundancies. The institute is already on the record as having made the point, and we would like to restate it, that it is anxious that the haemorrhaging of the professional planners carries significant risks for the operation of the planning system in Northern Ireland. It has inevitable consequences for the delivery of the priorities of the Northern Ireland Executive and the Programme for Government. The Committee must seek assurances from the Minister that individuals who exercise planning powers are properly trained, that all units and functions of the new planning hierarchy in Northern Ireland are adequately staffed by professional and administrative staff, and that there is adequate funding that does not rely on receipts that come from applications or other revenues that are generated solely by the system's users.

1401. The issue of resourcing takes us to our third point, which is to do with the timing and introduction of the plan-led system. We note that there is some inconsistency between clause 3 and clause 25. One requires the Department to take decisions in accordance with the plan, and the other requires the council to have regard to the development plan. The Committee will be aware that previous resourcing difficulties in combination with the external judicial proceedings have meant that preparatory work on updating and renewing development plans has largely ceased. The consequence is that, from 1 January 2011, we have only one up-to-date area plan that covers the two district councils of Ards and Down. That is about 8% of Northern Ireland, compared to about 19% of local plan coverage in England. The Department for Environment, Food and Rural Affairs has strongly criticised that figure.

1402. It would be unfair and inequitable to expect newly formed local councils to take decisions on the basis of planning frameworks that were, in some cases, prepared almost 20 years ago in economic and other circumstances that were very different to those than exist today. Although the institute supports the introduction of the plan-led system, we are certain that its introduction must be held back to allow the new generation of local plans to be rolled out.

1403. Our views are reinforced by the lack of detail on the new community planning framework that is also proposed. It seems to us that there are a number of unresolved issues with it, including the definition and identification of community; how it interrelates with the other elements of the area plan framework; how conflict is to be reconciled when policies pull in opposite directions; and how community plans will be timed and sequenced against the delivery of local plans. We consider that the presumption in favour of development should remain in the

interim, although assurances must be sought from the Minister that the new suite of plans will be expedited following the devolution of planning powers.

1404. We also wonder about the role of and relationship with the emerging regional development strategy review, which sits at the top tier of the policy hierarchy. The RDS was material to decisions on individual planning applications and appeals, but at draft and adopted stage, the area plans have a statutory requirement to be in general conformity with the RDS. However, that statutory requirement appears to be diminished in the Bill. We can find only two references to the RDS in the Bill. The first requires policy to be "in general conformity" with it, and the second requires local development plans to "take account of" the RDS. It seems to us that there is some uncertainty regarding the status of the RDS. Indeed, the 10-year review of the RDS confirms that the statutory requirement is under review. The Committee must seek clarity on the role of the RDS, because, without a clear strategic vision and guide, there is the potential for local authorities to focus solely on their own agendas, which will lead inevitably to long-term bad delivery and cause difficulties with balanced delivery.

1405. Our final point relates to the Department's role. We understand the need to retain some degree of control and oversight of the delivery of planning functions in Northern Ireland. However, our members feel that the Bill is drafted in an overcautious and inflexible manner that will deprive local authorities of the ability to freely exercise their planning functions. We urge the Committee to challenge those areas of unchecked and unnecessary departmental intervention, which must inevitably result in the duplication of manpower and resources.

1406. The Bill provides for much departmental involvement in the area plan, for example, with its statement of community involvement, a timetable for review, the terms of such a review, or the revision to the plan. The Bill also allows the Department to prescribe the form and content of the plan and to refer it for independent examination. There is also provision for the Department to consider the independent report that comes back from the examiner.

1407. It seems to us that the checks and balances that are built in through the intervention and default powers in clauses 15 and 16 are adequate to safeguard the Department's position. We consider there to be significant replication between the development control and management function in the powers provided in clauses 26 and 29. It may well be that there is a timing problem between the Department's determination for a proposal that is regionally significant or a major application. That would have a knock-on, delaying effect for the commencement of the 12-week consultation period. That must also frustrate development ambitions.

1408. However, we support the schemes of delegation, which mirror the existing streamlined arrangements in the Planning Service. In fact, the Planning Service won an award with the RTPi in London. We are keen to see those arrangements retained in the new planning framework.

1409. We welcome the proposals for the Department to set performance targets for local authorities. However, that must be about much more than naming and shaming. There must be some financial sanction for those councils that fail to determine their applications and to deliver their planning functions in a timely manner. In the same way, authorities that consistently achieve their targets must be rewarded. We consider such carrot-and-stick mechanisms to be enormously important in securing responsiveness, speed, simplicity and, most of all, deliverability. Those are important characteristics that ensure the professionalisation of the system.

1410. To sum up, the RTPi welcomes reform. However, it seeks clarification, assurances and revisions on a number of aspects of the Bill, including the production of subordinate legislation; integration with the parallel local government reform; adequacy of resources; prompt roll-out of

the new generation of area plans; and departmental intervention powers, which should be considered and appropriate.

1411. We look forward to continuing our dialogue with the Department, Minister and Committee as this important legislation emerges.

1412. The Chairperson: Thank you very much. You are very welcome here. I will just pick up on a few points. You mentioned retraining for agents. Many councillors or former councillors are MLAs. I have sat on a council myself, and I know that some of the applications that we had to decide on were unbelievable. Ordinary architects who knew nothing about policy were putting in an application on behalf of somebody who may as well have done it themselves. Is there any scope in the Bill, or anything that we could consider including in it, regarding guidelines on advice? I will not say that someone would have to have a qualification, but I want to ensure that the people giving advice on applications have the appropriate training, rather than people asking someone for advice just because they have a whole load of letters after their name.

1413. Ms Thompson: That is a big question. You are asking how planning can become more professional, and the RTPI would like to see only people with professional qualifications and chartered members of the RTPI giving planning advice. It is difficult to control because every man and his dog thinks that they are planning experts.

1414. The Chairperson: We are well aware of what we are proposing to transfer and how difficult that is going to be and that there is a need for a transition period. You talked about capacity building, in which you have a degree of expertise. It is a major training programme; how do you see your role in it?

1415. Ms Christie: We have run some councillor training programmes in the past; in 2009, when it looked like the RPA was kicking off, we engaged with NILGA in particular. It will be a matter of picking that up again and, hopefully, rolling out some sort of training programme.

1416. The Chairperson: It comes down to resources again. It cannot be all fees-based; you mentioned it being rates-based as well. I would like to tease that out a wee bit, because, as public representatives, we will have to answer to ratepayers on that. Leaving area plans aside, if we take the likes of development controls, which is now development management, how would you manage the fee structure for that side of it? How does it operate in other jurisdictions?

1417. Mr David Worthington (Royal Town Planning Institute): Very few councils across the water manage to operate their planning system with a funding level that is made up of more than 50% of charged fees. For most local authorities in England, the fee level that they are able to recoup counts for less than 50% of the actual running costs of the planning departments. That was something that the outgoing chairperson of the branch found out as part of the overall cost exercise that we and the Department were engaged in over the summer, when it became clear that members of staff were going to be relocated.

1418. Ms Thompson: The Committee might also be aware of a report that has been commissioned by the Planning Advisory Service in England regarding the subsidisation of planning departments, 'Where does all the money go?' We can circulate copies of that to the Committee. It basically comes to the conclusion that it should not all be generated through application receipts because it is a public service, so there should be some sort of public money funding it.

1419. The Chairperson: It is a public service, but when it comes down to the finances, you have to look at it from a business plan point of view. On numerous occasions, we asked about the planning model, because councils will need it, but it has not come to us yet. If you were



developing a business plan in the private sector, you would develop your plan and decide the number of people you need on a value-for-money basis. The problem is that we tend to forget that it is a public service.

1420. Mr Worthington: A manpower plan based on projected staffing levels against potential application receipts is essential. When the review of fees came out, we were concerned that those two things were not allied to the manpower review.

1421. The Chairperson: Perhaps we should say people power.

1422. I agree, and we have asked for the model. There was a time when applications were coming in and things were good in the Planning Service, and I can assure you that all the fees that were gained did not just go into the model or to cover staff costs; the amount of fees was well above that. Those fees went to the Treasury or somewhere else. We have to get a proper model in place.

1423. Mr Worthington: The Planning Advisory Service report might be of assistance with that.

1424. The Chairperson: We heard about the accelerated time frame, and we know that there is a good body of work to be done. We also know that we have an opportunity to change things during the clause-by-clause scrutiny. The devil is in the detail. You mentioned subordinate legislation, and we need to look at that. In addition, we were thinking of looking at a review period.

1425. Ms Thompson: Various parts of the Bill refer to regulations. What will those regulations say? When will we get a chance to comment on them? A lot of this is reliant on something else.

1426. Mr Worthington: A lot of the nuts and bolts of it do not work without subordinate legislation.

1427. The Chairperson: There is no doubt about that. You also touched on reorganisation and reform. Obviously, the Bill will not be implemented in any shape or form until proper governance arrangements are transferred, and that is fair enough. However, it has to run in conjunction with community planning, which I want to discuss now. Diana, you said that there should be more reference to the RDS. On the other hand, you talked about councils having their own agenda and about the Department's analysis. It is about combining all those parts.

1428. I want to ask you about the statement of community involvement, which will be important. Who and what will be involved in community participation? Will you comment on how we should deal with the community issue?

1429. Ms Thompson: We talked about that with our policy officer. I do not know whether the Committee will remember, but an organisation called Planning Aid, which is equivalent to legal aid, used to operate in Northern Ireland. There were resourcing difficulties with it and it has been dormant for a number of years, but we think that this might be a real opportunity for Planning Aid to come back to Northern Ireland. The system is set up and well developed in England, and it can work with communities to help them to become involved in planning processes. As a branch, we will be exploring whether that is a possible way to support communities.

1430. The Chairperson: Our system works on planning policy statements, area plans and regional development strategies. Indeed, there is a suite of planning policy statements; we might have 100 of them by the end of this mandate.

1431. Ms Thompson: They are being produced fast and furiously.

1432. The Chairperson: You talked about area plans, and we cannot forget that a body of work has been done on them. Good work has been done and resources have been spent. My problem is that that work might be wasted. What do you see happening if planning at council level is implemented in two years' time? As you said, councils might have a different view on planning matters.

1433. Ms Thompson: There is no doubt that those with the PAC must be adopted. It would be an outrage for all that work and expense just to be scrapped. It is important that those are concluded and become an interim guide for development in different areas. It is more a case of trying to get areas such as Omagh or Strabane on track; areas where the area plans are a number of years out of date. The development plan framework is particularly suffering in areas west of the Bann.

1434. The Chairperson: Armagh, too.

1435. Ms Thompson: Absolutely.

1436. The Chairperson: I will put in a plug for Armagh as well. Do any members have questions? You are all very quiet today. We propose to ask the Department to respond to the questions and ideas from you and the other respondents. We will try to get those responses fairly quickly.

1437. Ms Thompson: It might be helpful if we sent our speaking notes. That would cover everything that we said.

1438. The Chairperson: The document that I have is very good, but you can send the notes also. With regard to the timing, we have a process to go through. That was accepted in the Chamber, and I as Chairperson of the Committee accepted that. There has been some good work but subordinate legislation and capacity building are key, as is a review of the transition period and roll-out. You have a big role to play. However, I come back to the issue of agents, and I make no apologies for that. That has to be part of this process.

1439. Mr Worthington: The design and access statements and the community consultation exercises for the more major applications will obviously raise standards. It is a question of whether something needs to be built in on the lower levels.

1440. The Chairperson: The issue is not about just land use; it should also be based on community need.

1441. Mr T Clarke: We seem to concentrate on the higher levels. If I am picking correctly up on what the Chairperson is saying, the problem is that agents sometimes submit applications knowing fine well that they do not have any merit. We need to go from the bottom up.

1442. Ms Thompson: There does need to be a sea change. It should be a bit like being a doctor, in that you cannot practise unless you are professionally qualified. Ideally, that is how the planning profession should be.

1443. Mr T Clarke: You did not suggest that in your submission.

1444. Ms Thompson: As an institute, there are trade union issues that are very difficult for the institute to take a view on.

1445. Mr T Clarke: It would be easier for us if that suggestion came from a body such as yours, as opposed to from us. We are only prejudging what we see on the ground, whereas your institute represents a body of people. A recommendation such as that coming from you would probably be more persuasive.

1446. The Chairperson: I know that there are issues. We have experience on the ground and that is all part of the process. We could outline specific details. All that I am saying to you is that that aspect has to be looked at if we are to get this right.

1447. Mr Worthington: We need to bear in mind that, at the moment, we operate a system that has a presumption in favour of development.

1448. The Chairperson: There is no harm in that, David.

1449. Mr Worthington: I know but —

1450. The Chairperson: As someone from a rural constituency, I definitely do not see any harm in that. However, I agree with you.

1451. Mr Worthington: That means that there is less certainty in the system. You cannot say for definite that an application will be refused. Well, you can but —

1452. Mr T Clarke: You can; that is the problem.

1453. Mr Worthington: It is quite difficult to say that. I have advised people that things will be refused and they were not.

1454. The Chairperson: I know the feeling.

1455. Mr Worthington: My point is that when we move to a plan-led system, it will introduce a lot more certainty because the plan sets out what is approvable and what is not. So, you may find that that helps to ease some of the —

1456. The Chairperson: I suppose that that could be undermined in some ways by a suite of planning policy statements. Do not get me wrong; I am just saying that there are challenges to that system too.

1457. Mr Worthington: There is a need for the planning policy statements to be condensed and made more straightforward, and to try to stop them from pulling against each other, as some do.

1458. The Chairperson: Once we have 100 planning policy statements, we will need to condense them to about 25. You indicated that most of this will come back to the Department, and we spoke about the independent examination of planning appeals. We will go through this body of work, front-load the system and try to develop a plan. However, it could be a case of everyone wanting their own way, so some check needs to be in place. How do you feel about plans being sent for independent examination and then going back to the Department?

1459. Ms Thompson: That will be another layer of bureaucracy and potential judicial review. Some canny solicitor could ask why the Department agreed with something when the PAC did not and the council did something else.

1460. The Chairperson: That is fine, we are scrutinising the Bill and must record that view. We need to look at this and see how things will materialise.

1461. Mr W Clarke: Thank you for your excellent presentation. On the issue of capacity building, a broad range of people will need to be retrained, including elected members, council staff and planners. It will be a culture shock for all of them. That is particularly the case with spatial planning and bringing the different statutory agencies on board. What are your thoughts on the pilot schemes that were announced by the Minister? Are you involved in their roll-out? Will you provide training courses for councillors on spatial planning and the planning process?

1462. Mr Worthington: We were present when the Minister proposed those pilot schemes, but I am unsure as to whether we will be involved in their roll-out. We think that they are a good idea, if they are workable with the legislation and do not end up creating more mayhem and more fees for solicitors.

1463. We intend to roll out a programme of training that is specifically tailored to councillors. At one point there was a suggestion that the Town and Country Planning Association would hold its annual conference in Northern Ireland. As RPA receded that was taken off the agenda, but it could be brought back on again and a programme of training could be worked out.

1464. Mr W Clarke: Obviously, there are clear lessons from what happened across the water in the area of planning reform. Do you see any comparisons between what happened there and what is happening here? Is there anything that we should do differently?

1465. Mr Worthington: The Localism Bill that is going through the House of Commons will bring in a planning system in England that is different to the one that we are working on. When the Localism Bill was first discussed, one of the key issues was the notion that communities would be allowed to define themselves. That would have produced inward-looking plans, but the Localism Bill as introduced provides that councils rather than communities should make that definition. We have a number of shared space initiatives here that encourage communities, particularly those in areas with a lot of peace lines, to look outwards, towards each other. It is important that communities here do not self-define but are defined by councils, to avoid inward-looking plans.

1466. The Chairperson: There is a serious need for capacity building and resources. I thank the witnesses for their presentation and I look forward to working with them again.

1467. The Chairperson: We move on to the oral evidence session from the Royal Institution of Chartered Surveyors (RICS). I welcome Ms Diana Fitzsimmons, Mr Bill Morrison, Mr Ben Collins and Mr Liam Dornan. You are all very welcome. Please give a presentation to the Committee and then I will open the meeting to questions from members.

1468. Mr Ben Collins (Royal Institution of Chartered Surveyors): I am the Northern Ireland director of RICS. I will say a few brief words of introduction, and then each of my three colleagues, all fellows of RICS, will make a brief contribution. We understand that we have 10 minutes to make a presentation at the start.

1469. The Chairperson: We will give you a wee bit more than that.

1470. Mr Collins: Thank you for giving us the opportunity to speak to you about the Planning Bill. RICS has a requirement to act in the public interest and provide advice to the Government of the day. We have 3,000 members who work across land, property and construction in this region, including all aspects of the planning process. Our oral evidence will be supplementary to the written evidence. It can also be made available in a written format should the Committee wish.

1471. As our written submission suggests, we are generally supportive of measures to devolve more planning responsibilities to councils. However, we will use this evidence session to highlight our concerns about implementation issues. Liam Dornan will deal with implications for councils, Diana Fitzsimmons will deal with development plans and third-party appeals, and Bill Morrison will deal with conservation areas and governance.

1472. Mr Liam Dornan (Royal Institution of Chartered Surveyors): I will touch briefly on a very important issue for local councils, which is capacity building in councils. This is quite a big move, when one thinks of the way in which planning was devolved to a separate Department. RICS recognises that there is a need to ensure sufficient capacity in central and local government to ensure that the reform of the Planning Service is delivered in an effective and efficient manner. To that end, we hope that staff in the new planning services in central government and local authorities will be provided with sufficient resources. RICS has offered the Department assistance with training, and Minister Poots said during Question Time that he would welcome that.

1473. We welcome and support the inclusion of a statutory duty in the exercising of planning functions. We encourage the Committee to impress on the Minister the importance of sustainable development and the need for councils to comply with the spirit of the legislation. RICS recognises that councils, in their statutory functions and daily business, strive for sustainable solutions for development in their areas, especially when building new facilities for the public in their area.

1474. Clause 18 concerns the power of the Department to direct councils to prepare joint plans. RICS has concerns about councils being directed to work on joint plans in that fashion. We would welcome some kind of incentive to councils that decide, without direction by the Minister, to engage in the production of plans without intervention. A joint approach in some instances would be important, but councils coming together of their own volition would be better than their being directed by a third party.

1475. Clause 25 deals with the hierarchy of developments. There are still some issues to be clarified in that regard. The proposed legislation states that the Department can decide that a local development is a major development. Some elements of the criteria for those decisions are contained in clause 31. We need some clarification as to when the Minister can invoke that clause. This could be an issue with some of the local developments in our major cities, such as Derry, Belfast, Newry and Lisburn, depending on the size of the projects. It may undermine the workings of local authorities.

1476. Clause 26 deals with the definition of "regional significance". RICS has some concerns, as were described previously. It may bring the Minister and the council into conflict if the Minister or the Department suddenly decides that a local development is regionally significant and should, therefore, be looked after by central government and the Minister.

1477. Clause 27 deals with pre-application community consultation. That part of the Bill will place a duty on a council to consult with the local community. That is important if the local community is to have an input into development in an area, especially where regionally significant projects are concerned. The applicant is responsible for that consultation, and the RICS would like clarification on issues that deal with the definition of community. That includes how far that definition goes in the consultation and the breadth of the consultation that is required by the process. It is important for the developer to consult with the council on that so that the council can use its good services to maximise consultation with local people.

1478. Ms Diana Fitzsimmons (Royal Institution of Chartered Surveyors): I am a planning consultant and the office director of Turley Associates. We have about 100 applications with the

strategic projects team in the Planning Service. Those applications are for regionally significant projects. We have another couple of hundred applications with the local divisional planning offices. I was formerly principal commissioner with the Planning Appeals Commission, so I have experience of conducting two development plan inquiries. Before that, I was an academic, and before that, I was a planner in the DOE's Planning Service.

1479. The points that I want to make are about the proposed plan-making system and the fact that third-party appeals are lacking in the Bill.

1480. The RICS supports the fact that councils will be making local development plans, the two elements of those being the plan strategy and the local policies plan. It also supports the fact and that those two elements need to be consistent with each other. However, we have some issues about how quickly local councils will be able to do that. Obviously, the big issue is always timing and the timeliness of plan preparation, particularly in the context of a plan-led system, which the legislation will introduce.

1481. Developers and inward investors need a very predictable planning system, and that is very much part of the reform process. We agree that councils, in preparing their local development plans, must take account of regional policy and guidance from DOE, DRD and OFMDFM. They must also contribute to sustainable development. All those matters are in the Bill.

1482. As we are all aware, sustainable development is a term that has been defined differently by different people, so it is quite difficult to cover. The local development plan must also comply with any EU obligations. Therefore, it will not be an easy process for councils to carry out plan making, because they will have to listen to what people on the ground, or at the coalface, have to say while being in accordance with all the higher-up plans.

1483. Obviously, the Bill is very much the skeleton of the new development plan process. The Bill states that a lot of that will be developed further through development Orders and regulations, which will be the meat on the skeleton. It is very important that those Orders and regulations are issued as soon as possible so that we can see exactly what is required in the form and content of a plan, the consultation procedures, the content of a statement of community involvement, the plan review process and procedures. We should also be able to see exactly what is required in the content of an annual report on a plan, which the council will prepare. We do not see any of that detail in the legislation, so it is obviously for Orders and regulations to cover.

1484. We note that the DOE will retain extensive plan-making powers. You may want us to comment further on that. We think that that is probably OK at the moment, because it reflects nervousness in the Department about the councils' ability to carry out those plans in a short time. That may change over time, and the Department of the Environment will hold fewer powers of direction.

1485. We are concerned that community planning is not mentioned in the Bill. It is the layer below the local development plan, and it will obviously be a non-statutory planning process. Given that practice in community planning differs right across England and Scotland, we are not quite sure what community planning is and what it will be about. We need to learn from best practice across the water. For example, who will prepare the community plan? Will it be an all-district community plan? What groups will be consulted in the process of preparing such a plan? We need to avoid community disillusionment with the public participation process, so we suggest that people are consulted once on both the local development plan and the community plan to avoid death by consultation.

1486. We believe that training for councillors and council officials is very important. It is important that the measures are not introduced until new councillors and their officials have received thorough training. That is because the system needs to be seen to be fair, impartial and open. It also needs to be seen to comply with all the regional planning policy statements and the regional development strategy. That is not an easy process to match up, as it is very much a balancing process. The RICS is happy to contribute to training councils.

1487. The PAC is the preferred vehicle for the examination of a plan, as it is well trained and has a track record of being open, fair and impartial. However, if there is a huge backlog of plans waiting for examination, we can see the merit of having a well-trained independent examiner.

1488. When it comes to making representations on the soundness of a plan, which is in the Bill, there should be an opportunity for those defending their interests against such a representation to be heard at the examination as well. However, I do not see that, which used to be called counter-objecting, in the legislation.

1489. Another issue to consider is the definition of the soundness of a plan. In England, the word "soundness" has caused a lot of problems for the Planning Inspectorate. In fact, it turned away the first two plans that were submitted to it for examination because they were not sound. We need to be careful that we do not get bogged down. Therefore, we need a definition of the word "soundness".

1490. Finally, third-party rights of appeal are not included in the legislation. The RICS has traditionally been against introducing third-party appeals on the grounds that they would further delay decisions on planning applications. However, if the Assembly is keen to introduce such appeals, it could learn a lot from the system in the Republic of Ireland, where such appeals can be made only by those who have objected in the first instance. The appeal has to be submitted within four weeks with a full supporting case. In practice, there are no oral hearings in the Republic of Ireland, so it is a very speedy system of appeal.

1491. Mr Bill Morrison (Royal Institution of Chartered Surveyors): By way of background, I am a planning consultant, as is Diana. Formerly, I was divisional planning manager for Downpatrick and Belfast, so I have a little bit of insight about both inside and outside the system.

1492. The Chairperson: Your name rings a bell.

1493. Mr Morrison: I want to make three points on behalf of the RICS. The first is a general point, the second is about conservation and is quite specific, and the third is about something that could be introduced into the Bill if people were minded to address the pressing problem of planning delays.

1494. I will deal first with the more general observation. Picking up from the Chairperson's comments at the end of the Second Stage debate, we asked whether the Bill would work in practice, whether it would do what it intends to do and whether anything had been overlooked. Generally, the RICS takes the view that the Bill does what it says on the tin: it transfers planning powers to district councils with a few additional tweaks. Perhaps it is the additional tweaks that need to be looked at fairly carefully. The Bill contains the checks and balances, but the RICS would endorse two points that the Chairperson made at the Second Stage debate that powers for planning should not go to councils before they are:

"working within a new statutory governance framework and an ethical standards regime". — [Official Report, Vol 59, No 2, p117, col 2].

1495. Similarly, we say that links between community planning and development plans need to be clearly explained. Diana has addressed that particular point.

1496. The more specific point that I want to make addresses clauses 103 and 104, which relate to conservation. Generally speaking, the powers in those clauses will come across from the Planning (Northern Ireland) Order 1991. In our opinion, the introduction of additional factors needs to be looked at carefully. The proposals are to change the conservation law to bring partial demolition under control and to apply an enhancement test to development. We feel that those measures should be approached with some caution. They address long-standing case law in England, and, despite the passage of time, no attempt has been made to change that. That sends a signal that there may be something to be cautious about in introducing those two measures. All that the RICS wants to do is flag that up and ask that the Committee look carefully at that particular element.

1497. I will turn now to the no harm test. If something is proposed in a conservation area, the law as it stands states that:

"the desirability of preserving or enhancing the ... conservation area"

1498. should be taken into account. In other words, whenever we look at a development proposal, we must ask whether it preserves or enhances the character of the conservation area. The courts in England have taken the view that the critical element is that it causes no harm. The no harm test is fundamental to planning policy. That is the point that the RICS wants to underline. If a proposal causes no harm, it should be allowed in principle. However, the Bill proposes something that goes a stage further by introducing a test to ascertain whether a proposal enhances conservation.

1499. I am a supporter of historic buildings and conservation generally. I am member of the Ulster Architectural Heritage Society, which champions this measure. However, I am concerned that it may take planning one step too far. It makes it very difficult to conceive of how a development would measure up to the test of enhancement. If a proposal is put forward, and it causes no harm, we can understand that. If it has to enhance an area, we wonder what is going to be involved.

1500. My second point, which is also addressed in the Bill, is partial demolition. At the moment, if someone is in a conservation area and is required to carry out demolition, the courts have ruled that consent is required only if the building is to be totally demolished. If it will be only partially demolished, consent is not required. That has been addressed in the Bill, but it raises questions about whether it will lead to an abundance of planning applications for every minor issue that might have to be dealt with. For example, a householder wanting to push down a wall in their back yard will now ask whether he needs conservation area consent. They may or may not need planning permission, and, in many cases, it will be permitted development. However, such a case will fall under this element of the Bill. The complication is that there could be a lot more planning applications and applications for consent to demolish. That would introduce bureaucracy and would raise the question of whether it is absolutely necessary. If it ain't broke, don't fix it.

1501. My third point addresses the concerns that are prevalent at the moment about delays in planning processes. The RICS notes and commends the Planning Service's successes in streamlining. The Planning Service has done a lot over the past two years, after it got a lot of criticism about the length of time that applications were stuck in the process. Things have improved.



1502. We welcome clause 224, which will introduce consultee obligations. In other words, if someone is consulted in the process of planning applications, they will have to reply within a certain time or suffer some consequences that are yet to be determined. That at least puts pressure on consultees to come back with responses in time, which is a positive move.

1503. However, processes remain cumbersome, and that is compounded by challenges or the threat of challenge at various stages, particularly where public inquiries are involved. I am talking and thinking about Sprucefield, Belfast City Airport or, most recently, Newtownards. The RICS feels that some thought could be given in the Bill to measures that would address the Minister's concern that issues should be resolved at inquiries and by decision-takers, with the courts being the last resort. That must be right.

1504. Therefore, the question that I ask on behalf of the RICS is whether there is merit, under the Bill, in setting up a new regime to prevent challenges ahead of a planning decision and to raise the bar in what needs to be demonstrated. The significance of that, ahead of the planning decision, is that, at the moment we have challenges coming at various stages of the process, and when the application goes to public inquiry for one reason or another, environmental issues may not have been addressed, so the inquiry is pulled and the application is looked at again.

1505. If the Executive and Assembly could introduce a law that stated that there could be no court challenge until such time as a final decision had been taken, a lot of the delay factors in procedural challenges, some of which may be mischievous, would be taken out of the process. All challenges add to delays, so such a law would allow one opportunity at the end to challenge the decision if there had been a procedural flaw. We may get better-rounded judgments from the courts about whether the impact of the application was such that it required the matter to be looked at again. We feel that that is an issue that could be dealt with in the Planning Bill, and this might be the very opportunity to do that.

1506. The Chairperson: Thanks very much. You have provided a lot of food for thought. Other respondees raised many of the same issues. However, I will try to touch on some of the specific issues that you raised. I will start with you, Mr Dornan. Obviously, resources and capacity building are major issues for you in the transfer of all these functions.

1507. Mr Dornan: They are major issues. However, we do not want them to become absolutely huge issues, because the time frame is quite short. For example, April 2011 is one of the key dates. We do not want to be guilty, if that is the right term, of having a change for the good that does not turn out to be good. I believe that there will be enough of a burden on local councils dealing with, if I am correct, nearly 350 renewable energy applications in the planning system that do not seem to be going anywhere at the moment. The worst that could happen is that we make the changes and put people through the pain without improving the system. Therefore, resourcing, training and building capacity in local councils are absolutely essential for this shift in the planning system.

1508. The Chairperson: I will put it to the Committee for agreement, but there is to be a two-year review of how this whole process rolls out, which is fine. However, we are clear that, until the governance is in place, the Bill will not be implemented. The pilot programmes may give us a feel for exactly how the process will work. We are in agreement about that, although, as I said, the important issue is the capacity building, which everybody has mentioned. How do we deliver that when it comes to deciding fees and getting the model to run that all out? Do you have any comments on that? Should the system be entirely fees based?

1509. Mr Dornan: Interestingly, the Planning Service has just put its fees up by 20%. I think that it was last year or the previous year that the fees were increased by 20%, and we have seen a downturn in economic activity. I think that the fees structure has to suit the service that we

deliver. Moving planning to local councils should really be cost negative. There should not be any huge cost in moving planning from one government Department to another government agency.

1510. The Chairperson: Obviously, there is a cost with training and capacity building. Having said that — I am sorry, the point has gone out of my head. I will have to come back to it.

1511. Mr Dornan: To supplement that, I will give you an example of how training will help the situation. For the past three days, I have been involved with training. I work for Belfast City Council's building control service, and for the past five years, we have been helping LPS to finish off its rating surveys and to get ratepayers' bills out quicker. That ultimately helps absolutely everyone. We have been training with the Institute of Revenues, Rating and Valuation (IRRV), which is the professional body for rates collectors on these two islands, to try to improve the collection of rates and make that process more efficient. I believe that capacity building involves training for elected members and people working in local government. As my colleagues said, we have offered training, and we have offered to be involved in training for the new services in the councils.

1512. The Chairperson: Planning is still a public function. When dealing with finances, there has to be value for money, but people sometimes have to weigh up what they are getting. For example, we have seen planning rolled out in central government through the Department for a number of years, and we have also seen that fees have been accumulating recently, so the service did not exactly meet the amount of necessary work.

1513. Nothing has been said about the actual model that will be used to transfer planning down to the councils and how much work that will take. The previous presentation mentioned fees, but it also looked at the rates base. That would need to be part of how the system is rolled out over the two or three-year period or whatever period of time it is. It is something to seriously consider. We cannot just hand power down, decide to train people up, think that everything is fine and then tell ratepayers that that is what we are doing.

1514. Diana, you mentioned the plan-led process for councils and the timing that is involved in that. You talked about surveys, districts, designating roles and everything else. You worked in the area-planning process, so from your experience, how do you see that element?

1515. Ms Fitzsimmons: I was wondering whether there could be some sort of central resource for the 11 councils so that they can carry out a lot of the survey work. There are people in the Planning Service now who are quite skilled at doing development plans, and there are other people who have never done any such work. Rather than each council having to learn, possibly once every six years, how to do a plan, if there were a central resource that would help them out, as it were, and possibly carry out some of the analysis and research for them, they could then, after community consultation, evolve that into options and a plan. It might be a good idea to take some of the technical side of the process to a central resource.

1516. The Chairperson: How would you tie in the reality of that? We are talking about land use and zoned planning and community aspirations. We have to consider what goes along with that, such as the community plan element, local policies, statements, area plans and the RDS. How do you think that that whole process will work out?

1517. Ms Fitzsimmons: From what I have read, it seems to me that the community plan will be an all-district one. There are issues with that in that it becomes a wish-list for hospitals, schools and parks and so forth, yet the regional development strategy states what we can afford as a region.

1518. The Chairperson: I agree, and that needs to be teased out. That is why I asked you. We talked about spatial planning and land use planning, and spatial planning is about more than just using the land and places. It is also about the hierarchy that you mentioned.

1519. Ms Fitzsimmons: In an ideal world, the elements of the community plan that feed in to land uses should be taken on board by the local development framework and then worked through. Councils will have to make very hard decisions about which town centres will grow and which will not and where hospitals will be built. For example, community planning may result in people wanting a lot of small hospitals, yet the strategic plan will require large, specialist hospitals, as that is more economical. Therefore, it will not be an easy process.

1520. The Chairperson: I can well believe it, but we seem to be gearing up to move in that direction.

1521. Mr Morrison: It will probably have to be revisited when the proposals for local government come forward. One of the ways of simplifying the issue is to consider the development framework as just one means of delivering the community plan. In other words, there is a hierarchy, and the community plan is more important and on a larger scale for all aspects of local authority expenditure.

1522. The Chairperson: No doubt it will be one step at a time. Diana, we talked about the PAC earlier. We may create duplication if we create a process in which plans are sent to the Department with the possibility of their being sent to the PAC and returned to the Department. You have been on the inside of that process, so what are your views on that point?

1523. On the capacity issue, Bill told the Committee that there is a backlog as a result of redeployment and other issues. That backlog could be cleared quickly, but further problems could be created if we move it on a further step, as decisions will need to be made. There is nervousness in the Department about this, which is fair enough.

1524. Ms Fitzsimmons: The Planning Appeals Commission has evolved the process. It used to take a very long time to conduct a public inquiry. Examinations are much quicker, as they are commissioner led, but they could be further tightened and speeded up quite substantially. For example, a lot of people do not turn up when they said they would, and there is a great deal of time wasting. A number of commissioners should work on one plan to get it through quicker. In my opinion, the point is to use the Planning Appeals Commission's resources effectively.

1525. The Chairperson: Bill, just before I open it up to Committee members, you spoke about clause 224 and the duty to respond to consultations. I will not mention my experiences as a councillor, but, given that there are different applications for different developments, should the time frames for the receipt of consultees' responses to such applications be broken down?

1526. Mr Morrison: Clause 224 will leave a lot to development Orders and so on to specify what sanctions will be placed on consultees. However, at least the provision is in the Bill, and there probably will be an insistence from Departments for those responses to come back on time.

1527. One way that a consultee can get out of that duty is to say that they need more information. That is a delaying factor that perhaps no legislation can overcome. If someone needs more information, it must be provided and the file is put away until that information arrives. The recognition that consultee responses are crucial to the time frame of processing planning applications is important, and I am glad to see it in the Bill.

1528. The Chairperson: We can move that on and say that, for the consultee to be able to say that, the processes need to be right from the start. If a consultee is able to stall the process by

saying that they have not been sent certain information or they need a question answered, should there not be a time frame for that? You have spoken about procedural flaws and planning delays in general, and there are certain criteria that you have to go by. I will ask you about agents in a moment. However, the process is a tick-box exercise, and, if mistakes are made, applicants could argue that their agent did not fill in the application properly. The case officer would then have to go back to the person who validated that application.

1529. Surely to God if you are telling me that about the procedures and duty to respond, and the consultee is saying "you have not sent me this" or phoning up to say "give me another week", whoever is sending that information has a duty to respond. Do we not then need to look at that process and the criteria?

1530. Mr Morrison: The criteria have tightened. The whole validation process is a lot tighter than it was and probably as tight as it can be. The problem with consultees is more to do with the fact that the resources of the Department or agency that is dealing with the responses are not made available. Clause 224 will ensure that resources are given by other Departments to the processing of planning applications.

1531. Ms Fitzsimmons: The Planning Service's strategic projects team now has in-house representatives of the Northern Ireland Environment Agency and Roads Service. That in-house element helps to speed things up. Maybe councils need a similar in-house team with their own NIEA and Roads Service people to work with them on planning applications in a more joined-up process in each council.

1532. The Chairperson: We could call them mistakes, but we need to learn from what went on in the past.

1533. Mr Morrison: You can learn from successes as well as from mistakes.

1534. The Chairperson: Yes, certainly. We will not get into which consultees hold up the process, because we will be here all day. I talked during the previous presentation about agents and their training. No disrespect, but I have sat on a council and it is only when a person gets a refusal that you get a phone call asking you to speak up at a council meeting for them. There are people who may be good architects but when it comes to planning policy, or knowing policies, you might be safer to fill in the application yourself and send it in. I am being honest; that is what happens. Is there anything in this? Have you any recommendations or any views?

1535. Ms Fitzsimmons: The RICS could perform a useful role in assisting councils, the Department of the Environment and the Planning Service in training applicants if there is a relationship there that needs improving.

1536. The Chairperson: That is what is happening out there. Do not shy away from it. In all the processes that we are trying to get right, we have experienced that at council level and we need to look at it. I am not saying that we put that in the Bill. Perhaps it could be a recommendation.

1537. Mr Morrison: Your worry is uninformed agents who may be —

1538. The Chairperson: That is there; it is on the ground.

1539. Mr T Clarke: Not necessarily uninformed.

1540. The Chairperson: No, not necessarily uninformed.

1541. Mr Morrison: The planning system should not be dependent on high skills. It should allow people to be able to submit an application properly. However, that might require training of agents.

1542. The Chairperson: We thought that e-PIC would cure that problem but I do not think that it is working just yet.

1543. Mr Morrison: Yes.

1544. The Chairperson: Let us be honest: we have seen what is happening on the ground. All I am saying is that that needs to be highlighted. You maybe do not have to be a rocket scientist to put in an application but you certainly need to know a wee bit about planning policy and criteria.

1545. Mr Dornan: In the building control system in this country you do not have to be an architect to submit an application. Local councils and building control services would like to have a particular type of person submit an application because that would dictate the information that is supplied and make it easier for the council to make a decision. I think that that is what you are referring to.

1546. The Chairperson: I had just better clarify that point for the Hansard report: I used architects as an example only. I agree with you, and we will speak no more on it.

1547. Mr Dornan: What I am saying is that there is no limitation on anyone being an agent in the building control end of the business. Whether they are a surveyor, architect, engineer or a lay person, they have a right to submit an application for consideration by the local councils. That is the case here, and it may well lead to delays in the consideration of that application.

1548. The Chairperson: If people want to put in an application, there are certain ways of going about it, including using the 'Yellow Pages', word of mouth or their contacts. That is fine. I have made the point clear.

1549. Mr W Clarke: Following on from what the Chairperson said about having to get agents for simple applications, surely, since the Planning Service was set up, there has always been an onus on the Department to provide that information to the applicant at the beginning of the process. Surely front-loading the service at that stage will do away with the need for agents. If more resources were put in at the front end, it would help people with their application. I know that people phone up a planning office and are told that it is too busy and to stick in an application for the planning office to decide what points need clarified. That is a drain on people's resources. I think that there is a duty, perhaps through resources being directed from central government, to put the money into Planning Service at the beginning of the process.

1550. Mr Morrison: In fairness, the Planning Service has moved quite far in that direction, not so much with the e-PIC system but with the website.

1551. Mr W Clarke: Ordinary lay people do not get trained on that.

1552. Mr Morrison: It is a complicated business.

1553. The Chairperson: There is nothing simple about planning.

1554. Mr W Clarke: It has nothing to do with the computer systems. I am talking about having a one-stop shop whereby people come into a planning office and go through their application. People should have at least one opportunity to do that.

1555. Mr Morrison: As a general observation, one of the things about giving powers to councils is that there is a danger that each council will behave in a different manner with regard to these things.

1556. Ms W Clarke: As planning offices do.

1557. Mr Morrison: Yes. Even on the question of fees, which you touched on, it seems that it would be difficult if each council area were to set its own fees. There is an argument for keeping them consistent across the board.

1558. Ms Fitzsimmons: Clause 40 states that an order will be made that will require particular types of applications for planning permission to have design statements and access statements. That is the English system, and it takes a professional person to do that, as opposed to an unqualified agent or an applicant. That is one of the things that will be required in the future.

1559. The Chairperson: That is fine. I think that you are correct on that.

1560. We are being told that we will not have enough time to scrutinise the Bill, but a lot of questions will be asked before we are finished. We have an opportunity to get it right. There will be a transition period when people take time to bed in and get it right. Subordinate legislation will determine how it rolls out on the ground, and some of the issues that we talked about today will raise their heads. For the record, I have nothing against those architects — or architects in general — but I am giving examples of what we have heard, and we need to look at that. Thank you.

## 27 January 2011

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Danny Kinahan  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Mr John Quinn	Arc21
Mr Terry Bunce	Ards Airport
Ms Anne Doherty	Belfast City Council
Ms Joan Devlin	Belfast Healthy Cities
Ms Jonna Monaghan	Belfast Healthy Cities
Mr Colm Bradley	Community Places
Mr Lewis Porter	Craigavon Borough Council
Mr Patrick O'Neill	Development Planning Partnership
Ms Sharon O'Connor	Down District Council
Mr Roger Pollen	Federation of Small Businesses
Mr James Orr	Friends of the Earth
Mr Kevin McShane	Institution of Civil Engineers
Mr Ian Wilson	Lisburn City Council

Ms Carolyn Wilson	Mobile Operators Association
Mr David de Casseres	Northern Ireland Electricity
Ms Catherine Blease	Northern Ireland Housing Executive
Ms Esther Christie	
Ms Alison McCullagh	Omagh District Council
Ms Claire Ferry	Royal Society for the Protection of Birds
Mr Brian Sore	Royal Town Planning Institute
Mr Patrick Cregg	Woodland Trust

1561. The Chairperson (Mr Boylan): I declare the meeting open to the public. I remind all members and those in the Public Gallery to switch off their mobile phones. Even on silent, they interfere with the recording system. We have received apologies from John Dallat, Thomas Buchanan, George Savage and Willie Clarke.

1562. Today's evidence in the Long Gallery will focus on four areas of the Planning Bill that have been consistently highlighted in public responses as key areas of concern: the independent examination of development plans and appeals, including the proposed balance of control between the Department and local authorities; developer contributions to community infrastructure funding; pre-application community consultation; and third party appeals.

1563. I thank you all for coming to Parliament Buildings to participate in the Committee's evidence event. The Planning Bill is a large Bill that covers a range of areas, and the Committee has little time in which to conduct its scrutiny. The Committee is trying to condense as much evidence as it can into the time available. We have now received 61 written submissions from a range of individuals and organisations keen to make us aware of their thoughts on the Bill. I take this opportunity to thank you for your written submissions and your attendance today.

1564. Yesterday and this morning, the Committee took evidence from 11 organisations that it felt represented the statutory sector, local authorities, social and community needs, technical aspects of planning, and business and industry. Today we will focus on four areas of the Bill that have been raised consistently across this spectrum of interested parties.

1565. The Bill was introduced in the Assembly on 6 December 2010 and passed its Second Stage on 14 December. Committee Stage began on 15 December, just before the Assembly went into recess, and, after a two-week extension was agreed this morning, will now conclude on 1 March, when the Committee will report to the Assembly. It is expected that the remaining plenary stages of the legislative process will take place during March.

1566. Members of staff have microphones. If you wish to speak, please signal to me or to Committee staff. A paper setting out the order in which evidence will be taken has been provided to everyone. There are four main areas for discussion, and I will be strict in confining people to each discussion area because, as frustrating as it may be, we simply do not have the time to run through all of the issues. On that point, we had 61 written submissions. I do not think there is anything to hear that that we have not already heard. The Committee will hold other evidence sessions, but today we want to stick to those four main areas.

1567. I will outline the area for discussion first, then call on the organisations listed against each topic to present their perspective. I will call two representatives, each of whom will have minutes. I will then throw open the discussion to the floor. At the end of all the sessions, we will get departmental officials to respond. Anyone else who wishes to comment should start by stating their name and organisation for the record. There will then be an opportunity for

Committee members to ask questions. I will then move onto the next clause as listed. Once all the areas have been dealt with, I will invite departmental officials to make their points.

1568. Without further ado, the first discussion is on the independent examination of development plans and appeals, including the proposed balance of power between the Department and local authorities. Throughout these sessions, I encourage people to indicate how they would like to see the Bill amended to address their concerns. There are two speakers with five minutes each on the first topic. Colm Bradley from Community Places will be followed by John Quinn of Arc21, after which I will open up the discussion for brief points and suggestions from the floor.

1569. Mr Colm Bradley (Community Places): Thank you, Chairperson, and thanks to the Committee for organising this event. On the general principle of the balance between the Department and local government, our view is that, wherever possible, if we are handing planning over to local government, decisions should be taken by local government. The Department's primary role should be to ensure consistency across all local government areas, so that regardless of where an applicant or objector lives, or where a community is concerned about an application or a development plan, they know that they will be treated the same as elsewhere. In other words, it should not be a postcode lottery. That should be the Department's primary role — to ensure consistency and good governance across all local government areas. If we are devolving planning, let us devolve decision-making to local government.

1570. On the issue of who should carry out independent examination and the Department's role in it, I should first say that we welcome the move towards independent examinations and the introduction of a soundness test. Although it has yet to be fleshed out in more detail, we like the sound of the soundness test.

1571. The Planning Appeals Commission (PAC) is appointed not by the Department but by the Office of the First Minister and deputy First Minister (OFMDFM). It is so appointed in order to ensure its independence and to ensure that the public will trust it as an independent professional organisation. We feel that that is important to public confidence in the planning system — the whole planning system, the whole process — and we should cherish and protect that independence. Some of the proposals in the Bill suggest that that independence may be undermined in the future. For example, it is proposed that the Department may appoint an independent examiner other than the PAC to examine a development plan. I am sure that, on occasions, having another resource will be helpful; however, we do not feel that that person or persons should be appointed by the Department. They should be appointed by OFMDFM, which appoints the PAC.

1572. The final issue with the independent examination of development plans is the role of the Department. Should it, as proposed in the Bill, have the power to adopt or not adopt a PAC report? If the Department retains that power, that will undermine the independence of the system. Regardless of the soundness of the Department's decisions on those occasions, the public may well feel that it is ultimately the Minister who is deciding what happens with a development plan. The whole system will not have the degree of public confidence that we all hope it will have. The PAC must be an independent body whose only considerations when it looks at a development plan are planning policies. Its independence is extremely important to society and for building public confidence in planning. Let us retain that confidence as far as we can.

1573. There are PAC resource issues. There are also issues associated with its procedures, timescales and delays. Those are operational issues that need and ought to be sorted out, but they are not issues for the Planning Bill at this stage.



1574. Finally, on the issue of appeals, we would all like to think that decisions on planning applications would be taken correctly the first time and be right. Unfortunately, they are not. As with many other decision-making systems, an appeals system is sometimes required. If we improve our systems and get our decisions right the first time there will be less need to use an appeals system. As the success rate of an appeals system falls, people use it less. So, let us get the decisions right the first time and we will then have less use of an appeals system. However, we do need an independent appeals system to build in confidence and ensure consistency across the region.

1575. Mr John Quinn (Arc21): I cannot disagree with anything that Mr Bradley said. However, I would like to turn to the issue of the balance of power. Arc21 is an umbrella group representing 11 councils in the east of Northern Ireland tasked with delivering mission-critical waste infrastructure. Planning is pivotal to the successful outcome of the programme. I suspect that Arc21's views will not diverge much from the general local government view. Arc21 and local government generally perceive a reticence by the Department to release the shackles and allow local government truly to take decisions in terms of devolving planning functions.

1576. I quote from the Hansard report of the Assembly debate on the Second Stage of the Planning Bill on 14 December 2010, when the Minister said the transformation was fundamental:

"to the development of local accountable democracy. It puts power ... in the hands of locally elected representatives accountable to the people." — [Official Report, Vol 59, No 2, p112, col 2].

1577. Those are honourable words, but they are not evidenced in the Bill with regard to the balance of power. We are not sure of the motivation for that, but it certainly does not seem to militate in favour of giving power and accountability to local councillors and the people who elected them.

1578. I do not want to be specific, but the whole Bill is peppered with issues such as retention of powers of direction, scrutiny, performance appraisal, monitoring and oversight. Therefore, it appears to local government that a lot of the power is being retained. While the operational function may be devolved, perhaps a lot of the decision-making is being retained in the centre.

1579. Liabilities and financial implications, however, appear to be very much vested now in local government. There is not enough clarity on those financial and operational implications. Perhaps that goes back to the absence of the level of engagement that we would have liked to see in the run-up to implementation with regard to resource implications, financial implications and the amount of compensation that has been paid or will be paid under the future regime. There has been little clarity in respect of the status quo or, indeed, of the implications of the current financial and human resources situation in Planning Service. I want to make that general point.

1580. In terms of what we might want to see, one proposal is that there should be some sort of appeal mechanism on foot of decisions or interventions by the Department. Recourse by local government against decisions or direction from the Department is absent from the Bill. We would like there to be some embodiment of a process by which to appeal those decisions.

1581. Assuming that there is nervousness in the Department about devolving the powers to local government — perhaps understandably, given that there is no recent history of local government's performance in that context — it might be appropriate to consider some sort of a review mechanism within the process, so that those shackles could be loosened progressively over time as capacity is built up in local government. Some sort of review within a timescale of, say, two, three or five years — or, indeed, a periodical review of the process — might be something that the Committee might find appropriate.

1582. I want to deal with the issue of independent examination. We welcome the move from the more litigious public inquiry process to the more informal examination in public. Hopefully, some of the other measures that are proposed will make the process less adversarial.

1583. However, again, in the powers that are proposed to be retained by the Department that relate to the appointment of commissioners, it does not have that power. There is evidence that it seeks to retain the power to appoint commissioners in the new regime, which almost supersedes the functional remit of the PAC. I do not see the rationale for that. I do not even see the justification for it vis-à-vis the consultation process. Certainly, there was no massive head of steam to give the Department those powers in the responses to the consultation. Therefore, we cannot understand the motivation for it. There are other ways to do this that retain the PAC's independence in the process — by giving it that remit. If there were resource issues, the PAC could appoint outsourced commissioners, or OFMDFM could do the same. I cannot see any particular reason why the Department needs to retain that power.

1584. Under clause 29, which deals with call-in provisions, the Department seeks similar powers to appoint beyond the PAC for a public inquiry or hearing. That could create a situation in which the Department itself would be conflicted in that process, having appointed an independent commissioner to oversee a hearing or public inquiry while still having the ultimate remit in the decision-making process. We cannot see the rationale behind that. We believe that there are other ways to deal with that if there is nervousness about resourcing implications for the PAC.

1585. The Chairperson: OK, John. Thank you. Luckily, Colm finished a little early and we were able to give you an extra minute. I propose to open the meeting up to the floor for 20 minutes. We have talked about development plans and independent examination in general terms, and I will allow sharp and short contributions on that issue for 20 minutes. Following that, I will open it up to Committee members to ask questions.

1586. Ms Anne Doherty (Belfast City Council): I want to back up some of the comments about power and accountability in local councils. There are a number of areas in the Bill that duplicate functions between the councils and the Department: joined-up planning agreements; the designation of conservation areas; the making of tree preservation orders; and the issuing of enforcement notices. The council considers that duplication to be unnecessary and a repetition of responsibility and resources that has the potential to cause unnecessary confusion in the planning process.

1587. Belfast City Council also feels that the Department has retained too many powers of oversight of and intervention in the planning process. Again, that will undermine the local accountability of councils and has the potential to cause delays in the planning process.

1588. A hierarchy of planning applications is proposed in the Bill. However, a major planning application in a rural area could be quite different to what would constitute a major application in the Belfast City Council area. The council feels that the Department's call-in arrangements should be limited to plans that are contentious or contrary to local development plans, rather than being based on a hierarchy.

1589. Finally, the council requests that the Planning Appeals Commission be adequately resourced. It would also be more appropriate for independent commissioners to be used for less controversial appeals or specialist issues, rather than being appointed by the Department for the development plan process.

1590. Ms Sharon O'Connor (Down District Council): I participated in the whole process of the Ards and Down area plan, from genesis to public inquiry. Although it was an extremely interesting and educational experience, it was not one that was characterised by ease of public

access or participation. The performance of the PAC was satisfactory, but, ultimately, it was a frustrating exercise for local government participants, as the recommendations made by the PAC — which were based on planning policy — were largely rebuffed by the Department. I hoped that the Bill would contain an improved quality of transacting in the area planning process, not one that would buffer up the retention of the power in the Department or water down the independence of the Planning Appeals Commission. The council feels that the commission is effective, on balance.

1591. Ms Claire Ferry (Royal Society for the Protection of Birds): I have two points. The Government response discussed the possibility that during the independent examination, the objectors to development plans, as well as the proposers of the plan, would have to show that their proposals were sound. Why is that not mentioned in the Bill?

1592. My second point regards adoption. As Mr Bradley mentioned earlier, the examination report is not binding. That is ameliorated somewhat in that the Department must show that it has considered the recommendations and give reasons for its decision. A non-binding report is connected to a certain amount of democratic accountability, but it has also speed implications for the adoption of reports. A binding report will go through much more quickly. If one of the problems is the speed of plans, that needs to be considered.

1593. Our key concern is that, if an independent examiner makes recommendations to rectify a draft plan which they consider to be unsound, and the Department does not adopt those recommendations, is there any chance of legal challenge? What does the Department think of that?

1594. Mr Roger Pollen (Federation of Small Businesses): We have made a written submission, and I just want to add three points to what we have heard.

1595. Our members want to see the planning process simplified, speeded up and made less costly and more responsive to the needs of business. In a recent survey of our entire membership, things cited as relevant in the process were the fees, the professional fees that are then involved to do the job well and the time costs to small businesses that are caused by delays. We will certainly welcome anything that leads to a faster and more flexible approach.

1596. We express caution that the powers that are reserved, as referred to by Arc21, allow intervention outwith the normal expected process. Where that is possible, it will lead to delays, challenges and further expense.

1597. Finally, we note the uncertainty over the future status of councils, given the restructuring following the review of public administration, or the lack of it at the moment. We urge caution that consistency of application should be applied. Obviously, the Department's role in that will be critical.

1598. Mr Ian Wilson (Lisburn City Council): I have a couple of points to reinforce those made by others and expand on them slightly.

1599. We would like to see some sort of clarity on the circumstances of the intervention of the Department under clause 16. It is not clear in the Bill, and we believe it needs to be. The intervention in substantive checking is also going to cause a major delay in the introduction of a suite of development plans across Northern Ireland. We would like the focus to be rescheduled on that particular element.

1600. Lisburn City Council wants to know what is meant by cost neutrality on the transfer of powers. Is it cost neutral before people have been redeployed in the Department as a whole, or

from that time? The whole explanation of cost neutrality, and the resource to be transferred, needs to be clarified.

1601. The other issue is in relation to the role of independent examiners. Lisburn City Council would like a definition of what is meant by "unsatisfactory" in clause 15, in relation to development plan documents. That is not clear, and perhaps enabling legislation is needed to clarify it.

1602. Clause 16(7) states that:

"The council must reimburse the Department for any expenditure"

1603. in relation to call-in for the preparation and revision of a development plan. Local authorities will strongly object to that.

1604. My colleague from Belfast mentioned local development plans. The requirement for enabling legislation to deal with competing interests between neighbouring local development plans needs a little bit more resource and more thinking through.

1605. Mr Brian Sore (Royal Town Planning Institute): We made a submission yesterday. On behalf of the 500-odd planners who are our members in Northern Ireland, we have been making a plea on behalf of the professional role. In relation to the Department's role in this, someone expressed surprise that the Institute is in favour of the Department releasing the controls in the Planning Bill. Obviously, some of our members are planners in the Department. There needs to be clarity, from the professional perspectives at local and central level, about how the Department will act as the overseer of planning in Northern Ireland. If we are really going down the route of devolving power to the local councils, free rein should be given to them and to the professional planners who work in them. Planners do not want every decision they make to be second-guessed and sent back to the Department, and they do not want the system to be over-bureaucratized by having to fulfil business plans every year that then go back to the Department to be approved. That seems like a duplication of effort.

1606. I back up what was said by my colleague from Arc21. There needs to be proper resourcing. The Bill is going to cost money, and the current system does not have sufficient resources to provide both the Department and local councils with a fit-for-purpose planning unit. The Committee should urge the Minister to be explicit about the resources that will be available. As Ian Wilson said, it is not just about cost neutrality.

1607. Public confidence in any form of appeals system is paramount. If an independent is appointed, they need to have transparency and the confidence of the public in any decision that is made. What is not wanted is an independent system that ends up with legal challenges going on. The Planning Appeals Commission has been set up and has a fair degree of support in relation to its independence of the system and the Department. The institute supports that. If there is an independent examination, it needs to be done in a way in which the Planning Appeals Commission would carry out that role.

1608. It was remarked to me that a system that gives control to a local level will represent true local level. Although we argued that the Department should not have controls, there clearly needs to be an instance in which the Department will have a right to pull in a plan if it is going completely off the rails. Clause 16 gives some degree of comfort that the Department has that right, without having to repeat it in several other clauses.

1609. Mr Kinahan: I want to play devil's advocate slightly. Last night, I was with a community group that had no faith in its council's being able to make decisions. It was completely unfair,

but I imagine that that is why the Department wants to keep some control. There may not be faith in politicians, local councils or the Civil Service, but we all have to fight that battle together. It is about finding that balance in it all. The Department has taken a lot of battering today on having too much control. As Mr Quinn said, it is peppered all the way through. We need it there until we have all won the confidence in each of our roles.

1610. I was with my council this morning. I am not a member of the council any longer, but it desperately needs information on resources, clarity and the status quo, as John Quinn said earlier, because it needs more information to make a good response to this. The Committee has a long way to go before we get all of the information together.

1611. The Chairperson: We talked about capacity in the PAC and whether OFMDFM should appoint an independent challenger if one were needed. The appeal mechanism was mentioned, as were the review period, call-ins, public participation, the soundness, legal challenge and clause 16 in relation to being cost neutral. Clause 15 was also mentioned, as were duplication, resources and confidence within the system. That is a recap for the departmental officials on some of the issues that were raised.

1612. The second discussion is on the community infrastructure levy and developer contributions. I welcome Kevin McShane from the Institution of Civil Engineers and James Orr from Friends of the Earth. Both of you have five minutes, after which we will open up the discussion once again.

1613. Mr Kevin McShane (Institution of Civil Engineers): Thank you. The institution welcomes the changes in the Bill and thanks members for giving us the opportunity to speak today. As a professional body, we represent a broad spectrum on the professional side, with over 1,800 members in Northern Ireland, some of whom are based in the public sector. In relation to the infrastructure levy and developer contributions, we want to concentrate our comments on quite a lot of the work that we do for the developers.

1614. We have heard from Ms O'Connor and Mr Wilson from Down District Council and Lisburn City Council respectively. I was going to be generic in my references, but, with the people who are here, I might be specific to try to generate some debate and see what sort of a response I get. Over the past few decades, we have seen the area plans develop, and quite a lot of zonings have come forward. The zonings have been associated with requirements for the delivery of new infrastructure. One example of that is the housing that has been zoned to the north of Lisburn; some 2,000 houses were zoned in the last area plan. That required the delivery of the Lisburn north feeder road.

1615. Ballyclare is another good example, where the N31 was proposed as an essential piece of infrastructure to serve a development. The plan for that was first published in 1993, yet it sat through the 2005 expiry date and extended on through to 2010. That is where it currently sits.

1616. We saw the Ards and Down plan recently through the PAC. A lovely piece of infrastructure has been identified in Downpatrick, where there is a large zoning. The area plan makes it quite clear that that infrastructure has to be delivered before those houses can come forward.

1617. In Lisburn, developers came together with the local council and other bodies and entered into an article 40 agreement to deliver the road, which was quite a comprehensive scheme. Unfortunately, all of those negotiations took about five years to reach agreement before any design work could commence. It then took several years to go through environmental legislation and the planning system before we could actually start to build any of the much-needed homes in that area.

1618. I mentioned the introduction of the draft plans in 1993 for Ballyclare highlighting the requirement for the road. However, there were a number of developers who could not come together and reach agreement on how that was going to be delivered. It is only now that one developer has bitten the bullet, purchased all of the land and come forward with a scheme that has commenced on site now. So, you can see the time — from 1993 to 2011 — that it took to deliver that.

1619. To use Downpatrick as an example, my fear and that of the institution is that the market conditions and the current status mean that the landowners and the developers will never get together to deliver the road. So, we have a large zoning in an area plan that effectively will not be delivered during the life of that plan.

1620. There is, however, a willingness from the developers and from the community to provide contributions to allow that, as an example of infrastructure, to come forward. Yet, in the existing Bill and the previous legislation, there is not really a mechanism that allows funding from separate groups to come forward. Clause 75 of the new Bill allows the possibility to pool separate contributions and developer contributions.

1621. Is that a better way of allowing developments to proceed? You can have a fund in place to allow contributions to be made on either a number of units, if it is a housing scheme, or a square-footage basis, if it is some sort of retail scheme or another form of proposal.

1622. We note that local authorities in the South of this island have used community charges widely. That means that developers know from the start what the charges are going to be, with the result that they can budget and allocate for them. The local authorities also know what funding will come in place. They are the bodies that control the delivery of the infrastructure as it is required. In Britain, such an arrangement was confirmed by the Department for Communities and Local Government. On 18 November last year, Greg Clark confirmed that the community infrastructure levy that the previous Government introduced in April 2010 would be retained. Britain is looking at having better arrangements from article 40s and section 106s.

1623. A similar fund here would allow the smaller applications to pay their fair share. Quite commonly, small schemes for small retail, small development, small schools and small housing projects do not, on their own, generate a requirement to provide a significant element of infrastructure. If we go back to the likes of Downpatrick as an example, it has a hospital, the possibility of new offices and new residential developments, which are all small applications. In their own right, they would not justify anything. However, putting them together as a community infrastructure level allows the local authority to control where that funding is best used and controls the mechanism of pooling those funds together and using them. I am therefore asking members to make sure that the Planning Bill allows the local authorities to control and use some sort of community infrastructure levy.

1624. The Chairperson: Thank you very much. Downpatrick and Belfast have got a good mention today.

1625. Mr James Orr (Friends of the Earth): Thank you for giving me the opportunity to speak to you today. I warmly welcome the comments from the Institution of Civil Engineers. It was a bit of a relief to hear that it supports the Bill; we have not been in collusion about that.

1626. I want to try to convince members of three things today. The first is the benefits of a new approach to planning gain, which incorporates things such as the old article 40 agreement, which will now be made under clause 75, and the community structure levy. I want to outline the benefits to all parties, including communities and developers, as well as the benefits to the

planners themselves. Finally, the new approach to planning gain is a central pillar to the principles that underpin planning reform.

1627. We have only one major fear to deal with, which is the fear that we have to overcome the myth that we are burdening the private sector. Friends of the Earth fully supports economic development, but a strong economy involves a lot more than short-term private profiteering. A healthy economy is also measured by well-being, green infrastructure, woodlands, open space, convivial spaces and a strong informal economy. It is about balance and reasonableness. Planning exists to serve the public interest. We know that granting planning permission for a site can increase development value tenfold, and sometimes a hundred fold, even in recession. The basic principle is that those who gain financially by the granting of planning permission should share some of that financial gain by investing in relevant infrastructure.

1628. To our mind, the community infrastructure levy has two main benefits. First, it is a legally robust method of collecting funding. Secondly, it requires local authorities to develop an infrastructure plan, either through their local development plans or community planning. It gives transparency and predictability, and it can be set at a rate that does not undermine economic development in an area. We have a huge infrastructure catch-up to play in Northern Ireland, and checks and balances include an examination in public, the exclusion of small developments within recognised thresholds, and widespread consultation on the levy. Therefore, I think that the burden on particularly small developments is quite a myth. Even during a recession, we must take a long-term view so that we can help planning authorities to plan ahead.

1629. We believe in and welcome clause 75, particularly for social and affordable housing, applications that are accompanied by an environmental statement and one-off complex applications for which a community infrastructure levy is not relevant. The principles of transparency, culture change in the planning system and delivering a plan-led system are all fully supported in the context of that radical and interesting approach to a community infrastructure fund or levy.

1630. In conclusion, meeting our huge infrastructural needs will be one of the biggest challenges that we will face in Northern Ireland over the next 10 years. We need to support sustainable homes, distributed grids and integrated connectivity away from the private car. We also need to invest in and share the burden equally and fairly in matters such as combined heat and power schemes. I believe that we must retain the informality and flexibility of clause 75 while including a more predictable and plan-led approach, which will be provided through the community infrastructure levy or community infrastructure fund.

1631. The Chairperson: Thank you, James. When I saw you rolling up your sleeves, I thought that the Committee was going to be in trouble. I will now open the session up to other contributors.

1632. Ms Alison McCullagh (Omagh District Council): Omagh District Council welcomes the transfer of a fit-for-purpose planning service to local government. However, we also feel that such a planning service requires teeth.

1633. It is disappointing that there is no meaningful reference to community planning in clause 75. That is particularly so, because, as other speakers said, this is the framework through which community planning can integrate with land use planning. Omagh District Council is disappointed with clause 75(3), which, on the issue of developer contributions, states that:

"the Department must consult with the council for the district".

1634. Surely the intention should be to seek agreement, particularly if the council is representative of the community. The council is also disappointed that many developer contributions may relate to rezoning at a later stage.

1635. I concur with the previous contributor that there must be absolute clarity on the financial model for determining the infrastructure and the timing that is associated with the payments of the contributions. There must also be flexibility on the definition of the area of benefit, no potential for developer contributions to be minimised or avoided and no possibility that any community infrastructure fund will be reduced.

1636. Ms Esther Christie (Northern Ireland Housing Executive): The Housing Executive welcomed the reference in the planning reform report to developer contributions. It noted that two methods were outlined in that report: first, a community infrastructure levy; and secondly, article 40 planning agreements. The Housing Executive feels that those methods of delivery are not mutually exclusive and could be operated simultaneously. The approach through the article 40 planning agreements would be preferable for social and affordable housing, as it would directly contribute to the promotion of balanced communities and would ensure a land supply for social and affordable housing. It is also more in line with the way that social housing is programmed and funded in a regional context. We feel that the community infrastructure levy would require legislation, while article 40 planning agreements can be applied through policy. Indeed, if a regional draft policy on developer contribution, that is, PPS22 were brought forward, it would provide a consistent basis on which all the council areas could apply article 40 agreements. The Housing Executive would prefer that social and affordable housing be facilitated through article 40 planning agreements, rather than through the community infrastructure levy approach.

1637. Ms Jonna Monaghan (Belfast Healthy Cities): I welcome what has been said so far. I also want to reinforce the point that even quite modest developer contributions can support local level infrastructures such as play spaces and walking paths. Such activity can contribute significantly to the creation of healthy places that people want to live in and that are more attractive places for businesses to invest in. It would also generate significant public savings, not least through a reduced need for healthcare.

1638. Ms Ferry: There are two issues to discuss. First, a developer could reasonably be expected to invest in and pay for one infrastructure need that arises as a result of a development. The second issue, which my colleague from the Institution of Civil Engineers mentioned, is that several developments in an area could each supply a small amount to a pot. They could then deliver something that is beyond what is reasonable to ask one developer to pay for but that has a community benefit because it is linked into the community plan. I want to be clear about whether both those can be delivered under clause 75 or whether we need something else or a slight rewording of the clause.

1639. An issue was raised at this morning's session about the ongoing management of matters such as green infrastructure. In England, I believe that it is possible through the infrastructure levy to allow a commuted sum to be handed over. That is then invested and allows ongoing management costs, so it is not just for the one-off development of one piece of infrastructure.

1640. Ms O'Connor: Concurrent with this process, we are looking at the regional development strategy and the mechanism for dealing with the failure of the market to provide infrastructure to allow economic growth of sub-regional centres such as Downpatrick and many others in the North of Ireland. That is essential. There is no point trying to grow and develop sub-regional centres in the absence of a mechanism that will cope with particular issues, including those that Mr McShane mentioned, and market failure or the fragmentation of land assembly.



1641. The Chairperson: Thank you. Do not forget to say your name, please, for recording purposes.

1642. Mr Patrick Cregg (Woodland Trust): I reiterate what my colleague James Orr from Friends of the Earth said. The Bill provides an opportunity to do something in more than just the immediate vicinity of a proposed development. It also provides an opportunity to create a fund that a borough council could use in a more strategic way. Therefore, matters that are wider than those in the catchment area of the development could be covered. For example, an inventory of all the significant trees in a borough would be a good use of some of that money. That would mean that we know what is there and what needs to be protected.

1643. The Chairperson: That is a very good plug.

1644. Ms Doherty: Our view is that article 40 has probably been underused in the past. It focuses on roads infrastructure and creates uncertainty for developers, because it is negotiated after. We support the community infrastructure levy and further consideration of it. We request that consideration also be given to the definition of the term "infrastructure". The definition needs to be broadened by looking at, for example, the enhancement of open space, civic amenity sites and other community amenities in the area in question.

1645. Mr I Wilson: I have a couple of points to make about article 40 and the community infrastructure levy approach. It is necessary to look at the scale and type of development, the yield that that will bring and the benefits to the community. That needs further investigation. The levy-type approach takes away many of the individual challenges that are associated with negotiating article 40s site by site. However, it is more complex to establish and administer.

1646. I will leave the following questions with the Committee to consider. How should the levy, especially its scope and scale, be embedded in the development plan? What is the timing of its payments or drawdown? What purposes could it be used for? How will claims to the fund be administered? Finally, should someone not also deliver on the claw back arrangements?

1647. In these significant and difficult economic climates, that arrangement should not be rushed into. Perhaps the Committee should consider the Scottish model, under which the arrangement has been deferred.

1648. In conclusion, we also expect that many of the applications will be regionally significant. Therefore, local authorities would ask that the Department reflect the local development plans in its consideration of how the negotiation of the community infrastructure levy would be implemented.

1649. Mr Pollen: I urge some caution. We have reservations about the concept of levying additional taxes and charges on businesses. In this case, the suggestion is that they would be contributions to some form of hypothecated infrastructure fund. Although in many ways, a lot of the arguments here are well made and we would support them, such a fund would need to be hypothecated and should not just be a general taxation on development. Otherwise, it would sound very much like a stealth tax on business. Therefore, we would urge realism and caution in that situation.

1650. I would also like to have better clarity on the definition of a developer. For example, is it scale based? I think that James Orr's points about small developments being set outside that proposal were well made. We are urging caution on that. The number of federation members in the construction industry whose businesses have gone to the wall in the past couple of years is substantial, and there is not a fat margin in a lot of those developments that could just be raided to pay for other things that cannot be afforded through taxation.

1651. Ms Catherine Blease (Northern Ireland Housing Executive): Housing associations could be considered to be developers, but given that they are non-profit-making organisations, we would like them to be exempt from a tax on social or affordable housing units. I think that clear definitions should be set out of what a developer is if it is non-profit making.

1652. When considering the community infrastructure levy and councils' powers, perhaps a regional levy could be set, meaning that each council would charge the same amount for developers. That would mean consistency across the whole region, with the result that there would be no competition between those areas that were setting lower charges so that they could get more development into their area. I think that that type of cross-council infrastructure should be considered.

1653. The Chairperson: I will take one more point, and then I will open the Floor to members to see whether they have any points to make. Go on, Claire; it has been a good day, so I will let you go on.

1654. Ms Ferry: I have one quick point to make. Section 210 of the Planning Act 2008 in England and Wales allows for an exemption for development by charities, so that might be something to consider.

1655. Mr McGlone: Again, I am picking up threads of the discussion, which I thank people for. The issue boils down to the community infrastructure levy or fund, or whatever it is called; Roger just referred to it. A lot more detail needs to be put into precisely what that is. Those of us who deal with planning applications are aware that, floating around the edges in the ether, there is also the notion of the developer contribution to consider. We need to have absolute clarity as to precisely what is being sought by those processes, because I am already confused about the precise distinction between them.

1656. The community infrastructure levy seems to be fine in principle, but when we overlap that with a developer contribution, I think that we could hit problems and glitches, not least for the new councils that will be landed with the system. A lot more thought has to go into precisely what is being achieved, certainly by the community infrastructure levy, and what is being thought about the developer contribution in other policy areas or Departments. If those roles are not very clearly defined, it could lead to serious problems, not least in inhibiting development of the economy. Again, Roger referred to that, and we will be talking to a lot of people later today about that. I am sure that that will come up time and time again in my constituency. People will ask what the politicians are doing to encourage and support development.

1657. We have to bear that strongly in mind. I do not entirely take the Housing Executive's point that housing associations are stand-alone organisations. Many have considerable assets at their disposal, so although they are non-profit-making, they have a considerable asset base. It might be worth giving more thought as to how that asset base can contribute to the levy or fund.

1658. I am anxious to know whether anyone in the Hall knows the formula that would give me a clear understanding of the distinction between the developer contribution and the community infrastructure levy. I would be delighted to hear it.

1659. The Chairperson: Obviously, the Department will have an opportunity to respond to that valid question.

1660. Professor S Christie: I understand that the developer contribution is for the development of things that are intimately and totally required in the development. For example, if a larger road is needed to access the development, that would come from the developer contribution. The community levy is for greater benefit that has been accrued as a result of the increase in

value to the site by the granting of planning permission. That would go into a fund that may not be directly used on or required by the site. Therefore, it is much more general. The developer contribution is very specific and is for things that have to be in the site.

1661. Mr McGlone: I can see this leading to complications on the ground, for example, where there are multiple developers on one site. I am not entirely clear about the outworkings of this and where it is supposed to take us. The principle seems to be fine, but there is quite a bit of overlap in how each is to be defined and kept separate, while making sure that they are both are of mutual benefit. I envisage some complications with it, and I need it clarified. I would rather have one process run well than two run poorly.

1662. The Chairperson: I can let another speaker ask a teeny-weeny supplementary question.

1663. Mr Pollen: I echo what Patsy said. The other issue in teasing this out is to ask when any contribution must be made. It is an upfront cost that has to be borne before any profit is shown. However, the current financial climate illustrates how that could be an issue.

1664. The Chairperson: I want to recap on some of the points that have been made.

1665. Let me remind everyone here that many of those issues have been teased out in Committee Stage, and there is another opportunity to do that again today. Once we have taken on board and compiled all the points that have been made, we will liaise with the people who are most concerned, including those who think that it is a good idea and those who have reservations about it.

1666. I want to touch on some points so that the Department can respond. There was talk about community charges, and references were made to the Southern model. Other issues include article 40; checks and balances; a financial model and a fit-for-purpose Planning Service; the notion of community planning, which is an idea that has raised its head on a number of occasions in the Committee; and the developer contribution or levy. A valid point was also made about the fragmentation of land and the whole idea of land use. The Scottish model was mentioned, and Professor Lloyd talked to the Committee this morning about that. The issue of housing associations was also raised. Mr McGlone and Catherine Blease responded to that. That is all food for thought for the departmental officials.

1667. The third element for discussion is the pre-application discussion or community consultation.

1668. Mr David de Casseres (Northern Ireland Electricity): I want to make some high-level comments on the important subject of community consultation. Northern Ireland Electricity is involved in the development and design of major strategic infrastructure projects that will have consequences for all Northern Ireland and, perhaps, the wider island as a whole. Planning is central to that process, so I am pleased to be able to speak about it briefly today.

1669. As many of you may be aware, there is a very significant need for major infrastructure to be built in to the electricity system over the next few years to allow for the integration of renewable generation across the island. That is extremely important. We are in the early stages of engagement in community consultation on proposals to strengthen and reinforce the transmission system by, perhaps, using 400 km-plus of new circuits over the next few years to handle that challenge. That is a significant development that will have to bring with it significant community consultation. Therefore, the matter under discussion is very important to us.

1670. When we look at the planning that all that will require in the future, we see a need for a strong and efficient planning system that will actually perform against the challenges that that

will bring. We see a need for government to stream policy into the planning process, and we also see the importance of central control of significant major infrastructure. I know that the Bill provides for article 31 projects to be retained under central control, and I propose that we consider having an upper tier of such projects, of which there are a great many. However, it could not be claimed that all of them are of strategic significance to Northern Ireland as a whole.

1671. The final issue that I want to raise on the planning process before I talk specifically about pre-application consultation is the need for a process that sticks when decisions are made. Many people here will have concerns about that.

1672. NIE believes that pre-application community consultation is extremely important. Indeed, a better word than "consultation" might be "participation". We believe that it is extremely important to engage and discuss with communities so that they feel that they are participants in developments that take place.

1673. We believe that provisions for that are already enshrined in legislation such as that that deals with environmental impact. Given the need to demonstrate that alternatives have been examined and that they have been discussed and consulted on with communities at large, such provisions are already a fundamental part of the planning process for major infrastructure projects. Therefore, we do not think that compulsory pre-application consultation is particularly helpful, especially when it comes to major linear infrastructure, which may cross several council boundaries. We think that it will introduce rules and bureaucracy, which will create further delays. It will introduce uncertainties and costs. All those issues will be significant in the future.

1674. Another issue that I want to mention on community consultation concerns who exactly is the community. That is a significant issue. Although it may seem trite, it is actually a difficult question to answer. Recently, we have engaged as many people as possible on proposals for a major interconnector between Northern Ireland and the Republic —

1675. The Chairperson: Thanks for bringing that up, David. I was going to mention that.

1676. Mr de Casseres: I will not mention it any further. The reality is that, when in discussions with communities, it must be clear who the community is. It might comprise public representatives, council bodies and statutory consultees. People who live close to a development and who may be affected by it could be considered to be a community, and others who live quite some distance away and can see the development from their homes could also be thought of as the community.

1677. Therefore, setting rules of engagement, compulsory ones in particular, to require consultation introduces all sorts of potential complexities, pitfalls and areas of challenge whereby people who are regarded as communities — or, perhaps, who regard themselves as a community — do not feel that they have been adequately consulted. That needs to be carefully considered and the consequences need to be recognised. If we make things more complicated and more costly we will most certainly not be able to deliver the infrastructure that this country needs in the future.

1678. The Chairperson: I can answer the question about the North/South interconnector and community consultation, if you want, because it runs through my constituency.

1679. Mr Patrick O'Neill (Development Planning Partnership): First and foremost, we welcome the introduction of pre-application community consultation and the ultimate submission of community consultation statements, which is much needed in Northern Ireland. However, we do not think that the legislation should prescribe how that should take place. It should be within the

gift of the applicant to determine the most appropriate mechanism for encouraging local communities to get involved, because it is not the case that one size fits all.

1680. We have talked a lot about the Scottish model today, and I am going to mention it again. Similar legislative provision was introduced in Scotland, which highlighted an issue that has not been dealt with in the Planning Bill — the differentiation between major planning applications and subsequent amendments to such applications. It may be prudent to amend the Bill to ensure that pre-application consultation is not required for applications for amendments to conditions or minor changes to applications. That will reduce the time spent and cost incurred by the applicant.

1681. We have no issues with pre-application notification, and we welcome that. However, we believe that it is unnecessary that a council should decide who should be consulted within the 12-week period. Depending on the number of consultees suggested, that could delay schemes needlessly. Alternatively, to avoid delay, there could be a facility to carry over some consultation processes once the application has been validated and is at the assessment stage.

1682. Ultimately, the requirement should be for effective engagement where it can be demonstrated that efforts have been made to inform and seek feedback from the community, as opposed to persuading and satisfying the community, because that is not always going to be possible.

1683. Mr C Bradley: I want to pick up on a few of the issues that have been mentioned. On the point that developers should be allowed to determine the form and nature of consultation, that is the situation that we have at the minute. Some of them are not terribly good at it, and that is why they often get into trouble. The proposal in the Bill, if it is properly implemented and if guidance is produced by the Department and by councils, will ensure consistency and clarity not just for communities but for developers. That is the point. We will all have more certainty about the form and nature of consultation, when and how it should happen and how it should be reported on. We will all know that, and, if that is so, we will all be working to the same rules.

1684. There is no duplication of consultation required for environmental impact consultation. We are not talking about a second consultation process. We are talking about a standardised, clear and transparent consultation process, which, once it is carried out, can be used to inform the environmental impact assessment and the planning application. It will serve both purposes. The Bill proposes simply that we have that transparency and consistency across a broader range of major and regional applications.

1685. Mr Orr: I absolutely share David's concern about how consultation and participation get confused in Northern Ireland and about the huge challenge that faces us in trying to rejig the grid infrastructure to move us towards a more sustainable low-carbon electricity production system. I totally sympathise. However, my colleague made the point that this is very much in the interests of two groups, one of which is the developers. I completely share the frustration that, in many cases, consultation tends to be obfuscation. However, it is also in the interests of the planners.

1686. We need a renewal and a reinvigoration of the planning system and the role of the planner. This planning reform can set the planner in the middle of a facilitation debate between a whole range of different stakeholders. That is why it is absolutely crucial that it be led by the planners. I have no doubt that if the pre-application consultations are engaged with positively and courageously — not reactively, as happens at the minute, or from a defensive posture — and with the intention of getting people round the table, it will absolutely help bodies such as NIE to improve grid infrastructure in Northern Ireland.

1687. Ms Joan Devlin (Belfast Healthy Cities): Community participation is one of the core values on which the Healthy Cities movement was founded, and I very much agree with what Colm, particularly, has been saying. We support the introduction of pre-application consultation, and we see it as an important way to inform and involve relevant people and other sectors. I know that we have the debate about how to define "community" and community participation, but it is important that other sectors are involved in shaping development proposals. Pre-application consultation can help to ensure that development supports needs in relevant local areas.

1688. We want to stress that the Localism Bill currently going through the Westminster Parliament includes a significant level of detail on requirements for pre-application consultation, including format, content and acceptable publicity. For example, the Bill incorporates clauses where applicants must be able to contact the majority of people in an area and must provide a statement of how they have responded to consultation. Those can provide a ready-made and helpful model for Northern Ireland. Incorporating that detail creates both clarity and confidence for the public and can help to create an empowering, inclusive, high-quality and timely process and contribute to the wider impacts of planning.

1689. For example, we have recently been approached in an area in Belfast — an area of high deprivation — where planning permission has been given for a high number of fast food bars where there is already a high level of obesity. From our point of view, we try to make the links between planning and the impact on health and emerging public health issues. As was said earlier, consultation does not have to be costly. There are lots of very strong organisations locally or regionally that are very capable of carrying out consultation at a very low cost.

1690. My final point is that it is important to include a duty on the person conducting the consultation to take the responses and to demonstrate that the responses have been listened to and included in the final documentation.

1691. Mr Sore: I welcome the comments made by Friends of the Earth on the role of the professional planner who will be in the local council area. One of the functions of that planner is to advise the members of the council on the professional way to approach the community and the development potential. If there is to be a new type of planner at local level, which we do not have at present, that will really be a new form of planning. We, as an institute, are thinking about whether we will need to retrain planners in the way that they operate and work with the council members as their immediate boss.

1692. There is also a role for council members, because, at the end of the day, they are elected by the public to represent certain views. Therefore, the consultation needs to take place within councils, with councillors representing their electorate. This is about new ways of working. We have got to try to get out of the current system and think about the system that will be in place in 2015.

1693. Mention was made of definitions. One of the things that we have said in our submission is that there needs to be clarity. What is meant by "community"? What is meant by "developer contributions"? What scale should this be at? When is something regional and when is it local? There is an awful lot that needs to be clarified.

1694. In relation to some of the other legislation that has been coming forward and some of the PPS information, we have said that it may not be right to specify absolutely everything in the main body of the document. However, it is right that that be followed up with guidelines that give clarity on what is meant by "community" and "developer contributions". Good examples could be used in those guidelines, so we urge the Committee to ensure that work on clarity follows the Bill.

1695. The third issue is how to engage with the community. In England, the institute is debating the role of Planning Aid. Planning Aid was always seen to be the halfway measure, almost independent of the actual statutory planning regime. Communities could engage with Planning Aid, and Planning Aid would act as the interface between the statutory agencies and the local community. The Committee may want to consider something, not necessarily a copy of Planning Aid but something along those lines, where both a developer and the local community can go to an agency that will facilitate a community consultation. Let us face it; in Northern Ireland, we do not have a very good history of that. While there have been very good examples of big developers who carried out consultation very well and of local community and voluntary groups that assisted the communities in putting forward very good contributions, they have been piecemeal. We are looking for a system that can be applied across the Province.

1696. The Chairperson: I liked that wee dig at councils and councillors. Thanks very much.

1697. Mr Lewis Porter (Craigavon Borough Council): While welcoming the pre-application community consultation in general, we have concerns about the definition of "community" and the definition of the area impacted. We are concerned, because it is not necessarily just the area that is being impacted on by a development; communities on the other side of the town or borough in question will be impacted on. So, there is a wider community issue.

1698. There is also the cost of community consultation, both in terms of council resources and for the community groups themselves, which can suffer from "consultationitis". If people feel that their views are not being taken cognisance of, there is a danger of genuine community concerns dropping off and groups that are being consulted within the community relying on particular agendas that can give a negative slant on development in response to that community consultation.

1699. Mr Terry Bunce (Ards Airport): Licensed airports in the Province have a specific interest in the consultation process. Airports have a statutory requirement to maintain the integrity of the protected surfaces that surround them and their air traffic zones. To ensure that that process continues, licensed airports must continue to be consulted on all proposals within their air traffic zones. Consultation in that area should therefore be compulsory. We have no option but to retain that.

1700. Mr I Wilson: Lisburn City Council welcomes the pre-application community consultation. Anywhere where you front-load the process and shorten it at the back end will bring a little bit of certainty to the outcome. Our council is keen on clause 28(2), but we seek clarification on who is responsible for prescribing the form of the pre-application community consultation. That is not clear.

1701. The Chairperson: David, I am glad that you mentioned the interconnector and the consultation. Unfortunately, there was a lack of consultation at the start of the process, and different people have talked about it being reactive rather than proactive. Through this planning process we will see a more proactive approach to consultation. We have to strike a balance between proper economic drive and development and giving people an opportunity to participate in how land should be developed and land use in itself.

1702. The Scottish model was mentioned again. Perhaps it is not a case of one size fits all; we are not saying that. However, perhaps the Committee needs to go to Scotland to see exactly how the Scottish model is working. There was talk about developers and the idea of who should be consulted. I prefer to call it participation rather than engagement. It should be about participation; people should be given their say.

1703. Health was mentioned. It should not be just about land use; it should also be about place. Professional planners were also mentioned. Council capacity building and training are key elements. We talked about the wider community basis, which is correct. There is a specific issue about consultation being compulsory — was it fly zones in particular?

1704. Mr Bunce: [Inaudible.]

1705. Mr McGlone: I think that Mr O'Neill first suggested that we leave it in the gift of the applicant to determine the method of consultation. Most of us are here today because the current method of consultation has major shortcomings. Unfortunately, over the past month I have been involved in a couple of cases in which that was exactly the case: it was left to the applicant to determine, through an agent — who probably should have known better — the method of neighbour notification. That method was to not notify the next-door neighbour that a planning application was coming. That led to emotional distress. The best conclusion that we can have today is that the method needs to be improved.

1706. Mr Wilson from Lisburn City Council asked a valid question: who defines what the consultation should be? There will be certain strictures, but, as I listened carefully to what he said, that could conceivably vary from area to another. The Department could lay down guidelines, which could be developed by a council, but they will have to be adaptable to allow a wee bit of elbow room. The difference between urban and rural, for example — I envisage those types of situations.

1707. The Chairperson: I am delighted that you mentioned that, Mr McGlone.

1708. Mr McGlone: I need to mention it, because, as we heard earlier, we could be dealing with two different communities of place. I wanted to mention that one qualifier about the method of consultation by the applicant.

1709. Mr P O'Neill: Do not get me wrong: we are not against guidance being published on how consultation should be done. We welcome that, but we do not see a way of writing into legislation how it should be done. If there is guidance, the developers will follow it, but we do not see how it can be included in legislation.

1710. The Chairperson: We will now discuss the wee matter of third party right of appeal.

1711. Ms Carolyn Wilson (Mobile Operators Association): I thank the Committee for allowing us to come along and speak. The Mobile Operators Association represents the collective interests of the four UK mobile operators: O2, Vodafone, 3 and Everything Everywhere, which trades as Orange and T-Mobile. We represent them on health and planning issues.

1712. We all know that planning in the UK operates in the wider public interest and generally presumes in favour of development. The Planning Bill is based on that premise, and it proposes significant changes to the current planning system. A number of the Bill's proposals are similar to provisions that operate in Scotland and in England and Wales.

1713. Third party right of appeal is not a new consideration. In 2003 and 2004, it was consulted on in Scotland as part of what became the Planning etc. (Scotland) Act 2006, so there was a lot of consultation, discussion and research. More recently, prior to the general election, the Conservative Party included it as an issue, but the recently published Localism Bill has dropped it from planning system reform in England.



1714. We operate in a plan-led system, and, generally, development is undertaken in accordance with needs that are identified in development plans. It is noticed that the Bill proposes a system that is based on local development plans, similar to the system in Scotland and the local development frameworks in England. The Bill proposes that the local development plan itself will be pre-empted by a statement of community involvement, which will be subject to stakeholder engagement. That system seems to work well in local development frameworks in England, which have been on the go since 2004 or 2005.

1715. All of that results ultimately in a democratic, agreed outcome for a local plan. Consideration of introducing third party rights of appeal could be seen as a way of delaying and derailing a community need that has been accepted through the local development plan process. Research in countries that have such rights shows that, quite often, it is the design element of a development that is subject to appeal rather than the principle, which is usually enshrined in the development plan itself. Therefore, linking back to the previous subject, it is clearly preferable to engage a community at an early stage.

1716. Front-loading of the system has been mentioned a lot, and the Scottish model has gone down that route. A lot of work has been put into Planning Advice Note (PAN) 81, 'Community Engagement', and people have spoken about clear policy guidance on how community engagement should be carried out and what it should be. PAN 81 is a good document to have a look at for that.

1717. The gentleman from the Royal Town Planning Institute mentioned Planning Aid. I am a volunteer for Planning Aid, which does good work with communities in informing and advising them on the background on which to engage with the local development plan process and in development management. So, again, that may be a route to think about.

1718. Before the legislation changed in England, Wales and Scotland in 2001, the Mobile Operators Association's experience was that the system was not very transparent. That changed in 2001, with the operators' voluntary adherence to the 'Ten Commitments to Best Siting Practice'. As part of that, and to make the process more accountable and transparent, the association agreed to carry out extensive consultation on proposals for base stations.

1719. One way in which we do that is through the annual roll-out plan, which is submitted electronically and jointly each year to every UK planning authority. At the moment, it goes to regional DOE bodies. Obviously, following devolution, it will go to local councils. Basically, it gives a heads-up on operators' proposals for the following 12 months, together with existing base stations and those that have planning consent. Roll-out plans can be shared with the public and with elected members.

1720. As part of this commitment, the operators agreed to carry out wider consultation when site-specific base station developments are identified. Again, there has been a lot of talk about how to identify "the community". We do it through pre-application discussions with the community and local planning authorities, in the form of a consultation plan drawn up by our agents that is then, hopefully, agreed with the planning authority and local key stakeholders. We are quite happy to carry out further consultation when it is identified. Over the past eight or nine years, we have found that that method of front-loading consultation is a preferable way to engage with communities and take their concerns on board.

1721. Often, concerns are raised that are not necessarily to do with planning matters, so the consultation process provides an opportunity to address those matters and to inform people better. Where there are obvious planning matters, open discussion often leads to different siting and design proposals for base stations. In the past, I have certainly been involved in a few cases in Northern Ireland where that happened. Consequently, based on our experience, we do not

think that third party appeal rights would give communities or people the basis on which to inform development proposals.

1722. We must recognise that, sometimes, the planning process can be hijacked by individuals or specific interest groups who do not necessarily have the wider community's backing or interest. I have been a planner for 20 years, in local authorities and in the private sector, and it is evident to me that if a community, or people within a community, are indifferent to a proposal or support it, they tend not to get involved in the process. It tends to be those groups or individuals who object to the proposal. The concern with third party appeals is that development might be slowed down and delays in the system might be incurred because of possible self-interest by individuals, rather than people who have the wider community interest behind them.

1723. With particular reference to mobile telecommunications, we must bear in mind what is enshrined in the current planning policy statement, PPS 10, namely that the telecommunications infrastructure must develop in a way that continues to provide Northern Ireland with world-class telecom services that allow it to compete. At the same time, the environmental impact must be kept to a minimum. PPS 10 recognises that modern telecom systems have a vital role to play in everyday life, both socially and economically. Our members' concern is that third party appeal rights would significantly slow the process down and add additional cost.

1724. Telecommunications technology is fast moving. The infrastructure has evolved very quickly from 2G to 3G, and it is evolving all the time. If the planning system is not fit for purpose or efficient and it does not take account of that, or if there is unnecessary delay, that infrastructure may not be deployed in Northern Ireland and may be deployed by our members in other parts of the UK where third-party appeal rights have been resisted.

1725. Our development industry has certain locational and technological requirements, and those are given good development control advice by PPS 14 and PPS 10. What concerns us about telecommunications infrastructure and other development is that any additional costs due to third-party appeal rights and, more importantly, significant delays in the system would direct investment elsewhere in the UK. With such economic uncertainty at the moment, it may not be the best time to think about introducing third-party appeal rights. The social and economic benefits of development and, in particular, communications infrastructure are important, and we do not want to direct that elsewhere.

1726. The Chairperson: I gave you some leeway because you made it all the way from Scotland. I am sure that the other witnesses will not mind.

1727. Ms Monaghan: Belfast Healthy Cities welcomes the opportunity to speak to the Committee today. For those who might not know us, Belfast Healthy Cities is a partnership that works to improve health and well-being for people in Belfast and beyond. We do that through intersectoral collaboration to improve the wider physical and social living conditions. Belfast is a World Health Organization designated European healthy city. Among the core teams' work that the World Health Organization has designated for its 90 member cities are equity and healthy urban environments.

1728. First, third-party rights of appeal are an important part of a comprehensive planning system, and we support their introduction in Northern Ireland. Third-party rights of appeal complement the general focus on community engagement in the Bill and provide a safeguard for communities to make sure that any material and relevant concerns are heard, and they provide a measure of natural justice. They also provide a way of making absolutely sure that development is in the public interest and is focused on what people in Northern Ireland need. In doing that, they strengthen trust in the planning system, which is important for a timely and effective system and process.

1729. Secondly, with reference to the previous witness, we think that third-party rights of appeal can act as an incentive to invest in pre-application consultation. They can make sure that people have a more open platform for debate, and, more importantly, they can ensure that all relevant and sound evidence is presented at that stage. It might be worth noting that the Republic of Ireland has had liberal third-party rights of appeal for some time, and it is clear that that has not acted as a deterrent to development there.

1730. Thirdly, third-party rights of appeal can improve the quality of decision-making and can contribute to developing prosperous, healthy and sustainable communities because they add an extra layer of scrutiny. That aspect would be particularly important in the transition period when planning powers are transferred and capacity and experience are being built. It might be appropriate to consider introducing third-party rights of appeal as a transitional measure to be reviewed at a later date. There might be other ways of limiting the rights. You could consider including award of costs for frivolous or vexatious appeals as a deterrent.

1731. There might be a role for planning mediation, which is currently not mentioned in the Bill, in offering a way for parties to look at a conflict before a decision is made. Again, that would be a way of supporting better decision-making.

1732. In summary, third-party rights of appeal are a way of strengthening transparency and accountability in a comprehensive, modern planning system and are in keeping with the ethos of community planning. Such appeals would also enable all stakeholders to participate in the process with greater confidence. Having the confidence to believe that they can have a say in decisions helps people to be engaged, proactive and responsible, which reduces the risk of vexatious processes and conflicts that are quite tangible.

1733. That feeling of being involved supports a sense of well-being, which is really important for enabling people and communities to look forward with confidence. It might not be immediately obvious, but planning has a fundamental impact on people's health and well-being. A simple example is the impact that it might have on the job opportunities open to people, because planning determines where homes are in relation to jobs. In the same way, planning determines how dependent people are on cars and what access they have to physical activity and to green spaces by deciding where to set aside those spaces and how big they should be.

1734. We think that identifying well-being as a desired outcome of planning would help to make all those issues more visible and would create a good opportunity to steer development in such a way that is in the public interest and supports quality of life, health and well-being for people in Northern Ireland. Third-party rights of appeal are by no means the only way of doing that, but they would make an important contribution to it.

1735. The Chairperson: Planning Service is well aware of my views on third-party appeals. If you look up the Hansard report of debates in the Assembly Chamber, you will see exactly how I feel about it.

1736. Mr I Wilson: Lisburn City Council has always been consistent in its approach to third-party rights of appeal. In response to question 67 of the 2009 consultation on planning reform, the council stated its resistance to the introduction of third-party appeals. The front-loading of the community consultation process allows for an additional opportunity to deal with any uncertainty that might exist. However, if anyone is thinking of bringing in third-party appeals, they should perhaps consider that the examiner or the PAC would need to consider awarding damages for third-party interventions so as not to open the floodgates to delays to the decision-making process.

1737. Ms Clare McGrath (Community Places): I wish to make a few points on this topic. First, the majority of respondents to the 2009 consultation on planning reform supported the right to third-party appeals. We support a limited third-party right of appeal, because it would ensure that developers conduct genuine participation and a meaningful pre-application consultation. It would also enable communities to feel that their comments would be given more weight in pre-application consultations.

1738. Third-party appeals should be introduced in a two-stage process. First, there should be a soundness test to determine whether an appeal has sound enough grounds to go ahead. Secondly, the process should happen over a five-year period as a confidence-building measure during the change in local government, and it should then be reviewed.

1739. Evidence from An Bord Pleanála in the Republic of Ireland demonstrates that 46% of formerly decided appeals in 2008 were by third parties only. Of those, 99.3% were wholly or partially changed — 39.5% were refused planning permission and 59.8% were granted with revised conditions. That evidence supports the need for and the impact of third-party rights of appeal in better decision-making. It also refutes claims that they are frivolous.

1740. Developers, through their right of appeal, have the unfair advantage of having the opportunity to influence how policy is made through establishing precedents. Consequently, that informs subsequent decision-making in favour of developers. The public, who have no third-party rights of appeal, have no such opportunity.

1741. Mr Cregg: I have been talking about third-party rights of appeal for as long as I have been on this planet. I find it unbelievable that, in a democracy, we should stack the cards in favour of one player. It is like a person entering a poker game in which they agree to give their opponent all the coloured cards while they take the lesser cards. If we are to accept the arguments from our Scottish friend and Lisburn Borough Council that the pre-consultation is sufficient for everybody to air their fears and get their points across, would we then consequently say that, rather than just removing a third-party right of appeal, we should remove all rights of appeal if the developer has been part of that consultation in the first place?

1742. Mr Orr: I share those comments. I have read all 200 and whatever clauses of the Planning Bill, and there is very little that is innovative, visionary or different. A lot of the provisions are cut and pasted from previous legislation or borrowed from other jurisdictions. If the Committee and the Assembly want to make one fundamental difference to planning reform in Northern Ireland, they can do what is right for natural justice and give us limited third-party appeals. We are not opening floodgates or inviting vexatious applications. We do not need to borrow from Southern Ireland and learn from some of its mistakes; we can invent something that is courageous and innovative for Northern Ireland. I commend that to the Committee.

1743. Mr McShane: Having agreed with Friends of the Earth earlier, I now have to oppose its view. The Institution of Civil Engineers sees the judicial review process being used by retailers purely as an excuse for delaying the implementation of approvals. Our fear is that opening up the floodgates to third-party appeals would simply allow that process to be extended and would delay the implementation of much-needed facilities. However, if the Assembly decides that third-party appeals are to be introduced, they should be introduced with a very short time frame so that they do not delay the implementation of facilities.

1744. Ms Blease: As regards the point that was made earlier, an appeal would be far quicker and far less costly than taking a judicial review through the courts. Contentious decisions would be resolved a lot quicker.

1745. Councillor Michael Carr (Newry and Mourne District Council): I endorse the comments from the Woodland Trust and Friends of the Earth. If it is right for one side to have an appeal, it is equally right that the other side should have an appeal. Planning Service makes recommendations to either approve or refuse, and 100% of the refusals can be appealed. None of the applications that are approved can be appealed by the people who are affected. I have seen numerous occasions on which they should have had that right. People have suffered and are still suffering from poor or inappropriate planning decisions.

1746. I had promised myself that I would not speak today, but I feel strongly that third-party appeals should be included in the Bill and that there should be discussion about them. I also have confidence in the delivery of the Planning Bill. The Bill cannot be taken in isolation without looking at governance legislation and at how councillors behave with regard to the Planning Service. We are not yet in a position to do that; it is a bit like putting the cart before the horse.

1747. We need to know where we stand as councillors and, more importantly, how it will be funded. The Planning Service looks as though it is being run down. We in Newry and Banbridge are waiting for a development plan that is 11 years late. If it is ever passed, it will have two or three years to operate. We are involved with the electronic planning information for citizens (e-PIC) project, which is four years late and has cost twice as much as was first planned. It needs to be made clear what councils will inherit.

1748. I enjoyed today's presentation. Councils do good things, and they could contribute to much better planning. Planning responsibility should be transferred, but it has to be done in the right order.

1749. Ms Ferry: Miss Wilson from the Mobile Operators Association said that, if we have a planned system, developments should be fine if applications go ahead in line with the plan. That is exactly our point. Everybody here who argued against third-party appeals talked about floodgates and said that everyone would appeal. As I understand it, many of my colleagues in environment and community non-governmental organisations asked for a limited third-party right of appeal. To prevent vexatious appeals, there are ways of limiting who can come forward, and we have outlined those ways in our responses.

1750. One example is a planning application that is contrary to a development plan. It is for exactly that reason that we need to have a limited right of appeal. Other examples might be when a local authority has an interest in a planning application; or when a professional planning officer has recommended that planning permission be refused but has been overruled by the local council. There are elements that we all understand and that we know can be included to limit third-party appeals to avoid huge delays in the planning system.

1751. We have to remember that judicial review is costly and beyond the ability of many groups to undertake, even when they have a valid reason to do so. As many people said, the proposal would allow much greater access to justice and equity across the system.

1752. Mr I Wilson: Lisburn City Council supports the current planning appeals procedure where it gives the opportunity to a third party that has been actively involved in the process under consideration to appear at the PAC to put their case across. In that case, the PAC is an independent arbitrator. I would not like anyone to think that Lisburn City Council does not support the current system.

1753. The Chairperson: Your position has been clarified and recorded, Ian; you are safe.

1754. I thank everyone for their contributions. We now move to answers to all of them. [Laughter.] By the time we leave the room we will have everything sorted out.

1755. Before I give the Department an opportunity to respond, do Members wish to speak? I am sure that Mr Wilson is not keen on mobile phones; I do not think that he uses one at all. Do you want to say anything about that issue?

1756. Mr B Wilson: No. We are here to listen rather than to speak.

1757. The Chairperson: That is OK. I was just giving you the opportunity.

1758. Mr McGlone: Although supporting in principle the third-party right of appeal, we have to consider the soundness test. Some of us have experience of inordinate delays in planning applications, of an appeal being brought to a conclusion one way or another — whether that be approval or refusal — or when a third party uses an appeal to negotiate for a bit of extra money for a ransom strip or sight line. A soundness determinant, a wee bit like in social security where you have the right of appeal to a social security commissioner but only on certain grounds, would be useful if a wee bit more meat on its bones could be portrayed.

1759. Mr Wilson mentioned the award of damages. I understand third-party appeals when they arrive at the point of costs being determined; however, damages could lead to something quite different. If the proposal was for a factory or housing development, by the time the appeal came in two to three years' time damages could be considerable and are usually a matter for determination in the courts. The distinction between costs and damages is something that we need to factor in if we go down the route of third-party appeals. However, there is certainly much food for thought here today.

1760. The Chairperson: I invite the team from the Department to respond. We picked out four broad topics, although many issues came up. I ask the Department to comment on as many of the issues raised as possible.

1761. Ms Maggie Smith (Department of the Environment): It has been an extremely interesting afternoon. We appreciate the time that everybody is putting in to commenting on the Bill.

1762. Points such as guidance and secondary legislation came up consistently. People said that there was not enough detail in the Bill about the practicalities of what needs to be done. In parallel with our work on the Bill, we are finalising proposals for subordinate legislation. It is useful to do the two in parallel because it is interesting and useful to hear reactions to the provisions in the Bill. There is a great deal of subordinate legislation, and our aim is to get it out for consultation as soon as possible after the legislation has been finalised.

1763. The preparations that councils need to make were touched on several times. We are working on pilot projects that will involve the Department, councils and all those who will be involved in the transfer of functions, whenever that may occur. As we know, the date has not yet been set for the transfer, although it will be set by the Executive in due course. The pilot projects will test the arrangements that will apply when powers eventually devolve to councils and they will involve councillors, council employees and those Planning Service employees who will transfer to councils working closely together until powers transfer. They will examine capacity building and all the arrangements that are involved in the transition.

1764. The first issue that was discussed today is the independent examination of development plans and appeals. Various issues were raised: whether OFMDFM should pay for additional commissioners; planning appeals; the call-in and soundness of plans; and issues about clauses 15 and 16. I will ask Angus to pick up on those points and to clarify the issues that surround them.

1765. Mr Angus Kerr (Department of the Environment): Thank you very much. The independent examination of plans and the use of the PAC and independent examiners is not meant to cast doubt on the impartiality or independence of the Planning Appeals Commission; the Department wants to use the commission as the first port of call in development plan examinations or appeals. However, in the past when there was a huge backlog or a large number of plans arrived at the same time, the Planning Appeals Commission had difficulties in dealing with them. We anticipate that that may also be the case when powers transfer, because, for example, development plan functions will transfer to 11 new councils, all of which will want to hit the ground running with their new plans. The Minister wants to be able to step in and ensure that, if there is a problem, there is another way of ensuring that the independent examination of plans will move forward.

1766. The approach will be based on the normal approach that government takes to appointing independent people, with applicants being examined to ensure that they are properly qualified and independent. The approach will mirror that taken during the regional development strategy in which some of you may have been involved and which used independent people, rather than the PAC, to conduct an examination in public. That approach, which is also used by DRD when examining major road proposals, would be used only as a last resort, and the Department will ensure that all proper procedures are in place so that those appointed are independent and appropriately qualified. The process of the independent examination of plans that those individuals would be expected to undertake would be the same as is undertaken by the PAC and would be set out in guidance.

1767. Related to that is the issue of balance between the power of councils and that of the Department in the Bill, and, specifically, on the independent examination in the binding report.

1768. The approach in the Bill, which the Minister wants to take, is that the Planning Appeals Commission or independent examiner will undertake the independent examination and will report to the Minister. There will then be an opportunity for the Minister to issue the binding or final report for councils to adopt. That is born out of the unique circumstances of Northern Ireland, where it is deemed that the appropriate person or system within which that should be done is the democratically accountable system in the Assembly and the Minister himself as opposed to its being left to independent examiners or the Planning Appeals Commission, which is not accountable in that way. It is not envisaged that the Minister will be involved in changing the report to a significant extent. It will be well bounded in his role to ensure the consistency and good planning of the region. Those are the Minister's regional objectives.

1769. Other issues cropped up, including soundness. The requirement for objectors to demonstrate the soundness of their proposals will be brought through in subordinate legislation and guidance but not in the Bill. The approach is likely to focus on the procedural tests undertaken by the team preparing the plan: its consistency with central government's plans, policy and guidance; the coherence or effectiveness of a plan; and how it is justified.

1770. One of the other issues mentioned was broader intervention and intervention powers. Powers are peppered throughout the Bill allowing the Department to intervene. They are there as a safeguard. They are similar in many ways to powers in other jurisdictions where a similar planning system has been in place. They are not viewed as powers that the Department will use daily; they are availed of in a limited sense and are rarely used in other jurisdictions. That will be the likely outcome in Northern Ireland as well. It is envisaged that councils will take up the responsibilities given them and move forward with them.

1771. I probably missed one or two things, but I hope that you will come back to me if I did. That is an overview.

1772. Ms Smith: I appreciate that it looks as though a huge amount of power is retained by the Department. That is because a great deal of space in the Bill has to be devoted to safeguards. As Angus said, it is only in extreme circumstances that the Department will step in to do the job of a council. Our clear expectation is that councils will do a very good job; it is unlikely that the Department will ever have to step in and use those powers.

1773. The Chairperson: Are there any other comments? Some members have to leave. If anyone needs clarification, now is the time to ask. Be brief; I will allow only five minutes.

1774. Mr John Walsh (Belfast City Council): Will the Department prescribe the circumstances in which the Department or the Minister will, in any of those cases, step in and utilise the powers of intervention that they will have under the Bill?

1775. Ms L Jackson: I will deal with the query about the calling-in of a planning application for a major development, for example, from a council. The Department will take over the planning application side.

1776. Mr Walsh: Or a local plan.

1777. Ms L Jackson: It is the same principle. We are preparing a direction on call-in, which will be consulted on as well as the subordinate legislation. We will stipulate criteria whereby a council will have to notify the Department of a particular type of application. We envisage that that would happen where there is a significant departure from a local development plan or where there is a significant objection from a statutory consultee. The process is limited and prescriptive. In that way, attention is focused on those important applications that will be referred.

1778. The Chairperson: OK. I thank the officials for their responses. Normally, the Committee is stuck in room 144 when it takes formal presentations; today, however, was very productive, and I thank all those who participated. I know that many of you have presented written submissions, and if you need to contact the Committee we will respond to you. The Committee Stage of the Bill will continue and a transcript of this event will be circulated to all participants in the next few days for comment. The finalised transcript will be made available on the Committee's Planning Bill web page. The content of that transcript will feed into the Committee's report on the Planning Bill, which will be laid before the Assembly later this month.

1779. I thank the Assembly officials and reporters who transcribed the event, Assembly broadcasting for providing the recording service and the catering and support staff for their help today. Thank you all for coming.

## **27 January 2011**

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)

Mr Patsy McGlone (Deputy Chairperson)

Mr Trevor Clarke

Mr Danny Kinahan



Mr Alastair Ross

Mr Peter Weir

Mr Brian Wilson

Witnesses:

Professor Sue Christie	Planning Task Force
Ms Claire Ferry	
Mr Aodhan O'Donnell	Consumer Council
Mr Colm Bradley	Community Places
Ms Clare McGrath	
Mr Arthur Acheson	Ministerial Advisory Group
Professor Greg Lloyd	

1780. The Chairperson (Mr Boylan): We will move straight to oral evidence on the Planning Bill. The first two participants are not here. I welcome Sue Christie and Claire Ferry from the Planning Task Force. We have five briefings today, so, although I will give you a certain amount of latitude, we have to try to stick to time. We have a big afternoon ahead of us.

1781. Professor Sue Christie (Planning Task Force): Thank you very much for giving us the opportunity to speak to you this morning. The Planning Task Force is a loose grouping of environmental and community organisations working together on all aspects of planning. For the past couple of years, we have been concentrating on various aspects of planning reform. The comments that we will be discussing have been agreed by all members of the group, although other specific comments will be raised by specific members. Obviously, that will be gone into in greater detail this afternoon, as it has been in written submissions.

1782. The Planning Bill is an extremely important piece of legislation, and we need to get the framework right to improve the situation for many years to come. We need to think in the long term to give the Bill the best chance of setting the solid foundations that Northern Ireland needs. The Bill needs to go beyond words. It needs to be operational and practical, so that the Committee's intent is actually carried out by the planners, understood and agreed by local authorities, and supported by all people in Northern Ireland. Time is of the essence. It is a huge Bill, and there is very little time. However, we need to get the fundamentals right. If necessary, details can be amended, but they need to be set out in the Bill at this stage.

1783. There are some aspects of the Bill that need modification in order to achieve those goals. Planning needs to have a very clear and specific purpose detailed in the Bill. We suggest that the Bill should state that the goal of planning is to secure proper planning, community well-being and sustainable development. We need to fully embed and clarify what sustainable development is and how it is to be delivered. The Bill should require the Department to exercise its functions with the objective of "securing" sustainable development; "contributing to" is not adequate.

1784. We need to include a duty to consider climate change and energy implications for all development, especially with regard to energy security and energy prices in Northern Ireland. There needs to be an established and clear statutory link between local development plans and community planning. One way to secure that, and to ensure that development is truly sustainable, would be a community infrastructure levy which provides a clear mechanism to support and compensate local communities.

1785. We feel that the introduction of limited third party right of appeal is necessary to ensure fairness and parity for developers and communities. Pre-development consultations are welcome, but they will need guidelines, monitoring and an appeals process. In order to be effective and be seen to be effective, and for communities to feel that they have a true voice in the planning process, we feel that third party right of appeal is necessary.

1786. Finally, there are some aspects of supplementary information that will be required. PPS 1 is urgently needed to clarify and explain the purpose of planning and securing sustainable development. Councils will require guidance on the details of standards and procedures, especially around community planning, development control and local plans. Those are new areas for communities and councils, and they will need some advice to ensure that there is a level playing field throughout Northern Ireland to allow individual councils to do better and to ensure that all meet the baseline.

1787. Subordinate legislation will be required, and should be progressed, to ensure the delivery of the Planning Bill to its maximum potential. We would be delighted to answer any questions.

1788. The Chairperson: Claire, would you like to add a few words, or are you happy enough?

1789. Ms Claire Ferry (Planning Task Force): I am happy with Sue's summary and am here to help answer the questions.

1790. The Chairperson: Thank you very much.

1791. We have received a number of responses, and some of the cases have been highlighted. You mentioned the third party right of appeal. In all the debates that we have had on the Bill, both here and in the Chamber, people have talked about front-loading the system. However, we may be looking at back-loading the system if we leave in an appeal mechanism. There may be some merit in some kind of appeal mechanism. Is there any model out there that we could introduce into the Bill that you think would work?

1792. Ms Ferry: As you know, many of our organisations have called for third party right of appeal at the various stages of the consultation on planning reform. A good deal of evidence has been compiled by many of the non-governmental organisations, including a specific project in England in 2002 which looked at third party rights of appeal in many different countries, from Ireland to Australia, and a number of models. Other research has been done in Northern Ireland, looking at comparable systems, for example in Ireland. There is the scope, and a supporting case, for a limited third party right of appeal.

1793. I want to stress that we are not suggesting an absolute free-for-all. We are looking for a limited third party right of appeal under certain circumstances, such as when a planning application is contrary to an adopted development plan — where the development plan process has been gone through and a planning application has been permitted against what has been said in the development plan — or when the local authority has an interest.

1794. The right to appeal could be limited to those people who objected to the original application or to cases where a planning officer has recommended refusal but that decision has been overturned by the local authority. Those are the types of limitations that could be considered for third party right of appeal.

1795. Everybody is so confident about the front-loading of the system, with pre-application discussions and pre-application consultation with communities. We absolutely support that, and if that is going to be so good, the third party appeal mechanism will not be used often. However, it is fair and allows equal access to justice for everybody. It is possible to stop vexatious and

extraneous appeals by putting in the principle that the Planning Appeals Commission can award costs if it feels that the appeal is not fair.

1796. The Chairperson: You have posed questions for the Department, and we will ask them on your behalf. The link between community plans, local development plans and well-being is important. Representatives from Queen's University were here, and they gave a good presentation on spatial planning. Will you comment on that, please?

1797. Ms Ferry: Community planning and community well-being will come into play with local government reform. That consultation is out at the moment. We think that it is important to have a statutory link between what communities are saying about what they want in their community plans and the local development plan, which is the spatial planning framework of how any development will be delivered. Having looked elsewhere in the UK, the RSPB has found that there is a risk of community death by consultation or consultation overload. Aspirations are raised through the community planning process; it looks as though everything is going to be wonderful and that everyone is going to get what they want from their community plan. However, if there is no mechanism for translating that into actual development and the structure of spatial planning, what will happen? They will have their hopes dashed, unless that connection is made clear.

1798. Professor Christie: It is important that community well-being is tied in with the community plans. It is vital that we re-engage the community in identifying and delivering crucial services, particularly in times of financial strictures. If the hopes of the community are dashed and something as crucial as the physical plan is not followed through, we will lose the resource of community involvement and commitment, which should be the bedrock of future planning.

1799. The Chairperson: A lot of people have talked about the time frames and proper scrutiny of the Bill. There has been a good body of work in the Bill, and you support its broad principles. The devil is in the detail, as you know. We have talked about subordinate legislation, which will be the key element to a lot of things, how it rolls out and PPS 1. Do you still think that the time frame is too short?

1800. Ms Ferry: The time frame is quite short. Nevertheless, we appreciate the work that has gone into the Bill. Although it is a chunky Bill, it is evident that a lot of it is transferring existing legislation into the new context. The new things, such as the items that we have mentioned already, include the purpose for planning, the duty for sustainable development and the potential for a third party right of appeal. A lot of the things that we raised as groups in the pre-Bill consultation are not dealt with by the Bill and will be dealt with by subordinate legislation. We recognise that, and we are not going to try to force them into this bit of legislation.

1801. However, we are concerned about the reality of getting the subordinate legislation and additional policy and guidance written up and available in a timely fashion, particularly bearing in mind the Department's resource constraints. In our response, we said that we would appreciate the Committee's asking the Department how feasible that is and when it will be done. Importantly, when it is being done, will there be adequate time for consultation with the likes of us and the public?

1802. Mr Kinahan: Thanks very much for a good, crisp, short, sharp and pertinent presentation. I have one point, which is more of a statement, and two questions. Yesterday, at a meeting of the Committee for the Office of the First Minister and deputy First Minister, we received an interim report on the sustainable development strategy. My disappointment was that all the replies from all the Departments will not be finalised until 24 March, which misses everything that we are doing. We have to make sure that this is one of the other things that works through alongside this Bill and that it is on the table the moment the Assembly comes back, with

whoever is Minister. We must make sure that the Department has replied on the sustainable development strategy. I cannot remember where we are with that to make sure that our bit is done. The witnesses would not say yesterday which Departments have not replied. They were specific about not saying that.

1803. My other two points are questions. I take on board the community infrastructure levy, but one group who presented yesterday were very keen that it should not always be a general levy, but should sometimes cover pertinent things that are needed in a locality. I am sure that you would support that, and I believe that you have answered that question.

1804. The third thing is third party rights of appeal. We know that the Minister is quite against bringing that in, but has said that he will review it. Have you any thoughts on how to front-load the system so that it is doing the absolute best that it can, given that we may not get third party rights?

1805. Ms Ferry: I will make quick mention of the community infrastructure levy. Clause 75 allows for planning agreements. We already have a process for allowing planning agreements under article 40 of the Planning (Northern Ireland) Order 1991. Those have not been used very much. They are very legalistic and are often avoided, to a large degree. That is very different to the situation elsewhere in the UK, for example in England, where agreements under section 106 of the Town and Country Planning Act 1990 are used a lot. The community infrastructure levy could be additional to that to make sure that local infrastructure is provided.

1806. Depending on how it is done, it could be almost less of a burden on developers if the levy from different schemes was amalgamated to provide one decent piece of infrastructure that is identified as being needed. That type of identification will come through things like community planning and the regional development strategy, bearing in mind that some infrastructure that is needed will be beyond the scale of one development in an area. There may be many developments in one area, and it would make sense to combine those, whereas it would be difficult to get that co-ordination and collaboration in a planning agreement because they are for one application, rather than many in one area.

1807. If third party appeal rights do not happen now — and we would rather they did; indeed, Minister Poots in his previous role is recorded in Hansard as saying that he supported third party rights of appeal — we want to make sure that enough is done that there are consequences if pre-application consultation is not done properly. Among the things that we have listed are a statutory requirement for such consultation and making sure that the requirements for notification are followed properly. The Localism Bill, which was recently introduced in England, specifies in more detail who should be notified of any upcoming applications to make sure that the right people hear about it. We also list a minimum duration for period of consultation, good practice advice on how it is done, and the need for someone to check so that, if it is not done properly, there is some kind of comeback.

1808. Mr Kinahan: Can we see a summary of the Localism Bill? It arises quite often, and a summary would be good.

1809. The Chairperson: Yes.

1810. Mr McGlone: A number of things are sort of linked about the place. I hear and entirely support what you are saying on the sustainability argument, but, as Danny has just pointed out, hot from the press yesterday, that is entirely contingent on how another Department is moving — or not moving. We saw the inadequacies of the DOE exposed in its first presentation on the Climate Change Bill.

1811. If a lot of the work on sustainability is contingent on other Departments, and if those Departments are not delivering up to the spec, it is a matter for the Committee to establish first, what time frames for sustainability other Departments have and secondly, whether that is in any legislation, practice or policies that they are developing. The Committee will probably need to establish those points itself, because that feeds in to this matter.

1812. Likewise, you made a valid point about the time frames for SL1s and other supplementary policy guidance or, indeed, policy statements that might follow on the back of the Bill. Indeed, a number of us raised that point previously. If all that documentation is not falling into place, the Bill really is not worth one whit.

1813. I will play devil's advocate on a couple of issues that you mentioned. Will you expand on how a community infrastructure levy would work and how it would be levied on people? We are moving into a situation where many of us see new planning fees. We all know that the game plan at work, which is that, with the transition of powers to local authorities, some sort of presentation can be made so that, on paper, the new fees that they think they will implement will look cost neutral. If even some of the projected planning fees go through as they are at present, there could be quite substantial increases in fees, whether they come from the developer or from somewhere else along the line. Could that levy be seen as a further imposition of another type of fee or taxation on people who may be finding it difficult enough to get things moving in the current economic climate? I refer to individuals, businesses and, indeed, those who are involved in development.

1814. Finally, I will definitely play devil's advocate on the issue of third-party rights of appeal. How do you answer the charge that people who are interested only in delaying the planning process would or could use third-party rights of appeal to do so? I would have to be honest with myself and say that that issue has also cropped up.

1815. Ms Ferry: First, I will discuss possibility of fees and the levy being seen as an additional imposition. It is important to keep the two separate. The fees are for a specific purpose, and, if both are additional to costs, they need to be justified. If councils are looking at increasing fees, they need to be able to justify what that increase is being spent on, why the fees are going up and whether they can show what the fees will be used for. Exactly the same goes for the infrastructure levy. We do not think that it should be introduced just because we feel like getting more money. It needs to be used for infrastructure requirements arising from the development, and not only because we fancy having a new sports centre in the local area. The levy needs to be connected to the development so that it is justifiable and that how it is spent can be shown.

1816. As I mentioned, the need for infrastructure may arise as a result of several developments in one area. Separate agreements with all the different developers would not be entered into. However, if they were each to put in a small amount of money, the required local infrastructure would be achieved, rather than each developer being asked to get involved in some kind of piecemeal approach, which could end up being more expensive for them. I think, therefore, that it would be more beneficial to have the levy in place.

1817. Professor Christie: The levies will be proportionate to the size of the development, so a very small development would not be asked for hundreds of thousands of pounds. Overtly, the amount of money levied might be quite large, but it would be only a fraction of the costs of development, as opposed to a flat fee.

1818. Mr McGlone: Obviously, you have taken that idea from somewhere. Does it operate somewhere else, and, if so, how does it work? For clarity, when talking about the proposal on fees, I am referring to a document of the Department's that is out for consultation. Does that levy idea operate somewhere else?

1819. Professor Christie: Yes, it operates in England.

1820. Mr McGlone: Perhaps it is wrong to ask this, but can you give me an inkling of what sort of costs and so on are involved in the levy? Perhaps we can find that out.

1821. The policies issue must also be considered. That is the humbug in the middle of these plans.

1822. Ms Ferry: I agree. There are delays at the moment, because people are appealing and objecting. However, as we said, if the front-loading is done properly, many people's concerns will be sorted out if they are limited to only circumstances where there is a real justification for them. That could be, for example, if the local authority has a vested interest in the application, if it is contrary to a pre-agreed development plan that was considered sound under the new system, or if the person concerned objected consistently throughout and the application was not vexatious. We should not forget that if the Planning Appeals Commission could award costs against somebody for a vexatious application, people would be discouraged from appealing because they wanted to delay a decision, as they would be charged for that. I am sure that that will be a big disincentive.

1823. Mr McGlone: What I meant was the policies issue about other policy development issues, be it on sustainability or on other matters even in the DOE itself.

1824. Professor Christie: That is a huge problem. I would say that this gives the Assembly the opportunity to overcome some of the big problems that we in Northern Ireland have had for years with the non-integration of policies across Departments. The Assembly, through the Executive, can take a role in that and encourage different Departments to work together. Perhaps it could do more than just encourage the Departments. One of the big problems in Northern Ireland is getting the integration that allows us to move forward on a whole range of issues that need the co-operation and participation of a number of Departments. That is a big problem, but we need to address it.

1825. Ms Ferry: If there is to be a delay in the overarching sustainability development strategy for all Departments, this is the opportunity at least to get it right in the planning system. We are referring specifically to the general functions of the Department as listed in the Bill. It states that the Department must secure:

"the orderly and consistent development of land and the planning of that development."

1826. That statement is really just a means to an end. Securing the development of land and the planning of that development is a means to the end of achieving securing proper planning, community well-being and sustainable development. If that is made clearer in the Bill, we would at least know that the planning system is doing that, even if there are delays in getting sustainable development policies across.

1827. Professor Christie: If those provisions are already up to standard, that would also overcome the problem of having to go back and change them when we get progress here. It would set the standard and show where we want to go from here, and everybody else has to then have to move forward.

1828. Mr McGlone: Thank you for that.

1829. Mr B Wilson: Thank you very much for your presentation. It was concise, and it highlighted the main points, as well as my main concerns. I welcome the emphasis on

sustainable development and third-party appeals. Those matters are particularly important. You said that:

"The Committee should consider the need for a Climate Change Duty."

1830. Will you expand on how that could be implemented?

1831. Ms Ferry: Again, that is taken from an example in English legislation. Section 182 of the Planning Act 2008 requires development plan documents to:

"include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change."

1832. Therefore, there are examples in other legislation of how a climate change duty can be introduced. Although I have not read it in detail yet, climate change is a key issue in the draft regional development strategy. If the regional development strategy is providing the overarching framework under which the local development plans will come through, climate change is one of the big things that we face. The planning system and other systems have to have a way to deal with that, and it should be reflected in the Bill.

1833. Mr B Wilson: What legislation is that in England?

1834. Ms Ferry: The Planning Act 2008.

1835. Mr B Wilson: Thank you.

1836. The Chairperson: Claire and Sue, thank you very much for your presentation. No doubt you will be back before us and will be keeping in tune with what the Committee will do over the next couple of weeks.

1837. We will now receive an oral briefing from the Consumer Council.

1838. Mr Aodhan O'Donnell (Consumer Council): I thank the Chairperson and Committee for hearing the Consumer Council's oral briefing. The Consumer Council provided submissions to the consultation in September 2009 and also in response to the Committee's call for evidence.

1839. The matters covered in the Bill probably go beyond the Consumer Council's statutory function on matters such as transport, energy and water. However, under the General Consumer Council (Northern Ireland) Order 1984, we have a general representation role to look after consumers' and citizens' interests. That is why over the past number of years we have provided submissions and comment on the Planning Bill as it has proceeded.

1840. The Consumer Council wants to make two key overarching points. First, we welcome the Bill's retention of the condition to accommodate the long-term view of the regional development strategy, which is out for consultation. It is a key condition that the Planning Bill operate in conjunction with the regional development strategy and that due regard will be given to any guidance that comes from the Department for Regional Development (DRD) and the Office of the First Minister and deputy First Minister (OFMDFM).

1841. Secondly, in our written response to the Committee, we raised the issue of how the Bill gives local councils a stronger role in planning and development and how that role fits in with the delayed process of the review of public administration (RPA). We felt that there was a lot of crossover between, for example, the local development plans and the development of

community planning. We recognise that the integration of councils would have helped to move the process forward. Therefore, the delay in the RPA process will have an impact. Those are the two overarching points that we wanted to make.

1842. We will not go into the details and specifics of planning, but you will probably be aware that we will want to comment on the areas of the Bill that focus on community consultation and involvement. We find that that is key to ensuring that citizens are well informed. Clauses 2, 4 and 27 prescribe community involvement and consultation by the Department, councils and applicants. From the Consumer Council's point of view, it is important that there is more guidance and information about how that community involvement and consultation will take place.

1843. The Bill goes into a bit more detail on the applicant process, but we are keen that the Department and councils in particular undertake a very open and transparent process of consultation and involvement. That will help to build confidence in the planning process and ensure access to information. It will also ensure that community involvement and consultation is not just one way; information in reports and findings should be fed back to citizens and consumers so that they can see whether their voices and concerns have been accommodated and reacted to. We would like to see further information that consumers can take away, perhaps not in the Bill, but in subsequent guidance or subordinate legislation.

1844. Part 9 of the Bill, which deals with access to the redress and appeals system, will also impact on consumers directly. That is another important aspect of instilling and building consumer confidence in the process. Any redress system should be accessible and user-friendly, and information should be clear so that people know the system and how it works.

1845. As I said, we will not get into the specifics and technicalities of planning, but the final point that we want to raise concerns councils' performance. There is quite a bit of detail about how that will be assessed, and it is important that performance is reported on as well. Given the new roles, functions and powers, there will be an opportunity to learn from councils' experiences and to learn how well some of them are undertaking the tasks. That will be a support mechanism for the staff and councillors who are involved in the process of assessing and reporting on planning applications. That is an opportunity to develop capacity in councils and among staff

1846. Councils' performance will, no doubt, be very important to people in the community and the media where significant planning developments and applications are concerned. It is important that a reporting system is developed and that there is consistency of performance across councils and in the reporting and assessment of that performance. That is one of the key areas that the Consumer Council wants to be developed further once the Bill is enacted.

1847. The Consumer Council wanted to highlight, as it did in previous submissions, its desire to see community involvement and consultation go right through from the Department to the councils and applicants. It is important that there is openness and transparency in that process. The Consumer Council is happy to share some of the principles that it has and advocates for consumer involvement and choice. Those include information, access to information and redress systems. Those are principles well established in particular processes, and we would like to see them incorporated into any future development.

1848. The Chairperson: Thank you very much for your presentation. You mentioned the Consumer Council's role, but a lot of questions have been asked about exactly what is meant by the use of the word "community" in the Bill. I suppose it means that everybody should be included. Will you expand on that?



1849. Mr O'Donnell: Community engagement and involvement is key. The Consumer Council has set out a number of principles that any good public service, or indeed any service provider, should provide to consumers. Those principles concern how they engage, communicate and provide redress if something goes wrong. It is down to ensuring that there is information and that it is provided to people in a form that they can access and understand. It is about giving plain information while reacting to consumers' needs. We undertake quite a bit of community consultation through consumer panels that help to build a service along with the consumer, rather than delivering on to the consumer.

1850. The Chairperson: To follow on from that point, we heard earlier about front-loading the system and giving everyone a chance. How do you ensure that the community is making a meaningful contribution in the absence of, for example, third-party rights of appeal? Until now, people have been allowed to submit evidence and views, and those are taken into material consideration in any application. However, the question is whether sufficient weight is given to them.

1851. Mr O'Donnell: From the work that the Consumer Council has undertaken, and this is not just focused on this issue but is right across the board, there is a need to understand and appreciate the capacity in the communities to take on board information and respond to it. As councils are locally based, they are well placed to assess the infrastructure and capacity of local communities. However, the point is to work with those organisations that help and support communities at a more local level.

1852. The Chairperson: Thank you very much. Do any members have any questions?

1853. Mr B Wilson: You said that the process should include a limited third-party right of appeal. Could you develop that point?

1854. Mr O'Donnell: This comes back to the point of redress and ensuring that enough safeguards and mechanisms are in place to allow appropriate measures for people who are affected by development to get on board in a way that means that there is limited cost and expense risk to them.

1855. In other areas of work that we undertake, we find that consumers have often raised issues, complaints and areas of concern, but they do not follow through on them. There is a large drop-off when it comes to following through on that type of action. That is one area where there are issues that are not getting resolved. We would like to see some mechanism that provides support and takes away any risk that people would have in raising that sort of issue. That is an area of concern that we have right across the board. Anecdotally, we hear many people complain about and raise issues, but they are never followed through in development. Therefore, we need to ensure that effective mechanisms are in place to support people.

1856. Mr B Wilson: What sort of criteria would someone have to meet before they would be eligible to make a third-party appeal?

1857. Mr O'Donnell: We have not gone into that in detail. We want to make sure that safeguards are in place, but work would have to be done on that. It is not an area that we have progressed. To be honest, we struggle in other areas to find that support and resolution for people. Therefore, that cuts across not only this area, but other areas.

1858. Mr McGlone: It is good to see you again, Aodhan. You raised a number of very valid points, the first of which was about how local decision-making will fit in with the delayed RPA and transfer of powers. That is one of the things that has been taxing most of us here. Many of us see it as putting the cart before the horse. The structures for local government, including

most definitely checks and balances, should be in place before the powers are added on. I am glad to see that others are thinking like that and about how it ties in with other policies, such as the regional development strategy, which you heard about earlier.

1859. I will follow on from the Chairperson's valid point about the community consultation exercise. I am sure that, like me, many other members in the room have been in situations where community groups may have one view, but, when the situation arises, 95% of the population living in the place in question could have a different view. Sometimes those views are more or less the same, and sometimes they are not. It is very important that we learn best practice in dealing with that situation for the new councils when they come through. There could be a heavy reliance on a group of people who are well organised and structured and who may be a bit more vocal than the rest of the community but who are still not representative of that community. That is a valid point.

1860. That is heard usually when objections to a development start to appear. For example, a hall could have half a dozen people, who are the community representatives, in it one night. The next night, however, 200 people could be in that hall, singing off a different hymn sheet. It is important that that level of consultation is got right. Therefore, any good practice that you can share is important.

1861. Finally, I would like clarity on one point. I noticed last night when I was reading your submission that it recommends:

"that DOE investigate the possibility of including Northern Ireland Water on its list of statutory consultees".

1862. I thought that it was already one of the statutory consultees.

1863. Mr O'Donnell: I will check back on that. I thought that it was not, but, for clarification, I will check it. We definitely raised that in our initial consultation response.

1864. Mr McGlone: I was going to add to that. There seems to be a glitch in the Rivers Agency at the moment. Although it is consulted, it does not respond to all consultations now. Clearly you are working with the agency on flooding issues and climate change, that is, the big issues that have an impact on planning. That is an important factor. If we are clarifying the number of consultees, the issue with the Rivers Agency should be highlighted too.

1865. Mr O'Donnell: I will make a point about effective consultation. What we are doing at the moment with departmental spending plans is going out and consulting with citizens and getting beyond the community groups and representative groups. The most important thing for us to do is provide information.

1866. People accept that there are challenges and difficulties with the Budget, for example, but the fact is that, if people are given information and provided with the constraints that they are working to, consumers get it, and they make the choices. There will often be differences of opinion, but that is the process that has to be gone through to ensure that there is openness on the information, that there are options for the decisions that are going to be taken and that there is acceptance of the rationale for any decisions that are made.

1867. It can be a long process, and it requires a lot of work in pulling together information, providing options and scenarios and the impacts of those choices, but it yields much richer feedback and an understanding of the positions, if perhaps not support all the time. We are happy enough to give feedback on what we are doing on a range of different consultations.

1868. The Chairperson: Thank you very much, Aodhan.

1869. We will now move on to receive an oral evidence session from Community Places, which has provided a submission. I welcome Colm Bradley and Clare McGrath. Colm, you are welcome back. I believe that you are taking the lead. I will hand over to you for a presentation, and then I will open the session up for questions.

1870. Mr Colm Bradley (Community Places): Thanks very much, Chairperson, and I thank the Committee for inviting us along. For those who do not know, Community Places provides planning advice to individuals and community groups and supports and facilitate community involvement in the planning process. In our written submission, we covered a number of issues, but today I will focus particularly on community involvement, on which we have a fair degree of expertise.

1871. We generally welcome the proposal for pre-application community consultation. However, we feel that the Bill could be improved to ensure that pre-application community consultation is as effective as possible. For us, the Bill is an opportunity to provide clarity and certainty on consultation rights and standards, not just for the public and communities but also for developers and applicants. Everyone should know what the standards and procedures are. Pre-application consultation should apply to all applications, but obviously with different standards required depending on the size and nature of the application. Regional applications should have a higher standard to meet than major or local applications. As it stands, the Bill does not require the Department to issue guidance on pre-application consultation, so we think that it should clearly state that the Department will produce guidelines.

1872. Once the developer or applicant has prepared their report of the consultation process, people who have been involved in the process should have the right to see and comment on the report. Those comments should then be taken into account when the Department and councils assess the quality of the report. A report by an applicant should show how they have had regard to the pre-consultation, demonstrating how they have responded to each of the issues that arose during the consultation process. That does not mean to say that they should take them all on board, but they must show that that have considered them.

1873. Another issue came up during the policy consultation stage when we consulted with community groups. They felt that there should be independent facilitation in the consultation process, particularly for major and regional applications, and that if that independent facilitation was not available, people would be likely not to have the same confidence in the process.

1874. It is interesting to note that the 2006 legislation required the Department to produce a statement of community involvement. That has yet to be produced. Therefore, although the requirement in the Bill is welcome, it is just repeating the requirement that was in the 2006 legislation. That being the case, we would like the Bill to establish a firm date for the Department to produce its statement of community involvement. We suggest that one calendar year should be sufficient for that. The Bill will also require councils to produce statements of community involvement. Again, we would like a timescale for that in the Bill.

1875. To ensure consistency across the region and between all councils, and so that expectations for community involvement do not become a postcode lottery, the Department should approve councils' statements of community involvement. For some reason or other, the Bill requires councils to take account of the statement of community involvement when producing local plans, but not when producing a plan strategy. That anomaly should be corrected. We also agree with the suggestion of the Queen's University team that the Department and councils should monitor and review statements of community involvement over the years.

1876. Others have drawn attention to the widespread support in the consultation on the policy that there should be a statutory link between community planning and land use planning. Like others, we would like to see that included in the Bill. There are good, solid reasons for that. Community planning is not just about involving communities in looking at what services are required in a local authority area. All public agencies and statutory providers are involved in the community planning process. Many of those same agencies are involved in the land use planning process. If we create a statutory link between those processes, they can work with each other and avoid duplication. We can have co-ordinated consultation, co-ordinated research into needs and a co-ordinated approach to the Planning Service's land use and developments across the whole local authority area. Therefore, we can avoid duplication and make better use of resources. If that statutory link is not there, when the planning authority undertakes its plan strategies and its local plans, it will have to go out and do separate consultations — separate to the community plan. As it stands in the Bill, the local authority will go out and do consultation on the community plan, and, the next day, it will do consultation on the plan strategy and the land use planning. Without that statutory link, they will have to do both. If we create a statutory link, they will only have to do it once.

1877. Having studied the evidence from the Queen's team, we also think that the plan strategies and local development plans should be, in their terms, "in general conformity" with the community plan. That would ensure that the statutory link is as strong as it possibly could be. Since both those processes are led by councils and involve all the statutory agencies, it seems sensible that they should be as strong as possible and that there should be a statutory link between the two processes.

1878. A couple of other issues have already been discussed this morning. We think that the community infrastructure levy is slightly misnamed. The use of the word "community" suggests that it is about local community infrastructure, but, to our minds, it is not just about local community infrastructure. It is about public infrastructure. A good example of that is where a number of developments are putting pressure on public transport: the infrastructure levy could be used to improve public transport. Therefore, we suggest that it should be introduced in the Bill as an enabling power, which would require further debate, consultation and approval by the Executive before it could be introduced in any detail. As others have said this morning, we think that it should be a sliding scale.

1879. The infrastructure levy was introduced in England some years ago. Its original basis was the understanding that when planning permission is given to a site, it immediately increases the value of that site. Therefore, the community infrastructure levy should reflect the value that has been placed on that site as a result of planning permission being approved. If the public gives planning permission for a site through its local authority, it vastly increases the value of that site. That should be reflected in the community infrastructure levy, which would support all types of public infrastructure.

1880. Finally, one minor point that we mentioned in our written submission was the issue of grant aid by the Department. The 1980s legislation that first introduced powers for the Department of the Environment to make grants required Department of Finance and Personnel (DFP) approval for each and every grant. For some reason, that has been carried over into the new Bill. To our knowledge, it is a requirement that no other Department has to meet. Of course, all Departments have to follow DFP guidance in respect of auditing, monitoring, and so on, but obtaining approval for every grant seems like a bureaucratic nightmare that could easily be removed.

1881. The Chairperson: Thanks very much for your presentation. There are mixed reports on the community infrastructure levy, but maybe the sign is that it will benefit the community as a whole, no matter what the development is. We were originally looking at developer

contributions, but it should go back to being to the benefit of the community. Can you expand on that?

1882. Mr C Bradley: Our thinking is that it is collected by the local authority across all major applications in the local authority area. That money becomes available to the local authority, and it can decide how best to distribute it. If you link that to the community plan and say that expenditure should be for the delivery of the community plan, then discussion has already taken place on the needs and issues across the local authority area, along with the priorities for investment, and the community infrastructure levy pot of money becomes one source of investment to meet the priorities identified in the community plan.

1883. There is a link among all of those processes. It is not just like a pot of money that a local authority can do whatever it wishes with; it has to come through the community plan in terms of identifying the priorities. Those priorities might be to improve services across a number of communities in a local authority. The levy is collected from different developments across the local authority, so it becomes a pot of money that a local authority can use for general improvements for communities and the public.

1884. The Chairperson: OK. In terms of the whole process of local development plans, community involvement and community planning, communities will obviously have aspirations. How do you see that all rolling out under this policy? How can we ensure that there is proper participation without it being a wish list of things, so that it is only aspirational?

1885. Mr C Bradley: When we talk about community consultation, we are talking about the public as well as the community sector. It is all one to us. Hopefully the community sector will be a bit better informed and a bit better at being persuasive, but, to us, it is all one. Processes for helping people to prioritise their issues have been tried and tested in a number of consultation exercises. While they may start with what appears to be a wish list, there are techniques and methods that can be used — we have used them in large public meetings of 200 people — to help people to work through and come up with a shortlist of priorities.

1886. The benefit of having a standardised approach to pre-application consultation, which is reflected also in the statement of community involvement, is that we will begin to develop those skills. Currently, planners do not really have them. We did quite a lot of consultation to help the Planning Service when it was developing its suite of development plans over the past few years. It is not something that planners are trained to do, to be fair to them. We found that we were training them in the course of facilitating public consultation on their behalf. It is not a skill that they are allowed to develop, but it should be. For example, mediation training has been introduced into the planning service in Scotland.

1887. The Chairperson: You are talking about training planners. There is a big need for capacity building in local councils. Do you think that there is a nervousness in the Planning Service or the Department about the transfer? We could be looking at major resourcing, training and capacity building, but you have not touched on that. Maybe I missed that point, but would you like to touch on that a wee bit?

1888. Mr C Bradley: We will move to a very different environment when councils take over planning. The relationship between planning as a profession and elected representatives at local level will have to change. They have been separate entities for so long, and there is almost an adversarial relationship, which is not found elsewhere, between the two. Elsewhere, the profession is seen as having a professional expertise that helps local representatives to take their decisions and take better decisions. We need to get to that place. It is about developing the capacity of both sets of people to understand their distinct and complementary roles.

1889. The Chairperson: We had the Planning Appeals Commission (PAC) in yesterday giving evidence. You have talked a wee bit about the independent examination. Are you saying that the Planning Appeals Commission should carry out those independent examinations?

1890. Mr C Bradley: Yes.

1891. The Chairperson: Even though it may not have the capacity at the minute? There have been a lot of arguments over the past 12 months about its capacity to deal with public inquiries.

1892. Mr C Bradley: We need to separate the two issues of who should do it and the capacity to do it. The Bill proposes that the independent examinations will be carried out by the Planning Appeals Commission or by someone else appointed by the Department. The Bill also says that the Department will have the power to adopt or amend the report of the Planning Appeals Commission or the independent examiner. We think that there is a difficulty there. It is important that people see and have faith and confidence in the whole planning process. The reason why we have an independent examination is to provide confidence that decisions on major applications and development plans are being taken on professional policy grounds. That is what the PAC provides. If local authorities prepare local development plans which then go to the PAC for independent examination but, subsequently, are subject to another political consideration through the Department, there is a risk that the public will not have the same confidence in the processes.

1893. The Chairperson: Should there be some mechanism to ensure that you have a plan? No plan will be 100% right; it will have to be looked at. Should that process start in councils and be incorporated at the start? We are talking about the front-loading system. It could be argued that it should be there, as opposed to every plan having to go back to be independently checked. I can only go by some of the appeals that I have been at for single houses, but they follow the same criteria. They are only reassessing whether Planning Service has properly assessed an application. It is like a homework exercise; that is what it seems to be. Do we need to look at those criteria? Are we saying that that is robust enough? Regardless of independence, are the actual criteria and the challenge and the assessment robust enough? Is there something that we need to look at? Or are you happy that PAC is confident and independent enough to assess any applications?

1894. Mr C Bradley: I think that it is independent all right. The length of time that people have to wait for their appeals to be heard is unacceptable. That is a capacity and resource issue. You would like to think that planning authorities would get individual applications right the first time. If that were the case, we would not have so many successful appeals. We continue to have lots of successful appeals, so something is not right the first time round.

1895. The Chairperson: I think that you have said enough. There is still homework to be done. We need to be looking at that now. When we transfer that down, the governance will come first; I know that members have been asking. Some people could ask why it should sit on the shelf. We have accepted this, and we have to move on with it and see what happens after this process and how it rolls out. If it goes through and receives Royal Assent, it will sit. The governance and reorganisation will come first. A lot of training and things are required in the profession; you are well linked to it. We are trying to get something incorporated in the Bill or in subordinate legislation to deal with some of the issues that we have talked about. We have talked about an independent examination in particular. Are you happy that it should lie with the PAC?

1896. Mr C Bradley: Yes.

1897. Mr Kinahan: Thank you for a very good presentation; there were a lot of extremely useful points. You talked about independent facilitation. I am not sure what you meant. Communities

will, at times, need to bring in professionals to help them with such issues as sustainability, rivers or heritage. How do you see that working? Can we be assured that those professionals are independent from government advisors? At the same time, how can they be resourced through the planning system, so that they can have the best people to advise them?

1898. Mr C Bradley: The first issue is independent facilitation. At the pre-application stage of a major development the developer is required to consult under the Bill. As it stands, the developer can do that himself or appoint a consultant or someone who will do that for him. So the developer will have complete control of the process and produce a report on it. As the Bill stands, there will be no independence in that process. Let us suppose that a developer appoints a consultant to facilitate a public meeting. That can be done in a very fair and equitable way, or it can be directed to make it difficult for people to participate. If that begins to happen, public confidence in pre-application consultation will dwindle.

1899. We need to ensure that, when we introduce this, we build in safeguards to ensure that it is properly done and reported on and that everyone can see that the issues that have been raised are in the final report. The suggestion that came from community groups was that the planning authority would have a list of independent facilitators who would be approved by the local authority. The developer would have to use one of those independent facilitators.

1900. Mr McGlone: One thing is flagged up in your submission is your recommendation to add to clause 1(1) of the Bill the words:

"and to secure sustainable development, tackle disadvantage and poverty and promote inclusion and equality of opportunity".

1901. That is something that the Committee should discuss and tease out further: how those values can be incorporated into the Planning Bill. Thank you for making that suggestion.

1902. I am intrigued by this community infrastructure levy or public infrastructure levy. The Chairperson also touched on this. One of the issues that has been kicked about the place is the developer contribution. It was kicked from one Department to another, and then disappeared for a while. It became a big issue when things were going well but it has not been such a big issue recently.

1903. We have the proposed hike in fees by the Department and we have this public infrastructure levy — and I accept the thematic areas around it and the principle of it. However, do we throw into that the developer contributions as well? Is it the thinking that the developer contribution potentially equals the public or community infrastructure levy? We could have that many levies that, by the time you wind up building a house, only millionaires could go into it.

1904. Mr C Bradley: On the fees issue, the fees should be a total cost recovery for the administration cost of processing applications, and nothing else. That is all fees should be.

1905. We make a distinction between developer contributions and infrastructure levy. To our minds, the article 40 developer contribution should be for the immediate impact of that development. The developer should pay for anything that is consequential, or that needs to be done to allow that particular development to happen. Where the local infrastructure requires improvement in order for the development to happen, the developer should pay. Sometimes you see road improvements or local improvements to water and sewerage. Where that particular development could not take place unless those improvements were made, the developer should contribute to those. They are immediately associated with that site.

1906. Mr McGlone: I wonder where the other concept fits in. In your submission, you say that:

"developers should make a greater contribution towards the provision of infrastructure".

1907. Fair enough, a lot of us are chasing round our own constituencies where developers have gone pear-shaped or are getting it tight at the minute, with Roads Service or Northern Ireland Water, to try to have infrastructural systems adopted.

1908. I thought that I was clear in my own mind about the issue of developer contributions, and I am trying to find out about the infrastructure levy. Forgive me, because I am from up the country, but it seems to my mind that there is quite a considerable overlap, if not in the concept itself, then certainly in its outworkings. There is considerable overlap, and there needs to be a fair bit of teasing out of the issues and of their implementation before we go in the direction of one or the other, because you could wind up having a heap of things to be done before you lay a block. I do not mean that in the wrong sense, but we want to ensure that that is done with clarity and that we know precisely what this is all about. At the moment, I am a bit confused on it.

1909. Mr C Bradley: I will illustrate with an example. The infrastructure levy applies to major developments, not to individual households. Let us suppose that there were an application for a new shopping centre that required a slip road for people to get into it. That would be an immediate consequence of that shopping centre development, so the developer should pay for it. The public should not pay for the slip road into the shopping centre.

1910. Mr McGlone: That would usually be part of the application anyway.

1911. Mr C Bradley: Yes. The infrastructure levy would recognise that, in order for people to get to that slip road, they would make wider use of the whole roads infrastructure and wider use of public transport. Who pays for all of the traffic that is generated for miles around to that shopping centre? At the minute, taxpayers pay for it. Taxpayers pay for wear and tear that is caused to roads and for public transport that is used for people getting to that slip road. Is that OK? Maybe it is not.

1912. Mr McGlone: But if they are not going there, they are going somewhere else.

1913. Mr C Bradley: Maybe they are, and maybe they are not.

1914. Mr McGlone: I say that because I have gone through quite a contentious case on my own patch. I have gone through the retail impact assessment stuff, which deals with the offloading of customers from one place to another, their transportation and all that sort of stuff. Forgive me for labouring the point, Colm, but I am trying to get into my head the distinction between the developer contribution and the infrastructure levy.

1915. Mr T Clarke: I agree with Colm. Sometimes roads need to be widened as a result of a development, especially housing developments. Why should a road be widened at the expense of the public purse when it is enhancing the development? The development cannot happen without road widening, so the developer should pay. That is part of the infrastructure levy.

1916. The Chairperson: To move it on another bit, a major housing development would need a recreational facility. That has community benefits as well. Developers put in footpaths and all anyway, and I would like to go down that route as well. It is a DFP issue. How do you put that in?

1917. Mr T Clarke: There is a danger with that.



1918. The Chairperson: All I am saying is that that is what a community levy could mean. I am not saying that it is right or wrong; I just want to get a better understanding of what we could be looking at.

1919. Mr C Bradley: Perhaps a better example is play facilities. Currently, if there are a number of reasonably sized housing developments in an area, you cannot require each of the individual applicants to provide a play area, so it either does not get provided or it gets provided by the taxpayer or by the community infrastructure levy.

1920. Mr T Clarke: With many applications, there has had to be provision for play areas, and the developers are content to do that. People who are buying into developments and who are going into contracts with management companies are unaware that, when the playground wears out in 10 years' time, they will have to stump up the money to pay for it again. There is a danger with trying to encourage too much of that, because it is the public who have to pay for it.

1921. So, although it is a good idea for the Planning Service to insist that there has to be play areas or community facilities, and the developer will, with good intentions, build those for the community, the community will have to pay for the running costs later. The replacement costs after the facility wears out must also be considered.

1922. The Chairperson: I am just making the point: I am not saying that I am for or against it. That is just what we are looking at.

1923. I have one final point to make about rolling out the workforce model for delivering the Planning Service, especially the development management end. People have spoken about the fees structure and the rates base. How can that model be properly funded? Although the Planning Service is a public service, it still has to be run as a business. We spoke about receipts being down. Have you any views on that? I know that this is a difficult issue, but it was always said that resources would go to the councils.

1924. Mr C Bradley: First, should we be aiming to increase fees to ensure full cost recovery? When times are good, that is OK. However, times are not so good now. There is probably a core basic cost to providing a planning service that the taxpayer will always have to meet, so, I am not sure that full cost recovery through planning fees is possible. It is the direction in which we should be going, but we will always have to accept that there are core costs, particularly around developing planning policies, and I am not sure whether planning applicants should be required to pay the cost of developing such policies. However, if the cost of planning policy-making could be separated from the cost of administering and assessing an application, the taxpayer would pay for the general planning policy work, planning fee administration and application.

1925. Mr T Clarke: We are in the bad days now, so we have probably reached the bottom. In the good days, they should be collecting money, because they should be profiting from the receipts that they get from planning applications. They should not reduce those receipts when the good days come back. They should continue at the same price, which will bankroll them again.

1926. Mr C Bradley: One could also have an infrastructure levy, which one could be raising in the good days.

1927. The Chairperson: That is the good thing about the levy. However, you are correct. The Committee has said on a number of occasions that during the good days the money was going away. It was not about just covering the cost of the application and the service; the money was being sent back to the Treasury. We are saying that that money is part of the levy and could be built up. We need to look at that again.

1928. Mr C Bradley: A levy is also very flexible and could be changed within months. There would be a sliding scale because it would be introduced by regulations. The sliding scale could be changed within a couple of months and one could follow the market.

1929. The Chairperson: That sounds great in principle. Thank you very much.

1930. We will now receive an oral evidence session from the Ministerial Advisory Group. I welcome Mr Arthur Acheson. You are very welcome, and I will hand over to you, and then I will open it up for members' questions.

1931. Mr Arthur Acheson (Ministerial Advisory Group): Thank you. I have been following some of your work in the Hansard report. You have done a lot of work here, and I must say that it has been terrific. Chairman, I was particularly interested when I read several references that you made to the word "place". That is key, but it is something at which Northern Ireland has been particularly bad.

1932. I have taken the principles of the Commission for Architecture and the Built Environment (CABE). It is a threatened group now, but it essentially runs an equivalent function in England to that of the Ministerial Advisory Group here in Northern Ireland. CABE talks about the design, management and maintenance of a place. Community involvement is key to how places will emerge in the future. I notice that the Committee has spent a long time on community involvement already. Solutions may be emerging, and I would like to bring those to you today.

1933. The notion that we involve people, rather than just consult them, is terribly important. During some of the conversations at these meetings, the words "involve" and "consult" have been used as though they mean the same thing, but they do not. Therefore, I am pleased to see that the Department is talking about community involvement. I have a long history of working with communities in Northern Ireland. In my experience, the best way to involve them is to reverse the three ideas that CABE talks about; design, management and maintenance, and begin with maintenance.

1934. First, we should look at how places are maintained and what we can do about the usual issues that people raise about their places, such as litter, dog fouling and chewing gum. We should look at the fact that different bodies look after different parts of an area, and we should examine people's involvement in cleaning-up and maintaining a place from a young age in school. By maintaining a place, which is what people do to their own property, they get to know it, understand it and see the issues.

1935. We then move to the next step, which is management. How do we manage that place for betterment? If conflicting Departments are involved, which is often the case when it comes to maintenance, the Roads Service may go to one part, the Housing Executive to another, and nobody looks at the bit in between. We find that people try to discover who owns the piece of ground in between and which public body is responsible for it. Local communities have a fundamental right to know who is looking after their place. We then ask how we can get those people to work together, and how can we work with them to manage events such as the switching on of the Christmas tree lights, the provision of those lights, or the insurance for the Christmas tree, the carol service, or whatever is necessary for the management and better use of the place. That is the next stage. From that comes the brief for the design. Therefore, when we talk about the design of a place, people have become knowledgeable and aware, and they have had an input into running and maintaining it, and we have a much better opportunity for design or planning. That is the general format of how I see involvement taking place.

1936. An extremely good model exists already in Northern Ireland, and I referred to it in my paper. I have brought some copies along today, although I was able to get only half a dozen

from the Housing Executive. It is called the Housing Community Network, and it has been running for 20-plus years. It is not a statement of community involvement by a council or by the DOE; it is a strategy for community involvement. The present edition that I have with me today, and which I am happy to distribute, is for 2008-2011. As we sit here, the strategy is being revised in an office in the city centre, and that involvement strategy will run from 2011-14. It is always a three-year run.

1937. From that strategy, I see a huge opportunity to devise the basis on which legislation for planning could be framed, rather than the Department putting out something in which it attempts to agree a statement of community involvement with, perhaps, a new council. It has not done so in the five years since the Planning Reform (Northern Ireland) Order 2006, which required it to produce a statement of community involvement.

1938. The symposium convened by the Ministerial Advisory Group last September called on the Department to prepare and produce policies behind that statement and the statement itself, and offered the assistance of the Ministerial Advisory Group to do so. We have had informal discussions with Planning Service officials on the matter.

1939. However, we see this issue as being more than a statement. We see it as being a genuine strategy. It is about involvement, not consultation. For example, looking at the next stage of producing a plan, a community plan, or a planning application that is in the system, there is an opportunity for Planning Service officers and the community in the area to be involved, whether it is in the visioning process, making that visioning process into a plan and relating that to a community plan; or whether it is a housing matter, a policing matter or a matter of public safety or cleanliness. We find that the group of active citizens in a community is the group that we are talking about and which is already involved as one of the 600 groups in the Housing Community Network.

1940. I suggest that, with a bit of work between DOE and the Housing Executive, there is a huge opportunity to produce what I call, characteristically, a community network. Instead of extending it and calling it a housing and planning community network, I am saying that we should step back a bit and think of all the opportunities where the existing 600 groups, which are part of the strategy that members have in front of them, the existing 35 districts of the Housing Executive, and the five regions, could work together on the kind of community involvement that we feel is necessary for making plans, implementing plans and the management of development.

1941. I will give you another example, which shows a very simple means of facilitating community involvement. In the past number of years, the Department has formalised pre-application discussions (PADs). The PAD is an opportunity for a developer to talk to the Planning Service at an early stage. There is a very simple recipe here for community involvement at the right stage. We have been talking a lot in various sessions about front-loading. In this case, front-loading would involve PADs becoming public. In other words, they would be advertised and neighbour-notified to those who will be most closely affected by the development. Therefore, when a developer meets a planning officer, it will not be perceived by the community as something that is happening quietly and in secret to set something up; it will give neighbours an opportunity to come in at a time when plans are at their most sketchy.

1942. I am an architect, so I know about the amount of work involved in developing a scheme, and I know that if early indicators come from the community, it is so much better. Rather than making it a separate community consultation process, the process already exists through the PADs. Those should be opened up to the neighbour-notifiable residents or businesses in order to allow them to get involved. I have taken many schemes to the point where the community was going in one direction and the developer in another. In one case it was only at the last minute,

by bringing them together in the planning office, that we discovered that the issue was all about the direction in which three windows faced. There were months of delay, because the planning officer was not coping with that.

1943. The planning officer is not a trained integrator or designer. He is, essentially, trained to be a decision-maker. When he gets conflicting requirements; those make the process very difficult and long and drawn out. I have another planning application that has been running for seven years. It is still undetermined. It could go to appeal at any time and be determined in four weeks, but we would rather see it through.

1944. The issues are about getting the early involvement of people, and I say involvement, I do not say consultation. That must be written into statute, otherwise it will not happen. That is a summary of my thoughts. I am very happy to take questions.

1945. The Chairperson: Thank you very much. That was one of our more lively presentations. To be honest, I have mentioned place on a number of occasions, but the key is to marry that with participation. People say consultation, but it is about participation.

1946. Mr Acheson: It is continuous too. It is exciting, Chairman, if we get it right. However, at the moment, the Bill has flaws that need to be corrected. The perception and concept need to be better.

1947. The Chairperson: You have created more questions for the Department than for the Committee. You have talked about the Community Involvement Strategy model, which is fine; there is a good body of work in that, and we will certainly be talking about it. Funnily enough, we also had a good presentation from the Housing Executive yesterday.

1948. Mr Acheson: I read its document, and I was very impressed by its co-operative and participatory role. That is the nature of the Housing Executive, it really is.

1949. The Chairperson: Obviously, we will be knocking on the door of the Minister for Social Development to ensure that he follows that through, but we will not get into that.

1950. I want to ask you about some other views on existing plans — [Interruption].

1951. Will members please switch off their mobile phones? They interfere with the recording system.

1952. Until now, this has been about zoning land. How do we marry that with community involvement and community aspirations? We do not want to send out the wrong message. There is a lot of capacity building to do, such as training councillors and looking at how we propose to move the planning process to council level. We have a wee bit of work to do.

1953. Mr Acheson: There is a huge resource in Northern Ireland comprising people in their local places. They are the ones who, I always find, know their places best. They are always "consulted", or in other words, their ideas are taken. Those ideas are then taken by the consultant who makes it into something that he thinks those people should have. The ideas then become some sort of a plan.

1954. That is, frankly, the wrong process. It is not what people would do in their own houses. People get to know and understand their places. The ability of the Planning Service, the Housing Executive and private sector planning consultants and architects to enable those people to do things is remarkable.

1955. There are some very good examples of local master-planning going on, and those are involving people. One is in Glenarm, another in Bushmills, and another is in Glenariff. They are very local plans; only the size of a super output area or a ward. They are referred to in the Ministerial Advisory Group's paper.

1956. The Housing Executive manages 600 local groups that contribute to their areas. That equates almost exactly to the number of wards in Northern Ireland. The Committee knows that each ward has an elected representative and an administrative system already in place. There are 586 wards and 600 community groups in the Housing Executive system. The Housing Executive manages those 600 groups with terms of reference, capacity for people to attend meetings and get a small fee or expense payment for doing so, and capacity to provide them with tools for maintaining flower baskets in villages, painting toilet doors or whatever. If one body can do that, another can do it too, given that, as you said, a lot of the work has already been done.

1957. Therefore, as we move to 462 wards in the proposed new system of 11 councils, the capacity is already there in the local people. There is more than one planning officer and architect for each ward already. A little bit of voluntary effort is needed. I put two hours a month into one community group. Now, it is applying for its own grant aid and is meeting with the rural development programme. After three years, and with two hours a month and a little village plan, the capacity that is already there is amazing, but they do not even know it. At the beginning of the process, those people asked me whether one could talk to the Roads Service. Now, Roads Service is talking to them, when they want dropped kerbs or some other small maintenance or management improvement in the village. They are now working together, so that Roads Service does not have to do it twice.

1958. There are a lot of words in government such as "engagement", "stakeholders", "effective" and "efficient". I am tired listening to them. What we have to do is get on and do it.

1959. I suggest that when we make local plans, a lot of the work has already been done. The DSD has a lot of local plans already, councils have a lot of local plans, and the DRD has them too. The Prince's Regeneration Trust has been assisting, and the rural development network, which operates through DARD, also works on such plans.

1960. A lot of local blocks of planning and issues have been dealt with. We have 130 identified landscape character assessment areas in Northern Ireland that were all done 10 years ago. That was exceptionally good work, and it can guide the process for local communities. A four- or five-page booklet about a local community tells people what environmental issues and concerns there are. People can write a plan for their local place. It does not need consultants; it needs only a very small amount of local professional participation to assist the process. One place that I work with takes two hours a month, which is not a lot to ask.

1961. The Chairperson: No, it is not. I think you have hit the nail on the head. If we used a common-sense approach, we would get there. However, that is seldom used. When you are dealing with planning and planning applications, there is no point in talking about a common-sense approach.

1962. We do not want this to be a consultation in which people say what they feel, but then they go out the door, and no weight is given to that.

1963. How do we ensure, in the statement of community involvement or whatever way we want to put it across, that there will be proper participation and that the views will be taken on board?

1964. Mr Acheson: We go on the basis that the statement does not become something on which we tick the box to say that we have done it but that it becomes a strategy. That is the way that the Housing Executive has tackled it. It should become a strategy for community involvement, and that includes public or, at least, neighbourhood-notified pre-application discussions. We should put those into statute and make the Planning Service work to those rules.

1965. In fact, I often represent the developer as much as I represent the community, because I am an architect and work with both. I find that the developer appreciates early certainty just as much as the community does. Particularly if a design input is brought in during the process, there are often double benefits. There are benefits to the developer in understanding what the community needs and wants, by being able to perhaps pick up another site and provide that for it, making a few quid on the way, helping the economy and meeting local needs. Unfortunately, the Planning Service has got in the way of that, which used to be a natural process. It has pushed them apart. It talks about involving them, but it does not know how to do it. For five years, it has not done it.

1966. Mr Kinahan: I find it fascinating to hear those extremely good ideas. My biggest concern is almost the first. At the beginning of all this consultation we had the community involved. It was not only the people who lived in an area but the people who worked there and passed through it. In fact, by the time that we had finished, it was everyone who touched it. That dilutes your ownership concept. Yes, everybody in Northern Ireland owns the thing, and I wondered how that concept could work with such a huge body.

1967. Another comment was that the Housing Executive is only in certain patches, in that there are certain parts, whether rural or others, in which we do not see it. The third comment is that, in South Antrim, there are 330 different community groups, and there is not one that represents properly one area. Sometimes there are five in one town, and they all compete and disagree with each other, with the end result that nothing gets done. It is a fantastic piece of work and ideas, but —

1968. The Chairperson: I know one area that we are not going to.

1969. Mr Acheson: I realise that those are real issues. I do not go to 600 housing community networks. There may be things there that interest me, but I do not go to those. However, if someone asks me to take an interest in their area and come to sit in on a housing community network meeting, I do that. I go to about two housing community networks out of 600. I sense that the Housing Executive has managed to create a system whereby those people for that place are elected into post. They must be constituted and elected, and it is a three-year strategy. Interestingly, the Housing Executive's document up to April 2011 says that, if you are not part of a housing community network, you might be thinking of a village champion or a rural person who takes a lead and takes responsibility.

1970. We are talking not about power but about responsibility. A group of people, insiders and outsiders, might be willing to do the maintenance tasks and the management tasks. People paint public toilet doors because they do not want to see the graffiti on them. The Housing Executive provides the paint, and the local council is happy for them to do that because it saves the council from having to do it. I know that those people feel that the smallest encouragement really does them good. They are getting to the point where they can have their own Christmas tree, get their own place organised, pay their own electricity bill and run their own car boot sale.

1971. To me, that is what it is about, and you can grow that even out of the most adverse circumstances of people not working together. They will work together, and it is about continuous involvement, not about power or consultation about design but about rolling up the sleeves and saying that they will get a bin lorry from the council and clean up an area. I have

even done that with groups of very disenchanted children. When I first go round, they ask me what I am doing. When I tell them that I am picking up litter, they tell me that they will throw it down again. By the end of the afternoon, they too are picking up litter.

1972. When I see them throwing stones at the digger driver who is trying to clean the road, I say:

"Right, I am going to get black bags out of my car and we are going to make some money, guys. We are going to lift these cans, and each can is worth a penny when we take them to the community centre."

1973. That starts the process quite early, is not difficult to do, and saves diggers from getting stoned.

1974. The Chairperson: You talked about business improvement districts. Will you expand a wee bit on that?

1975. Mr Acheson: Business improvement districts are part of the planning system in other regimes. They are recognised by and integrated into planning legislation. We have been very slow in doing that in Northern Ireland. There is an opportunity once again for the Department of the Environment (DOE) and the Department for Social Development (DSD) to discuss this. DSD is taking an interest, but I believe that its legislation will come along much later. So, there is an opportunity in this Bill to have the business improvement district legislation written in as part of DOE.

1976. I would prefer that rather than enterprise zones and zones of simplified planning control, which are from some other era. Those have both been tried but have not been particularly successful. Business improvement districts are what town and city centre managers are looking forward to. Again, it involves local businesses. If a certain percentage of a certain size of local ratepayer decides that there should be a small levy on top of rates for specific environmental improvements, for example, or specific events or marketing, then all the people in the area contribute to that.

1977. There is a huge opportunity there to see that level of business community involvement in a place. To get that growing locally with some additional local funding, instead of depending every time on DSD, DRD or DOE coming in to do something to the place, really does work in other places. It is big in the South of Ireland and in parts of Great Britain. It has not come to Northern Ireland yet. This is an opportunity to work with DSD and decide whether it is better in this Bill or in some future Bill that DSD will put forward. I would prefer that it went in now because the people on the ground are itching to get on with the job.

1978. Mr McGlone: I am sorry that I had to go out earlier, Mr Acheson. I did not hear all your presentation, but I read it last night. I am interested in your point about business improvement districts. However, I am also interested in those simplified planning zones, and we have tried to elicit more detail from the Department about those.

1979. Up until now in my mind, from what I have heard, they are still a nebulous concept. I still do not have an idea how they work in practice even after hearing someone trying to explain them to me. I am interesting — in fact, intrigued — to see that they were introduced as concepts elsewhere, and I think you said that their success was limited, which is maybe an exaggeration. We do not want to be repeating failures here. Where were simplified planning zones brought in, and where and why did they fail?

1980. Mr Acheson: Can I come back to you, Chairman, on that one? I do not have that sort of data with me. However, the principle there is that anything goes. Looking at Northern Ireland, with its 130 landscape character areas, we really do not want places where anything goes. We want the people in those places to be closely involved at all stages in maintaining, managing, designing and planning those places, and not simply to say that anybody who buys a piece of ground can suddenly come in here and do something. That will never be right. On principle, it is wrong.

1981. We are all aware of enterprise zones. They have been through the mill and have not come up with the goods in Northern Ireland. Business improvement districts offer much more in terms of local involvement and local enterprise, which is what this place desperately needs.

1982. Mr McGlone: Thank you.

1983. Mr Acheson: I can get you more information.

1984. The Chairperson: Can you send us more examples of that, so that we can have a better idea of what you mean?

1985. Mr Acheson: Yes. I will give you the business improvement district schemes. It is well known in DSD circles, where it is being discussed at the moment.

1986. The Chairperson: Thank you.

1987. Mr B Wilson: In your submission you referred to areas of townscape character. That is something that I have been fighting for 20 years now. Now, the Belfast metropolitan area plan (BMAP) might finally be published and we might get some areas of townscape character. They are not in the Bill. What does that indicate? How could the Bill be improved to include them?

1988. Mr Acheson: That is my question. The Bill spends pages and pages on conservation areas, but not a mention of areas of townscape character. Yet the area plans put forward both. What is the logic of being prescriptive and very descriptive about one, but having no knowledge or information of the other whatsoever? You either put them both in or leave them both out.

1989. I know that there is stalling going on in Planning Service about areas of townscape character. I was involved in the early 1980s in promoting an area to be a conservation area. DOE did not allow it. DOE said that it would consider declaring the area an area of townscape character. The residents got together and produced a fully-fledged document of 50 pages. Every tree in the street was named, every house type. All about it was named. DOE said, thank you for that and we will think about it. Two years later, DOE declared it an area of townscape character. It was nothing to do with an area plan. There was no requirement to wait for an area plan whatsoever. Two or three years after that, DOE decided to upgrade it from an area of townscape character to a conservation area. Residents were delighted, but it took five, six or seven years of strong lobbying by them and a lot of work by local people in producing their own document.

1990. I tried to do the same thing recently with another area which was threatened. In that case, the Planning Service, with no change in regulations or system, told me that it could not do that because it was awaiting a decision on the area plan. That is absolute nonsense, because it was done outwith the area plan process previously under exactly the same legislation. The service needs to be sorted out on that. That is the reason why this problem needs to be highlighted.



1991. Another point is that areas of townscape character and conservation areas are influenced by, and demanded by, the local people. If they are foisted upon the people from above, they are not appreciated. If they are demanded by the people, they are appreciated. In the first example that I gave, several houses which were in multiple occupation, or were institutionalised, returned to single-family use as a result of the area of townscape character and conservation area, which was precisely in accordance with the betterment of the area and suited all the residents. Of the residents who came to a public meeting to start that off, 49 out of 50 said that they would stay in the area, would not sell up and wanted their place protected. It worked. It is still there; it is still beautiful. We can do it.

1992. The Chairperson: The whole process is about community buy-in. That is better than, as you said, foisting something upon people. The first thing people do is object or ask a question.

1993. Mr Acheson: It is also hugely more expensive to do it the way we are doing it.

1994. The Chairperson: Thank you very much, Mr Acheson. I am going to have to suspend proceedings for a few minutes — [Interruption.]

1995. No. I retract what I have said, and we will continue with our final evidence session. We will receive a presentation from Professor Greg Lloyd. Professor, you are very welcome. We have been keeping that seat warm for you.

1996. Mr Weir: You do not know how welcome you are.

1997. Professor Greg Lloyd (University of Ulster): I am afraid that I did a wheelie coming into the car park.

1998. The Chairperson: You know the format. Welcome back. Long-standing members of the Committee remember your contribution to the Committee in this whole process.

1999. Professor Lloyd: Thank you; lovely. I understand that I have about five minutes.

2000. The Chairperson: I will not debate that point after the members have been waiting.

2001. Professor Lloyd: I thank the Committee for the invitation to come along. I will say only a few words. I draw most of my observations from a number of sources, one of which is that — and it grieves me to say this — for some 30 years I lived and worked in Scotland and was heavily involved with the reform and modernisation of the Scottish planning system, which is still unfolding. I still relate to that and get involved with it at various points.

2002. In 2007 I was invited by Minister Foster to become her independent adviser on the land reform taking place in Northern Ireland. I was then based in Liverpool. In one of those coincidences in life, I was then able to come to work at the University of Ulster, which has been very pleasant. I no longer fill that role for the Minister because it ended once my report was submitted. However, I take a critically reflective and friendly view of what is happening in Northern Ireland, and I do draw down on my experiences if that is OK.

2003. You will notice from my submission that I make reference, probably overly so, to what has happened in Scotland. However, what is happening in Scotland, Wales and Ireland is changing very dramatically, and certainly the Scottish model is a very useful template for Northern Ireland. Indeed, quite a lot of its principles have been picked up and imported.

2004. The Planning Bill is to be commended because of its attention to proportionality, to front-loaded engagement, and to putting greater responsibilities on all developers, from householder up to major developer, to come forward with the right information so that decisions can be made.

2005. As an economist by training, I tend to see the world under two headings. The first is the institutions under which we operate, and I organised my thinking around that in my submission. The institutional framework is really the rules of the game, and there the Planning Bill has met quite a number of its initial objectives. It wanted to make the system in Northern Ireland much more efficient, effective, transparent and open to civil engagement. That is to be commended.

2006. My reading of the substantial number of clauses shows that the Bill has gone a long way to achieving that. Embedded in there are some very nice nuances whereby the planning system can adapt to development proposals and respond to them appropriately. So, large and small developments will be treated appropriately. That model is working very well in Scotland. The ethos of the Planning Bill in promoting a greater awareness of rights and responsibilities is also to be welcomed. We have the beginnings here of the rules of the game being put into place.

2007. The other heading that I tend to think around, which is where I do have some observations, is what we could call the organisational delivery mechanisms for the Planning Bill. I have reservations there. I am concerned that there are loopholes and gaps in the areas of strategy and strategic thinking. The fracture between the regional development strategy and the statutory planning system is a major issue that we need to address.

2008. In Scotland, the planning hierarchy, which the Planning Bill puts forward with different scales of development and different types of administrative response, keeps at its apex what is called the national planning framework, which is more or less the equivalent of the regional development strategy. That means that all planning decisions cascade within that statutory planning framework.

2009. The important thing is that during the Scottish parliamentary debates on the importance of planning reform — particularly the nature of the national planning framework, because Scotland did not have one before — it was looked at in some detail by the equivalent of the Environment Committee, but also by the Economics Committee. That Committee said that it recognised the potential of the proposed national planning framework to be not only an integral part of that planning hierarchy but also to have statutory force. Indeed, that is what happened.

2010. The subsequent legislation made the national planning framework an issue to be debated in the Parliament. It is not a spending document, but there is an implicit notion that funds will have to be dedicated. Importantly for planning, it becomes a material consideration. The framework provides certainty and consistency for the planning system. I am concerned that in Northern Ireland the regional strategy and the statutory planning system running in parallel will be a problem. The Planning Bill is wonderful, because it refers to "compliance" and "consistent with". That is terrific. However, if you put a lawyer in between those two words, you will have problems. It is as simple as that.

2011. The second thing is that in the Planning Bill — and I have referred to this — there are a number of instances where the centre, appropriately, will be the point of reference for particular developments, those of regional significance and that type of thing, or where a development plan is not prepared sufficiently quickly and so on. What is the strategic framework against which those decisions are being made? If it is simply compliance with the regional development strategy, it could be interpreted in a lot of ways. It worries me that we are not integrating the completeness of the planning system in Northern Ireland. That is my main concern.

2012. My second concern — and you get the impression that I welcome the Planning Bill very much — is that it makes a lot of assumptions about the required culture change. I hate that phrase, “culture change”, because this is about rights and responsibilities. My experience is that, though Scotland initiated its planning reform in 2001 leading to legislation in 2006, this year Scotland is still trying to define what is meant by an appropriate culture change. It is not simply about developers providing all the information that they are required to in order to facilitate an effective decision-making process. It is not solely about the planning system realising that it has a very important role to play in facilitating economic investment and development. It is also about the complete understanding of everybody about the importance of the planning system.

2013. The planning system is a statutory function of government. It is there to serve a number of purposes. One is to protect private property and encourage private investment and development; another is to serve the public interest. We need to respect that. If I can be rude — I do not mean to be personally rude, but if I can make an observation — in my three years of living in Northern Ireland, what strikes me very much about the practice of planning is that there is a politics of resistance. No one likes it. People resist it at all times. Hence, people have recourse to judicial review. People speak badly of the planning system. On my desk, I have a headline from the ‘Belfast Telegraph’ that I look at every morning, which says that the planning system has made Northern Ireland a laughing stock. To be frank, how dare those sentiments be said about something that is here to protect everybody’s well-being and sense of interest? That is my concern.

2014. How to get there? The Scottish experience shows that it takes a long time, but it is possible. One of the things that took place in Scotland was a number of what Mr Salmond would probably call “national conversations”. They brought together developers and agencies and got them to realise that they needed to support the planning system and respect it and respect the reforms. That is beginning to work through. The city of Edinburgh, for example, has now reached and published a planning concordat with developers in the city, so that developers of every scale and the planning authority know exactly how they can facilitate very efficient and effective decision-making. It is not scientifically proven but the anecdotal evidence is that it is working very well. Developers feel much more relaxed and confident about planning and, equally, planners know that they have explained their position to the developers. All this is part of the culture change.

2015. Another dimension to that, which was achieved in Scotland and which I think is very important, is that many of the delays in the planning system are a consequence of the statutory agencies, be it environmental, health and safety or whatever, dragging their heels in responding. Again, national conversations in Scotland have got all the agencies to change their views on that, and they now treat the planning system differently. Instead of scrutinising development plan after development plan looking for problems, the agencies are proofing them to check that the plans are doing what they want. That is not splitting hairs; it is actually a very different way of dealing with this.

2016. One last thing, if I may. I am talking very quickly as well. There is a conversation to be had in Northern Ireland, quite apart from the strategic and culture change and the associated resourcing of planning. Planning is fundamental to our well-being as a society and, my goodness, are we not facing major economic, social and environmental challenges? It is important to recognise, when we look at history, that there has been a major recession. The English press refers to it as a double-dip recession; in my view, it is a depression. We have only had two depressions in our modern history, one in 1893 and one in 1929. In the recovery process, a very strong planning system was put into place: in 1909, to guide new investment and provide certainty to developers and in 1947 — and this affected Northern Ireland as well — to recover from the depression of the 1930s. Now is the time when we need to be investing in and resourcing the planning system. New skills are needed. We will not be constructing high-volume,

greenfield-site housing developments any more. We will be building retro, energy-efficient buildings, drawing down on looking after people, addressing things like fuel poverty and the need for affordable housing for people adversely by the economy.

2017. My final point is that we need to have a conversation about where the planning system sits in the Northern Ireland Assembly Government. I refer again to Scotland. In 2007, with the election of a Scottish National Party Administration, responsibility for statutory land use planning moved from the then Department of Communities to the Economy Directorate. That was an incredible statement that planning was not simply a residual thing that mopped up the need for housing or poverty or whatever; it was a mechanism to deliver economic well-being. We need to look at that, because it would be very important for the future of Northern Ireland.

2018. The Chairperson: Thank you very much. That was the slowest five minutes that we have been through all day. I was here when you brought forward proposals last time with Minister Foster.

2019. You keep referring to the Scottish model. How long has that taken to bed in? You mentioned the national planning framework. You know that here we have the RDS (regional development strategy), the area plan model and a suite of PPSs. I am sure that there will be up to 50 of them by the time this mandate ends. How does that all marry up to what happens in Scotland?

2020. Professor Lloyd: I will briefly describe the Scottish model. There is a now a statutory national planning framework. That takes a pan-Scottish view and sets out the development priorities for all the bits of Scotland. Scotland is like Northern Ireland; there are marked contrasts between urban and rural, coastal and river plain and so on. We also know that nothing sits still for long. Economic activity moves very quickly. We know that there are strong demographic moves, as well as the reconstitution of our population. We are aging, and so on.

2021. In Scotland, there is a very deliberate relationship between the statutory national plan and the development plans. For example, development planning in Scotland is organised around the four cities — we could do it for Belfast and Derry — where there are strategic city development plans. Those plans are made up of a vision statement and detailed policy plans. That is not a million miles from the Planning Bill. Elsewhere, there is just a single, unitary development plan which is supported very heavily by the planning policy statement.

2022. What Scotland has done which in my view is wrong — and I am very critical of it — is reduce something like 27 Scottish planning policy statements to one. The view was that, by bringing them all together, they were proofed. Sadly, life is rather more complicated than that. If you have something with a bit of an economic dimension, it might emphasise something more than something that is environmental. This unitary planning statement has obscured the fact that change in society is very dynamic and we need sophisticated and dynamic provision to match, deal with and anticipate it.

2023. Again, that is a personal observation. Scientific research has not been conducted into that, so the evidence is purely anecdotal. Needless to say, the legal community in Scotland is very pleased with the unitary statement.

2024. The Chairperson: I think that we have received 11 presentations over the past couple of days. A lot of things have been tied in together, and a lot of groups have mentioned matters such as third-party appeals. You mentioned front-loading. On the face of it, that is fine, but it is all about who should be included. That is one element, but the key for me is actual participation and what communities will get to say. How has the Scottish model struck that balance between economic development and community aspirations?

2025. Professor Lloyd: The issue is about talking. Over the past 10 years or so, there have been a lot of conversations and meetings, and people have been talking about those matters. Developers, small builders and householders now realise that developing something in a particular place will affect people in different ways. There has been quite heavy investment in Scotland in trying to raise people's level of awareness. It is realised that the issue is not about the politics of resistance and that it is important to talk and reflect and to have different ideas so that people can perhaps come up with their own options and observations. The development community has changed. It has learned that, if it wants to put forward a medium-sized development somewhere, it is important that it goes into the community and tries to perhaps raise a level of consciousness. There are some silly things involved. For example, Northern Ireland, like Scotland, requires planning permission for telecommunication masts, but it is not required in England and Wales. A lot of people will object to a telecommunication mast immediately by ringing up on their mobile phone.

2026. Scotland has linked its national planning framework to the planning system and has also begun a debate about the importance of the land resource to Scotland. In parallel, Scotland is now publishing and preparing what it calls its land use strategy. The national planning framework provides the urban input, and a rural study was conducted to gain the rural input. It is very much like the study that was conducted by the foresight group in the Department for Business, Innovation and Skills (BIS) in Westminster. The importance of that study is the realisation that we do not make land any more, and that, by and large, land is fixed in location and quality and that we are losing land through coastal erosion and flooding and so forth. We need to have a very good sense of the limits. That is the worry that I have about, on the one hand, the regional development strategy, which is very appropriately driven by economics and trying to get a balance across Northern Ireland, and on the other, the planning system. There is a mediation process between the two that discusses how the economic priorities and so forth hit the land resource and that asks how to allocate that land resource. That is an absolute imperative. When people start to talk about land, they realise how important it is to society. It is interesting to find that when something is built on land, it is fixed for a long time. We create something that might be there for 50, 60 or 100 years, so we need to treat it with a great deal of respect.

2027. The Chairperson: It is about how those three elements are married together. There are the statements and the area plans to consider, and, obviously, the RDS must be conformed with, which is key. Your point about the politics of resistance was also crucial. All decisions had been foisted on the community, as opposed to there being community buy-in, and now we are going to change the whole process. That will take a long time.

2028. Professor Lloyd: Absolutely. Under the RPA proposals, the transfer of responsibility for development management to local authorities will be a huge ask, because we are making decisions that have to reflect the whole spectrum of community interests and what people want, and quite rightly so. To get there, however, I think that we need to prepare, invest and educate so that, rather than automatically resisting, people will come forward and say that they want to participate because they want the best for their community. Anyone opening the papers on any day of the week would see that, significantly, we face two major issues: energy cost inflation and food price inflation. We need to rethink how we use land in Northern Ireland, because we could be growing biomass and improving our agricultural productivity. Therefore, land use is not just about building houses on the edge of settlements; it is about going back to fundamentals. Having read some of the stories about house price inflation and energy cost inflation, I can see, for example, fuel poverty among older people being a time bomb, not just in Northern Ireland, but across Europe. We have to be ahead of that game.

2029. The Chairperson: Mr Wilson was delighted with those comments.

2030. Mr B Wilson: That is Green Party policy.

2031. Mr McGlone: Thank you very much; it is good to see you again. You made an essential point, which has come up today already, about the read-across between various Departments in Northern Ireland. You articulated that point well your submission. You showed how the RDS and the sustainability proposals fit in, and I can see entirely where the thinking in the department that deals with Finance and Sustainable Growth in Scotland was coming from. I read and fully support that, especially in the economic climate that we are in at the moment. Those ideas are part of the big political discourse on how we move to the point of doing that. It is a very valuable point, and I suppose that it should be our mission statement. However, given our current climate, where we have silos in what could be the relevant Departments, whether we get there down the line is another question.

2032. As I was reading your document last night, I was struck by a number of very interesting observations, and you articulated some of them already. You said:

"The hierarchy of developments is to be welcomed."

2033. For the benefit of those of us who have gone through the likes of the area plan process, how do you see the hierarchy of developments being different? In what way is it significantly different from the hierarchy that exists already, be it in dispersed rural communities or for land zoned for villages or towns? I would like your insights on that.

2034. I raised this point with the witness who was here before you, and I see that you also dwelled on it quite significantly in your submission. One of the witnesses who was in earlier spoke about community, and the Chairperson also asked about that. What is "the community", who do you consult with, and how do you consult with them? I pointed out that, on many occasions, those who represent and articulate the views of "the community" may be totally remote and divorced from that community. Therefore, we must consider how we arrive at the point of consulting fully and inclusively with the community and not just with people who are set up as a community group for a reason that is particular to that area but who are in no way representative of the entire community.

2035. That brings me to simplified planning zones and enterprise zones, which I see you also referred to. Having listened to the gentleman who was in before you question the Department about simplified planning zones, I made the point that, to me, the last thing that they are is simplified. I may just be having a thick moment or something by not being able to get that, and I almost arrived at the point of being too embarrassed to ask him any more about it, because the more I asked, the less I understood. It is interesting to note that you said that reference to such planning zones is very worrying and that their long-term benefits are quite contestable. As I said to the previous gentlemen, we do not want to repeat the mistakes that were made elsewhere. Therefore, it would be very useful to me if you, in your professional capacity, could give me a bit of a handle on what a simplified planning zone is. Once you have done that, perhaps you could explain how the concept has not been so simple or beneficial in the other places where it has been brought in.

2036. Finally, your submission points out that:

"The Planning Bill asserts that its proposals will be cost neutral to the planning system."

2037. You state that that cannot be the case, and you go on to talk about the requirement for further investment in planning and so forth. However, a raft of proposals has been brought in to significantly increase planning fees here. Therefore, the big concern in that is that we would arrive at the point at which planning fees become so exorbitant that they would inhibit the type

of development and planning that we want. I am interested in hearing your views on that range of issues.

2038. Professor Lloyd: I will take those points in reverse order. Cost neutrality is an oxymoron. Even the term "cost" as used by government annoys me intensely, I have to say. We should be talking about "investment". While studying economic history, I was always very affected by the concept of the so-called British disease in the 1950s, when Britain took a view that it would not invest in labour skills and training because it was a "cost". In contradiction, Germany "invested" heavily. Consequently, in the 1960s and 1970s, British industry survived by poaching people who had been trained elsewhere. We see that in the football sector today. It is the same thing, and we do not get it right. That is because we have a cost fetish.

2039. The process cannot be cost neutral. We will have to invest if we want to run an effective and efficient planning system that is engaging and nurturing the community and explaining and bringing it along so that we understand what we want for different places across Northern Ireland. You are right to say that planning fees could not cope with the downturn at the moment. Planning fees would probably seriously endanger any small developer who was trying to go forward. That means that we cannot go down the planning fee route.

2040. That applies equally to developer contributions. I do not have a problem with it, if, at a point in time, there is a high-growth economy, full employment, no social problems and no environmental issues. However, as a general rule, it would not fit at all. Therefore, I think that we need to revisit that. It cannot be cost neutral; it must be an investment by the Assembly.

2041. Simplified planning zones were introduced in the early 1980s in England and Wales, Scotland and Northern Ireland. They were tied up with this idea of enterprise zones and came out of the Local Government Planning and Land Act 1980. I must be careful in what I say, but it was very much a reaction of the Conservative Government that was elected in 1979 in that they were trying to deal with areas where they were convinced that government intervention had clearly failed. Rather than have lots of public expenditure going in by way of many regulatory bodies and institutions, such as development agencies, they asked why they should not be able to create mini Hong Kongs. Therefore, the system was actually modelled on Hong Kong. However, enterprise zones, which came first, were very complicated. They involved certain tax reliefs and the simplification of planning. Effectively, regulatory planning was replaced by a zoning system. Other measures dealing with health and safety and anti-pollution measures and so forth were then introduced.

2042. In some instances, enterprise zones worked quite well. The massive Singer sewing machine factory at Clydebank in Glasgow collapsed with the loss of 10,000 jobs. An enterprise zone was then created, and developers moved in and started to put other things in place. All that they did was to take a big space and create lots of little spaces for smaller firms to move into. It appears to have worked. However, the jury is still out on enterprise zones overall. They have all gone now. Belfast had one that, I believe, was made up of two sites. They did not kick-start the local property market to any great extent. They were not sustainable, and they did not necessarily create net employment growth — there was a lot of shuffling in to get tax relief.

2043. Simplified planning zones were the cheap follow-on, which the Government thought worked. Again, the jury is out on that. I am suspicious of having a provision in the Bill for simplified planning zones and enterprise zones. In fact, the reference to enterprise zones came out of the blue; I did not see that one coming at all.

2044. As you rightly say, simplified planning zones are quite complicated. They require particular skills to draw up, because land has to be zoned in anticipation of what people think they want. That is a big call. It also opens up the potential for legal challenge. The introduction of

enterprise zones was very much part of a neo-liberal-inspired planning strategy in the early 1980s, and, frankly, I do not think that it would be appropriate for Northern Ireland to go down that route.

2045. The one thing that stunned me when I was preparing for and reading the Planning Bill over Christmas was that I came across the call for evidence from the Northern Ireland Affairs Committee asking whether Northern Ireland as a whole should be made into an enterprise zone. The evidence on that had to be submitted by last Friday. If that idea goes ahead, we might as well just tear up the Planning Bill, and, not only that, but I would see that as an absolute outrage for the devolved relationship. It is not going to work.

2046. That debate is taking place because of the issues on corporation tax, and that is fair enough. However, if we are to deal with corporation tax, let us deal with it as an economic mechanism and not as a planning mechanism. To be frank, if Northern Ireland as a whole were made into an enterprise zone, I would not want to go there. It would not work for lots and lots of reasons. I would have grave concerns about that. I also think that it would also knock back completely what Northern Ireland has been doing on this reform since 2002.

2047. Members should be aware that sociologists say that there are 97 definitions of "community". The trouble is that the concept of "community" is very wobbly. You are right to ask what a community is. We know that there are communities of place, communities of interest and communities of intent. The planning system has to be robust enough to be able to allow communities to find their own voice and have the confidence to come forward and not feel that they are being put upon. Secondly, they should have the confidence to be able to come up with their own ideas.

2048. To be frank, all the solutions to Northern Ireland's problems are to be found in communities. That is why planning reform is highly political — with a small "p". It is about nurturing and allowing people to come out with ideas. Decisions will still have to be made, because there will not always be a consensus. However, we need to be able to talk openly.

2049. I am reminded of work that is being done on opposition to wind farms. There is such a thing as the so-called 80:20 rule. You will probably enjoy this, Mr Wilson, but whenever a proposal for a wind farm comes up, 80% of the local population is against it, with 20% in favour of it. If the process goes through with due diligence, and once the wind farm is built, those percentages reverse, with only 20% against it and 80% for it. That tells me that there is something about planning that means that it is not simply a bit of paper or a law; it is the way that we use it. The key politicisation that involves working with communities is very important.

2050. We must have an ongoing debate. We need leaders, champions and good headlines. However, trade-offs are involved. I will probably upset Mr Wilson now, but there will be times when the environment will take a hit. Society may say that that is for social and economic reasons and everyone understands that, but we are still a long way off that. That is not a criticism of Northern Ireland; it is a criticism of many mainland European planning systems.

2051. We must not go down the road of encouraging the Nimby debate. As soon as we get into that polarised debate, we have lost, because people go deaf.

2052. Mr McGlone: That is great. Thank you very much indeed. That was very interesting.

2053. The Chairperson: I hope that all the members were listening to that. Professor Lloyd, thank you very much. I have always enjoyed your appearances before the Committee. Thank you.



# 1 February 2011

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr George Savage  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Mr Stephen Gallagher  
Mr Brian Gorman  
Ms Lois Jackson  
Ms Irene Kennedy  
Mr Angus Kerr                   Department of the Environment  
Ms Catherine McKinney  
Ms Sarah Malcolmson  
Mr Peter Mullaney  
Ms Maggie Smith

2054. The Chairperson (Mr Boylan): We will now commence the informal clause-by-clause scrutiny of the Planning Bill. We aim to get through Parts 1 to 4, which would take us up to clause 129. The Department has responded in writing to the issues that all stakeholders raised on each clause, and I will invite departmental officials to comment on the key issues. I will then ask Committee members whether they feel that they have enough information to reach a position on a clause or whether amendments, further research or information from the Department are required.

2055. I welcome Maggie Smith, Angus Kerr, Catherine McKinney and Irene Kennedy. I ask members to turn to Part 1 to begin the informal clause-by-clause scrutiny. Part 1 is titled "Functions of Department of the Environment with respect to development of land".

2056. Clause 1 is titled "General functions of Department with respect to development of land". Organisations told the Committee that clause 1 should be expanded to make it clear that the desired outcome of the Department's role in planning is the achievement of sustainable development, tackling disadvantage and poverty, and promoting good relations, with amendments to clause 1(2)(b) and (3)(a) to include an obligation to the NI Act relating to equality. Concern was also expressed about the degree of control being retained by the Department and the risk of duplication between the Department and councils. Several respondents wanted to see an overarching land-use strategy for the North that would guide the Department in its decision-making.

2057. If members have no questions about that, I will ask the Department to highlight some of the issues and indicate the direction in which the Department feels that it may need to go after hearing some of the responses.

2058. Ms Maggie Smith (Department of the Environment): I will start at the beginning. Sustainable development is already dealt with at clause 1(2)(b), which requires the Department to exercise its functions:

"with the objective of contributing to the achievement of sustainable development."

2059. A number of organisations suggested that "contributing to" should be changed to "securing". That change would certainly strengthen the clause.

2060. Tackling disadvantage and poverty, promoting inclusion, and so on, cannot really be done through land-use planning. The issues would probably be more effectively tackled through something such as community planning. Those are wider obligations than can really be tackled through land-use planning.

2061. There was a suggestion that a direct reference to section 75 of the Northern Ireland Act 1998 should be included. That is not necessary, because the Department and the councils, as public authorities that carry out functions in Northern Ireland, are all bound by the 1998 Act. They are required by the schedules to the Act and the Equality Commission to have equality schemes, to ensure that every policy is screened for equality implications, and so on. That is already well covered in legislation and in the monitoring that the Equality Commission provides.

2062. Some stakeholders talked about possible duplication and the amount of control that the Department has. The best thing to do may be to repeat what we talked about before: the controls are there as a safeguard. The whole point of the Bill is to ensure that the majority of planning powers go to councils. The councils will draw up their development plans and determine the majority of planning applications. The Department will step in only if a council is unable to fulfil its responsibilities. It is there only as a safeguard.

2063. The Chairperson: You said that you are willing to change "contributing to" to "securing" in subsection (2)(b). Is that correct?

2064. Ms Smith: We need to go to the Minister, but, if that would be helpful, we could suggest that change to him.

2065. The Chairperson: It would certainly strengthen clause 1. We need a link in statute to the community planning element, and that change in wording would certainly strengthen the clause. It is important.

2066. How do you see that link being made? I know that we are talking about two different pieces of legislation, but we need a commitment from the Department, be that in writing or whatever. That commitment could be achieved via a recommendation from the Committee.

2067. Ms Smith: What you say is absolutely right. The difficulty is that the concepts of community planning and well-being do not yet exist in legislation, so the link needs to be made through local government legislation. If it would be helpful, I am sure that the Minister would be more than happy to write to the Committee on that issue.

2068. The Chairperson: It is about trying to secure that. Inclusive in all that is the equality issue: the involvement of the whole community planning element; land development; local policies; and everything else. We have talked about that already, but it is now about getting it in statute.

2069. Ms Smith: That would be achieved through local government legislation, which would then amend the planning legislation.

2070. The Chairperson: I do not think that the Committee will have any problem with making that recommendation and ensuring that that happens.

2071. Mr McGlone: I am glad, Maggie, that you raised the issues of community planning and general well-being. You said that land-use planning could not address social issues. I am trying to get into my head the practical outworkings of, for example, the designation of industrial land or mixed-use land — we will not get into the simplified planning zones — in indicative areas of high unemployment. You specifically focused on the issue of land use, but I thought that the Bill was meant to move towards spatial planning, rather than land-use planning exclusively. I am far from being an expert. However, in the submissions that the Committee received, it was explained that spatial planning opened up more opportunities and created a more holistic approach to planning. It was also explained that it could be used to address social issues, never mind the community well-being aspects that were suggested as part of local government reform. Will you explain the difference between land-use planning and spatial planning in helping to address those social issues? There should be input from other Departments, but planning should begin to embrace wider policy issues.

2072. Mr Angus Kerr (Department of the Environment): That is a good way of looking at the direction in which planning is moving and the direction that the Bill wants to move it in. What we tend to call traditional land-use planning is the type of planning that everyone is used to, and the type that councils and their officials will have worked on for the Department over the years. The Bill will see us move towards a much more proactive and holistic spatial planning approach, which, as Ken Sterrett outlined when he was before the Committee, will provide the opportunity to address socio-economic and traditional land-use planning issues.

2073. As Maggie said, the way in which it will work most effectively is through the community planning format, and the traditional land-use planning aspects of the Bill reflect the spatial aspects of the community plan. When the councils have a full suite of powers — including community planning, regeneration, well-being and planning — they will be able to bring those together in a much more holistic way than the Department can now, because they will be able to take into account issues to do with health, education, regeneration and crime and policing. Whatever flows from that which can be reflected spatially will be done through local development plans, for which the Bill also provides powers

2074. Mr McGlone: You have explained much more articulately than I could have done that we have placed the cart before the horse. Had local government reform been in place, it would have informed, directed and facilitated the changes that could be brought in by planning. We are a context removed and are dealing with something in absentia.

2075. Mr Kerr: As Maggie said, the intention is to link the two.

2076. Mr McGlone: I know that, but if you do not have the context, you cannot deal with the subsequence, and that is also part of our problem. We are speculating about things that might happen and that we think will probably happen, but we are doing them back to front. You could comment on that, although I will not ask you to do so. However, that is the logic of the position that we are in.

2077. The Chairperson: That is why I mentioned the need for a commitment. The Committee is scrutinising the Bill, as it agreed to do. However, the reorganisation of local government is key to community planning, governance and spatial planning. Maggie, the Committee needs that commitment before the whole process is finished, either in writing or in some other format that is acceptable to members. You indicated that that is the way that the Minister wants to go.

2078. Ms Smith: Yes; that sequence of events was agreed by the Executive. The Minister also made a statement in the Assembly, and I am confident that he is happy to put that commitment on record.

2079. The Chairperson: The Committee needs that confidence, because the public and the councils do not have much confidence in the process. However, it is about the responses from councils and how we ensure that there is a commitment from the Assembly. Mr McGlone spoke about putting the cart before the horse, and that is being said in councils at present. Nevertheless, we have received a commitment that the Bill will not go anywhere until the reorganisation takes place.

2080. Ms Smith: Yes.

2081. The Chairperson: Mr McGlone, have you any other points to raise?

2082. Mr McGlone: That has probably clarified and distilled it for me. We will talk about the equality issues later on.

2083. Mr W Clarke: My questions, which are probably along the same lines, concern using the Bill's overarching framework to drive sustainable development. However, there is also the well-being aspect to consider. Although you say that the community plan will deal with that, I imagine that the issue would feature in everybody's community plan. That is why I want to see spatial planning and well-being covered in the Bill. The Bill should be thinking forcibly about sustainable development — not just land use but how the planning process can make people's lives better. I do not think that that should be done in the community plan. The Bill needs to show that that is what we are endeavouring to do through our planning system.

2084. When planning to develop a large area for housing, the first decision should be on the infrastructure — for example, public transport — required to get to those houses. There is also the issue of carbon reduction in building and getting to those homes, and the services, such as crèches, that need to be provided to help mothers. All that should be rolled out from government. It should not come through a community plan. Certainly, there should be a community plan, but government should, first and foremost, consider people's well-being, not simply bricks and mortar.

2085. Mr Kerr: The power of well-being that will establish the principles to which you refer, not just for the planning functions that councils will have but for all their functions, and even through community planning and stretching beyond that to some extent, will come about through the consultation exercise, which is ongoing for the local government Bill. Work is continuing to ensure that that is got right. Once that legislation is in place, it will apply to the wider work of councils, including planning work.

2086. Mr W Clarke: It is a bit difficult to consider the Planning Bill while the reform of local government is going on at the same time, and that is exactly what stakeholders are saying. They want to know the point of the consultation. All the groups are saying that they do not believe that sustainable development and well-being are strong enough in the Bill, yet the Department just responds that it will be dealt with later under a different piece of legislation. Do you know where I am coming from? Are you saying that those people are wrong?

2087. Ms Smith: We are not saying that they are wrong. The Planning Bill will deal with the planning system, but the local government Bill will be much wider in dealing with the responsibilities of local government, including the new power of well-being. There is already a duty on every Department to promote sustainable development.

2088. Mr W Clarke: It is paying lip service to sustainable development.

2089. Ms Smith: Clause 1(2)(b) of the Planning Bill states that there is:

"the objective of contributing to the achievement of sustainable development."

2090. Therefore, it actually strengthens sustainability in the planning system. However, that is not the only place where sustainable development is mentioned in respect of planning. It is also an underpinning principle in the regional development strategy (RDS). Everything that councils do in respect of development plans will also have to fit in with the regional development strategy. There is also a planning policy statement about the general principles of planning, which contains a section on sustainable development. As we roll out that work on planning reform, we will look again at the general principles of PPS 1, and we will pay particular attention to the section on sustainable development.

2091. To some extent, the Bill is restrictive because only so much can be done through legislation. The duty is in the Bill, but that is only part of the picture. The regional development strategy and the other work that we will do on PPS 1 mean a flexible way of doing things. There is a real opportunity in PPS 1 to get into the issues and to discuss sustainable development in a much more practical way.

2092. Mr W Clarke: That take us back to an amendment to clause 1(2)(b) to remove the word "contributing" and replaced it with "securing sustainable development". That is important.

2093. Ms Smith: We can look at that and talk to the Minister about it.

2094. The Chairperson: Therefore, clause 1(2)(b) would read:

"with the objective of securing sustainable development."

2095. Why can we not go on to include the words:

"well-being, tackling disadvantage and poverty, and promoting social inclusion and equality of opportunity."?

2096. Ms Smith: That is to do with the limitations of the planning system. Sustainable development in the planning system will cover economic, social and environmental issues.

2097. The Chairperson: I will put it another way. Can we connect that to community planning in some way?

2098. Ms Smith: We cannot in this case, but we will ask the Minister to spell that connection out to you in writing because it brings us back to the local government legislation.

2099. The Chairperson: Just for clarity, are you saying that we cannot include well-being, tackling disadvantage and poverty, and promoting social inclusion and equality in this clause of the Bill?

2100. Ms Smith: Those areas will be covered in the social aspects of sustainable development. The whole power of well-being will be teased out in the local government Bill. That is a result of the consultation that is going on at the moment.

2101. The Chairperson: I will finish on this point. You know where we are trying to go with this issue. We are trying to get a connection with the local government Bill. Is there anything that we can write into that clause to make reference to that?

2102. Ms Smith: If we strengthen the reference to sustainable development, it will go towards what you are trying to do, and that will come back round again in the local government Bill.

2103. Mr Kinahan: I am concerned that we are trying to put too much into the Bill and that we will make it more complicated. I can see why we may wish to link sustainable development, equality, and everything else, but we could stymie the Bill if we make reference to those things.

2104. The Chairperson: I am trying to make it inclusive. We should look towards achieving that; there is no harm in that. If we are going to look at the whole principle of conforming with the RDS and planning policy statements, we need to look at the sustainable element. However, we are more concerned about the main issues that we have mentioned.

2105. Ms Smith: In this Bill, the legislative link is through the local government. We can also make the link in guidance to this Bill. That will also make the link back to local government legislation and the power of well-being.

2106. The Chairperson: Maggie, I hope we can have confidence in that. The Minister will finish his shift in March, and then it is up to someone else. We need a commitment and full support for this Committee.

2107. Ms Smith: Yes, but the Minister is not acting on his own. All of this is being done with the agreement of the Executive.

2108. The Chairperson: I know, but it is the role of the Environment Committee to scrutinise the Bill as closely as possible in the time frame that is granted to us.

2109. Mr McGlone: Let me return to the issue of sustainability. The way it is worded at the moment is like grandma and apple pie. It is wonderful to have it in there and all that type of stuff. Who makes sure that it happens and what benchmark of activity or standard, whatever you want to call them, is applied and by whom? It is a great concept and, no matter where you go, "sustainability" is the word. It seems to pop up in all sorts of document. What I am trying to do is give some sort of practical effect to what that means and who makes sure that it happens.

2110. For example, is it by way of mentioning, "plus conditions of approval"? Is it by way of some sort of directive or collaboration with OFMDFM? That office is about to close down its sustainability unit. I am trying to find out who informs and establishes the criteria by which sustainability is implemented and given effect to on the ground. Have you any ideas on that? I am sure that you have thought about that because it is in the Bill. I want to establish how it actually happens.

2111. Mr Kerr: That has been an issue. There is a sense of motherhood and apple pie with sustainable development and in many ways that has been a problem, and a criticism that we have faced for a number of years, because that duty has been in place.

2112. In the Bill, we have tried to give it a more concrete element, so that people can see it implemented through the planning process, through a number of measures. One is to bring in the plan-led system so that development management decisions on applications are made on the basis of the plan, and then to introduce a sustainability appraisal of the plan. So every plan prepared by a council will need to have a sustainability appraisal, looking through the detail to

see whether aspects are sustainable: if an aspect is not sustainable, why is it not sustainable; is there anything we can do to make it more sustainable, or less unsustainable, and so forth. We develop that to the independent examination, where one of the key criteria in assessing the plan that the Planning Appeals Commission or the independent examiners will look at is sustainability. We hope that what comes out at the end is a much more sustainable, much better plan than some of those we have made in lots of ways. That will then inform the decisions that are made with the whole sustainable development ethos.

2113. Mr McGlone: Who sets the standards by which the people in council perform? If I understand you correctly, the local development plan will be determined as sustainable or unsustainable. Who sets the benchmark for each council? Presumably, you are looking for absolute consistency right across the whole of the North, in the 26 or 11 council areas, as it may be.

2114. Who informs and sets the standard of sustainability if it moves to independent review or independent oversight? That is where I am coming from, Angus.

2115. Mr Kerr: That will be dealt with in guidance provided by DOE on what is meant by "sustainability", what should be addressed in sustainability appraisals and the levels which a plan is expected to get to in its different aspects, housing, environment and all that, in relation to sustainable development. That will be assessed independently, by guidance on the one hand and plan on the other, to see whether it meets the standard. It will be different in each area, because what is sustainable in Belfast differs from what is sustainable in Omagh, Enniskillen and Derry.

2116. It sometimes concerns me when I hear too much about standardising it, because the approach will be different for different areas. That is generally how we will want to see it working.

2117. Mr McGlone: I am no expert on it, but I realise that there has to be some degree of consistency in any policies. You mentioned guidelines. Chairperson, with your permission I will explore that further. Is that on the Department's to-do list? Is it being developed?

2118. Mr Kerr: We are working on guidance. There is best practice, with sustainability appraisals in particular, around the different jurisdictions, because they have been introduced in all jurisdictions in these islands. We are looking at that and seeing how that can be "Northern Irelandised" for ourselves.

2119. The Chairperson: Maggie, you said that the powers in relation to the equality obligations in the NI Act were strong enough. There has been a suggestion to include something at clause 1(3)(a). Do you feel that another form of words, perhaps, could be put in there to strengthen it? Should we be content with your response on the equality issue?

2120. Ms Smith: With regard to equality, I always go back section 75, because everybody is bound by that. There is a machinery through section 75 that makes sure that public authorities fulfil their duties. You cannot get any stronger than that.

2121. The Chairperson: I agree with you. That is the case, as long as the checks and balances are in place and the minorities are protected.

2122. Ms Smith: The councils, as public authorities, also have section 76. They are bound by section 75 to promote equality and good relations, and section 76 prevents them from discriminating or aiding discrimination. They are also bound by the full raft of anti-discrimination legislation. All of that is already there.

2123. Mr McGlone: Are we moving to the equality impact assessment?

2124. The Chairperson: Yes.

2125. Mr Kinahan: Changing horses, given what I said before about trying to add too much, should we be looking at the reference to the green new deal? I know that it is part of sustainable development, but it is part of the question of whether we should leave it to come in under guidance.

2126. Ms Smith: That would be solely for guidance.

2127. The Chairperson: Are you happy with that, Mr Kinahan?

2128. Mr Kinahan: Yes.

2129. The Chairperson: Now that we have a quorum, I refer members to tab 1A. You have been provided with departmental replies to Queen's University research papers on development, management, planning, control, enforcement and community involvement.

2130. Are members content to note those documents and incorporate them into the final Committee report?

Members indicated assent.

2131. The Chairperson: I advise members that they have been provided with a copy of the equality impact and human rights assessment on the reform of the planning system. Mr McGlone wanted to talk about that issue.

2132. Mr McGlone: I have read this, and it is very general. I am no expert; I do not claim to be an expert on any form of law, let alone equality law. However, look at table 2, for example, where, principally, this comes from. To be realistic about it, we all know that the real concerns are around religious beliefs and political opinions. On page 27, it is stated:

"These anxieties should be duly acknowledged in any emerging proposals."

2133. That is about as anodyne a statement as I have heard from anybody. I cannot overemphasise this point: where I am coming from and where my party is coming from is that equality must be at the core of local government, especially if we are going to hand back powers and, crucially, powers of planning. I would like the Committee to obtain further advice on those matters from someone who specialises in the field of equality legislation.

2134. The Chairperson: Maggie, would you like to respond on that?

2135. Ms Smith: Your concern was that the requirement was very general. An equality impact assessment tends to be as detailed as the level of policy. An assessment was carried out on planning reform, which is a big body of work that has resulted in the policy that is now being articulated through the Bill. As we have all mentioned a number of times, the Bill is set at a general level. It is about general principles and the handing over of power. Therefore, the equality issues that relate specifically to the policy of handing over power are quite general. The methodology of the equality impact assessment was to focus on how the policy might impact on different groups; for example, between men and women. One can only consider the impact of handing planning powers over to councils at a very general level. It is only when you get further



down — when councils get the powers, start to exercise them and the policy and practice becomes more detailed — that you can look at the equality issues in much more detail.

2136. Mr McGlone: That is precisely the point. I hear what you are saying, but people have got to understand where we are coming from. There are major concerns in the community, and I am here to articulate them. Local government must treat everybody with equality, transparency and openness, and any potential that might exist to revert back to 40-odd years ago must be circumvented now. We must not wait until it happens. That is, essentially, where I am coming from. I know that somebody somewhere in the Civil Service has done a general assessment, but this matter goes to the heart of where we have come from, almost 50 years ago. This time, therefore, we want to make sure that we do it right, in the interests of the equality of every citizen in the North. It was for that reason that I was suggesting that the Committee might commission some sort of support or help. I do not have anyone in mind, but someone who specialises in the field should assist us, because, if it is not going to be done at departmental level, we would be doing the general community a big favour if we did it.

2137. Mr Kinahan: I know exactly where you are coming from, but I am nervous. I shall use an example of something that happened in Templepatrick. Through Sustrans, we were going to get new bicycle routes and lanes, but one person decided to object because he did not want the bumps. Because we had to listen to him, that was the end of the whole thing. How do we find the balance? I see that we need the assessment to be general, but we need to be able to make it specific when it gets to the right level, so that people are protected.

2138. Mr McGlone: We need, for want of a better word, a more informed view of this.

2139. The Chairperson: Yes. Certainly, we need to invite somebody along to look at the document to make sure that we are doing the right thing. I understand where you are coming from. We need a briefing from somebody.

2140. Mr McGlone: We need advice from someone who deals with and knows about this type of stuff. I do not know enough about it. Although a general policy overview is a requirement for the Department, we really want to do things right, rather than skimming over an equality impact assessment that simply says that things are good at this stage.

2141. The Chairperson: To be fair, there is a lot of good legislation in place. In this case, however, it is right that the Committee should invite someone to speak to us, if members are agreed.

2142. Ms Smith: This equality impact assessment is the one that goes with the planning reform policy. In the same way that the policy is at the top level, this is a top-level EQIA. However, as it progresses, every policy underneath planning reform will have to be looked at against the requirements of an EQIA. This is the first step, and, as we burrow further, as more work is done and the policies become more detailed, there will be much more detailed equality impact assessments.

2143. Mr McGlone: If we can inform the ripple effect, so much the better.

2144. The Chairperson: Are members content to note those documents and incorporate them into the final Committee report?

Members indicated assent.

2145. The Chairperson: I advise members that the Examiner of Statutory Rules report on the delegated powers of the Bill has been incorporated into the Committee's tables to be addressed by the Department under the relevant clauses. Are members content to note that document and incorporate it into the final Committee report?

Members indicated assent.

2146. The Chairperson: I advise members that the Committee received an email and a paper on the development contributions from the Federation of Housing Associations. Its representatives had hoped to present the paper at last Thursday's stakeholder event, but were unable to attend. Are members content to note those documents and incorporate them into the final Committee report?

Members indicated assent.

2147. The Chairperson: I advise members that papers have been received from the ministerial advisory group on simplified planning zones and business improvement districts as requested by the Committee last week. Members may wish to consider that response in connection with clause 75. Are members content to note those documents and incorporate them into the final Committee report?

Members indicated assent.

2148. The Chairperson: I advise members that the Committee has been provided with a research paper following up on issues raised during the Queen's University research briefings. It provides more information on the community infrastructure levy, the introduction of a chief planning officer, performance management, the English Localism Bill, community planning, and engagement with stakeholders. Are members content to note that document and incorporate it into the final Committee report?

Members indicated assent.

2149. The Chairperson: I advise members that the Royal Society for the Protection of Birds (RSPB) and Community Places have submitted supplementary papers clarifying the issues that they raised during their oral evidence sessions at the stakeholder event. The RSPB paper provides more information on sustainable development, climate change, local development plans, a community infrastructure levy and limited third-party right of appeal. Accordingly, the paper includes suggested amendments to clauses 1, 5, 8, 9, 38, 53, 58, 75 and 77.

2150. The Community Places paper provides additional commentary on the appointment of independent examiners, which is dealt with in clause 10; a community infrastructure levy, and limited third-party appeals. The paper suggests how amendments may be made to the Bill in connection with those issues.

2151. Members may wish to consider those documents as we go through the clauses. RSPB has also provided information on the Localism Bill. Are members content to incorporate those documents into the final Committee report?

Members indicated assent.

2152. The Chairperson: We will move on to clause 2, entitled "Preparation of statement of community involvement by Department". I remind members that clause 2 was generally welcomed, but it was suggested that it should specify a time frame for the publication of a

statement of community involvement and include greater detail on the key elements of its engagement process. Respondents also wanted clause 2 to include a requirement to monitor the impact and effectiveness of the statement of community involvement in relation to section 75 groups.

2153. I will hand over to Maggie and the team. How can you assist the Committee and the community in dealing with the issues surrounding the statement of community involvement?

2154. Ms Smith: Because there is no firm date for transfer, we suggest that placing a time limit on the statement of community involvement is not the best option.

2155. Mr Weir: Perhaps I am pre-empting you, but if the problem is not knowing the transfer date, is one option to tie in the production of that with a condition-led transfer?

2156. Ms Smith: We would be happy to look at that. Stakeholders have raised a number of issues about what community involvement is, and we have tried to clarify that for your report. You talked about the monitoring of the statement of community involvement, and you mentioned section 75. If monitoring is considered, we suggest that it should be monitoring in general rather than with reference particularly to section 75, because that monitoring will be done anyway.

2157. The Chairperson: Sorry, Maggie?

2158. Ms Smith: You may want to think about monitoring in general, rather than limiting it to the monitoring with respect to section 75. You may also want to think about reviews and updating, because that is needed.

2159. The Chairperson: Yes. Clearly, the review and monitoring process is a key element. The statement was the issue. It is about participation and everything else. That was one of the key elements, and it is about how we propose to address that. Will you indicate exactly what you mean by "community"? We still have not covered that. Does it include everybody? This may be the last opportunity in the informal clause-by-clause scrutiny, so we need to get it right. It should be about participation as opposed to consultation and engagement.

2160. Ms Smith: Absolutely. The Bill, so that it does not become too detailed, requires that the statement be produced. We are also looking at the subordinate measures that would provide the detail on all of that. It is very important to make sure that the statement is taken seriously by everybody, that it is implemented properly, and that the involvement and engagement are appropriate for the communities and are meaningful. Those subordinate measures are being prepared at the moment and that is listed in the memorandum of delegated powers that we submitted to you. We are thinking about minima that councils would be expected to develop for themselves.

2161. Mr McGlone: I know that this will sound like a bit of an odd question, but are we getting to the definition of what "community" is? I listened very carefully to Professor Greg Lloyd the other day. He was very interesting. He had definitions of, I think, three headline areas: place, intent and interest. How do you expand on that? How far do you go with community consultation, or how far do you define it? How long is a piece of string?

2162. Ms Smith: Yes. The Bill tries to leave the definition of "community" as open as possible so that it is very inclusive. Existing legislation defines "community" in a way that suggests that it is only people who live in the area. It refers specifically to people's interest in development in the area in which they live.

2163. What is now proposed is wording that refers to people who have an interest in development in the area. That could be people who live in the area, but it could also be those who work, own property, invest or use services in the area. Leaving it open like that allows for a better understanding of the importance that areas have for communities and individuals.

2164. The Chairperson: Clearly, at the operating end of that will be an element of neighbour notification to ensure that the community is fully involved. I know that that is not in the Bill but it needs to be incorporated as one way to ensure that as many people as possible are involved.

2165. Ms Irene Kennedy (Department of the Environment): There could be a range of methods to involve the community. The statement will set that out across broad areas, not just development and control.

2166. Mr Dallat: I have not been here for a while so I am out of my depth. Is there any obligation or opportunity in the Bill to check the facts of community planning evidence? I could make a case for multi-storey flats in Shaftesbury Square or for putting hundreds of houses on a golf course. Is that not a problem that you have to consider? Is there any opportunity to ensure that evidence provided to the Department can be substantiated and is not a parcel of lies?

2167. Mr Kerr: Once planning powers move over to councils, the councils will be in the same situation as planners in the Department with regard to assessing information that comes in with, for example, a planning application or a development plan against policy provisions in place at the time. Due diligence must be exercised to ascertain exactly what is being said and whether it is factually correct. There is nothing in the Bill that specifically addresses that issue. I suppose it will be the same situation for councils as it is now for the Department.

2168. Mr Dallat: Precisely. To be honest, my thoughts are probably based on over 30 years' experience on councils, where creative planning has been the order of the day. In recent years, social housing suddenly became a vital element in any planning application, which, of course, never materialised. However, that is only one example.

2169. I suspect that if planning goes back to councils we will get the lobbyists who will be prepared to make any kind of claim in defence of a planning application. Unfortunately, the third-party objectors, who really have no rights, do not have the resources or money to do the sort of work that was done by, say, Dundonald Greenbelt Association, to give just one example.

2170. Community planning could be very positive but I suspect that there are also inherent dangers. I know of no other area of law where I can concoct the most outrageous claims and lies and it is not a criminal offence. If I worked and claimed the dole I would be in court. However, you can submit evidence in defence of multi-million-pound planning applications that is absolute lies from beginning to end and there is nothing in the Bill that will make that a criminal offence. Are we missing an opportunity to ensure that when public relations companies, politicians or whoever put pen to paper they are under some obligation to check that those claims are true?

2171. Mr Kerr: I forgot to mention that the pre-application consultation process will assist the Bill with a lot of that. It gives an opportunity for developers and the local community to come together for major or regionally significant planning applications and tease out a lot of those issues. If there is one group claiming one thing, a developer claiming another and a third group claiming something else, those issues can be sorted out at that point, when everyone is around the table and has a chance to say that they do not think that a claim is accurate, or the real situation is X or Y. To some extent, therefore, the consultation process will address some of your concerns.

2172. Ms Smith: It is worth adding that the purpose of this Bill is the transfer of powers. It is only a part of the jigsaw. It is a very crucial part, but there are others, such as the regional development strategy and the planning policy. The local plan has to be made within that policy framework. There are the issues that Angus Kerr mentioned, which are addressed in the Bill. When an application is being looked at, it must be considered in the context of the plan, the pre-application consultation, the policies and all the other material considerations.

2173. As part of the preparation for the transfer of powers, we will be doing work with councils. A lot of it will involve making sure that councillors understand their role in planning decisions and that those decisions have to be made on sound planning grounds.

2174. Mr Dallat: That is very useful. I raise the issue because I know of no other element of government where there is more corruption than in planning. If I were on income support, I would see in big writing on every page the warning that benefit fraud is a criminal offence, you may go to jail, and so on. Yet there is nothing for planning.

2175. I am not talking about subjective evidence on issues such as whether a development will enhance an area. I am talking about claims that are total lies. There is nothing here to inhibit that. That is one element of government services that people do not trust and have severe doubts about. It is something that needs to be cleaned up.

2176. I have listened carefully to Maggie, and I do not understand this all that well, but I think that before we could consider passing this over to councils, that should be pretty well addressed. We must not go back to the past, when things happened that should not have happened. Such things might have nothing to do with section 75; they might have a lot more to do with money in the bank or the National Asset Management Agency (NAMA) or wherever they are at the moment.

2177. The Chairperson: I do not think that that falls under this Bill, but it is a valid point. We have spoken over the last number of days about community involvement. We talked today about the statement of community involvement and the community plan. Those are key to front-loading the system. I would like to see those in place.

2178. Have members any other comments?

2179. Mr Savage: I have read through this plan regarding the developments and changes that you want to make to the planning system. I live in a rural area where there have been many planning applications, especially where there has been a change in the ownership of land. Some people were happy with the way things were, but then the premises changed hands and younger people came on board and wanted to streamline things and make changes. However, they cannot do it. I have seen examples of that in a number of places in Craigavon. It is all right if there is a business plan, but if people do not have a business plan, how do they get one? That is one of the biggest problems that I see. There might be half a dozen applications by genuine people who want to build new homes, but they cannot get it done because they do not have a business plan. That is a big drawback, and I do not want to give the nod to something that will come back to haunt us. I cannot see where there could be a breakthrough on that matter; perhaps you can show me where it could be.

2180. The easiest thing for planners to do is refuse plans. I often find myself acting as the middleman, trying to come up with some form of compromise between planners and applicants. The key point is how we do that and how we can find a satisfactory way of keeping both sides happy. The applicants own their properties and they just want to enhance and modernise them. There is a big responsibility on everyone, because once this goes through it will not be easily changed at the stroke of a pen. Everyone must come out of this smelling of roses.

2181. Ms Smith: The points that you made —

2182. Mr Savage: I am very fond of PPS 21 —

2183. The Chairperson: I do not think that all members are in favour of PPS 21, but I think that it is a good policy. Mr Savage referred to a policy statement, which the Committee can look at in the round.

2184. Ms Smith: Yes; what he referred to are policy issues, which cannot be addressed through the Bill.

2185. The Chairperson: The Committee takes those views on board and we will look at that matter. That concludes the Committee's informal clause-by-clause consideration of Part 1 of the Bill, which relates to general functions of the Department and the statement of community involvement.

2186. We now move to Part 2, which relates to local development plans. Clause 3 relates to a survey of the district. I remind members that most respondents wanted the survey of the district to be expanded to include issues of well-being, climate change, natural resource management, good relations and community planning. Many respondents were also concerned about the legacy of current area plans and how those would be integrated. Local authorities were concerned about the requirement in clause 3(4) to keep matters relating to neighbouring districts under review and the potential impact of that, in the form of competitiveness between neighbouring councils. Concerns were also raised about the involvement and support of agencies such as NIEA, Roads Service and Rivers Agency in the preparation of local development plans. Maggie, would you like to comment on those concerns?

2187. Ms Smith: I will ask Angus to pick up on those points.

2188. Mr Kerr: The first issue was about expanding survey powers to include additional issues. As we said earlier, issues such as community planning and well-being would be most appropriately addressed through consultation and any future local government reform Bill. There is a facility in clause 3 to allow additional matters to be taken on board in the surveys. The clause was designed to cover the key issues and to allow councils the facility to cover other areas if they wish to do so. It was designed in that way, so as not to be too prescriptive. In addition, there is a power for the Department to direct that councils add on additional survey issues if that is felt necessary.

2189. When the powers are transferred, councils will immediately have the power to undertake surveys and to carry out the preparation of their new plans. Any work that has been done by the Department can be taken on by councils if they so wish, but councils have the ball in their court at that stage, so they can decide whether they will take that work forward.

2190. The other issue that was raised was neighbouring districts. The clause allows councils to keep under review matters in neighbouring council areas that impact on their areas, should they need to. We feel that that is an appropriate power for new councils to have. Quite often, when a local development plan is being prepared, what goes on in one council area is very relevant to what is going on in an adjacent council area. For example, commuting patterns would need to be taken into account. Therefore, we feel that that is appropriate. That covers the key issues.

2191. The Chairperson: There is a concern about the role of agencies and the support of agencies.

2192. Mr Kerr: There is a concern about their ability to buy in to and assist with the process. That is allowed for throughout the development plan process. Key agencies will be consulted and involved throughout, and they will have every opportunity to have input, including at the final stage of independent examination. Therefore, there should be an opportunity for that to happen.

2193. The Chairperson: With regard to the issue of neighbouring districts, could we incorporate a strategy involving joint plans?

2194. Mr Kerr: The provisions relate only to the survey powers of the councils. As you will know, there are additional provisions in the Bill for councils to come together and jointly prepare a plan. If they were to do that, it is likely that they would share the responsibility for the survey, but the issues that they would be surveying are covered in clause 3. Therefore, it is an interrelated point.

2195. The Chairperson: The key point is about districts looking at what neighbouring districts want and possibly burdening their ratepayers and everything else. That argument has come up, but we can also look at the joint plan element.

2196. Mr Kerr: Yes.

2197. The Chairperson: Clause 3(2)(f) states:

"such other matters as may be prescribed or as the Department (in a particular case) may direct."

2198. Could the Department direct on matters such as climate change?

2199. Mr Kerr: Yes, it would be possible for the council to look at those issues if it felt that it was important and it would also be possible for the Department to prescribe that.

2200. Mr Kinahan: I am concerned about the time frame. There is a lot of detail in the Bill. Are councils prepared for this? They will have to start this work the moment Bill is passed. Do you think that they can have everything in place by the end of the financial year?

2201. Clause 3(2)(f) will allow the Department to add a whole lot of other matters to what councils need to survey. Will there be guidance on that for councils? I am concerned about councils needing resources and whether we need some form of pilot scheme. There is so much information that could be asked for in surveys, so, until you give councils a tight definition, the process will be open-ended.

2202. Mr Kerr: That is an important point. Part of our thinking was to avoid overburdening councils with long, prescriptive lists of tasks that they must do within certain tight timescales. The idea was to give the basics, which can then be built up in guidance. The level of detail that councils go into in some of those areas will vary, because some factors will be more important to their local development plan than others, and that is an important point. The concept of proportionality means that you must make sure that the work that you do is proportionate to the outcomes that you are seeking, based on the importance of the issue in the area and the impact that it will have on the final local development plan document. So, it will be focused on that, and it is very much not a provision that requires everything to be surveyed, as that would involve a lot of work and be of questionable value.

2203. Mr Kinahan: Nevertheless, we need some guidance at the beginning.

2204. Mr Dallat: My apologies for coming in at the tail end of this. Will the Bill deal with all aspects of planning, including the regeneration of derelict areas?

2205. Mr Kerr: If a council is concerned about an area where regeneration is an issue, that would be covered by clause 3(2)(a).

2206. Mr Dallat: You and I know that, in every community, there are areas that are in danger of becoming derelict. They are in every town. Will the Bill oblige or put an onus on councils to monitor that, so that we do not have the situation that exists in most towns, where whole streets and areas are boarded up, vandalised or set on fire? The whole concept of renewal should be continuous, which is what happens in some American towns.

2207. In addition, what is in the Bill to make sure that history does not repeat itself? Although it may be far too far back for you to remember, I am thinking about large parts of England, such as Corby in Northamptonshire, which appeared to have all the necessary features but, at the end of the day, had nothing. Even today, despite people's best efforts, it is still not a community.

2208. Mr Kerr: On your first point, the onus is clearly on councils to keep under review matters that might be expected to affect developments and their planning, and councils must do that if, as you said, there is a particular issue in an area or a community.

2209. The second point, on whether history is repeating itself, is addressed in the Bill in a wider sense, although maybe not so much in that clause. It goes back to our conversation about the new spatial and holistic approach to planning, which is based on community planning and will take proper account of all issues that build and shape communities. In its widest sense, that is addressed in the Bill.

2210. Mr Dallat: Thank you for that. I need to be convinced that those two aspects of planning will be delivered and that the onus will be on councils to be proactive, so that, instead of continuing to be dictated to by third parties such as developers, they have some ownership of the area that they manage. However, I am not convinced that the Bill in its present form is strong enough to address that. The public need to be convinced that it will make a real and genuine change to how planning works and will be driven by the needs of the community rather than the speculators. As we know, they do not even have to build anything. Many of them are managing derelict sites. That may not be the case so much at the moment, but that was the practice for a long time; they filled the attic full of art treasures by just buying derelict buildings and leaving them there. I hope that you appreciate what I am saying. I would be full of enthusiasm if I could be convinced that those two aspects of planning will be delivered.

2211. Mr W Clarke: Sorry, Chairperson; I have been popping in and out of the meeting. Was the point about including climate change at clause 3(2)(a) dealt with? Is it a good opportunity to put climate change in there?

2212. Mr Kerr: That is not meant to be an exhaustive list of absolutely every single issue that needs to be kept under review to inform the development plan. Councils can address an issue such as climate change if they feel that it is important for the planning of their areas. The Bill provides an opportunity for them to do that and for us in the Department to prescribe that that is necessary.

2213. The Chairperson: That is under clause 3(2)(f).

2214. Mr Kerr: It is under clause 3(2)(e) and clause 3(2)(f), because clause 3(2)(e) gives councils that opportunity.



2215. Mr W Clarke: Mitigating the impact of climate change is not an ordinary issue. This Bill is to see us through the next 20 or 30 years; maybe longer. There needs to be a greater focus on climate change. The words "mitigating the impact of climate change" need to be in the Bill.

2216. Mr Kerr: We will address climate change through the revision of PPS 1 in the near future.

2217. Mr W Clarke: I understand that a new policy is coming out and there are loads of —

2218. The Chairperson: Excuse me for just a moment. You are saying that that general principle is fine. However, Mr Clarke is asking whether we can incorporate a reference to climate change in clause 3(2)(e) or clause 3(2)(f). You are saying that you cannot have an exhaustive list.

2219. Mr Kerr: Yes. One option is to list absolutely everything under clause 3(2). However, we have a general list that would cover issues such as climate change and many others that are relevant to the development planning of a council area.

2220. The Chairperson: You are looking at putting that in PPS 1.

2221. Ms Smith: Yes, there is a commitment that PPS 1 will deal with climate change. Climate change is an interesting issue in this respect because it is complex. To put a reference to it in the Bill could potentially introduce something that could be difficult for councils to comply with because there are definitional issues about climate change. For example, what exactly do we mean by climate change and how is it measured?

2222. A more effective way to deal with climate change is through PPS 1, where there is the opportunity to be more discursive and set out exactly what we are talking about.

2223. The provisions dealing with survey allow them to take the appropriate measurement for climate change. We are looking at the physical, social, environmental, economic characteristics of the area, and so on. There are huge opportunities for councils to collect data or make a survey, should they wish to do so. The flexibility exists; then we can discuss what climate change is through PPS 1.

2224. Mr W Clarke: Climate change and its impact on planning are widely recognised. I am not going to be the dog in the manger about the issue, but Governments throughout the world recognise the impact of climate change. If we are introducing a new piece of planning legislation, climate change should be on the face of the Bill in some form. Adding it to a list does not give credit to the issue we are talking about. All aspects of planning, including spatial planning, transport, flood defences, forestry and carbon sinks, will be affected. It is such an important issue that it should be on the face of the Bill. We will revisit it.

2225. The Chairperson: Climate change would sit well in clause 3(2)(a), where the Bill states that councils must keep under review

"the principal physical, economic, social and environmental characteristics"

2226. of the council's district. "Climate change", with a comma, would sit well in there.

2227. Mr Kerr: The difficulty is what is meant by the phrase "survey climate change"?

2228. The Chairperson: It means sustainability and everything else, and trying to encourage people.

2229. Mr Weir: It could mean just putting a stick in a field.

2230. The Chairperson: It is a serious issue for the Committee. We are developing policy for the future, so we might as well start off on the right track. Climate change is an issue; it has been one in this mandate for the past four years.

2231. Mr McGlone: I am glad that you mentioned this mandate, Chairperson. You and I have sat through extensive inquiries into climate change. However, Angus has put his finger on the matter. How does one define climate change? The Department does not have a stand-alone policy on the matter, and neither do the Executive. Most of this is EU-driven. We should not be sitting here on our own, trying to develop a policy on climate change when no stand-alone policy has been devised either by the Department or the Executive. For us to ask officials who, naturally, have been given no direction by the Department or their political overlords in the Executive as to what climate change means is wrong. It is little wonder that we struggle with this.

2232. The Chairperson: The witnesses need not answer that, but if they wish to respond they can do so.

2233. Mr Dallat: Today in the newspapers, there is a picture of a polar bear sitting on a lump of ice floating down a river. That polar bear knows what climate change is.

2234. The Chairperson: I thought that the previous Minister of the Environment, Mr S Wilson, had dealt with the polar bears during his time.

2235. Mr Weir: The wording of the Bill is

“principal physical, economic, social and environmental characteristics”.

2236. I find it difficult to see how climate change, in the broadest sense, is not already covered. I do not see why there is a specific need for reference to it. Clause 3(2)(a) covers the whole gamut of things. To be brutally honest, if we were to adjust it —

2237. The Chairperson: And then clause 3(2)(f)?

2238. Mr Weir: Clause 3(2)(f) also ensures that it is covered.

2239. Mr Kinahan: It is there.

2240. Mr Weir: It is covered. It does not need to be added in explicitly.

2241. Mr W Clarke: I heard the same arguments from the Department of Agriculture and Rural Development during the Agriculture Committee’s consideration of the Forestry Bill. DARD argued that there was no need for climate change to be on the face of that Bill. However, Committees exist to bring forward legislation, along with Departments, and through the work of the Agriculture Committee, climate change was put on the face of that Bill. As we go through this process, we will get it on the face of this Bill. I think that it is up to the Department to say where climate change should be put on the face of the Bill.

2242. The Chairperson: It was included in the Forestry Bill through the wisdom of the Minister of Agriculture and Rural Development, I may add.

2243. Mr Kinahan: I wonder whether the answer is via a clause that relates us to European legislation, because that is what drives the climate change legislation that we have to follow. It is covered in the Bill, but I sense that the member wants it to be specific.

2244. Mr W Clarke: We can come back to it.

2245. The Chairperson: If the witnesses are saying that the issue is covered in the clause; then some members want it to be included specifically. Will the witnesses come back to us on that point? Do you want to say something more, Patsy?

2246. Mr McGlone: It is on a separate issue.

2247. The Chairperson: Does it concern this clause?

2248. Mr McGlone: Yes. It is about a local policies plan.

2249. The Chairperson: We will deal with that later. Are members content with the explanation of clause 3?

Members indicated assent.

2250. The Chairperson: We will move to clause 4, which is entitled: "Statement of community involvement". We talked about some of the relevant issues in the preparation session. I remind members that clause 4 was generally welcomed, but, as with the Department's statement of community involvement, respondents wanted clause 4 to include a requirement for local authorities to monitor the impact and effectiveness of their statements of community involvement in relation to section 75 groups. They also wanted the Bill to specify a time limit for the publication of the statement. In addition, almost all respondents wanted a statutory link in the Bill between the statement of community involvement and community planning.

2251. Some respondents wanted clause 4 made more specific by amending terms such as "attempt to" with "must", and "may" with "will". They also wanted community groups and the public to be given statutory rights of participation in the preparation of local development plans. The Committee wanted the importance of the neighbourhood notification to be recognised.

2252. Mr Kerr: We touched on a number of those issues, to some extent, when we were looking at the Department's statement of community involvement a couple of clauses back. When it comes to monitoring and time-limiting the statement of community involvement, it is our intention to provide in subordinate legislation more guidance on how the statement process works. At this stage, it is not clear whether we want to go for prescriptive legislative requirements on timescales. We are aware that these are new processes for councils. As soon as time limits and timescale are brought into statute, it can become very difficult for councils to bring those things forward, particularly first time round. We are going to look at that very carefully. We are not saying that we will require councils to prepare statements of community involvement within a certain time.

2253. The Chairperson: If we were to build in a two-year review, it would be part of that process.

2254. Mr Kerr: Yes. There will be a requirement to keep the statement of community involvement up to date and relevant, which will be important in a particular area as time goes by. We have covered the issue of the link with community planning.

2255. The Chairperson: It is an important issue. I know that some members were not here at the start of the discussion, but that is clearly a major element. Have we covered neighbourhood notification?

2256. Mr Kerr: Yes, we touched on that earlier.

2257. The Chairperson: That is all part of the jigsaw when it comes to community participation.

2258. Mr McGlone: I raised neighbourhood notification before, as you did, Chairperson. The fact that it is not done in some cases, particularly when it applies to plans involving close proximity to housing, literally drives people bonkers. We went through all that before. Have you developed any process whereby people are required by certain criteria to notify neighbours? I do not know whether you use distance or amenity criteria; whatever it might be. When notification is not given, it definitely causes serious problems among neighbours.

2259. Mr Kerr: Would it be possible to come back to the Committee on neighbour notification when we deal with the plan management aspect of planning applications? Is that possible?

2260. Mr McGlone: That is OK.

2261. The Chairperson: Are the witnesses aware that notification has to be displayed on sites in the South? Has that option been looked at? Obviously, it applies to rural areas only.

2262. Mr Kerr: Councils could suggest such measures through the statement of community involvement.

2263. The Chairperson: Clause 4(3) states:

"The council and the Department must attempt to agree the terms of the statement of community involvement".

2264. It has been suggested that the words "attempt to" be removed. Has that been considered?

2265. Mr Kerr: Basically, it is anticipated that we will work closely with councils throughout the development plan process. Normally, there will be agreement. However, if that does not happen, there is an opportunity, later in the clause, for the Department to be able to issue a direction to which the council must reply.

2266. Mr Weir: I do not see how legislation can require people to agree something. Ultimately, if there are two sides, how can they be forced to agree? One can encourage them to do so and facilitate agreement.

2267. The Chairperson: I am only asking the question on behalf of respondents who suggested it.

2268. Mr Weir: I understand that. I am not sure that it is possible.

2269. The Chairperson: I am not saying that I am in favour of that: I am simply going through the points and asking questions. Obviously, "may" and "will" have the same effect, then?

2270. Ms Smith: The word "may" gives the Department discretion. If it were changed to "will", that would mean that if the Department and a council were not in agreement, the Department

would have to issue a direction when there might be a better way to deal with matter or the disagreement may be so small that it is not worth it.

2271. The Chairperson: The Committee is very disappointed that councils and the Department will not agree. [Laughter.]

2272. Do any other members wish to make a point?

2273. Mr Kinahan: Can we see a statement of community involvement from elsewhere?

2274. Mr Kerr: We have examples from other jurisdictions. We can send one to you.

2275. The Chairperson: Are members happy with the explanation? Are we content?

Members indicated assent.

2276. The Chairperson: We will move to clause 5, which deals with sustainable development. I remind members that most respondents want to see stronger commitment to sustainable development by replacing the phrase "contributing to the achievement of" with the word "securing", and for the phrase "sustainable development" to be well defined. There was also concern about the difference in the Department's obligation to the regional development strategy and those of local authorities. Some respondents also wanted the clause to commit the Bill to tackle disadvantage and poverty. They suggested that it should include a requirement that complements section 75 of the NI Act, which relates to equality. I know that I have gone over some of those issues already. Would the witnesses like to comment briefly before I ask members if they wish to raise any points?

2277. Mr Kerr: The key point, which we discussed earlier, is that we will look at the issue of securing sustainable development, which will strengthen the Bill.

2278. The Chairperson: Are members content?

Members indicated assent.

2279. The Chairperson: Clause 6 concerns local development plans. Almost all respondents wanted to see the introduction of a statutory link between those and community plans. Several also sought clarification on the integration with existing area plans and the relationship with planning policy statements. Will you comment on that, please?

2280. Mr Kerr: We have already touched on the statutory link. That will be handled through the local government reform Bill, and we will write to you about that.

2281. As members are aware, the new planning system will still be set within the context of regional plans, policies and guidance from the point of view of the regional development strategy, planning policy statements and other guidance that the Department may issue. Plans will be expected to take those into account and they will be tested through independent examination.

2282. The Chairperson: I can see a problem, which Mr Savage highlighted earlier. Area plans, the regional development strategy and planning policy statements should outline clearly what can be built and developed in each area. The community will then be involved for the first time, and there could be a wish list, which may involve having to explain what PPS 21 or PPS 16 say.

That needs to be shown clearly in guidance. Councils need guidelines because the whole thing needs to be explained. That is an important element.

2283. Mr Dallat: The concept of what constitutes a community bothers me a little bit, because I represent a coastal area, including Portrush, Portstewart, Portballintrae and Castlerock — what is left of it. What is the community? In some parts of Belfast, the population quadruples during the academic year. How can we ensure that outcome will be a balanced community? I could not find that out in the past.

2284. Mr Kerr: As we have discussed, the approach will be to define a community for councils in the broadest sense. Therefore, it will include situations such as those the member has outlined, in which communities change during a period of time because of student populations and that sort of thing. Councils will have to look at the issue of balance when preparing their development plans. That flows down through the regional development strategy. Balanced communities are an issue that should be addressed.

2285. Mr Dallat: I understand that fully. I asked the question because local councils that will inherit planning do not have much passed on to them. Without wanting to be offensive, look about you: places such as Portballintrae are gone, as are Castlerock, Portstewart and other areas. If we are to have this enormous Planning Bill, a lot of people will want something in it that defines to some degree what a balanced community is and how it is achieved. Otherwise, a lot of the material will be of no value because it will be totally wrecked by those who have the resources or desire to make it unbalanced. Communities could get wiped out: churches and schools could close. The few people who remain will be tortured 24 hours a day if the plan is unduly influenced by one element of community.

2286. Ms Smith: The strength of the whole process of developing the plan is that it is the council's plan, and the council has to work with the community. As Angus said, the definition of community is created to be very inclusive. The whole community will have the opportunity to influence that plan, which is drawn up by local councils and local people. Therefore, the vision should reflect the thinking of the council and the community. It gives an element of local control that does not exist at the moment. The reason for putting powers back to councils is to make sure that that local democratic control is there.

2287. Mr Dallat: Will you explain how local councillors will acquire the power to do that, since your Department was not able to do it? There is nothing in the Bill that addresses balanced communities.

2288. Ms Smith: The Bill transfers the planning powers, that is, the powers to work with communities to develop the plan.

2289. Mr Dallat: That is fine. I want to buy this Bill, but, at the moment, I do not even want to put down a deposit on it. I need to be convinced that transferring those powers to local councils will enhance the quality of life in communities. I know enough about local councils to know that they will not go out and do what you have failed to do, which is to achieve a balanced community, unless there is something in law that makes them do it.

2290. Mr Kerr: In the future, there will be an opportunity for councils to be innovative in the approach they take in their development plans. For example, if a council is dealing with the north coast, the front-loading process of a community consultation exercise could throw up the key point about second homes and student accommodation in that area. Therefore, it will be perfectly within the ability of councils to bring something forward in their local development plan that specifically addresses the issue, maybe more so than departmental officials were able to do in the past.

2291. When we were researching this, the best examples of plans that we came across in other jurisdictions involved local members or mayors taking the lead with the planning function and addressing the issues that the community brought forward. One got a real sense of that, more so than one does working in the departmental scenario that we have had in Northern Ireland for so long.

2292. Mr Dallat: I do not want to prolong the matter. I mentioned the north coast, but I was not talking specifically about that. I am sure that you know nice models of perfection. I know that a lot of plans were influenced by local councillors who were lobbied — and I am being nice here — by people with power and influence to put something somewhere that will make them a lot of money, rather than thinking about the needs of the community. We will leave it at that, but we will come back to it again.

2293. The Chairperson: It is an issue that is close to your heart. There are new powers, and we cannot prevent what has happened in the past. However, we can change it through this policy and ensure that it does not happen in the future. There is no doubt that a lot of powers are being transferred to councils. That is why we keep harping back to the community plan and to community involvement.

2294. Mr McGlone: One issue that NILGA raised was that the cost of the required survey of a district preparing local development plans and annual monitoring reports is not included in the planning fees. I am not making a case that it should be, but we are into the question of full-cost recovery and the cost of making and processing a planning application from beginning to end versus the cost of the planning process. I have seen some of the costs proposed, and a number of them are exorbitant. In the interests of the consumer and those who work in construction and in the local economy, I do not want to see any inhibitory costs being imposed on applicants.

2295. I am anxious to hear your thoughts on the division between where the costs associated with policy development should come from and the cost of processing a planning application from it being stamped, validated and going through the site inspection to issuing a determination.

2296. Ms Smith: Councils can pay for the planning system in three ways. First, they will have income from fees. We are reviewing the fees, which often do not reflect the real cost of processing applications. Those not paying their way are the very big applications. That is why the maximum for various fee categories has been extended upwards. The cost of applications is not being covered by the fee that they attract.

2297. Small applications are, in effect, subsidising the big ones. So, although we are extending the maximum, some people at the lower end, with very small applications for single houses and so on, will pay less. The fee structure will be more realistic and much fairer. Councils will also have some sort of grant and the rates. So, they will have a choice in how they use their resources.

2298. Mr McGlone: The model, as you outlined it, Maggie, is based on the concept that there will be a big application. However, the big application does not exist at the moment, and there is not likely to be one for the foreseeable future. Many developer sites are just extant and some are lying vacant. Therefore, any model developed on that basis for handover to councils will in many ways be based on a notional income that potentially could come from bigger planning applications that do not exist and are not likely to come forward.

2299. At the moment, you are saying that smaller applications are subsidising the rest of the planning process. We will still be in a situation of having notional incomes, and they will remain notional because the bigger applications are not coming in. Therefore, we are back to the

situation in which councils will be seen, on paper, to be inheriting something that could be cost neutral but which, in practice, will be the opposite because of the nature of the economy at the moment.

2300. In addition, you are throwing in other issues such as recouping the costs of EIAs, etc. I am very interested to hear where all this is going, especially policy development. You said that there might conceivably be a grant to councils for that. Is that —

2301. Ms Smith: The councils have the block grant at the moment.

2302. Mr McGlone: I know that.

2303. Ms Smith: That is what I am referring to.

2304. Mr McGlone: However, you are handing councils additional responsibilities. We have all been through consultation exercises here, there and everywhere. However, if you throw into this the likes of a development in an area plan, God knows where the costs will stop whenever one includes barristers, specialist legal opinion, etc. I sat through one, and through part of another one, so I have a fair idea of the sorts of costs that are floating around in that room, including specialists, planners etc.

2305. That will become a very important issue in practice for councils when the handover comes about. Councillors, and especially ratepayers, will be asking whether they are being sold a pup with proposals for fees handover and fees structuring as they are at the moment.

2306. Ms Smith: I cannot comment on issues to do with the grant in detail. I was not suggesting that there would be any change or addition to the grant. As you know, we have carried out the consultation in respect of the fees, and we will be coming to you shortly with the usual synopsis of the consultation responses, our proposals, and so on. We will have all of the information then, so that will be an opportunity to discuss it in detail.

2307. As regards what is being handed over; we are restructuring, downsizing and changing the shape of the planning system in DOE. Part of the reason for that is to ensure that we have the right number of people in the right places when we hand the system over to councils. Therefore, we will be handing over the right system for each council cluster.

2308. Mr McGlone: It may be unfair of me to labour the point with you, but I do not see the funding for that key policy area being embraced within any reasonable full cost recovery for the processing of a planning application. There will still be a void in the funding, in so far as the responsibilities and duties of the councils and the roles that it is anticipated they will take on board.

2309. Ms Smith: At the moment, the fees focus on applications. We are also looking at areas for which the Planning Service is responsible and for which councils will be responsible in the future and where it would be reasonable to recoup costs. That work will start soon; in fact, it will start when we get the first phase of the planning review out of the way. We will know more after that. The system is working effectively. We are reshaping it; we are shaping it so that it will be right for individual councils. The other details still have to be worked out.

2310. The Chairperson: I think that we are happy with that. We will pick up on some of the issues later, when we are discussing other clauses.



2311. We move to clause 7. I remind members that most respondents were content that councils should be required to produce a timetable, but many sought clarification on the detail.

2312. Mr Kerr: The detail will be provided in subordinate legislation and in guidance.

2313. The Chairperson: There are no questions on that, so I will move to clause 8. I remind members that many respondents found clause 8 to be vague and suggested amendments to make it more specific. As with earlier clauses, there was almost universal support for plan strategies to have a statutory link to community plans. There was also a suggestion that a commitment to address climate change could be incorporated in the clause.

2314. Mr Kerr: Further detail about what a plan strategy will contain, over and above what is in clause 8(2), will be set out in subordinate legislation. There will also be guidance for councils on the preparation of plan strategies.

2315. The Chairperson: Do you have a time frame for the subordinate legislation? Maggie, you talked about the memorandum. What is the earliest date that we will be able to see all of the proposals.

2316. Ms Smith: The memorandum sets out the areas in which there will be subordinate legislation. On 10 January, we sent you a timetable, which set out the various stages.

2317. The Chairperson: It is in our papers; I am aware of that. I want to nail down the detail of the subordinate legislation. Is it in the timetable?

2318. Ms Smith: Yes. It is also worth saying that the good progress being made on the Bill is allowing us to push forward with subordinate legislation.

2319. The Chairperson: Once again, this is about the link with community plans and climate change. Do members have any questions on the clause?

2320. Mr McGlone: Has the Department sorted out the matter of general conformity with the RDS?

2321. Mr Kerr: The wording of clause 8(5)(a) is:

" In preparing a plan strategy, the council must take account of —

the regional development strategy;"

2322. We discussed that at our previous meeting. It is a changed approach from that which applies to the Department and its plans, which use the phrase "general conformity with". There is also a statementing process in legislation.

2323. Mr McGlone: Does that mean that clause 1(2)(a) and clause 8(5)(a) will use the same vocabulary?

2324. Mr Kerr: Yes. The issue was raised before. We are going to look at that to determine whether we can come up with a similar approach for both clauses.

2325. The Chairperson: Do any other members wish to comment? OK. We have the timetables, but we need to see the detail.

2326. We will move to clause 9, which is entitled "Local policies plan". Most respondents sought more clarity. Will you give us a bit of detail for members and for those respondents?

2327. Mr Kerr: Again, the issues are similar. The details, as with the planning strategy, will be provided in subordinate legislation and in guidance. The local policies plan is, obviously, the more local aspect of the local development plan, whereby councils will determine zoning and local policies. The plan strategy is much more strategic.

2328. The Chairperson: Obviously, capacity building, support, etc, have to be taken into account when giving power back to councils to undertake the whole process. I note that clause 9(2) states:

"The local policies plan must set out —"

2329. There is that word "must" again. We will liaise with respondents about specific issues, but do any members have any comments now?

2330. Mr McGlone: I am interested that people were looking for more detail on the required form and content of local policies plans. I raised the issue earlier of how compliant or otherwise local policies plans are with the likes of the RDS or, for that matter, planning policy statements? That is pretty important. Although I understand the rationale, how it rolls out in 11 different variants could lead to problems. Are you going to come back with more detail on what it means or what form it will take?

2331. Mr Kerr: The current wording includes the phrase "must take account of", although we are going to look at that. The approach is that the plan strategy and the local policies plan must be done within the parameters of the regional policy and the RDS. The lock, as we see it, is the independent examination stage at the end of the process. One aspect of selling the process is the alignment of local development plans with central government plans, policies and guidance. In a sense, that is where we feel that those issues will be tested and thrashed out so that we can be sure that the local policies plan for a particular area properly takes account of regional policy and guidance. That is the way we see it being achieved. It will not be achieved through a standardised approach; it will take flexibility to let local areas do their own thing to some extent.

2332. Mr McGlone: Flexibility and doing your own thing is a concern. However, is it correct that this will be subject to ratification by the Department?

2333. Mr Kerr: At the very end of the process, yes.

2334. Ms Smith: The independent examination is very important in that regard.

2335. Mr McGlone: Thanks for that.

2336. Mr Chairperson: I want to talk about training and guidance. I mentioned earlier about conformity and adhering to policies. When does this kick in? It is all very well to say that local policies can be drawn up, and outline to what they are to adhere. However, there is a training exercise involved and an understanding to be gained about what can and cannot be developed. When will that happen?

2337. Mr Kerr: It is already beginning through the pilot exercise with councils, whereby they and the Department can start to get a feel for how this will work. Also, we are already working on guidance which will be made available.

2338. The Chairperson: That is why having a review of how the whole process will work is key. Do members have any other questions?

2339. Let us move to clause 10, the independent examination. I remind members that many respondents questioned the proposal to appoint independent examiners. Some suggested that responsibility for examination should remain with the Planning Appeals Commission (PAC), which should be given more resources, if necessary; some suggested that it might be appropriate for the PAC to appoint independent examiners when it needs additional capacity; some wanted confirmation that independent examiners would perform the task in the same way as the PAC; and others suggested that the PAC should appoint independent examiners. So, there is food for thought. Does the Department wish to comment?

2340. Mr Kerr: The approach that the Bill brings allows flexibility for the Department to go to independent examiners other than the PAC as a last resort. When a local development plan is coming through, the first point of contact will be to ask the PAC whether it can do an assessment and, if it can, there should be no problem. Due to the way things worked in the past with development plans, there has been a tendency for them to stack up when there has been a problem with resources and when the PAC has been unable to carry out an independent examination of a plan and produce a report within what the Department considers a reasonable period. This provision is being included to allow the Department the ability to have the flexibility to appoint someone in those circumstances.

2341. As to how it will work, and to ensure that the appropriate people are appointed, the appointment procedure will have to take the usual government approach and will adhere to appointment policy. It will be done to ensure that the independent examiners will be independent and suitably qualified. It is similar approach to that used elsewhere. It was used for the independent examination of the RDS first time around and it is also used for Roads Service when it holds major inquiries for new roads, etc. The precedent for the approach exists and we believe it to be necessary to ensure that we do not have the same problem that we have had historically with delays to plans.

2342. The Chairperson: So, the Department is not in favour of councils appointing independent examiners?

2343. Mr Kerr: The provisions in the Bill do not allow for that.

2344. The Chairperson: We keep mentioning front-loading the system. If, in an ideal situation, people are being trained and are going through development plans, etc, we should be trying to get things right at that point. I know that there should be a challenge mechanism and independence, but we need to try to minimise those aspects given the time that some examinations and enquiries take. Should we concentrate more on building capacity and carrying out a review rather than saying that, at the end of the day, we need to have something in the Bill to ensure that we have the right checks and balances, and that there is equality, etc? We should look at front-loading.

2345. Mr Kerr: That is right. The fundamental approach is, in a sense, to improve front-loading so that we do not end up with the situation that we have had here historically, where a draft plan is issued, and then people suddenly become engaged because they see the effect that it will have on their local community, and they start to submit hundreds of objections. Through the new approach, we are trying to sort issues up front so that the level of objection and representation at the independent examination stage is much reduced. I agree absolutely.

2346. The Chairperson: It goes back to capacity building and training, etc. Some council areas are largely rural. This will impact differently on urban and rural areas. I am not making a

distinction; all that I am saying is that we have to be realistic about what a public representative will be asked to do. Constituents will ask questions, and we would prefer to get that part right. People have asked about the independent examination. The Department is giving powers to local authorities to develop plans and a vision, but, at the end of the day, we are saying that the Department must make sure that it is right. Looking at this from the other side, the Department should be trying to encourage councils to train people and should be giving them the resources to do so. Perhaps they will get it about 98% right; it is not possible to get it correct all the time. Do members have any questions about clause 10?

2347. Mr McGlone: BCC made the point that:

"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".

2348. That is a very sensible proposal, because all I have to say to the witnesses is — judicial review. As we know, a judicial review of any area plan can cause inordinate delay. It could lead to a stack of area plans, one after another, a number of which are under judicial review and are hanging. They are delayed, and they delay the whole process. Eventually, area plans will go behind time while some come on board on time and are being reviewed. Is that sensible? If five or six area plans are being reviewed or are being independently assessed by the PAC, such provision should be factored in. There should be a one-off appointment of independent assessors to speed up the process and help break the workload. That can be brought about by reasons and circumstances not of anybody's making other than the person who takes the judicial review, for whatever reason they choose to do so.

2349. Mr Kerr: Yes. That is the purpose of the clause. It has been written to allow the Department to do that regardless of the circumstances. It is a permissive power that enables that to happen if necessary for whatever reason.

2350. Mr McGlone: Would that person have the same powers as the PAC?

2351. Mr Kerr: Yes, and they would take the same approach.

2352. Mr McGlone: You thought about those types of circumstances. That is OK.

2353. The Chairperson: Have there been any discussions with local councils about potential legal costs, liabilities etc?

2354. Ms Smith: That goes back to the discussion of a few minutes ago. Our aim is to ensure that we hand over a workable system to councils. That is what we are working to achieve.

2355. The Chairperson;

2356. I will take your word for that, Maggie. The issue was raised. Obviously, it is a major issue for councils.

2357. Mr Kinahan: I am sorry to be coming in and out, and you may have already discussed this, but will there be a timeframe so that things do not end up sitting with the Department for ages?

2358. Mr Kerr: The overall process will be guided by the timetable, which has to be agreed up front. So, that should not happen. The idea of the new development plan process is that it

should be properly project-managed because we recognise that there were problems with delays in the past.

2359. The Chairperson: We move to clause 11, "Withdrawal of development plan documents". Concern was raised about the Department's powers under this clause. One respondent said:

"The local authority responsible for the plan development and the programme management should be responsible for the withdrawal of development plan documents at all stages."

2360. Mr Kerr: Councils will have the power to withdraw plans up to the point when they are being submitted to the Department because, obviously, after that point they will be with the Department. There will also be the power for the Department to suggest this.

2361. The Chairperson: Are members content with clause 11?

Members indicated assent.

2362. The Chairperson: Clause 12 is entitled "Adoption". Respondents had concerns about the Department's power under this clause. Will you clarify the clause for members, and maybe address those concerns?

2363. Mr Kerr: From memory, one concern was about the Department's role at the end of the process in issuing the binding report. The Department's view is that in the administrative circumstances in Northern Ireland make it appropriate for the Department of the Environment, which will have responsibility for orderly and consistent planning in the region, to have the final say once the independent examination reports have been made.

2364. In practice, the extent to which the Department intervenes in the process undertaken, and in the independent examination, will be minimal and will focus on the exceptional and on the alignment with central government plans and policies. It is more of a safeguard and about ensuring that there is a consistent approach across the region.

2365. The Chairperson: One council said it was concerned that:

"there appears to be an absence of a consultation or dialogue between the department and the Council prior to the adoption of the development plan".

2366. Mr Kerr: There will be consultation throughout the local development plan process. In that way, it will work. There should always be close liaison between councils and the Department. That is the way it works in all other jurisdictions. The idea is not to end up at independent examination stage with something that is completely out of sync with what is required.

2367. The Chairperson: I know that, but this goes back to knowledge, and training, and what exactly is required. It should not be a case of having a wish list and a plan that goes awry. People should be fully trained. That is why the community element is key. Are members content with the explanation?

Members indicated assent.

2368. The Chairperson: I will move to clause 13. I remind members that most respondents wanted to see more detail about the time frames. Angus, will you clarify those, please?

2369. Mr Kerr: Greater detail will be provided in subordinate legislation. We expect councils to carry out a review every five years, at least. They have the opportunity to do so more regularly, if they want to, but we are insisting that it be done at least every five years. The time frame on how long a plan would last was raised. We envisage that it will last for 15 years. The term of five years is not on the face of the Bill; it will be in subordinate legislation.

2370. The Chairperson: Are members content with clause 13?

Members indicated assent.

2371. The Chairperson: I move to clause 14. I remind members that the clause was generally welcomed, but one respondent wanted to see provisions to ensure that all relevant persons are made aware of a proposed review.

2372. Mr Kerr: If there is to be a review, the process followed will be the same as that for preparation of the plan. That includes all the publicity and consultation arrangements.

2373. The Chairperson: Are members content?

Members indicated assent.

2374. The Chairperson: I move to clause 15. I remind members that many respondents indicated concern at the level of control being retained by the Department and sought more detail in relation to that.

2375. Mr Kerr: Clauses 15 and 16 relate to opportunities for the Department to intervene in the planning process. They are seen as a safeguard. They are not seen as being something that is routine. This is broadly in line with the approaches taken in the other jurisdictions, and the view is that the Department would wish to intervene only in very exceptional circumstances. Nevertheless, it was felt that this was a necessary provision in case the situation arises.

2376. The Chairperson: Are members content?

Members indicated assent.

2377. The Chairperson: I move to clause 16. You touched on that already. Respondents were concerned about the level of intervention, achieving consistency when using independent examiners, and the Department's ability to require reimbursement. Will you comment on that?

2378. Mr Kerr: This relates the independent examination process. We will be ensuring that independent examiners, when appointed, will be operating the same process and approach as the PAC would operate if it were holding an independent examination. There will also be a process in place to ensure that the appointees are independent and appropriately qualified.

2379. Mr McGlone: I presume that the process of independent nominations would be agreed with the PAC? That should be the case, because independent assessment is an extension of the process in which it is involved, and that, for one reason or another, such as a lack of resources, it might not be able to take part. Perhaps it is a presumption on my part, but these things do pop up now and again. Has the PAC bought into this?

2380. Mr Kerr: There will have to be close liaison with the PAC to ascertain whether it would be appropriate for us to appoint an independent examiner.

2381. Mr McGlone: I am not talking about a case-by-case basis. Has the PAC bought into the process of appointing other independents?

2382. Mr Kerr: The PAC has been fully consulted and is aware of it. You would have to ask the PAC about the extent to which it supports this.

2383. Mr McGlone: We are at quite a crucial point here, Angus. I do not want to see silos appearing further down the line. There is no reason for that to happen, but I want assurance that the PAC has bought into this process as a way forward. You are bringing forward legislation; it is for you to confirm that the PAC has bought into the process.

2384. Mr Kerr: Perhaps that is something that we can come back to the Committee about.

2385. Mr Kinahan: I want to explore the issue of reimbursement. I presume that councils will have an idea of the costs incurred before they sign up to the process. There was a debate in the Chamber the other day about hitting councils with costs mid-year that they do not know are coming. This needs to fit into their budgeting.

2386. Ms Smith: Yes. Councils will, obviously, be responsible for their budgets and for drawing up the plans. When they set out their timetables and decide how they are going to develop their plans, they need to take budgetary issues into account. The same applies to the Department when it is making a plan.

2387. Mr Kinahan: Councils will need clarity from the Department about the costs that will need to be reimbursed. They need to know the charges that will be coming back. As I understand it, the costs being reimbursed are departmental costs.

2388. Ms Smith: I beg your pardon; I am at cross-purposes. I was talking about the reimbursement of departmental expenses.

2389. Mr Kinahan: I just wanted to make sure that there is clarity for councils that, if reimbursement is going to happen, they can plan for it and know what the costs are going to be. I am referring to clause 16(7).

2390. The Chairperson: We will get to that again; there is no need to respond unless you wish to, Angus.

2391. Mr Kerr: That provision aligns with those in other jurisdictions where, in the unlikely event that the Department would step in and undertake the plan preparation process, the council would be expected to reimburse the Department for undertaking that duty.

2392. Mr Kinahan: I am just asking whether there is clarity up front so that councils know that they will not be hit with a surprise.

2393. Mr Kerr: Yes, that would be ensured.

2394. The Chairperson: OK. We will break for lunch and resume at 1.30 pm.

On resuming —

2395. The Chairperson: We will continue with Part 2. We are moving on to clause 17, which is about joint plans. The clause was generally welcomed. One council suggested that it would be

strengthened if it included the ability to liaise with councils on a cross-border basis. From a personal point of view, that is very welcome. I do not think that the Committee agrees.

2396. Mr Kerr: Cross-border bodies already do liaison and planning work on a number of issues, particularly in relation to the European environmental assessment directive. Guidance will set out how cross-border liaison will take place and on what issues.

2397. The Chairperson: Speaking from experience, we are all talking about competitiveness and giving people a chance. In the likes of the Newry and Mourne and Dundalk areas, we need to give people an opportunity, no matter what the development is, to compete. I certainly welcome it from that point of view. Do members have any questions?

2398. Mr Kinahan: Is it just internal to the island of Ireland, or are we actually talking about borders?

2399. The Chairperson: I think that European funding stretches to the north-west, but that is for another Committee. We had a good discussion about joint plans. It is like everything else: the devil is in the detail. We talked about all of the other aspects in previous clauses. I think that we are content with it. I remind members that this is informal clause-by-clause scrutiny. There will be other opportunities outside of the Committee to propose amendments or anything else to the House at Consideration Stage.

2400. We move on to clause 18. There was objection to the power being given to the Department by this clause. In addition, one organisation queried how the Bill would address linear infrastructure that may cross several boundaries. That is a key element, and we need to look at that.

2401. Mr Kerr: The point about the electricity network was quite specific. There is power in the Bill to deal with a specific regionally significant planning application, which would be done by the Department if it was about a specific electricity project. Secondly, there is the power in Part 1 for the Department to look at issues of a strategic nature across the whole region. If it is felt that there needs to be a holistic look at energy infrastructure provision across Northern Ireland, the power is there to do that.

2402. The Chairperson: It is a valid point. I want to bring up as an example the proposed North/South interconnector. We are transferring these powers to local authorities. It is about them taking on responsibility, but there will be a perception out there that when communities are involved in all this they will have a stronger say on what goes into their area plan and what they would like to see. The regional significance of major applications clearly needs to be outlined. That issue will keep raising its head until we see it implemented on the ground. It is vitally important.

2403. Mr Kerr: We will come to that in the next Part of the Bill.

2404. The Chairperson: With even a joint council under an 11-council model, when you see major infrastructure the community will ask what participation it is really having. There clearly need to be guidelines.

2405. We move on to clause 19. Questions were raised about the applicability of the clause to waste infrastructure. There was also a suggestion that the development of the electricity network framework should be treated in the same way.



2406. Mr Kerr: The purpose of this clause is to make sure that there is no duplication of work when there are public representations and objections to certain schemes that have a separate process to go through. A road scheme, for example, is dealt with properly through a roads inquiry as opposed to being duplicated in the local development plan inquiry.

2407. The Chairperson: Are members content with that explanation?

Members indicated assent.

2408. The Chairperson: There was a suggestion that guidance under clause 20 should include a reference to equality and poverty. Has the Department taken that point on board?

2409. Mr Kerr: We have taken on board the point that it would be helpful if any subsequent regulations or guidance highlighted relevant guidance from the Office of the First Minister and deputy First Minister. We can look at that in guidance, and we are happy to do that.

2410. The Chairperson: OK. Thank you. Are members happy enough with the explanation of clause 20?

Members indicated assent.

2411. The Chairperson: Clause 21. One council raised concerns about the cost implications of this clause. Others suggested that monitoring reports should incorporate indicators for shared space, community relations and environmental impact.

2412. Mr Kerr: Basically, we see the monitoring and review of plans as essential to establishing the success of the plan and its implementation, and whether any changes are needed to keep the plan up to date. The other point brought up was the form and content of annual monitoring. We intend to set that up in subordinate legislation and guidance. All of that will be subject to public consultation. It is important to point out that the monitoring carried out has to be focused directly on the implementation of the plan, so it is narrowly focused.

2413. Mr Kinahan: I am coming at this from a council point of view. Is there an example of a report? The councils' complaint is that they cannot get a grasp on the resources they need and what they need to do. I take on board that if you start producing examples, that will raise a whole set of different questions. However, if we handled it properly it might help.

2414. Mr Kerr: We are happy to send some examples of monitoring reports. That is no problem at all.

2415. The Chairperson: The cost issue keeps raising its head. We talked about raising the fees, the workforce model and everything else, but there are a lot of things that we are putting in the Bill to try to ensure equality and checks and balances and everything else. It all comes at a cost, and we need to look at how we are going to deal with that. We talked about fees and rates. From a departmental point of view, even up to a review period, we need to look at the funding of this.

2416. Mr Kerr: As Maggie mentioned earlier, we are looking at both the fees and the funding issue at the moment, in preparation for the eventual transfer. It will be covered in that.

2417. Mr Chairperson: No disrespect, but people are sitting out there in the dark. They do not know how this can be afforded or who will cover it. We are saying that we agree with the transfer, but the councils need to be properly equipped with sufficient resources to deal with it.

The sooner we resolve that issue the better, especially on the ground. It is all very well to sit in the Assembly and go through this. We know what you are saying, but the Minister needs to get out to local councils. Any points, members?

2418. Clause 22. I remind members that most respondents called for a commitment by the Department to produce regulations, and a timescale for their production.

2419. Mr Kerr: This particular clause gives the Department powers to prepare all the subordinate legislation that we have been talking about. The Committee has had a letter from us setting out the timescale for completion of that subordinate legislation.

2420. The Chairperson: Have members any questions? Are we content with that explanation?

Members indicated assent.

2421. The Chairperson: That concludes Part 2 of the Bill. I refer members now to Part 3, which is about planning control. We will go first to clauses 33 to 38, about simplified planning zones, and we will cover them all together. I remind members that the Committee has heard mixed views on the introduction of such zones. Some, largely industry, welcomed the idea; others felt that there was no longer any justification for them. One suggestion is that they could be remodelled as renewable energy zones; another is that they could be used for sport and recreation. Most wanted clarification as to how they would work with local development plans; others wanted confirmation that environmentally sensitive land would be protected, even if it had not been designated. Some called for the Bill to require consultation with the public on the designation of simplified planning zones, and others were concerned that they had not been consulted on the principle of their inclusion in the Bill. There are a few things to comment on, Angus. I do not think that it is that simple at all.

2422. Mr Kerr: If I miss anything, call me back.

2423. In respect of the development plan, both powers are separate. We discussed councils' powers to prepare development plans in Part 2, and that power is in place. In addition to that, this is a power to prepare a simplified planning zone, which is carried through from the Department's existing power to prepare simplified zones. Although it is possible for a council to highlight its intention to prepare a simplified planning zone in its plan strategy at some point in the future, there is no requirement for it to do that. The simplified planning zone can simply override a plan, depending on at what point in time it arrives and is brought forward. I hope that that covers the relationship between plan and simplified planning zone.

2424. Any proposal to bring forward a simplified planning zone will have to have full cognisance of environmentally sensitive areas and the requirements of any environmental directive. There is full consultation in the preparation of the simplified planning zone, with the opportunity for the relevant authority, be it the Northern Ireland Environment Agency (NIEA) or whomever, to influence the preparation of the simplified planning zone. The intention is that it will not in any way result in damage to sensitive areas. There are specific areas in the Bill which are removed from clause 38. It highlights conservation areas, national parks and that sort of thing — nature reserves — for which simplified planning zones cannot be prepared.

2425. The Chairperson: We will need consultation on it. We consulted on the broad principles of the Bill. There has been a comment that there was not consultation.

2426. Mr Kerr: There will be full consultation procedures; there are full consultation procedures within the whole simplified planning zone approach, broadly equivalent to the development plan consultations. There is an opportunity for the public and key stakeholders to get involved.

2427. The Chairperson: There are no other points. Thank you for your time. You can take a back seat.

2428. We will go back to clause 23. I remind members that some respondents had concerns about the proposals for applications for demolition and suggested that they should only be required in conservation areas or where it would affect listed buildings.

2429. Ms Irene Kennedy (Department of the Environment): Clause 23 largely carries over the definition of "development" from the Planning (Northern Ireland) Order 1991. It is just being amended as a consequence of a proposal that we have to make sure that the partial demolition of an unlisted building in a conservation area would be under control. We have clarified that. Consent is currently required for demolition in a conservation area or area of townscape or village character, as well as for a listed building. [Interruption.]

2430. The Chairperson: OK. You are aware that the Deputy Speaker will take the Chair in five minutes.

2431. Mr B Wilson: How does the area of townscape character relate to the new legislation?

2432. Ms I Kennedy: It is largely unchanged. There was a requirement for planning permission to demolish a building in an area of townscape character or village character. The enlargement of the definition of "development" deals with the case of an unlisted building in a conservation area and its partial demolition.

2433. Mr Buchanan: I welcome the fact that the provision remains and has been more or less been carried over. It is important that we protect listed buildings in the townscape and conservation areas. It is important that we retain that to protect our heritage, if nothing else — in rural areas especially.

2434. The Chairperson: Clause 24 is about developments requiring planning permission. Some respondents wanted clarification of the circumstances under which clause 24(2) will apply. They also called for a definition of "normally used".

2435. Ms I Kennedy: Again, this carries forward the existing provisions in the 1991 Order. As we go through this Part, we will often point out where provision has been carried forward. The clause allows a landowner or developer to revert to the use that existed prior to the granting of temporary permission. It could be for a temporary building. The use of the word "normally" relates to the lawful use that that land was put to in that prior instance.

2436. The Chairperson: Gentlemen, are you happy enough?

Members indicated assent.

2437. The Chairperson: Clause 25 concerns the hierarchy of developments, which raised its head earlier. Some respondents felt it imperative that applications of regional significance, especially major infrastructure projects and social housing, be dealt with by DOE, while several called for all council applications to be dealt with by the centre. Others wanted to see broad thresholds or definitions outlined in the Bill and wanted the clause to require account to be taken of the cumulative impact of similar applications for development. Several organisations wanted the Bill to require early decision-making and felt that the clause added uncertainty to the process.

2438. Ms Lois Jackson (Department of the Environment): The Department will deal with regionally significant developments. We felt that the detail for what constitutes a regionally

significant or major development is best placed in subordinate legislation — we have copied details of that to you — in relation to the classes and thresholds to be applied.

2439. The Chairperson: The respondents did not have an opportunity to look at the document that we had. They sought clarification on the definition. I hope that they have now got that, but it goes back to community aspirations. That needs to be clearly outlined from the start, and you have assured us on a number of occasions that that will happen.

2440. Ms Jackson: We will consult on the subordinate legislation as well. People will be able to have a further say about the categories and thresholds.

2441. The Chairperson: Do members have any questions? What about the cumulative impact?

2442. Ms Jackson: Yes, of a local development being directed as a major development. Flexibility is built in to the hierarchy to allow a local development to be directed and treated as a major development on the request of a council. That would be to get around issues like perhaps two local developments creating significance, which would mean that it is major. We will probably run the wording past the Departmental Solicitor's Office, but our policy intention is to make sure that sufficient flexibility is built into the Bill to allow us to do that.

2443. The Chairperson: Thank you very much. Are members content with that explanation?

Members indicated assent.

2444. The Chairperson: Clause 26 deals with the Department's jurisdiction in developments that are of regional significance. Respondents wanted the term "regionally significant" to be defined. One suggested that the PAC should be given the role of determining regional significance, as that would provide impartiality. Some respondents were concerned about the enforcement of pre-application discussions, and others wanted the environment to have more significance in the determination of whether a development was of regional significance. They therefore suggested that criteria on that should be introduced.

2445. Ms Jackson: Again, that is where subordinate legislation will help to outline the purpose, rationale and types of regionally significant development that we are discussing. The Department has a role in dealing with strategic and article 31 applications, and clause 26 is a continuation from that. We feel that it will enable the prioritisation of those very significant planning applications, because it will allow us to deal with them directly ourselves and fulfil our duties in that way. That is an important role for the Department.

2446. The Chairperson: Are members content?

Members indicated assent.

2447. The Chairperson: Clause 27 is concerned with pre-application community consultation. Can we suggest that we call that "participation"? Do not panic just yet, Maggie; it is only a word.

2448. The introduction of pre-application community consultation was strongly supported, but respondents wanted measures in place to ensure that it was carried out properly. However, one respondent wanted clarity about the extent to which a developer crossing council boundaries would have to meet different council requirements. Another called for clarity on the definition of the word "community", and another asked for confirmation that pre-application consultation would not be required for amendments to conditions. That is a valid point. I know that we use the word "consultation", but the process should be about participation.

2449. Ms Jackson: We will probably seek clarification on the definition. However, given that this is an entirely new proposal that everyone has to get to grips with, we will outline it clearly in guidance and subordinate legislation. Therefore, we appreciate that there is a lot more detail on that to come.

2450. The Chairperson: We are relying heavily on subordinate legislation.

2451. Mr Weir: A concern was raised about cross-area development. If two councils were involved, for example, surely such a situation at present would be handled through the planning schedule of one council rather than that of the other. Presumably, one council takes jurisdiction for the matter. It is the same for a planning application. If a legal case, for example, crosses different jurisdictions, someone takes lead authority. I presume that such a situation will be dealt with in the same way.

2452. Ms Jackson: Absolutely. That is probably how it would work in practice when the development in question is not a regionally significant development that crosses the councils in a substantial part of the region. However, a major planning application would be dealt with by a council area, which will obviously be one of the proposed 11. Again, those cross-boundary issues would have to be explained, possibly through the statutory consultee mechanism. It would be outlined that, in such cases, a council would be required to consult the neighbouring council. We will look at that as part of getting around that issue to make sure that the function is not necessarily discretionary but is carried out.

2453. The Chairperson: We would be interested to know how that will be worded in the subordinate legislation.

2454. The issue of any amendment to any condition raised its head on a lot of occasions. Respondents asked for confirmation on whether consultation will be required for that. For example, an approval may be agreed, and some respondents wanted confirmation that no consultation will be required for the amendment of a condition.

2455. Ms Jackson: Again, because that issue was raised, we have to take it forward with the Departmental Solicitor's Office. Scotland consulted recently on amendments to its pre-application community consultation, because people questioned whether they would have to carry out the full community consultation process for what could be the removal or alteration of one condition. Therefore, we need clarification on the types of application that that could possibly apply to, and we will then look at that.

2456. The Chairperson: I would say that it would be limited.

2457. Ms Jackson: It would be, because the removal of even one condition could be contentious.

2458. The Chairperson: That is why I asked. Thank you for that clarification. Are members happy with clause 27?

Members indicated assent.

2459. The Chairperson: We will move on to clause 28, which deals with the pre-application community consultation report. The requirement for a report on the pre-application community consultation was generally welcomed, but many respondents wanted the Bill to specify that responses needed to be taken into account and an opportunity given for the public and community groups to comment on the report. It was also noted that the report should be done at no charge to the public.

2460. Ms Jackson: Obviously, the consultation report would be made available to those who were interested in it. It would be required to be kept on the council's register and would, therefore, be available to view.

2461. Currently in such situations, there is a nominal charge for photocopying or suchlike, and it is up to councils to set that charge. That is how we are dealing with that. Certainly, the report will be of interest to a lot of people who will want to see exactly what was taken on board before a decision on whether to accept a decision was made.

2462. Mr Weir: I appreciate the point, and I would not be against such a nominal charge. Presumably the intention is also to make the report available on the Internet. There would still be some cost to someone printing off something, but at least people would have the Internet as an option.

2463. Ms Jackson: A whole area of electronic communication will, again, be identified in subordinate legislation. There are certainly website facilities and so on to allow people to view a report.

2464. The Chairperson: We will move on to clause 29, which is concerned with the call-in of applications and so forth to the Department. Many councils were concerned about the clause. They felt that it was excessive and wanted to see it made more specific so that they could see the criteria that would make an application subject to call-in. Some were also concerned about the Department's power to appoint external examiners, and they would prefer to see the PAC fully resourced to deal with all applications as required. There is obviously an issue with the call-in process. Will you clarify that point, please?

2465. Ms Jackson: We appreciate that we have had a few debates about call-in and what it will consist of. The Department will issue a direction on call-in, and it will consult on that as part of the subordinate legislation. We will outline the criteria under which councils will be required to notify the Department of certain types of planning application. The judgement as to whether the Department calls an application in will be based on whether it is regionally significant. That will be subject to consultation.

2466. Mr McGlone: Is the regional significance of an application the only criterion for call-in by the Department? I raised that point before.

2467. Ms Jackson: Yes.

2468. Mr McGlone: Does that mean that no other application, no matter how contentious or seriously laden with issues it may be, will be called in by the Department?

2469. Ms Jackson: The application will be called in only if it fulfils the criterion of being regionally significant. Councils will be dealing with significant, top-level planning applications. We are suggesting that the types of applications that would be notified would involve a significant objection from a statutory consultee or a significant departure from a local development plan. Obviously, we cannot pre-empt those applications. Some may have a direct impact on the whole region, for example, and the Department will base its decision on that. However, if it is determined that the issues that arise from the application are mostly based in a particular council area, it would be up to that council to deal with the application.

2470. Mr McGlone: Do you not think that that is a bit loose? Perhaps "ill defined" is a better way to put it. An application in an area could ultimately be of major regional significance, for example, on equality grounds, yet it would be initially confined to a district council area.

2471. Ms Jackson: The Department would be made aware of the planning application if it fell within the criteria to be notified. Councils are directed to let the Department know.

2472. Mr McGlone: Your criteria will be so loose as to be uninterpretable, if there is such a word, when determining an application's regional significance, or they need to be tightened up to say that this or that application is significant. I am picking up on the fact that you have not yet reached the point of giving a proper definition. As I said, the definition is loose.

2473. Ms Jackson: A definition of the term "regionally significant" is in the Bill. However, we would have to fully outline in guidance the types of application that we would consider significant. I think that that is where you are going.

2474. Mr McGlone: I am probably looking at consequential, rather than type of, application, if you get where I am going.

2475. Ms Jackson: The issues that a planning application raises will differ from one application and from one area to the next. The Department will have the advantage of discretion. It will have the discretion to decide whether the issues that a planning application raises are regionally significant. Your issue, perhaps, is about how the Department makes that decision.

2476. Mr McGlone: I am asking how it determines regional significance.

2477. Ms Jackson: As I said, we will use the criteria that we defined in the Bill. We will expand on those in guidance, but we feel that there is sufficient in the Bill to allow the process to happen.

2478. Mr McGlone: When is that guidance likely to be available? We are stabbing in the dark again. It is almost a case of the cart being stuck between two horses.

2479. Ms Jackson: Primary legislation sits with subordinate legislation and guidance. They form a complete picture, but we have to start with primary legislation. We are fairly well established with our subordinate legislation, and, flowing from that, we have identified separate pieces of departmental guidance.

2480. Mr McGlone: I know that that is all part of a jigsaw. The problem is that a major part of that jigsaw is not present. In fact, probably two thirds of it are not present, and the consequence is that the Bill is not being properly informed. Therefore, we are back to where we were earlier.

2481. Ms Jackson: I certainly do not think that we are at a disadvantage at the moment in that the Department currently deals with article 31 major planning applications. The guidance for that is already in place; therefore, the determination of those applications is something that we would —

2482. Mr McGlone: Perhaps I did not explain myself well enough. I am not talking about the quantity or magnitude of a planning application; I am talking about the scale of its repercussions. That application could be for a single house or a housing development, depending on how a council interpreted the planning policy. We are back to the safeguards and to the powers of regional government to call in when there is a difficulty.

2483. Ms Jackson: The power exists to call in by exception any planning application that raises issues of regional significance. However, what I am saying is what it hinges on.

2484. Mr McGlone: Are you saying that it is down to the interpretation of the term "regional significance", the guidelines for which you are working on? I am labouring this point, because I need to know, but will those guidelines will be in place before the transfer of functions?

2485. Ms Smith: Yes.

2486. Mr McGlone: Are you working on those, too?

2487. Ms Jackson: A whole suite of subordinate legislation and guidance will flow from the Bill.

2488. Ms Smith: We are working on those. Certainly, we are working on the subordinate legislation, and we will move on to the guidance.

2489. The Chairperson: We will tease that issue out. I think that we got some answers, but the devil will be in the detail.

2490. Mr Weir: Are you confirming and guaranteeing that the subordinate legislation and the guidance will be in place pre-transfer of functions?

2491. Ms Smith: Yes.

2492. Mr Weir: You answered that to some extent in your response to Patsy.

2493. The Chairperson: Thank you very much. Are members content with clause 29?

Members indicated assent.

2494. The Chairperson: Clause 30 deals with pre-determination hearings. Several organisations wanted to see minimum criteria with the clause, and one was concerned that councils would be able to decide who should attend a hearing.

2495. Ms Jackson: As I said, we are producing subordinate legislation on the criteria for a pre-determination hearing — I feel that I am constantly repeating myself. The detail on pre-determination hearings will be in the subordinate legislation. However, there will be flexibility for councils, because that is really a council function.

2496. The Department will set out mandatory hearings for certain types of application. However, councils will have the discretion to hold hearings for other types of application as they see fit. Holding hearings will largely boil down to resources and to what councils have available for them. There will be mandatory hearings and the facility for discretionary hearings.

2497. The Chairperson: We are starting to rely a lot on guidance and subordinate legislation without having had prior sight of them.

2498. Mr Kinahan: Who will decide what is mandatory?

2499. Ms Jackson: We will set that out.

2500. The Chairperson: Are you content with that explanation, gentlemen?

Members indicated assent.



2501. The Chairperson: Clause 31 concerns schemes of delegation for local developments. Several councils sought clarity on proposals for schemes of delegation, with one calling for the clause to be amended.

2502. Ms Jackson: Are you looking for an example of a scheme of delegation? We could certainly provide that.

2503. The Chairperson: Yes, that is OK.

2504. Ms Jackson: It is quite useful to see how they work in other jurisdictions.

2505. The Chairperson: I am just checking to see what that particular council's point was.

2506. Ms Jackson: I think that there was an issue about the words "must" and "may".

2507. The Chairperson: For clause 31(1), Belfast City Council suggested that:

"consideration be given to replacing the word 'must' with 'may' ... and delete the sub-sections (a)(i) and (ii). Accordingly, consideration should be given to the removal of sub-section 3".

2508. Do you have any comments to make on that?

2509. Ms Jackson: Essentially, we are saying that a council must prepare a scheme of delegation. We are not saying that it is optional for councils.

2510. The Chairperson: There is that word "must" again. I think that I asked about "must" before the lunch break.

2511. Ms Jackson: I do not think that there will be such an amendment. We want schemes of delegation to be implemented. We want councils to be responsible for introducing them, carrying them out and having them approved by the Department. I do not think that the word "may" is an appropriate substitute in this case.

2512. The Chairperson: "May" is a better word. It is OK, Maggie; there is no call to respond. We just wanted clarification on those points. Do members have any questions about clause 31? Are you happy enough with the Department's explanation?

Members indicated assent.

2513. The Chairperson: We will move on to clause 32, which deals with development Orders. Respondents supported definition Orders being drawn up jointly with local authorities but wanted a detailed definition of the term "development Orders". One respondent wanted the clause to refer to permitted development rights for minerals.

2514. Ms I Kennedy: A development Order is simply a piece of subordinate legislation that sets out the detail of how planning permission is granted. Members may be familiar with the current development Order, the Planning (General Development) Order (Northern Ireland) 1993.

2515. One group of respondents wanted permitted development rights for minerals, and we have been looking at that issue in recent consultations on amendments to permitted development rights.

2516. The Chairperson: Members, do you have any comments to make, or are you content with that explanation?

Members indicated assent.

2517. The Chairperson: We will move on to clause 39. For the information of those who were not here, we covered clauses 32 to 38 earlier. Clause 39 is concerned with granting planning permission in enterprise zones.

2518. Three councils had concerns about this clause. One objected to it strongly, another required clarification, and a third was concerned that such zoned areas are often in the ownership of Invest NI and are thereby confined to Invest NI client companies.

2519. Ms I Kennedy: The DOE is responsible for designating enterprise zones under the Enterprise Zones (Northern Ireland) Order 1981. The Bill will simply carry that provision forward. No significant changes will be made to the 1981 Order, and the Bill relates to planning permission in enterprise zones. It is important to recognise that designation of land is available through local development plans and not just through enterprise zones. A council looking at the local development plans will identify economic development needs at a range of sites, and there will be a choice of site location and so forth in its district.

2520. The Chairperson: Do members have any questions? Is everyone content with that?

2521. Mr W Clarke: I declare an interest as a member of Down District Council, which raised that point. The council is trying to get across the point that it wants a bit of flexibility for enterprises, such as those that are concerned with tourism, in land that was designated for industry, and that tourism is treated as an industry. When it came to designating land, once the Invest NI land was zoned, it was very difficult to get the small industrial parks and so on that were needed. That was particularly the case for small businesses and small units. The council is looking for flexibility and common sense in providing recreational potential, even for those who use the Invest NI site. It also wants waste management potential in Invest NI sites looked at. The council experienced difficulties with that, so that is the point that it wants to get across.

2522. The Chairperson: That is certainly something that we should look at. Obviously, this matter comes down to how land is zoned for industrial use. Clearly, Invest NI is an issue. If it has not secured that land, it certainly has first shout on it. I know that members from different areas will ask for investment in jobs and so on, but there should occasionally be opportunities for other developers in certain district council areas. You are saying that it is down to what the local council wants.

2523. Are there any other comments?

2524. Clause 40 is about the form and content of applications. I remind members that responses to this clause called for more robust validation procedures, the inclusion of issues relating to amenity, nuisance, human health and environmental impacts, and a greater emphasis on ascertaining whether a site is fit for its intended use. One respondent stressed that they did not feel that applications dispensed with the need for proper assessment by professional planners, and, as such, there was no need to prohibit validation until submission.

2525. Irene, would you like to respond on behalf of the Department?

2526. Ms I Kennedy: Clause 40 deals with the form and content of a planning application as it arrives. Many of the issues raised are procedural and are not directly related to the primary

legislation. The Department has a robust approach to dealing with the validation of applications, and it anticipates that councils will do likewise. That is because it is obviously in councils' interests to check that, on submission, applications are valid and contain all the information that is required to allow them to be considered.

2527. The clause will carry forward existing legislation that relates to amenity, nuisance and human health. It also carries forward the requirement for certain statements to accompany planning applications. Those statements relate to access and design. The issues raised in the submissions about amenity, nuisance and human health would all be material factors in the determination of applications, and if information on those is needed for the determination, councils may request it. Therefore, we do not necessarily believe that we need specify the need for a statement on human health or a statement on issues related to amenity or nuisance.

2528. One of the respondents raised the issue of the intended use of a site. That will be a material consideration, and the planning authority will have to take that into account when it determines the application. I am not sure whether the Committee needs me to address any other points on that.

2529. The Chairperson: No, thank you. Obviously those provisions will apply to applications across the board. Is that right?

2530. Ms I Kennedy: Yes.

2531. The Chairperson: Have there been problems with costs incurred in the past, with applications not being properly filled in and sent back?

2532. Ms I Kennedy: Yes.

2533. The Chairperson: That would be burdensome on local councils' costs and resources. Does the clause make that process robust enough? We need to ensure that the situations described do not happen. From experience, I know that many applications, especially individual applications, were sent back at an unseen cost to the Department.

2534. Ms I Kennedy: Yes, and there is obviously a cost to the applicant, and the agent of their application is not progressing as quickly as they would like. Therefore, the need for correct applications is in everybody's interests.

2535. The Chairperson: That is correct.

2536. Ms I Kennedy: Of course, there is guidance on what is required to complete the forms.

2537. Mr Peter Mullaney (Department of the Environment): There are now also fee reckoners. Obviously, one way to get an application wrong is to enclose an incorrect fee. Hopefully, that will be resolved.

2538. There is a difference between what is necessary to complete or to validate an application and the information that is needed to determine it. There is a basic A -to-Z step that everybody has to complete. Over and above that, depending on the nature and type of the application, there are instances where the planning authority, whether that is the Department or councils, may require additional information. However, that may not necessarily be apparent at the outset.

2539. The Chairperson: People need to be made aware of that. In the past, it has been OK to deal with an ordinary application as a constituency issue, but, when responsibility is given to councils, they must be ready for exactly that. Given that it is not specifically in the Bill, I am checking to ensure that that issue is raised here and that that message is dealt with through guidance or another mechanism. I am only raising the point. Are you aware of that need?

2540. Ms I Kennedy: Yes.

2541. The Chairperson: Are there any other questions? Are members content with that explanation and with clause 40?

Members indicated assent.

2542. The Chairperson: We will move on to clauses 41 and 42, which concern the notice and so forth of applications for planning permission and the notification of applications to certain persons. This is the first time in 42 clauses that respondents have raised no issues. Are members content with clauses 41 and 42?

Members indicated assent.

2543. The Chairperson: Clause 43 is about a notice requiring planning application to be made. I remind members that respondents wanted clarity on clause 43 where timing and what constitutes a breach are concerned.

2544. Ms I Kennedy: Again, clause 43 will carry forward provisions in the Planning (Northern Ireland) Order 1991 for what are often referred to as submission notices. Such notices are used when a development has taken place without the necessary permission and the Department, or the councils as it will be, asks the developer to submit an application to regularise the development.

2545. It is where the development is likely to be acceptable in planning terms, but an application has not been received and granted.

2546. The Chairperson: Is that retrospective planning? That is an issue. Do members have any questions?

2547. Clause 44 provides for an appeal mechanism in relation to the previous clause. No issues were raised by respondents. If you are content, we will move on, gentlemen.

Members indicated assent.

2548. The Chairperson: There seemed to be general support for clause 45, but one organisation suggested that it should be amended to require the Department or council, prior to planning approval, to consult and/or inform developers of planning conditions that are being imposed.

2549. Ms I Kennedy: Conditions are attached following a rigorous assessment of the application. They are required to meet a number of tests. There is also the opportunity for anyone who has conditions attached to their permission to appeal them. The difficulty with the suggestion is that if it were to apply to all planning applications and decisions, it would be quite onerous to consult the applicants before the decision is issued. It may well be practice that, in some cases, there is discussion with applicants before a decision issues as to the conditions that will be attached, but it is not necessary or practical in each case to adopt that approach and to have a requirement

that councils or the Department consult applicants on the conditions that will be attached to their permission.

2550. The Chairperson: Do members have any comments? Content?

Members indicated assent.

2551. The Chairperson: Clauses 46 to 49 concern the power of council to decline to determine subsequent applications, the power of the Department to decline to determine subsequent application, the power of council to decline to determine overlapping application and the power of the Department to decline to determine overlapping application. Could we not have simplified that? No issues were raised about those clauses. If you are content, gentlemen, we will move on.

Members indicated assent.

2552. The Chairperson: Clause 50 is the duty to decline to determine application where section 27 not complied with. One respondent called for clear guidance on pre-application community consultation to prevent challenge and delays. Another called for the clause to include a requirement for the Department or council to take account of any comments made on the pre-application community consultation report by the public and community groups.

2553. Ms I Kennedy: This goes back to the discussion that we had earlier about the pre-application community consultation and the requirement for us to produce guidance. That will certainly set out what those requirements are. What was the second point?

2554. The Chairperson: Including a requirement was the first, and clear guidance was the second.

2555. Ms I Kennedy: It has to be as part of the consideration of the application.

2556. The Chairperson: OK. Content, gentlemen?

Members indicated assent.

2557. The Chairperson: Several issues were raised in relation to clause 51, including the necessity of taking into account the effects of human health and the need for environmental impacts to be assessed.

2558. Ms I Kennedy: Clearly, those will be material factors when applications are being considered. The clause deals with the regulations that may be made under it to deal with environmental effects. Some of the suggestions will already be covered through the work that goes into preparing a local development plan. Obviously, issues about well-being will be picked up in the links with the local government legislation.

2559. The Chairperson: Any comments? Content?

Members indicated assent.

2560. The Chairperson: With the exception of a call for sufficient resources to be made available to deliver the provisions, which will be dealt with later, no issues were raised about clause 52. Are members content?

Members indicated assent.

2561. The Chairperson: Several issues were raised in relation to clause 53, including its applicability to landfill sites and what happens to restoration obligations in the event of insolvency.

2562. Several amendments were suggested to extend aftercare conditions to take account of nature conservation and useful amenity and to require developers to take advice from the Department of Agriculture, Forest Service, the Environment Agency and non-governmental organisations. Irene, would you like to comment on that? I am sure that members will have some questions to ask.

2563. Ms I Kennedy: Clearly, the clause deals with mineral planning permissions, but it would not be unusual for similar conditions to be attached to landfill developments. For example, restoration conditions also often follow a determination of an application.

2564. In the case of insolvency, the Department can try to remedy the problem by seeking redress from the landowner, if that is a separate person or entity from the applicant. If restoration does not occur and court proceedings fail, the Department or the council can issue an enforcement notice. Provided that the notice is placed on the statutory charges register, any subsequent owner can be held liable for the works. Councils can use powers under section 145 of the 1991 Order to carry out works and require reimbursement.

2565. The suggestion of a fourth category, nature conservation, is something that we would like to take a look at further. We would like to take some legal advice on the term "nature conservation", because the clause talks about use of land. While we can see how you can use land for agriculture, forestry or amenity, it is important to tease out what use of land for nature conservation would actually mean. Nature conservation may well be more of an objective than a use of land.

2566. Mr McGlone: Where, for example, a quarry site belongs to someone who becomes insolvent, I do not know if there is an answer to that. Is there a mechanism outside the Planning Bill to accommodate that — to revamp the site and get it back into action again? Unless the site is sold and the new owner decides to do something with it, or there is a form of grant aid available to facilitate that, there is no mechanism in the real world to accommodate that.

2567. We have all been around sites where planning permission has been granted, houses have been built, some of which have lapsed, and the next thing you hear the contractor has gone belly up. In those cases, it is a major job to even get the roads in the estate adopted, let alone the sewers and stuff like that. This is a question without an answer.

2568. The Chairperson: How do we deal with that? That is an issue, and it is something that we need to look at. With regard to aftercare conditions, there are some out there who have not complied, and we need to look at them. You mentioned the insolvency, which is one element. Certainly, we need to take a look at this.

2569. Mr Buchanan: For an application like that for mineral extraction, is it not possible to include a bond sufficient that, if insolvency comes about, Planning Service, DOE or whoever is responsible can come in and restore the site to its full potential? We have a difficulty like that in west Tyrone with mineral extraction from sites. There is a huge concern among residents that the sites will not be restored back to their natural states. There may be some bonds on those sites, but they may not be large enough. Maybe that is something that we should look at: making sure that, in applications like this, there is a sufficient bond to cover any default by the operator.

2570. Mr Mullaney: There is an analogy to road bonds under the Private Streets (Northern Ireland) Order 1980, which Mr McGlone has referred to. I am not aware that that pertains to mineral operations at the minute. Some mineral operations can be substantial in nature and scale. I understand your point, but I think that we will have to think about the practicalities of that. The analogy that I can think of is with the roads bond.

2571. Mr W Clarke: I am glad that the Department is going to look at the nature conservation element. This comes from the quarry representatives, who felt that measures to create the right habitats for indigenous species should be included. If it is coming from the quarry industry, it should be seriously considered.

2572. The Chairperson: I am looking at putting landfill back in to proper condition as best use. I have driven past a couple of areas, and I have seen that quarrying has stopped and it is just sitting there — and I am not saying that it is insolvency. Where is the recourse for that? How do we deal with that? Is it being dealt with here?

2573. Ms I Kennedy: There are provisions further on in the Bill which deal with the review of old mineral permissions and dormant quarries in which working may not have taken place for some time.

2574. The Chairperson: That will be dealt with in other clauses?

2575. Ms I Kennedy: Yes.

2576. The Chairperson: Any other points?

2577. The only issue raised in relation to clause 54 was the need for guidance, in general, for the Bill. We will discuss that later. Will there be guidance in relation to this?

2578. Ms I Kennedy: Yes. It will depend very much on the individual application and the condition that is going to be removed. It will be up to the councils and the planning authority to look at that and give it consideration.

2579. The Chairperson: Content, gentlemen?

Members indicated assent.

2580. The Chairperson: On clause 55, it was suggested that a premium fee for retrospective planning applications be introduced and that applications for developments already carried out without permission should attract an additional fee.

2581. Ms I Kennedy: That is included at clause 219.

2582. The Chairperson: OK, gentlemen?

Members indicated assent.

2583. The Chairperson: Some councils objected to clause 56, as they believed that it seemed excessive.

2584. Ms I Kennedy: Clause 56 relates to the call-in power that we discussed earlier. It is a necessary part of the call-in process.

2585. The Chairperson: OK. Moving on, there were no issues raised in respect of clause 57. Are members content?

Members indicated assent.

2586. The Chairperson: I remind members that many respondents raised the issue of third party rights of appeal on clause 58. The reduction of the appeal time frame from six to four months was generally welcomed, but one respondent suggested that the clause should include a reference to planning and mediation.

2587. Ms I Kennedy: I think there may well have simply been a misunderstanding about the time frame. The appeal period is currently six months and will move to four months.

2588. The Chairperson: Planning and mediation were mentioned. I propose to talk about third party appeals under general issues; I will not bring that point now. Are there any other points? No?

2589. Clause 59 refers to appeals against failure to take planning decisions. Respondents wanted clarification of the period that may be specified by a development order.

2590. Ms I Kennedy: It is currently two months, as established by article 11 of the Planning (General Development) Order (Northern Ireland) 1993, which is the subordinate legislation. It is the responsibility of the Department to change that. A council can agree in writing a longer period with an individual applicant. There may well be changes to that particular non-determination period, which we will bring forward in subordinate legislation, to deal with the different types of applications.

2591. The Chairperson: Ok; thank you. Content, gentlemen?

Members indicated assent.

2592. The Chairperson: Concerns were raised about the clause 60 and the provision to lengthen the period for which permission is granted, as it might lead to land banking. Clarification was also sought as to whether the clause imposed a time limit if a time clause is not included. I must say that the issue of land banking needs to be addressed. We have seen the effects and the impact of that.

2593. Ms I Kennedy: I think it is important that you read clause 63 in conjunction with clause 60. Clause 60 allows the time period to be stated as five years or such other time period as may be appropriate in the particular application. On the issue of land banking, we consulted on reducing the duration of planning permissions from five years to three, which would be in line with other jurisdictions. However, considering all the responses received, both in favour and against, the policy decision was that the existing duration of five years should remain.

2594. The Chairperson: I am just putting it to the Committee that we have seen the impact of that and we need to look at it, especially on the periphery of urban settings where land was banked for a period of time when it could have been used for better development or sold for better things.

2595. Mr McGlone: I am not too sure whether the land banking issue can be dealt with just by reducing the duration of a planning application. What would focus people's minds sharply would be if the land was to be rezoned or de-zoned. That probably goes back to the development plan



process. If there was a risk or threat of land being rezoned or de-zoned, you would probably see it being brought into use pretty quickly.

2596. Mr Mullaney: That is quite right in the sense that, even if planning permission expires, if the land in question has been approved on the basis of a zoning, that zoning still pertains. Therefore, the assumption is that, other things being equal, permission would be re-granted until such time as the zoning were to change, if at all.

2597. Mr McGlone: That is right. That brings us on to the development plan process with the councils. They will have the power, with local input and knowledge, to monitor what is happening or not happening, as may be the case, in their district.

2598. Mr Mullaney: Yes. Members may be aware that the Department undertakes an annual housing monitor, which is clearly a fundamental information tool for the preparation of future development plans.

2599. Mr McGlone: I am aware from speaking to other people of the situation, for example, in the United States. In some of the states, and under some of the authorities, this can be quickly done. If land is not used quickly, it is rezoned or de-zoned and other land that could be used brought into use. That seems to work very effectively. How do you think that would work under the new proposals? We talked earlier about the monitoring being done by councils. How does that kick in? You could have monitoring being done and recommendations made, but then you would be into a process of re-consultation and all that all over again.

2600. Mr Mullaney: As Mr Kerr outlined this morning and on previous occasions, there is clearly a mechanism for review of the new style of development plans, and it does not necessarily follow that all issues have to be addressed. If there is a particular issue relating to housing, the usual land use that crops up, it does not necessarily follow that everything has to be redone just to get your plan through, if those issues have not changed or can be dealt with in the future.

2601. One of the premises of the new development plan system is that it will not only be quicker in preparation from A to Z, but have the facility to review and look at those key issues. How quickly it is done is ultimately a matter of resources — and need, of course. You have to have a need to do it in the first place.

2602. Mr McGlone: Yes. OK. Thank you.

2603. The Chairperson: Is there an opportunity for de-zoning? Say that there are three area plans now and we have gone so far down the road that we believe they should be adopted. Say a local council, in the next couple of years, decides to revisit that. A specific area, especially an industrial area as opposed to a residential one, would be most relevant. If they wanted to change, and it is zoned for a particular use, can it be de-zoned?

2604. Mr Mullaney: Ultimately, to put it in very simple terms, the zoning of land is a balance between supply and demand, although we prefer to use the word "need" instead of "demand". If need were to be reduced and, when a review arose, there was less need, there is potentially a situation for that to happen.

2605. There is also the regional context. You will be aware that, under the regional development strategy, there have been a number of examples where there has been an issue, when the housing growth indicators have been translated into area plans, as to whether the land zoned in previous plans was all required now for the future. It is not done arbitrarily; we have to look at

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2606. The Chairperson: It is for a particular use. Land zoned for industrial use follows a pattern of previous experience and years, and it is not necessarily the right area. It has not been established. It just grew up in one area and it has continued, plan after plan, over a number of years. We should look again at the whole process. Maybe it is rezoning as opposed to de-zoning.

2607. Mr Mullaney: It could be. You can have a situation where you zone land for a particular reason, for instance employment, and that is dependent upon roads infrastructure. Maybe that infrastructure has been delayed, or a new proposal makes the land less attractive in terms of access than another area. I am only surmising, but you can conceive of a situation something like that. It is a case of reviewing and assessing the circumstances. It may come to pass, but I suspect that the majority of land will still be deemed to be suitable for its zoning.

2608. The Chairman: Basically, we are drawing a new line and starting all over. It is very difficult to go back over the plan. The developments have been there and the whole argument has taken place in the past.

2609. Mr Mullaney: You have to look at change of circumstance. It comes down to considering whether there have been any changes of circumstances and whether that then warrants a change of direction.

2610. The Chairperson: OK. Thank you very much.

2611. Moving on, no issues were raised under clauses 61 and 62. Are members content to move on?

Members indicated assent.

2612. The Chairperson: One respondent interpreted clause 63 as being applicable only to schemes where a time limit has been imposed.

2613. Ms I Kennedy: That refers back to clause 60. If a time limit is not imposed on a permission, there is deemed to be a five-year time limit. It is possible to terminate in that case.

2614. The Chairperson: OK. Thank you very much.

2615. One council considered the requirement under clause 64 for the Department to agree completion notices to be unnecessary.

2616. Ms I Kennedy: This is a theme will emerge as we go through these provisions. The requirement for the Department to be involved is part of the Department's proposed oversight arrangements and intervention powers, which very much draw on similar powers in other jurisdictions. If there are certain tools that councils may use that have to be confirmed by the Department, this allows the Department to have a consistent approach across district council areas.

2617. The Chairperson: OK. Any comments? Content?

Members indicated assent.

2618. The Chairperson: On clause 65, several councils sought justification for the Department's being able to serve completion notices.

2619. Ms I Kennedy: Again, that is the theme that runs through. These are reserve powers that the Department wishes to retain for the unlikely event that it would need to issue a completion notice. That would be in cases of last resort.

2620. The Chairperson: OK. Content, gentlemen?

Members indicated assent.

2621. The Chairperson: Moving on to clause 66. Respondents wanted reassurance that, if conditions are made in error by the planning authority, there should be no fee to change them, and that applicants should be informed well in advance of any conditions likely to be attached to planning permission. Other respondents suggested that the non-material change provision should also be made available to the Department.

2622. Ms I Kennedy: The issue of whether a fee will be charged is a matter for the fee regulations that will be made. It is not a matter for the Bill. This is a new power, devised to allow applicants to address changes that have emerged since permission was granted. We propose to issue some guidance on this, because it is a new provision.

2623. The Chairperson: The guidance is going to require as much paper as the legislation. We are supposed to be environmentalists on this Committee. However, thank you for your clarification. Happy enough, gentlemen?

Members indicated assent.

2624. The Chairperson: On clause 67, one respondent welcomed the flexibility that the clause provides to revoke or modify permissions.

2625. Mr McGlone: I may be asking more out of ignorance than anything else, but clause 67(2) states that:

"The power conferred by this section to revoke or modify permission to develop land may be exercised ... where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed".

2626. I understand that to mean that a planning application has gone through the process and been approved by the planning authority, and then they come in looking to get it changed. What that says to me is that the planning authority has got it wrong. Am I reading that wrongly?

2627. Ms I Kennedy: Revocation could emerge for a number of reasons. Perhaps the applicant has decided that they wanted a different site. That is unlikely in the case that you raised, where development is already under way. It could be that circumstances have changed and there is a need for that permission to be revoked.

2628. Mr Weir: I can think of one example, although it may be unusual, of a major capital work that we are looking at in north Down. I do not think that it has led to any direct change, but before completion of work on a leisure centre, it was realised that it was on a site that, unbeknownst to us, had been a dumping ground a number of years ago. Therefore, issues arose when drilling down because of what was underneath the land. If something comes up during development that nobody knew about, it could lead to some degree of variation in the precise sight lines or something of that nature. Therefore, there could be something that nobody knows about beforehand, but a particular event could happen that gives rise to a need to change.

2629. Mr Mullaney: There have been examples where there has been a change of policy or, perhaps, an adjoining piece of land has been designated for some amenity purpose. There have been revocations, or development plan land has become unzoned. However, there is a potential compensation implication behind revocation, so it is not undertaken lightly.

2630. Mr McGlone: You mentioned the issue of change of policy. I thought that the policy that applied is the one in place at the time of determination. This could open up a floodgate, and policies could be changed. For example, at the point of determination in PPS 21 on rural planning, a new policy could come in within a week, and that person could find that their application could be revoked because of that. Therefore, for me, the policy that is applied is the policy at the time of determination of that application.

2631. Mr Mullaney: That is quite correct, but, in theory, it could be revoked. However, as I say, there is a compensation implication. That could be undertaken on occasions where a development is of great public significance, and not least because there is a financial implication.

2632. Mr McGlone: Does that mean that it is an exceptional tool rather than anything else?

2633. Mr Mullaney: Yes, it has tended to be.

2634. The Chairperson: Are members content with clause 67?

Members indicated assent.

2635. The Chairperson: Clause 68 deals with aftercare conditions imposed on revocation or modification of mineral planning permission. No issues were raised on that clause, so we will move on. Are members content with clause 68?

Members indicated assent.

2636. The Chairperson: Clause 69 is about opposed cases in the procedure for section 67 orders. One respondent felt that the clause gave unnecessary scrutiny powers to the Department. Another called for clause 69(2)(c) to include people who originally made representation, as well as others who may be affected but who did not know about the original application or who represent a wider interest.

2637. Ms I Kennedy: That relates to the previous clause. It allows for an appeals mechanism for someone who is faced with the revocation of their permission. We believe that the Department's involvement in such cases is, again, part of its oversight and intervention role, and it allows it to ensure a consistent approach across the district councils. It is clearly a serious issue if a permission is being revoked.

2638. Clause 69(2)(c) would allow councils to consult any other person who, in the council's opinion, would be affected by the revocation modification order. Thus, there is flexibility for the councils to consult anyone.

2639. The Chairperson: Are members content with clause 69?

Members indicated assent.

2640. The Chairperson: We will move to clause 70, which is about unopposed cases in the procedure for section 67 orders. No issues were raised about that clause.

2641. The Chairperson: Are members content with clause 70?

Members indicated assent.

2642. The Chairperson: We will move on to clause 71, which is about revocation or modification of planning permission by the Department. Some councils did not support that clause. Some wanted the clause removed, and others wanted confirmation that it would not apply to decisions made before functions were transferred to councils.

2643. Ms I Kennedy: Again, that is one of the reserved powers, if you like, that the Department is carrying forward. It provides a power for the Department to revoke if it considers it necessary to do so. Again, it is part of the Department's oversight and intervention powers, and it will consult the council for the area before it proceeds down that route.

2644. The Chairperson: If members are happy enough with that explanation, we will move on.

2645. Are members content with clause 71?

Members indicated assent.

2646. The Chairperson: Clauses 72 and 73 deal with orders requiring discontinuance of use, alteration or removal of buildings or works, and confirmation by the Department of section 72 orders. Councils were concerned about the requirement under the clauses for confirmation from the Department. Other respondents sought confirmation that the clauses would be applicable in such issues as vesting schemes to regenerate an area. Would you like to comment on that?

2647. Ms I Kennedy: Discontinuance is really a process that will be used if revocation is not used. It is used in circumstances where a building is in use but that use is to be discontinued. Again, it is important that that provision is there, but it would be used very rarely. As we mentioned when we were talking about revocation, discontinuance brings with it compensation provisions. It is also part of the oversight powers that the Department has a role in such functions.

2648. The Chairperson: Thank you for the clarification. Are members happy enough?

Members indicated assent.

2649. The Chairperson: Clause 74 deals with the Department's power to make section 72 orders. One submission suggested that, to avoid confusion, the function provided by the clause should lie solely with councils.

2650. Ms I Kennedy: Again, the Department's view is that it should retain a power, where necessary and in rare cases, to make orders under section 72.

2651. The Chairperson: Are members content?

Members indicated assent.

2652. The Chairperson: Clause 75 deals with planning agreements. Most submissions called for the introduction of a community infrastructure levy. Others called for the clause to be amended to require the transfer of land from a developer to the Department. Would you like to comment on that?

2653. Mr Brian Gorman (Department of the Environment): The clause will carry forward the existing provision, which is in the 1991 Order. The only proposed amendment to the proposals is that the change of transferred financial sums should be made explicit. That is intended to mitigate site-specific impact. It does not actually set a requirement for a transfer. It will be used only where mitigating the impact of the development would be the necessary action.

2654. The Chairperson: Thank you very much. The 1991 Order has a lot to answer for.

2655. Clauses 76 and 77 deal with modification and discharge of planning agreements and appeals. No issues were raised about those clauses, so if we are content, we will move on. Are members content?

Members indicated assent.

2656. The Chairperson: Clause 78 deals with land belonging to councils and development by councils. Although respondents were generally happy with the clause, one sought confirmation that the Department would consult on the secondary legislation that will emerge from it. Others called for the intention and implication of the Bill to be made clear in support of the clause. Would you like to comment on that?

2657. Ms I Kennedy: That will clearly be of interest to councils, and it will also be of more widespread interest. Further guidance in subordinate legislation will be prepared.

2658. The Chairperson: We look forward to that.

2659. That concludes consideration of Part 3 of the Bill. We will move on to Part 4, which deals with additional planning control. Clause 79 deals with lists of buildings of special architectural or historic interest. Councils wanted further clarification of their roles under the clause.

2660. It is like musical chairs today; you are very welcome, Stephen.

2661. Ms I Kennedy: I will start with clause 79, and Stephen, who is the expert on some of these clauses, will then join us. The Department will retain responsibility for listing buildings, which will continue as is. The Department will be required to consult with councils under clause 79(3), so there will be no change in council responsibility. Of course, councils will wish to be involved in discussions and dialogue with the Department on potential listings.

2662. The Chairperson: Thank you. We will move on to clauses 80 and 81 —

2663. Mr Kinahan: I declare an interest as the owner of a listed building. Will councils be able to designate something as listed in categories, or will that still be held by the Department?

2664. Ms I Kennedy: As we move through the next clause, you will see that councils will have powers to issue building preservation notices. However, the Department will be responsible for maintaining the list.

2665. The Chairperson: I confirm that Mr Kinahan declared an interest.

2666. We shall move on to clauses 80 and 81, which deal with temporary listing: building preservation notices and temporary listing in urgent cases. Respondents called for additional resource capacity under those clauses. However, that will be dealt with later under general concerns. Is that correct?

2667. Ms I Kennedy: Yes. That is important, and it is clearly a resourcing issue that we have to consider.

2668. The Chairperson: There were no issues with clause 82, which deals with lapses of building preservation notices. Therefore, gentlemen, I propose to move on.

2669. Clause 83 is concerned with the Department issuing a certificate to say that it does not intend to list a building. Concerns were raised about resource capacity, and one respondent asked for clarification on councils' role in the listing process.

2670. Ms I Kennedy: The Department will retain responsibility for the listings, so there will be no change to councils' responsibilities. A council will not —

2671. The Chairperson: We have to adjourn for a couple of minutes, because we are down to three members, so we cannot record the proceedings.

Committee suspended.

On resuming —

2672. The Chairperson: We have an hour, and we will try to complete as much as possible within that time. On clause 84, most respondents felt that the proposed fine of £30,000 was insufficient to act as a deterrent.

2673. Ms I Kennedy: The current fine exceeds the equivalent in GB, which is £20,000. Members should also be aware that clause 84(6)(b) provides for an unlimited fine or a prison sentence. The Department considers £30,000 to be a significant level of potential fine, although it is ultimately for the courts to decide the actual fines.

2674. The Chairperson: I am not sure whether we have clarification on the previous clause with regard to a council's role in the listing process. I might have interrupted you in the middle of that.

2675. Ms I Kennedy: That is OK.

2676. The Chairperson: Can you clarify that point?

2677. Ms I Kennedy: Clause 83 relates to where a certificate can be issued stating that a building that will not be listed over the next five years, and someone can apply for that. The certificates will be issued by the Department, and councils will not be involved. A council will not be able to issue a building preservation notice under clause 80 for five years after the Department has issued a certificate under clause 83.

2678. The Chairperson: Thank you for that clarification. Do members have any questions on clause 84? Are we content?

Members indicated assent.

2679. The Chairperson: Thank you, gentlemen. Clause 85 deals with applications for listed building consent. I remind members that one respondent sought clarification of the circumstances that would apply for listed building consent to be referred to the Department instead of to councils.

2680. Ms I Kennedy: This is similar to the discussions that we had earlier with regard to call-in arrangements. Call-in will happen only in rare and exceptional circumstances where significant policy issues are raised.

2681. The Chairperson: Thank you. Are you happy with that explanation, gentlemen?

2682. Mr Kinahan: I declare an interest. Will councils be using the same advisers when discussing listed buildings, will it always be driven by the one that work for the Department or will there be a separate group?

2683. Ms I Kennedy: Councils may wish to think that issue through. The Northern Ireland Environment Agency will retain responsibility for listing and will also retain expertise. Councils may have conservation officers or experts in built heritage issues.

2684. The Chairperson: We move on to clause 86. There are no issues in relation to the clause. Are members content?

Members indicated assent.

2685. The Chairperson: On clause 87, one respondent called for the power to be used in exceptional circumstances only and another wanted clarification on when an application would be referred to the Department rather than remaining with councils.

2686. Ms I Kennedy: It is difficult to be certain and to prescribe when a particular case might be referred to the Department. It will depend on the circumstances of that case.

2687. The Chairperson: Any questions, gentlemen? Thank you.

2688. The Chairperson: On clause 88, councils sought clarity in their roles and that of the Department.

2689. Ms I Kennedy: Councils will be required to inform the Department if they intend to grant listed building consent, and that is to allow the Department to decide whether it wishes to call in that application. Again, it is part of the Department's oversight role.

2690. The Chairperson: Thank you. Content, gentlemen?

Members indicated assent.

2691. The Chairperson: On clause 89, the only issue raised was the need for consideration to be given to the capacity of councils for delivering the functions. It will be dealt with at a later date. Are we content, gentlemen?

Members indicated assent.

2692. The Chairperson: No issues were raised with clauses 90-92. Are members content?

Members indicated assent.

2693. The Chairperson: Clause 93 relates to the duration of listed building consent. I remind members that one respondent called for more consideration to be given to the proposed duration of listed building consent.



2694. Ms I Kennedy: Listed building consent is currently granted for a period of five years. However, a council or the Department can attach a longer or shorter period, depending on the circumstances. That is in line with the duration of other permissions and consents.

2695. The Chairperson: OK. No issues were raised about clauses 94 and 95. If you are content, we will move on, gentlemen.

Members indicated assent.

2696. The Chairperson: On clause 96, respondents requested clarification on the period for determining an application and the responsibility for prescribing that period.

2697. Ms I Kennedy: The period is currently eight weeks, and responsibility for prescribing it lies with the Department.

2698. The Chairperson: OK, thank you. Content, gentlemen?

Members indicated assent.

2699. The Chairperson: No issues were raised in respect of clause 97. If members are content, we will move on.

Members indicated assent.

2700. The Chairperson: On clause 98, councils expressed concern at the degree of scrutiny that will be retained by the Department.

2701. Ms I Kennedy: That provision is very much in line with the similar parallel process for planning permission and forms part of the Department's oversight role.

2702. The Chairperson: The Department has a big oversight role, and that is what the councils are questioning. Are we content, gentlemen?

Members indicated assent.

2703. The Chairperson: Again, no issues were raised with clause 99. If members have no questions, I propose to move on.

Members indicated assent.

2704. The Chairperson: The councils felt that clause 100 gives an unnecessary level of scrutiny to the Department, and that revocation should be left to councils.

2705. Ms I Kennedy: That provision is very similar to the — [Interruption.]

Committee suspended for a Division in the House.

On resuming —

2706. The Chairperson: We are going to clarify some points around clause 97. Some respondents raised the issue of a potential conflict between councils and the Department, especially where a council deems a listing detrimental to economic development. The rules of

engagement needed to be clearly defined. Also, clarity is needed on how councils might seek to vary or cancel a designation to help revitalise sections within a conservation area.

2707. Ms I Kennedy: I think that some of those comments relate to clause 103, but, nevertheless, we can look at them now. We anticipate quite regular dialogue between councils and the Department to allow those issues to be aired and discussed. Councils may discuss with the Department the case for seeking a variation or cancellation of a designation made prior to the transfer of powers.

2708. The Chairperson: Do members wish to raise any points?

2709. Mr Kinahan: Are there any plans for arbitration between a council and the Department if they cannot agree?

2710. Ms I Kennedy: There is nothing in the Bill. At this point, we do not anticipate that that will be necessary. However, as we move through the process, something may arise, but, at this point, we hope that there will be dialogue between the two.

2711. The Chairperson: OK. We have dealt with clause 98. No issues were raised in respect of clause 99. Are we content to move on, members?

Members indicated assent.

2712. The Chairperson: Councils felt that clause 100 gives an unnecessary level of scrutiny to the Department and that revocation should be left to councils.

2713. Ms I Kennedy: This clause carries forward the Department's revocation powers. It is line with the revocation powers that the Department has in relation to planning permission and is part of its scrutiny role and oversight.

2714. The Chairperson: OK. Are there any comments? Content, gentlemen?

Members indicated assent.

2715. The Chairperson: No issues were raised in respect of clause 101. Are we content to move on, gentlemen?

Members indicated assent.

2716. The Chairperson: One organisation stressed the importance of clause 102. Other than that, no issues were raised. Are we content to move on?

Members indicated assent.

2717. The Chairperson: On clause 103, most respondents felt that the conservation area designation would be valuable where there are many significant trees of special interest in an area of multiple ownership that is not specifically under threat and, therefore, not a priority for a tree preservation order (TPO). They also wanted clarity on how the Department will designate a conservation area and on further provisions on conservation areas and listed buildings. Does the Department have anything to add?

2718. Ms I Kennedy: I have nothing further to add.

2719. Mr Kinahan: Again, will there be a need for the provision of arbitration?

2720. Ms I Kennedy: At this point, we do not anticipate a need for that. However, that might have to be looked at in the future.

2721. The Chairperson: OK. On clause 104, councils indicated that they will require powers to vary older orders. Does the Department wish to comment?

2722. Ms I Kennedy: It is important that the authority that makes a designation has the power to vary it.

2723. The Chairperson: Do you have any comments to make, gentlemen?

Members indicated assent.

2724. The Chairperson: Clause 105 deals with grants in relation to conservation areas. The provision of grants and loans was largely welcomed, but one group wanted the provision applied to trees of special interest in conservation areas. There was also concern that a requirement of DFP approval for each grant would be too restrictive.

2725. Ms I Kennedy: The current limited resources would be targeted more at the preservation of the built environment than at trees in conservation areas.

2726. The Chairperson: Do you have any questions, gentlemen? Are members content?

Members indicated assent.

2727. The Chairperson: Clause 106 deals with the application of chapter 1, etc, to land and works of councils. One organisation called for further consideration of the clause.

2728. Ms I Kennedy: This is a parallel clause to one that we discussed earlier about planning applications by councils. It allows regulations to be made to modify the provisions in the Bill dealing with a council making an application for listed building consent.

2729. The Chairperson: Are you content, gentlemen?

Members indicated assent.

2730. The Chairperson: Clause 107 deals with the requirement of hazardous substances consent. Councils are concerned about the additional capacity required to access specialist knowledge in relation to the clause.

2731. Ms I Kennedy: Resourcing will have to be considered for many of those specialised areas. Hazardous substances cases are few and far between.

2732. The Chairperson: Do you have any comments to make, gentlemen? No issues were raised about: clause 108, which deals with applications for hazardous substances consent; clause 109, which deals with determination of applications for hazardous substances consent; clause 110, which deals with grant of hazardous substances consent without compliance with conditions previously attached; clause 111, which deals with revocation or modification of hazardous substances consent; or clause 112, which deals with confirmation by the Department of section 111 orders. If we are content, we will move on.

Members indicated assent.

2733. The Chairperson: Clause 113 deals with the call-in of certain applications for hazardous substances consent to the Department. Respondents called for the circumstances of the use of the clause to be particularly described.

2734. Ms I Kennedy: That is a call-in power that is similar to the call-in for applications for planning permission and listed building consent applications. It is used only in exceptional circumstances and with the small number of hazardous substances consent applications, that would be a very rare occurrence.

2735. The Chairperson: Are you content, gentlemen?

Members indicated assent.

2736. The Chairperson: No issues were raised about clause 114, which deals with appeals, or clause 115, which deals with the effect of hazardous substances consent and change of control of land. If you are content, gentlemen, we will move on.

Members indicated assent.

2737. The Chairperson: Clause 116 deals with offences. Some respondents felt that a fine of £30,000 was insufficient as a deterrent and that imprisonment should be considered.

2738. Ms I Kennedy: That would have to be very carefully considered.

2739. The Chairperson: It would have to be very carefully considered.

2740. Ms I Kennedy: We did not bring that forward in the Bill, and only one representation suggests that.

2741. The Chairperson: Do members have any questions?

2742. Mr Kinahan: I would like to know that council's reasoning.

2743. Ms I Kennedy: I know that only one respondent suggested that consideration should be given to a potential penalty of imprisonment. I do not have any information about why or in what case or instance that would be appropriate.

2744. Mr McGlone: I wonder whether imprisonment would be a final recourse if people were fined and persistently did not pay their fine. That could be a matter for the courts, and there are people better informed than me to adjudicate on that.

2745. Mr Weir: I do not have particularly strong views on the issue, but, when considering the normal processes of criminal conviction, I found one thing strange. We are talking about something that could be at indictment level but has no option for imprisonment and carries a potential fine of £30,000. Offences that rule out a prison sentence generally tend to be pitched with a lower level of fine. Often, offences that carry high levels of fine have a correlation that at least gives the courts the option of imprisonment. I suspect that imprisonment would not be a frequent possibility, but I wonder about that.

2746. Mr B Wilson: Previously, we looked at the demolition of listed buildings, and there was a fine of £30,000 and, if necessary, an unlimited fine or prison sentence. The issue of hazardous waste is equally serious, and the potential penalty of imprisonment should be introduced.

2747. Ms I Kennedy: We have not consulted on that, obviously.

2748. Mr Stephen Gallagher (Department of the Environment): I do not believe that that is an option in other jurisdictions.

2749. Ms I Kennedy: It may not be.

2750. The Chairperson: Can you check that and come back to us, please?

2751. Ms I Kennedy: We can check that.

2752. The Chairperson: Clauses 117 to 119 deal with emergencies, health and safety requirements and applications by councils for hazardous substances consent. No issues were raised on those clauses, so we will move on.

2753. Clause 120 deals with planning permission to include appropriate provision for trees. I remind members that respondents largely welcomed the clause but warned of the need for resources to be able to access the specialist skills needed. Resources are dealt with under general issues, so, if members are content, we will deal with that at that time.

2754. Clause 121 deals with tree preservation orders (TPOs) and councils. I remind members that several issues were raised with that clause, including the need for substantial penalties, the provision for areas of trees to be protected by TPOs and the exclusion of exemptions for dead and dying trees. Other respondents were opposed to the removal of the provision to appeal to the PAC against a decision to designate a TPO, and councils were worried about the cost implications of the clause.

2755. Ms I Kennedy: We will be talking about costs as a wider issue. The focus of the current work programme of planning reform has been very much on the transfer of planning controls to councils, the overhaul of the development plan system and the development management approach. This phase of reform transfers responsibility for TPOs and tree protection to district councils, carrying over the existing powers in the 1991 Order. We have not proposed a radical or wholesale review of the tree protection regime. The Department will want to consider carefully some of the detailed points that have been raised in the submissions.

2756. The issue over the appeal to the PAC is simply a misunderstanding. Currently, there is no appeal to the PAC over the designation of a tree preservation order. However, there would be an appeal if someone were to apply for consent for works to a tree and that were refused.

2757. Mr Weir: I do not want to labour the point, because you will be coming back on some of the issues that have been raised. The Woodland Trust raised an issue about the complete exemption on dead and dying trees in clause 121(5). Again, you will be coming back to us with information. The provision in clause 121(5) may be black and white in that it states that under no circumstances could a TPO be retained for that. Could there be a more nuanced position that, for example, might indicate that a material consideration when granting a TPO may be the state of health of a tree or something of that nature? It may be that, nine times out of 10, we want to get rid of a dead or dying tree. Say, for the sake of argument, that a tree had a historic connection but you had no way of preserving it, could you take a nuanced position in that regard?

2758. Ms I Kennedy: When there is a proposal or desire to make a TPO, the trees are thoroughly reviewed and surveyed to assess their condition. That probably also picks up any cultural historic reasons why the trees are important. We need to look at those issues more widely.

2759. Mr B Wilson: TPOs concern me greatly. They were made on a number of trees, and I was told a few years later that the trees were dying or dead. However, as far as I could see, there was very little wrong with them. Such action is justified by consultants who contact the Department on behalf of developers. Does the legislation state that the person who says that trees are dead or dying should be independent, or can he or she be employed by a developer?

2760. Ms I Kennedy: There is nothing in the legislation that requires that, but those people may belong to a professional body. Any reports that arboriculturalists prepare for developers are scrutinised by staff in the Department who have expertise and qualifications in landscaping and tree issues.

2761. Mr B Wilson: When a developer wants to build on a site, it is very convenient that trees on that site suddenly develop some disease, even though they have been there for a couple of hundred years. I do not want the legislation to make it too easy for developers to get rid of trees.

2762. Mr Mullaney: I understand your point. As Irene said, the Department can have recourse to its own arboriculturalist, but perhaps the member means that that could be included in guidelines and practice as opposed to its being in legislation.

2763. Mr Kinahan: We need an arbitration system because many developments have been built carefully around the preservation of a tree and then, a few years later, people decide that a tree is blocking their light or that it is in a dangerous condition.

2764. Mr Mullaney: We touched on that point last week. It is incumbent on the planning authority to ensure that there is recourse to the necessary expertise to ensure that there is sufficient light and distance between trees and the built development to ensure that the trees are not subsequently removed. Therefore, it is incumbent on the planning authority, whether that be the council or the Department, to ensure that it receives the necessary advice at the outset to make a proper decision.

2765. Mr Kinahan: Can we put that in the Bill?

2766. Mr Mullaney: That is good practice, and I would have thought that it is a question of guidance and practice.

2767. The Chairperson: We would be grateful if you could come back to us on some issues.

2768. Clause 122 relates to provisional tree preservation orders. Are members content with clause 122?

Members indicated assent.

2769. The Chairperson: Clause 123 relates to the power for the Department to make tree preservation orders. I remind members that counsel felt that clause 123 was an unnecessary duplication of responsibility.

2770. Ms I Kennedy: Again, this is part of the Department's oversight role in that it retains the power, in exceptional circumstances, to designate a TPO.

2771. The Chairperson: That needs to be clearly stated in guidance or whatever.

2772. Clause 124 deals with the replacement of trees. I remind members that one respondent said that it would be more appropriate for offenders to be required to replace trees.

2773. Ms I Kennedy: It is important that landowners are involved in that. Obviously, they own the land on which the tree will be replaced.

2774. The Chairperson: Do members have any comments to make?

Members indicated assent.

2775. The Chairperson: Clause 125 deals with penalties for the contravention of tree preservation orders. I remind members that one respondent felt that there should be just one offence for any breach of tree preservation regulations to strengthen and rationalise the law.

2776. Ms I Kennedy: The current provision is drafted to provide some flexibility in dealing with a potentially wide range of contraventions of tree preservation orders. The Department wishes to look at this very carefully before it considers an amalgamation of the two offences. It will need to talk to its legal advisers.

2777. Mr Weir: I am happy enough with that response. However, is it not possible for the courts to interpret the seriousness of offences? Can the courts not impose sentences for a wide range of offences, from the maximum right down a more-or-less absolute discharge and take a minimalist approach? If it were codified as one offence, could there be flexibility in sentencing?

2778. Ms I Kennedy: Yes, I see how that could happen if the two offences were merged together. We will wish to talk to departmental solicitors on that point.

2779. The Chairperson: There are a couple of matters that you will come back to us on in relation to that.

2780. No issues were raised on clause 126, which deals with the preservation of trees in conservation areas. If members do not have any comments, we will move on.

Members indicated assent.

2781. The Chairperson: Clause 127 deals with the power to disapply section 126. I remind members that there was no support for clause 127.

2782. Ms I Kennedy: Clause 127 is carried forward from the 1991 Order. It provides flexibility for the management of trees in conservation areas. The Department sees it as being of some value.

2783. The Chairperson: Are members content with clause 127?

Members indicated assent.

2784. The Chairperson: Clause 128 deals with a review of mineral planning permissions. I remind members that respondents were concerned about how councils will access the specialist expertise required to deliver this function, which is currently located in the Planning Service, after planning functions have been devolved. They suggest that it should perhaps remain as a central departmental function.

2785. Ms I Kennedy: We touched on this area earlier. It is the review of old mineral planning permissions that may be on the books for some time. Resources are the issue. We need to discuss how best to handle such cases with the councils.

2786. Mr McGlone: There is a specialism at the centre, but it may be required once every four or five years in one council area and once every year in another, depending on the nature, topography and tradition of industry in the area. It is definitely an issue that requires an awful lot more thought. Not every council will require that resource regularly enough to need full-time staff to be employed in the area.

2787. Ms I Kennedy: The power will transfer to councils, but there needs to be a discussion about how that will be implemented. There may be an opportunity for councils to group together to look at various mechanisms for the delivery of those powers. Some councils may have more mineral sites than others and be better placed to manage it.

2788. The Chairperson: We need to look at that one again and come back to it.

2789. Clause 129 deals with control of advertisements. I remind members that councils called for flexibility in relation to controls on advertising.

2790. Ms I Kennedy: The control of advertisements is set out in the Department's planning policy statements and in its current regulations relating to advertisements, which it also wishes to update.

2791. Mr Kinahan: I am pleased that the Department is trying to tackle advertising at roundabouts. We need to link that to Roads Service and the police. The police cannot enforce regulations at certain roundabouts in certain areas where there are masses of parked trailers.

2792. The Chairperson: Are we content, gentlemen?

Members indicted assent.

2793. The Chairperson: There are two issues that we need to go back over. Clause 53 deals with aftercare conditions. Do such conditions also apply to landfill sites? We talked about quarries.

2794. Ms I Kennedy: Not in clause 53; similar conditions can attach that relate to aftercare administration.

2795. The Chairperson: Do you want to come back to us about whether we can amend that clause? Will that be incorporated?

2796. Ms I Kennedy: It would be incorporated into the previous clause, which allows conditions to be attached to any planning decision if they are considered appropriate and necessary.

2797. The Chairperson: I am looking for clarity on the community infrastructure levy (CIL). That is not intended to be in the Bill.

2798. Ms I Kennedy: It is not included in the Bill.

2799. The Chairperson: Have you considered bringing that to the Minister's attention?



2800. Ms I Kennedy: That issue needs to be discussed widely across the Executive, because it involves infrastructure from different Departments. That is our intended approach, but there is no provision in the current reform for a CIL.

2801. The Chairperson: Is it within the scope of the Bill?

2802. Ms I Kennedy: It is not within —

2803. The Chairperson: Is it possible?

2804. Ms I Kennedy: I suppose that anything —

2805. The Chairperson: I am asking only because we talked about developer contributions.

2806. Ms I Kennedy: It is a type of developer contribution.

2807. The Chairperson: I was simply seeking clarification. Do members wish to make any comments on those issues?

2808. Mr McGlone: The issue of simplified planning zones was dealt with earlier; I am sorry that I missed that discussion. Concerns have been raised by people who, with respect, have much more academic and practical expertise than any of us in the room. Professor Lloyd raised issues, as did another witness last week, about their effectiveness. They were tried in Britain but were described as a damp squib. Has the Department given any more thought to the practicality of the simplified planning zones? From what we are hearing, if it just a simple read-across — a cut and paste from elsewhere — there is not much point in replicating other people's failures.

2809. Mr Kerr: The approach to simplified planning zones differs from the approach taken in the 1991 Order. We have made a number of changes to try to improve the process. Nevertheless, as Mr McGlone rightly says, the provision has not been in general use here or in the other jurisdictions for a number of complex reasons. Much work and resources would be involved in putting a simplified planning zone into operation. In many respects, it can cut off the revenue from planning application fees, because there is no need to put in a planning application. There have been problems with the way in which schemes have operated, in some respects.

2810. Mr McGlone: From what I am hearing, are you having second thoughts about it?

2811. Mr Kerr: We believe that it is important that there is a provision for councils to be able to apply it to a small area and that they at least have the option to make use of it. It will be used only in certain circumstances, which will probably be limited.

2812. Mr McGlone: We are not going to repeat the errors of elsewhere; we are going to ignore them. That is how it seems.

2813. Mr Weir: We could make up our own.

2814. Mr McGlone: The issue has been raised by people who are well acknowledged in their field. In fact, the Department acknowledges people such as Greg Lloyd when he raises such issues. There was another guy there last week, but I cannot remember his name. He seemed to have a fair command of the issues from an architectural point of view and was representing that section of the industry. When people with a command of their brief start to raise issues about the effectiveness of a concept that has been introduced to a planning Bill, you tend to ask why it is there.

2815. Mr Kerr: It is not ineffective, and there have been simplified planning zones in the other jurisdictions. We have looked at some of those. Perhaps we can give you sight of where they have pulled them through in England and Wales.

2816. Our approach has been to try to see the local development plan as being the main tool that councils will use and to make that document much more up to date and receptive to the needs of the areas at a given time. In many ways, that was part of the original rationale for simplified planning zones. Originally, they were, perhaps, seen as a quick way to go in and do something in a local area. We hope that the way in which we have brought forward the local development plan will give councils an opportunity to go in, zone land and bring forward urgent policies for an area, if required. The need is there.

2817. Mr McGlone: I am being guided by the advice of people who have more experience than me in the formulation of policy.

2818. The Chairperson: Thank you for attending today's meeting. We will see you again on Thursday. Members, please wait for a minute, and we will have a chat about some amendments.

## 3 February 2011

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Trevor Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Mr Stephen Gallagher  
Ms Irene Kennedy  
Mr Peter Mullaney  
Ms Maggie Smith  
Department of the Environment

2819. The Chairperson (Mr Boylan): The Committee welcomes back officials from the Department of the Environment (DOE). We welcome Maggie Smith, Irene Kennedy, Stephen Gallagher and Peter Mullaney. I will start with Part 5 of the Bill, which deals with enforcement. We will begin with clause 130, which concerns expressions that are used in connection with enforcement.

2820. Although the clause was generally welcomed, councils stressed the need for adequate resources. I know that that issue has already raised its head, and we may touch on it later when we discuss general issues. However, could we highlight resources that are specific to the enforcement provisions? Will the Department indicate its intentions on that, please? I know that we are talking about resources in general, but resources for enforcement are a key element of what we have seen has happened on the ground.

2821. Mr Peter Mullaney (Department of the Environment): We touched on the issue last week. Clearly, enforcement is a demand-led activity, and it is not possible to say just how many

breaches of planning control there will be. Therefore, it is always more difficult to allocate an appropriate level of resources, because it depends on the area and the nature of the breaches. Planning Service has a dedicated enforcement team in each of its divisional offices. When powers pass to councils, it will be for each council to determine the level of resource that it chooses to dedicate to enforcement activity.

2822. The Chairperson: Anyone who has been a councillor will be well aware of the enforcement issues. We want to hand down a piece of legislation that equips councils to deal with all aspects of planning control, and enforcement is one of the key elements of that. I know that there are a lot of retrospective cases at the moment, but we have to draw the line at some point. It is a key element for councils.

2823. Mr Kinahan: I have a more general point to make about resources. No one knows what resources they will need. I know that you said that the system is market-led, but I think that we need to provide guidance to councils that will allow them to determine the amount of resources that they need, even if an average is suggested. Everyone is working in a vacuum at the moment, and a little bit more detailed guidance is required.

2824. Ms Maggie Smith (Department of the Environment): That is a useful point, because it underlines the need for an effective relationship between the Department and the councils as we move towards the transfer of powers. As Peter said, resources are already being put into every section of what will become the area planning offices. Ultimately, the councils will have to decide for themselves how they are going to deploy those resources. Through the pilot projects, from April 2010 until the day of the transfer of functions, the Department and the councils will increasingly be working together. That is when the councils will be able to start thinking in a practical way about first, the demands that will be placed on the new planning service, which is coming to them, and secondly, how they will manage it.

2825. Mr B Wilson: As far as I am concerned, enforcement is the weak link in planning control. Resources are never given to enforcement. I declare an interest as a north Down councillor. One officer in North Down Borough Council is dealing with 150 cases, but it takes two years for a decision to be made on an individual case. By that time, the issue is long gone, and, in many cases, it has become a fait accompli. The problem in handing over responsibility for enforcement to the councils is that, at present, virtually no one is involved in any enforcement activity. Therefore, if a council makes a conscious decision to implement enforcement, it will have to take on a lot more staff to do it effectively.

2826. Ms Smith: I cannot comment on what is happening in a particular council area, but I think that you are saying that there may be a situation where a council would put more emphasis on enforcement than it is doing in a particular area at the moment. That point underscores the importance of transferring powers to councils, because it means that they can ensure that resources and powers are deployed in a way that is satisfactory to councils and the local community.

2827. Mr B Wilson: The point that I am making is that those commitments cannot be met within existing resources. There is a problem with funding from fees, because it determines the number of enforcement officers that councils can afford to employ and the way that those officers are deployed. Enforcement is a Cinderella issue as far as the Planning Service is concerned.

2828. Ms Smith: When the powers transfer to councils, they will have latitude in how they employ their resources.

2829. Mr Mullaney: As I mentioned last week, in such situations, irrespective of what level of resource is dedicated to enforcement, priorities have to be considered. As it is an unknown, and

as some types of cases are very serious and others less so, it will always be a case of prioritising enforcement activity. The Department, through its planning policy statements (PPS) and enforcement strategy, has already laid out what it considers to be the cases that require most active consideration. Ultimately, the case that is given highest priority will require action. There are two levels. The first is the actual amount of activity, and the second looks at ways that resources can be used most effectively in that activity.

2830. Mr B Wilson: There is considerable concern among councillors and the public that enforcement does not happen. Councils will be able to allocate extra resources to that when they take over, but there is certainly frustration at the present time.

2831. The Chairperson: Mr Clarke, did you want to ask a question?

2832. Mr T Clarke: The point that I wanted to make has been covered.

2833. Mr McGlone: It would be useful if we were informed about two points. We heard from the Planning Service that staff who were underused because of the drop in planning applications were being shifted to the enforcement division. It may be useful to get a handle on how many were shifted to enforcement.

2834. Secondly, how much do the legal costs and the implications of taking a case further down the line to the courts weigh as a decision-making factor in enforcement? In other words, the Planning Service may accrue fairly substantial bills every year through any legal action that it takes on enforcement. It will win some and lose others, and costs could be awarded one way or the other. Is there a pattern of increased non-redeemable costs for the Planning Service and the Department? What we were being told about extra resources going into enforcement does not seem to be the case in practice. Are other factors at work that we are not privy to at this stage? I am not asking you for that information now, Maggie. I would not expect you to have it now.

2835. Ms Smith: I was going to say that I do not have that information now.

2836. The Chairperson: We will try to acquire that information.

2837. Mr T Clarke: There is probably always a grey area with enforcement. What is the legal position with the enforcement section? Is it a statutory requirement to have an enforcement department?

2838. Mr Mullaney: Clearly, the Planning Bill will give enforcement powers to the planning authority. To date, the Department's policy stance has been that it will pursue enforcement; indeed, it is an important way of ensuring that the planning system works as effectively as possible. Therefore, those powers are available. The legislation says that the Department or the council, as will be the case, can pursue enforcement in any case that it considers it expedient to do so. Therefore, an assessment has to be made in every single case of whether to pursue and in what way. It is quite clear that that power exists, and our policy stance has been that we will exercise it.

2839. Mr T Clarke: I would like to tease out something that Patsy asked about. Peter talked about expediency. Does the Department keep a record of the number of cases that it did not pursue after enforcement action was taken? That information would be useful in giving us a flavour of the number of cases that the Department takes through the process but then decides are either not expedient to pursue or it gives up on.

2840. That would show us how useful or, in some cases, not useful the enforcement has been.

2841. Mr Mullaney: We do have records. I am not sure whether they are held in precisely that form. We will endeavour to supply whatever information or statistics we have.

2842. The Chairperson: Before we go on to the next clause, I refer members to the black files on the table, which contain the Department's responses. Mr Weir can help out Mr Clarke when he pays attention.

2843. Mr Weir: I think that Mr McGlone is in the same boat.

2844. The Chairperson: Mr McGlone is in the same boat, yes. It is the black files, as opposed to today's papers, that contain the Department's responses to these questions.

2845. On clause 131, several submissions were generally supportive but wanted more detail on the four-year rule for single dwellings and a definition of "substantially completed".

2846. Mr Mullaney: We are not quite sure about the first issue, because the implication is that the time period should be lengthened. However, that would effectively disadvantage the householder. At present, there is a four-year limit. Therefore, that would seem to be counterproductive, and we are not sure what the purpose of that submission is.

2847. The Chairperson: OK, just to clarify: the four-year rule and the 10-year rule are in primary legislation and cannot be changed in terms of change of use and in terms of the four years you can enforce; the four-year rule in terms of a building may not be established for four years.

2848. Mr Mullaney: That is correct.

2849. The Chairperson: Many councillors know from experience that enforcement depends on whether agreement is reached on the use of that building. After those four years, it could sit idle. Although they mention single dwellings, it is buildings per se.

2850. Mr Mullaney: On the precise point of the single dwelling, the limitation, basically, if somebody is living in the house is whether it is reasonable, after four years, to take action against that occupier. That is where we were not sure: it seemed counterproductive.

2851. On the "substantially completed" point, it is worth mentioning that, quite clearly, this is a Planning Bill — primary legislation. We have also referred to subordinate legislation, guidance and so on. However, case law is also a key component of planning, whether established through the courts or the appeals mechanism. There have been cases concerning what is "substantially completed". In effect, it is a question of fact and degree. The one thing that emerges is that each case must be judged on its merits, so what is "substantially completed" in one case may not apply in another. It is difficult to give a watertight definition.

2852. The Chairperson: That is fine, so long as it is consistent across the divisions.

2853. Mr Mullaney: Yes, absolutely. In case law it often emerges that what appear to be identical cases are not. They may be similar but not identical, and then we have to look at the precise circumstances of each case.

2854. The Chairperson: If I hear "on its own merits" once again, I may come back and reword that. Are there any questions?

2855. Mr T Clarke: Clause 131(3) refers to 10 years.

2856. The Chairperson: That is the 10-year rule for business use; that is in primary legislation.

2857. Mr Mullaney: Yes, that is for changes of use.

2858. The Chairperson: The major problem for councils is that six-year gap between four and 10 years. That is always —

2859. Mr T Clarke: Why not make them both four?

2860. The Chairperson: I think that we suggested that one other day. However, it is in primary legislation. To change it, we would have to go down a different route.

2861. Mr Mullaney: It is something that, again, is in the current legislation. There is a history about why there was change originally. However, it allows the Department that additional opportunity after four years. If both were four years, all enforcement activity would have to be effective within that period. In a sense, if you are looking to strengthen the enforcement provision, that would have the opposite effect. It would weaken it by shortening the period in which the planning authority could take enforcement action.

2862. The Chairperson: Can we change the provision to four years now?

2863. Mr Mullaney: We do not wish to go down that route.

2864. Mr T Clarke: The Department's defence is that that would weaken its hand, but it is despicable if it takes the Department to take nine and a half years to detect that somebody has an unlawful business. If enforcement has been successful until now, surely four years would be adequate, particularly for a commercial business as opposed to a residential property. Surely it is a good idea to bring the two in line to prevent any confusion. The Committee should look at four years for both.

2865. Mr Mullaney: Bear in mind that it is not necessarily from when the Department becomes aware of it.

2866. Mr McGlone: Can you expand on why the Department does not want to go that way?

2867. Mr Mullaney: Effectively, it would lead to a diminution or weakening of the enforcement powers that are available to the planning authority, whether the Department or councils. There are cases that take some time to reach a conclusion, plus the fact that we may not be aware of them from the outset. The clock is ticking.

2868. Mr McGlone: In the cases that I normally deal with, the clock is ticking from the time it is acknowledged to be a breach or non-compliant with planning regulations.

2869. Mr Mullaney: Yes, when the breach —

2870. Mr McGlone: It must take you an awful long time.

2871. Mr Mullaney: When the breach first occurs.

2872. Mr McGlone: As acknowledged in the evidence that you have accumulated and has been detected. Why, then, are you saying that it takes so long?

2873. Mr Mullaney: Certain cases take a long time to come to fruition.

2874. Mr McGlone: It does not matter how long it takes to come to fruition; it is either —

2875. Mr Mullaney: I should have said conclusion.

2876. Mr McGlone: Or conclusion, determination or whatever you want to call it. It does not matter; it is from when it is detected, and the evidence is rolled back from the time of detection in any appeals that I have attended or any cases that I have dealt with through the good offices of the Planning Service.

2877. Mr T Clarke: Clause 131 states:

“beginning with the date of the breach”.

2878. Mr Mullaney: Yes, it is the breach.

2879. Mr T Clarke: It is not the conclusion.

2880. Mr Mullaney: No, it is the breach.

2881. Mr T Clarke: If you detect the breach within three years and nine months, as opposed to nine years and nine months, it should make you more efficient. You should never wait eight or nine years. Do you agree, Patsy?

2882. Mr McGlone: Yes.

2883. Mr T Clarke: If we had successful and useful enforcement at the moment, it would certainly happen within four years. Therefore, provided you start action within four years, should it take three years to bring a case to conclusion in court and get the breach stopped, that breach will have taken place within the four-year period. You are still within your rights. It has not weakened you.

2884. Mr Mullaney: As with the current legislation, the proposed legislation applies from when the breach occurred.

2885. Mr T Clarke: Yes.

2886. Mr McGlone: Yes, but not to bring it to a conclusion. It is retrospective; it is the determination of the evidence retrospectively from when the breach occurs, be that four years or 10 years from the point of detection, if you want to call it that.

2887. Mr Mullaney: It is from when the breach occurs, but the detection may be some period after that.

2888. Mr McGlone: Absolutely, but it is for the person to prove how long that application —

2889. Mr Mullaney: Yes.

2890. Mr McGlone: In other words, when a person is caught allegedly in breach of planning law, it is for them to prove retrospectively either the four or 10 years.

2891. Mr Mullaney: That is correct, yes. Well, the onus —

2892. Mr McGlone: It is not taken into consideration whether they spin it out for two, four or five years from the date of detection. In my experience, that is not the way it works. It is for the person to prove backwards from the date of detection, not the date of determination.

2893. Mr Mullaney: No, it is not from detection, it is from when the breach occurs.

2894. Mr McGlone: Or when the breach occurs, as determined by them. It could well be that both are the same.

2895. Mr Mullaney: It could be, but the point is that a considerable period could elapse between the breach occurring and detection.

2896. Mr McGlone: Yes. That could be four years or 10 years, depending on whether it is a dwelling or a business. If it is more than that, you are out of the frame anyway.

2897. Mr Mullaney: Yes. The general point is that if everything were to be limited to four years, there would be instances, particularly for change of use, where that activity would be immune from potential enforcement.

2898. Mr McGlone: That goes back to your point, Trevor.

2899. Mr T Clarke: What have you been doing for the six years prior to that? If you need a safeguard of 10 years, what were you doing for the six years preceding four to 10, or from nought to 10?

2900. Mr Mullaney: The point is that it is not necessarily from day one. The breach may have occurred some time previously to its becoming apparent.

2901. Mr McGlone: Absolutely, and if it is some time previously, either four years, in the case of a dwelling, or 10 in the case of a business, then there is nothing you can do about it anyway.

2902. Mr Mullaney: Absolutely.

2903. Mr T Clarke: If you line the two up and make it less confusing by giving them both four years, a business could be operating there for almost four years. Surely that would be a reasonable amount of time for the Department to —

2904. Mr McGlone: It should be more detectable than a house.

2905. Mr T Clarke: Yes, they should be.

2906. Mr Mullaney: If we can pass without having a hand to that evidence showing why the 10-year rule was introduced, that is not necessarily the case, and it would be a weakening of the enforcement system. The categories are quite clearly defined in the Bill, whether it be a dwelling or a change of use or whatever, as are the four-year or 10-year rules that apply to each, or vice versa. There is no confusion in the Bill as to what is applicable in each instance, whether it is four years, 10 years or any other period. It is a continuation of the existing legislation.

2907. Mr McGlone: We know that, but we are the ones who are trying to live with it and some of its shortcomings.

2908. Mr Mullaney: But the shortcomings could be even greater; there may be cases between the four years and the 10 years that would become immune from enforcement activity. If the



purpose of the Bill, or the general wish, is to strengthen the enforcement regime, that would be going in the opposite direction.

2909. Mr McGlone: The reason for that, to be frank, goes back to the problem of enforcement that we highlighted earlier. That is not the fault of the legislation; it is the inadequacies and shortcomings of enforcement and of detection.

2910. Mr Mullaney: It is clearly a resource issue, but there is also the fact that it is timed from the breach. It does not necessarily follow that it is all about resources. Breaches can have occurred some time before they are detected.

2911. Mr McGlone: I know that. We could talk in circles about that.

2912. The Chairperson: To be honest, I think that we have given it a fair wind. It is down to enforcement, but checks are needed as well in the form of the four-year and 10-year rules. We will discuss that under resource issues. Only for the receipts being down and the situation in planning, we would not have detected as many breaches over the past couple of years.

2913. Mr T Clarke: Can we consider the four years?

2914. The Chairperson: It is up to the Committee to decide.

2915. Mr T Clarke: Can we put that down for consideration?

2916. The Chairperson: Yes.

2917. No specific issues were raised in relation to clause 132. One council wanted more time to respond, but a lot more councils could have taken more time to respond. Do members have any questions about clause 132? OK.

2918. On clause 133, local government suggested that a level 3 fine is too low for non-compliance with a contravention notice and that it should be set at level 5.

2919. Mr Mullaney: The Department considers that to be an adequate level. We can agree to differ, but we feel that it was adequate.

2920. Mr T Clarke: Which one is that?

2921. The Chairperson: That is clause 133, penalties for non-compliance with planning contravention notices. Local government views the level 3 fine as too low for non-compliance, and —

2922. Mr Weir: For clarification, Chairperson, what do level 3 and level 5 fines amount to?

2923. Ms Smith: A level 3 fine is £400 to £1,000. A level 5 fine is £2,000 to £5,000. Sorry, those are the increased tariffs.

2924. Ms Irene Kennedy (Department of the Environment): A level 3 fine is £1,000 and a level 5 is £5,000.

2925. Mr Weir: Are those on the basis of fines not exceeding those amounts? If so, it strikes me that a level 5 fine would not be excessive. I am concerned on a broader level. At times, we have all seen a degree of frustration in planning when someone has more or less just disregarded

things. To be brutally honest, even a £5,000 fine may not overly trouble them. The argument for keeping it at level 3 does not seem all that strong.

2926. Mr T Clarke: The Department may think that level 3 is suitable, but we are considering giving this to local government, which will have to try to fund this, and it is suggesting that it would be more satisfied with level 5. Is that not a good reason anyway? Local government will have to administer the planning system and will have to cover its own costs.

2927. The Chairperson: To be honest, I think that, in some cases, certainly the level of fine, I mean —

2928. Mr Weir: The other thing is that developers or people of that nature may sometimes have reasonably deep pockets. By the same token, some people may obtain legal aid, not because they are short of money but what they have put down on paper. In my neck of the woods, we have a notorious case involving the enforcement of the smoking ban in a situation where we had no alternative other than doing that. Even though we have been completely right and been vindicated every time it has gone to court, it still ended up costing the council a brave bit of money because the person concerned was officially on legal aid. I suspect that he had a lot more resources than he was letting on. If the fine is kept at level 3, we could, broadly, end up with a situation in which people more or less feel that they can flout the thing in the knowledge that it will probably cost the council more than it is worth to pursue it. To act as a wee bit of a deterrent, it needs teeth.

2929. The Chairperson: It is part of enforcement to ensure that they comply.

2930. Mr Mullaney: Clause 133 relates to a contravention notice, which requests information, rather than an enforcement notice.

2931. Mr Weir: I appreciate that, but in terms of pushing this, I suspect that if somebody has failed to do something through a slight oversight, I cannot imagine there being a rush to prosecute anyway. This will be where there is a flagrant breach. Simply having a maximum fine does not prevent the courts from looking at the situation and deciding that there was a technical breach for which it will impose a £50 fine or whatever. However, it at least gives the option of imposing a sanction or penalty on those who are deliberately obstructive.

2932. The Chairperson: Maybe we will look at the wording of an amendment in relation to that. Are you happy enough?

2933. Mr T Clarke: Unless the Department itself wants to do that.

2934. Ms Smith: We will take it back to the Minister for his view.

2935. Mr T Clarke: That would be easier than us trying to make a lot of amendments.

2936. The Chairperson: No, I do not think that we will make too many.

2937. Mr T Clarke: I am just suggesting —

2938. The Chairperson: No, that is fine. If the Department is willing to —

2939. Mr T Clarke: If not, then we can do it, Chairman.

2940. The Chairperson: OK. Are members happy enough with that?

Members indicated assent.

2941. The Chairperson: Originally, no issues were raised about clauses 134 to 136, but, as members can see, the south Belfast residents have e-mailed today to raise the issue of how we strengthen that, which I think we need to look at. I know that we are giving powers to councils, but how will we get residents involved? They made a point about what is going on and the non-compliance that is taking place in conservation areas.

2942. Mr T Clarke: I agree with their submission. That would capture a situation where a developer has conditions added to his permission under which he must carry out various functions before he starts his development. Eventually, people in the locality are satisfied, provided that all of the conditions are met, but, invariably, what we see is that the developer goes ahead with his development anyway, giving a two-fingered salute to the Department, which says that there is not much that it can do. If the Department could invoke a stop notice at that stage, it would prevent such a situation. If we are serious about handing over good legislation to local councils, a stop notice would be a useful tool in those instances.

2943. Mr Mullaney: The legislation provides for that; it provides for temporary stop notices. I suspect that the issue is with the circumstances in which they are applied — or not applied, as the case may be. Clearly, it is important to have those provisions, and it will be incumbent on each planning authority to determine the circumstances in which a stop notice should be served, if it considers that to be appropriate.

2944. The Chairperson: How do we strengthen it, Peter? It is all right saying that we are putting it in, but we need to look at it in statute. We have heard complaints about what is going on. That said, it is not a case of someone walking past a development and being selective by picking out certain things. We are saying that we need to get the process right from the start.

2945. Mr Mullaney: The process is there in the Bill, but it is worth pointing out that, in certain circumstances, there are potential compensation implications to serving a stop notice. Any planning authority will have to look carefully at whether it is appropriate to do so. The point is that the provisions are there and are available, but the concern or the issue is over when they should be applied or not applied.

2946. The Chairperson: Exactly, and it is all about non-compliance and who checks each phase, as Mr Clarke said, from start to finish. Someone might realise midway through the process or at the end of it that they have not complied. How do we ensure that the legislation covers that? You are saying that it is sufficiently robust.

2947. Mr Mullaney: Yes, because this is a temporary stop notice. A stop notice has to be served on foot as an enforcement notice, but a temporary stop notice allows it to be served for 28 days to hold the fort, if you like, without recourse to an enforcement notice. It is quite clear that an enforcement notice is a legal process that takes some time, while a temporary stop notice holds the fort, albeit only for a limited period. We contend that we are putting the provisions in place to allow that to happen, and it is for each planning authority to determine when it wants to apply those provisions.

2948. The Chairperson: That is the problem with the process: how do you go about initiating it? You are saying that it is sufficiently robust.

2949. Mr Mullaney: Yes. It is for each planning authority to determine whether it wants to invoke those powers.

2950. The Chairperson: There is inconsistency across the planning divisions at the minute. That is the problem.

2951. Mr Mullaney: Without wanting to go back to the mantra of each on its merits, each circumstance must be looked at carefully. The temporary stop notice gives the facility to act quickly if it is deemed appropriate to do so.

2952. The Chairperson: We may look at that again. The south Belfast residents wrote to us, and we may get more information in relation to this. I take your word that the legislation is robust enough, but we may look into it to ensure that.

2953. Mr T Clarke: Some statistics on how many stop notices have been issued would be useful.

2954. Mr Mullaney: Statistics on the numbers of stop notices issued are available. I stand open to contradiction, but we should have that information.

2955. The Chairperson: In relation to clause 137, one submission suggested that provision should be made for an alternative arrangement for service in the event that relevant parties cannot be located. Has the Department any comments on clause 137?

2956. Mr Mullaney: I am not sure exactly what was intended here, but it is worth bearing in mind that an enforcement notice is a legal document and a legal process that seeks a remedy. If that remedy is not provided, there are potential legal consequences for all the interested parties, and, that being the case, all of those interested parties should be involved. I am not sure what the alternatives are.

2957. The Chairperson: We need further clarification on that, and then we will get you to respond again.

2958. Mr Mullaney: We are quite clear about what needs to be done. I am not entirely sure what the alternative arrangements are.

2959. The Chairperson: It is about how, in the absence of people, a notice will be served.

2960. Mr Mullaney: That presents a potential difficulty, but the point that I am making is that it is a legal process. Everybody who is involved has a potential legal consequence out of it and needs to be served a notice or involved in the legal process. It is not an optional extra. If you are liable for action, you are liable for action.

2961. The Chairperson: We are talking about how it will be done in their absence and how long the process will take. Whoever you are serving the notice on might not receive it for a period of time. When we go through that process, we need to tighten up on that. They are asking whether there are other ways of achieving that. I know that it is a difficult issue.

2962. Mr Mullaney: We have a number of methods. The notice can be served in person or by recorded delivery. We acknowledge that there have been instances when this has been a difficulty; there is no doubt about that. However, I am not sure that there is any feasible alternative.

2963. The Chairperson: It is a valid issue that has been raised.

2964. Mr Mullaney: It is a valid issue, but I am not sure whether there is another way of doing it.

2965. The Chairperson: Any questions, gentlemen? OK, clause 138.

2966. Mr Mullaney: Again, this is the oversight powers. We have touched on this generally. There may well be occasions when the Department will have to have recourse to legal action, and clause 138 provides for that.

2967. The Chairperson: Content, gentlemen?

Members indicated assent.

2968. The Chairperson: No issues were raised in relation to clause 139, so I will move on to clause 140. Respondents wanted clarification on whether a council could vary or withdraw only enforcement notices issued by that council. It was also suggested that the function should be the responsibility of a single authority.

2969. Mr Mullaney: Again, it flows on from my previous comments. If the Department is to have the ability and power within the Bill, then it flows that the Department also has the power to vary or withdraw a notice.

2970. The Chairperson: The problem relates to when we transfer the powers down. There will be a transition period and a trial and error period. We are going by examples of how we operate now, but it will be new to each local authority. They are concerned about how the process will roll out and what obstacles they will meet.

2971. Mr Mullaney: This is similar to what we have said in terms of the guidance and practice of other areas of planning. It is sensible for there to be discussion between the Department and councils, and whatever guidance is necessary can be issued.

2972. The Chairperson: We will be relying a lot on guidance and subordinate legislation. Content, gentlemen?

Members indicated assent.

2973. The Chairperson: Clause 141 was supported, but it was suggested that the function should be a responsibility of a single authority.

2974. Mr Mullaney: We have just covered that point.

2975. The Chairperson: Yes. It is the same thing. Are members content?

Members indicated assent.

2976. The Chairperson: The issue of the third party rights of appeal was raised in relation to clause 142. That will be considered at a later stage.

2977. Mr Mullaney: Enforcement action — the serving of an enforcement notice — is a legal document and process. There is a right of appeal if the recipient of a notice chooses to exercise it, at present through the Planning Appeals Commission. They advertise enforcement appeals, and, as far as I am aware, third parties are allowed to participate if they give due notice.

2978. Therefore, there is a difference. This is a legal process, and somebody could end up in the courts and be fined. There is a point in saying that the first party in the case has certain rights, but third parties have an opportunity to participate in the process.

2979. Mr T Clarke: Perhaps I am confused, but is it not more the case that third-party objectors have a right to appeal against a planning approval decision as opposed to against an enforcement notice?

2980. Mr Mullaney: That is correct.

2981. The Chairperson: Obviously, that was a personal comment, but it was raised in connection with this clause. We are dealing with that issue, but it is not specific to the clause. That was a valid point, Mr Clarke. Are members content?

Members indicated assent.

2982. The Chairperson: We move now to clause 143, which deals with general supplementary provisions in appeals against enforcement notices. It was suggested that the involvement of the Department and councils under this clause was unnecessary and potentially confusing.

2983. Mr Mullaney: We covered that point about the oversight rule. However, the point is that if the Department chooses to exercise that power, it is required to consult the council before doing so.

2984. The Chairperson: OK. Thank you very much. Clause 144 deals with supplementary provisions relating to planning permission in appeals against enforcement notices. No issues were raised about the clause.

2985. Clause 145 concerns the execution and cost of works required by enforcement notice. Again, that relates to the confusion.

2986. Mr Mullaney: Yes, that is the same point about the same issue.

2987. The Chairperson: No issues, other than the need for more time, were raised about clause 146, which deals with an offence where enforcement notice has not been complied with, or clause 147, which concerns the effect of planning permission and so forth on enforcement or a breach of condition notice.

2988. Mr Dallat: Is there any protection against people who wilfully report others for breaches of planning laws? That situation usually involves two people who live up a lane falling out over something. As a consequence, claims are made that development has taken place outside the law and so forth. That puts people to enormous inconvenience. Is there anything in the law to ensure that enforcement officers check the facts and do not simply churn out letters pronouncing people guilty before they have even been to the place in question?

2989. Mr Mullaney: There is nothing in legislation. However, in practice and in common sense, the Department at present, and the planning authority in future, would be required to investigate the circumstances of each case and satisfy itself on the available evidence, or obtain further evidence if that evidence were not immediately available. It would then determine, first of all, whether there had been a breach of planning control. Mr Dallat is quite right to say that there are instances when matters are reported as alleged breaches when they are not.

2990. That is the first thing that the planning authority would be required to determine, and it would then assess the circumstances from that. Although we may get vexatious or wilful complaints, those are not taken at face value. It is incumbent on the planning authority to investigate them.

2991. The Chairperson: That is part of the problem. That was a very valid point. Somebody can make a telephone call that creates serious problems. I am by no means defending that. I am not talking about the planning application itself or the building or whatever it may be. However, those people certainly have no rights when it comes to being reported. If we ask the question, even as public representatives, nothing is said. We basically cannot give a response to people.

2992. Mr Mullaney: The Department, and any planning authority in these jurisdictions, clearly has to satisfy itself about cases. It is incumbent on it as a public authority to investigate cases.

2993. It also has to satisfy itself that there has been a planning breach, and it then has to ascertain the nature of that breach. Clearly, there are cases where complaints are made, but there has been no breach, or planning permission has been granted or whatever the case may be.

2994. Mr Dallat: I do not want to delay things, because time is valuable to the Committee. We have spent a lot of time going through the Bill. I would like to think that, at the end of the process, there would be some improvements in how planning is handled. This is one issue that puts people to enormous trial and tribulation. People who have never been in trouble with the law and have never been threatened with prosecution in their lives may be affected. Some mad hatter may move in up the lane, and he has not just the Planning Service, but everyone else, upset. He is even saving the worms. If we miss opportunities now to get decent planning that protects everybody, why should a planning application not just be rubber stamped and sent on, rather than people having to listen to a whole plethora of reasons why the planners cannot act? We should also remember that the planners were recently judged to be not fit for purpose.

2995. Mr Weir: I do not want to get involved too much in the wider debate, because we obviously have to scrutinise this piece of legislation. However, I understand that we have all come across situations in planning where people make vexatious complaints. My point is that sometimes, in dealing with "mad hatters", as John called them, legislation cannot solve the problem. The issue may be more about administrative processes or whatever, but there may not be an answer in what is down in black and white in legislation. We need to bear that in mind as well.

2996. Mr Mullaney: The point is that people cannot be prevented from complaining if they choose to do so.

2997. The Chairperson: I understand that.

2998. Mr Weir: They can always ring 'The Stephen Nolan Show'.

2999. The Chairperson: The biggest show in the country.

3000. Mr Dallat: Can we incorporate that?

3001. Mr Weir: If there is an amendment.

3002. The Chairperson: It is an issue and a valid point. Unfortunately, we have all experienced that situation, with people making phone calls and so on. Perhaps the Committee will look at that again.

3003. We will move on to clause 148, which concerns enforcement notices having effect against subsequent development.

3004. Mr Mullaney: This is a point that we discussed previously about the level of fines. We consider them to be adequate, although we note that it was requested that further consideration be given to them.

3005. The Chairperson: We have dealt with clause 148; we have only another 100 left to consider.

3006. Mr T Clarke: Could levels of fines not come under clause 147 as well? Does it not come under the clause that we discussed earlier, where a developer goes ahead without meeting the conditions? Is there adequate provision in the Bill to make it less attractive to do that? As John said, we want a piece of legislation that is going to be good. Although I agree with Peter on that point, developers have flouted the law, because they know that there are so many loopholes and they can go ahead and do things. There has been a problem with larger developers not meeting the conditions and coming along at the end to tidy those things up. It is clear in the conditions that they should be met before the start of the development. Surely that would be a breach of a condition notice.

3007. Mr Mullaney: As I understand, that is a level 5 fine, which is £5,000. Previously, it was a level 3 fine, so it was only £1,000.

3008. Mr T Clarke: Is a level 5 fine sufficient deterrent for someone who is building 60 or 70 houses?

3009. The Chairperson: We are going to raise the other issue of consideration to a level 5 fine. It is up to the Committee.

3010. Mr T Clarke: We want a deterrent. When a developer gets approval, we want him to meet the conditions. I would like to give Patsy an example. I got a letter today about a small development from the enforcement people. The developer got permission to build three houses, albeit that it was only three houses in someone's back garden. The condition was that he remove the wall. It is not expedient for the Planning Service to enforce such conditions. Therefore, the developer got his three houses passed and sold, yet it is not expedient for the Planning Service to enforce the condition for removal of the wall. That is a breach of a planning condition. If there had been a reasonable fine, however, the developer might have decided that it would be cheaper for him to have the wall taken down.

3011. In such a case, where a developer has flouted the rules, a fine of even £2,000 or £3,000 would have been pretty cheap, given the size of that wall. I think that there has to be a punishment that fits the crime.

3012. I know that you do not want us to be specific, Chairperson, but planning permission would not have been granted in that case if the wall could not have been removed. However, the developer said that he would build and sell his houses, and three people are coming to us complaining that they cannot even get visibility to get out. The Planning Service says that it is not expedient to enforce the condition. However, that was a breach of a condition, and there should be a fine to fit the crime.

3013. The Chairperson: Will you take that to the Minister so that he can have a look at it?

3014. Ms Smith: Yes.



3015. Mr Dallat: I had a case recently when a developer was to plant trees on a bit of open space. Not only did he not plant the trees, but, thanks to a later change in planning policy, he has built more houses on the open space. That is a serious point.

3016. Mr McGlone: I have been told on occasion that when the Planning Service first becomes aware of someone having gone ahead with a development in breach of the conditions of the existing planning approval, it notifies the Council of Mortgage Lenders. However, there is clearly an issue about the competence of the solicitor who was acting on behalf of the person purchasing the house.

3017. Mr T Clarke: The problem, Patsy, is that it takes the Planning Service nearly 10 years to get a list of businesses in the countryside. That is how developers can get developments up and running after a couple of years and houses all sold off before the Planning Service realises what has happened. Do you know about that wee loophole that they have always used?

3018. The Chairperson: In the absence of anybody checking exactly whether they have complied, a fine would act as a deterrent. We are asking whether the amount of the fine can be increased. Once the plans are approved, that is it, it is out the door, but who checks it? Obviously, the building regulations are checked, but there are no checks or balances on whether the development complied with the approval certificate or the conditions.

3019. Mr Mullaney: Again, that obviously comes down to resources. Once councils assume planning powers, however, they will also have the powers of building control, environmental health and so on. Therefore, they would have an opportunity to co-ordinate their inspection regime. If a council chose to put more staff into enforcement to look at potential breach of conditions or the implementation of conditions, they would also have the resource of building control and other departments that they may wish to use to co-ordinate their inspection regime.

3020. The Chairperson: That sounds fine on paper. In reality, however, there are no checks, although you mentioned building control. I heard of a case in a conservation area when a conservation officer indicated that a certain design for a development should not be allowed. He was overruled by the Planning Service. How much weight will you put on that?

3021. Generally speaking, the planning approval is stamped and out the door, but we are asking about who ensures that the conditions are complied with. A reasonable fine will act as a deterrent to ensure that the conditions are complied with. That is all we are asking. It is all right saying that it is on paper and that the council's building control should do this or that, but that generally does not happen.

3022. Mr Mullaney: I am not saying that that measure is a panacea. However, I am saying that that is one mechanism that could result in earlier detection, which is a point that Mr McGlone made.

3023. Mr T Clarke: I agree with the point about marrying those together. What that does not prevent is the situation where a developer unlawfully starts a development and has the majority of his houses sold off.

3024. If we think back to the example I gave, it has been brought to Planning Service's attention. The fine is inadequate as it is. Even if the fine is applied in this case, it will still be cheaper for the developer to pay the fine and not meet the condition. He would just move on and ask how much the Planning Service wants, give it a few thousand and say "There you are. Thank you very much."

3025. The Chairperson: Do you have a note of this issue?

3026. Ms Smith: Yes, we have made a note, and we will take it back to the Department.

3027. The Chairperson: We will move on to clause 149, which deals with service of stop notices by councils, and clause 150, which is about service of stop notices by the Department. It was thought that there was a duplication of responsibility for stop notices between councils and the Department. There was confusion. We are back to the stop notice issue.

3028. Mr Mullaney: The general point in that is duplication against the oversight powers that were referred to previously.

3029. The Chairperson: We might want to look at that again and see whether there is anything else to consider. I know that you are saying that it is robust on temporary and stop notices in general. Perhaps you would have a look and come back to us if you have anything to add or if you can find any examples. It is not only about giving powers to councils; it is about participation, communities and everything else. The issue has been raised.

3030. Let us move on to clause 151, which is about the enforcement of conditions. It was suggested that the level of call-in of planning applications by the Department may result in councils carrying out enforcement action where they may not agree with the proposal or condition. Would you like to respond?

3031. Mr Mullaney: For accuracy, the submission should read clause 151(2), not 151(20). Our apologies for that. The point is that the council may serve a notice, rather than there being a requirement on it to do so. If the Department makes conditions that the relevant council disagrees with, the concern is about what its position on a subsequent notice will be. Clause 151(2) will give the Department a discretionary power to pursue it if it chooses to do so. The power is not mandatory.

3032. Mr T Clarke: What is the purpose of this clause?

3033. The Chairperson: Could you expand on it, please, Peter?

3034. Mr Mullaney: The clause will call in enforcement of conditions. It gives power to allow notices to be served when there has been a breach of conditions. The point that is made in the submission is about what happens in a situation where the Department has imposed those conditions. That is the concern, rather than the service of notices. There may be a divergence of view as to the relevance or need for those conditions. Therefore, if there is any subsequent action, it will fall to the council, rather than to the Department, to take that action. That is the point of concern.

3035. Mr T Clarke: Are you saying that the Department can apply the condition, but it expects the council to follow it up on its behalf? Have I got that right?

3036. Ms Smith: No. Clause 151(2) says that the council may serve a notice. That means that the council has a choice. It does not have to serve a notice, but it may do so.

3037. Mr Mullaney: Clearly, that situation could arise where the Department has determined an application and the council disagrees with it. There is always that potential, but it is "may" rather than "shall". It is not a mandatory power.

3038. The Chairperson: There goes those words again Maggie.

3039. Do members have any other comments?

3040. Clause 152 is about fixed penalty notice where an enforcement notice has not been complied with. One council welcomed the fixed penalty option, and others felt that councils should be able to set penalties on a sliding scale. It was stressed that the fines needed to be significant to be effective. Do you have any comments on that?

3041. Ms I Kennedy: Perhaps I can respond to those comments, Chairperson. The ability to issue fixed penalty notices where an enforcement notice or a breach of condition notice has not been complied with is a new tool in the enforcement toolbox. The Department's view is that, at this stage and for consistency, it should set the fixed penalty at the one level. That will be set in subordinate legislation.

3042. Mr T Clarke: Where would we use this power? Can we have an example?

3043. Ms I Kennedy: It is an alternative to prosecuting someone who has not complied with an enforcement notice or a breach of condition notice.

3044. Mr T Clarke: At what level would the fixed penalty be set?

3045. Ms I Kennedy: We have not decided that. The level of a fixed penalty will be indicated in subordinate legislation. You will note that the Examiner of Statutory Rules has supported our suggestion that it should be subject to draft affirmative resolution.

3046. Mr Weir: Fixed penalty notices could be useful in dealing with relatively minor breaches. At one level, the expense that is involved in taking a case to court may lead a developer to believe that he will not be prosecuted for a minor offence. Notices give the council at least the option of imposing a fine in such instances. It may depend on the level of the fine, but in general the council will have some options.

3047. The Chairperson: The option is there if the council wishes to use it.

3048. We will move on to clause 153, which is concerned with fixed penalty notice where a breach of condition notice has not been complied with. Stakeholders raised no issues with that. Members should note that the Examiner of Statutory Rules was content that the amount of fixed penalty payments be set by regulations subject to draft affirmative procedure. Do members have any comments to make?

3049. We will move on to clause 154, which is about the use of fixed penalty receipts. Although one submission welcomed councils' ability to use receipts from fixed penalties for enforcement, another suggested that they should be able to use income from receipts to discharge any of its functions.

3050. Ms I Kennedy: Regulations will be prepared under clause 154 that will allow a council to use fixed penalty notices for the purposes of any of its functions. The ability to make regulations is there.

3051. The Chairperson: Do members have any questions or comments?

3052. We will move on to clause 155, which is about injunctions. The only issue raised in connection with clause 155 was to do with resources. We will talk in general about resources.

3053. Clause 156 is about councils issuing listed building enforcement notices. Although the clause was generally supported, there was a request that consideration be given to the

additional technical expertise and resources that are needed to carry out that function. Do you wish to comment on that?

3054. Ms I Kennedy: It is a resourcing issue.

3055. The Chairperson: OK. Clause 157 is about the Department issuing listed buildings enforcement notices. Again, there is an issue about the duplication of resources. Do you wish to comment on that clause on behalf of the Department?

3056. Ms I Kennedy: Again, that goes back to the Department's oversight role and its retention of the power to issue a listed building enforcement notice in those rare cases where it is deemed necessary to do so.

3057. The Chairperson: Do members wish to make any comments?

3058. Clause 158 is about an appeal against listed building enforcement notice, and clause 159 deals with the effect of listed building consent on listed building enforcement notice. No issues were raised about those clauses. If members have no comments to make, we will move on to the next clause.

3059. Clause 160 deals with urgent works to preserve building. It was suggested that consideration be given to the additional expertise and resources that are required to carry out that function and that the remit should lie with a single authority.

3060. Mr Mullaney: There are two issues in that, one of which is resources, which again, we have covered. We touched on the issue of technical expertise in other areas where councils may choose to combine expertise, or a council may wish to take the lead if there is a particular issue in a particular council area. That is a resources issue, but it is also an organisational issue and is not really for the Bill.

3061. Mr McGlone: I was just wondering where the two councils that made those suggestions are coming from. What technical expertise and resources are needed to tidy up a building? A brickie can be brought in to do it up or whatever. Therefore, I am not too sure where they are coming from.

3062. There is one question riding on from that, and I am not too sure whether it is dealt with here or in another part of the Bill. For example, buildings are left vacant, and ownership of that building becomes a big issue. I suppose that if someone were to go and do something with the building, such as cowp it or something like that for a sightline, they would very quickly find out who the owner was.

3063. I had occasion to deal with a case of ownership that became complicated and convoluted. Is there provision in the Bill for redemption of costs to a council when that happens? When an owner dies or moves to another country and they just cannot be got hold of, a building becomes quite dangerous, aside from being an eyesore.

3064. Mr T Clarke: A charge could just be put on it.

3065. Mr McGlone: I mean the legalities of that.

3066. Ms Smith: We will perhaps come back to you on that. It is a quite complicated issue.

3067. The Chairperson: I remind members that we are talking about listed buildings as well. Not everybody can just go in and carry out works. It is not a case of just sticking up a few acrow props and putting a plank against the wall.

3068. Mr McGlone: I know a few, if you are looking a few.

3069. The Chairperson: No, we have plenty down our way; we are OK.

3070. Clause 161 is concerned with hazardous substances contravention notices. It was suggested that consideration be given to the additional technical expertise and resources that are needed to carry out that function. It was also pointed out that the roles of the Health and Safety Executive and environmental health are not defined in the Bill.

3071. Mr Mullaney: We just touched on the issue of expertise, and we refer you to the Department's response to clause 156. The Health and Safety Executive and environmental health are important consultees in their own right on occasions. Again, it is a question of practice and guidelines. That is not something that we need to specify in the legislation.

3072. The Chairperson: Guidelines are important, though.

3073. Mr Mullaney: In the determination of any planning application or when looking at any enforcement action, the planning authority has to have regard to every material planning consideration, and, to do so, it calls on whatever expertise it requires, whether that is the Health and Safety Executive, environmental health or anybody else.

3074. The Chairperson: Are you content with clause 161, gentlemen?

Members indicated assent.

3075. The Chairperson: Other than, once again, the need for technical expertise and advice, no other issues were raised about clause 162, which is about the variation of hazardous substances contravention notices; clause 163, which is concerned with enforcement of duties as to replacement of trees; clause 164, which is appeals against section 163 notices; clause 165, which is about the execution and cost of works required by section 163 notice, or about clause 166, which is about enforcement of controls on trees in conservation areas. If members have no other questions, I propose to move on.

3076. Mr T Clarke: For accuracy, I notice that clause 163(2) states that:

"A notice under subsection (1) may only be served within 4 years from the date".

3077. That period of four years is a consistent theme as opposed to 10.

3078. The Chairperson: Mr Clarke has the number four in his head today, so he might need four cups of tea, four dinners and four desserts.

3079. Clause 167 concerns the enforcement of orders under section 72. There was a suggestion that the remit under the clause should lie with a single authority.

3080. Mr Mullaney: Again, it is the oversight role.

3081. The Chairperson: OK. Are members content?

Members indicated assent.

3082. The Chairperson: No issues were raised in respect of clauses 168 and 169, so, if members are content, I will move on to the next clause.

3083. Mr McGlone: There is no change to this?

3084. Mr Mullaney: It is a continuation.

3085. Mr McGlone: That is fine.

3086. The Chairperson: Content?

Members indicated assent.

3087. The Chairperson: Clause 170 concerns certificates under sections 168 and 169. There was a suggestion that there should be public consultation for certificates.

3088. Ms I Kennedy: This is very much about when someone applies to the Department for a certificate. I am not sure what the benefits of having wider publication would be.

3089. The Chairperson: That was suggested by the RSPB. Do members have any comments?

3090. Mr Mullaney: The planning authority would have to establish the facts before it could issue such a certificate.

3091. The Chairperson: OK, thank you. Apart from one council's suggestion that there should be further consideration, no issues were raised about clause 171. Providing that members have no further comments, I propose to move on. Agreed?

Members indicated assent.

3092. The Chairperson: On clause 172, again, there were no issues, barring one council's suggestion that there should be further consideration. If members have no comments to make, I propose to move on.

3093. Clause 173 concerns further provisions as to appeals under section 172. Apart from one council's suggestion — [Inaudible due to mobile phone interference.]

3094. Ms I Kennedy: The submission is content that there is a right to be heard.

3095. The Chairperson: Do members have any comments?

3096. No issues were raised in relation to clause 174. Do members want any more clarity, or are you content to move on?

Members indicated assent.

3097. The Chairperson: Clarification was sought on the role of the Department in relation to clauses 175 to 177.

3098. Mr Mullaney: Quite clearly, there will be occasions when the planning authority, whether councils or the Department, will be required to enter land, and these clauses afford that facility.

3099. The Chairperson: OK. Any comments?

3100. Mr McGlone: Belfast City Council wanted clarification of the role of the Department to avoid confusion and the duplication of resources. What precisely did it envisage by that duplication? Did it envisage — [Inaudible due to mobile phone interference.]

3101. Ms I Kennedy: I would not have thought so. The clauses deal with the right to enter. We are continuing the Department's right to enter for those cases in which it needs it and we are providing for rights of entry for councils. Belfast City Council has included a common phrase.

3102. Mr McGlone: Does that allow for a situation in which two sets of officers could turn up on one case?

3103. The Chairperson: No, it will be specific.

3104. Ms I Kennedy: In the vast majority of cases, it will be councils.

3105. The Chairperson: Council, yes, and it will be specific.

3106. Ms I Kennedy: It will be the council that takes action and will require to enter a site to gather information and establish the position. There may be rare cases in which the Department will also be involved. However, that will be separately and the Department will normally have consulted the councils, which will have decided not to take action.

3107. Mr Mullaney: In practice, one authority or the other will take the action.

3108. Mr McGlone: That is OK, thank you.

3109. The Chairperson: That will be clearly defined as best as possible. In specific cases —

3110. Ms I Kennedy: It is important to remember that these are remote cases that are being provided for.

3111. The Chairperson: OK, thank you very much. I advise members that that concludes Part 5 of the Bill. Part 6 starts with clause 178. Several concerns were raised in relation to this clause, including the potential costs, the inability of councils to appeal the Department's decisions, who takes responsibility for decisions made before the transfer of functions, the circumstances under which compensation must be paid and the source of funding for compensation.

3112. Ms I Kennedy: I will start trying to work through this. It is not surprising that there are queries, because this is an area that councils may not have had an opportunity to think about or be aware of. The transfer to councils of the power to carry out a range of functions will come with responsibilities and liability for the payment of compensation, which currently rests with the Department. We will want to provide in transitional arrangements that the Department retains liability for decisions prior to the transfer of powers to councils. That would be reasonable. Once those powers transfer, councils will become liable for their actions, just as they will for other duties and responsibilities.

3113. The Chairperson: Not retrospectively?

3114. Ms I Kennedy: Certainly, transitional arrangements will be put in place for departmental decisions prior to the transfer of functions. It would be unreasonable to transfer that liability to councils.

3115. Mr T Clarke: That is a good explanation, with which I am happy enough. Looking at the figures over the years, I am curious: why do you revoke planning permission?

3116. Ms I Kennedy: We touched on that the other day. Planning permission can be revoked for a number of reasons. It may well be that an applicant wants to revoke one permission to substitute it with another. In that case, there is no compensation. However, there can be circumstances that emerge which were unforeseen when planning permission was granted. Mr Weir gave a useful example of that the other day. Circumstances may make it necessary to revoke, to take away that planning permission or to discontinue planning permission if works or use are in place.

3117. Mr T Clarke: I appreciate that there will be a transition period during which the Department will be responsible, but once local government takes on the role, will there ever be an occasion on which the Department may ask for permission to be revoked? If so, will the Department pay compensation in such a case?

3118. Ms I Kennedy: The Department would consult councils before revoking any permission. However, yes, there may be situations in which the Department may do so, having consulted with the council. We expect those to be very rare, but the provision is there. In that case, the council would be liable for compensation.

3119. Mr T Clarke: I am not happy with that. I was pleased up to transition, but not if the Department is to play Big Brother and the council is to pick up the fine. There must be something to make the Department liable for compensation applied in cases where it has revoked an application, as opposed to putting pressure on local government.

3120. The Chairperson: Can you outline a situation where that might arise?

3121. Ms I Kennedy: That is quite difficult, because —

3122. The Chairperson: Bear in mind that we are going down through a plan-led system. I know that you want to put something in the Bill to ensure that the proper checks and balances are there in case such a situation arises. To be fair, it may be that, having gone through the process, whatever the development is, a problem is identified. If the Department decides to challenge it, we are saying that we should follow the process properly and identify areas, or whatever the case may be. I know that you are putting that power in the Bill and that it may be used rarely, but we need to look at the compensation issue.

3123. Ms I Kennedy: It will be part of the Department's oversight role to become involved when a council has not fulfilled its duty. It is similar to the development plan process that we discussed, in which there is an intervention where there is a default in the preparation of a development plan. There is a reimbursement of costs in that case. There could be instances when the Department uses the power to revoke in a much wider interest. There is a facility for the Department to make a payment to the council to cover a compensation liability in such a case.

3124. The Chairperson: I support Mr Clarke; we need to look at that point. If it is correct from the start and the process has been properly followed, and there is certainly a mechanism to challenge, as you say, or the oversight issue, we need to look at how the Department decides to step in at any point. If the Department decides to overturn a council's decision, it has to be



responsible for the compensation. I am not saying that it will happen regularly; that is why I asked you for an example, because it is hard to foresee.

3125. Ms I Kennedy: It is; we have looked at arrangements in other jurisdictions and this is how they operate. It is very hard to get examples of cases where it has happened. The facility is a characteristic of arrangements in other jurisdictions.

3126. The Chairperson: This is an opportunity for us to put in something new. We are obviously following best practice from other areas.

3127. Ms Smith: It is important that we distinguish between the situations in which the council has not been able to fulfil its duties and those very rare occasions when, in extreme circumstances, the council has not fulfilled its duty and the Department has to step in and act on the council's behalf. Those are the circumstances in which the compensation liability would fall to the council.

3128. The Chairperson: You are saying that you are putting something in the Bill that you do not foresee ever having to use.

3129. Ms Smith: Yes. It goes back to the point that we made earlier about building in safeguards. As members have said, this would be highly unusual, but there is the possibility that, some day, a council will be unable to fulfil its responsibilities. What happens then? What happens, as in other cases, is that the Department will step in and act on the council's behalf, but only after consultation with the council. It could be that, even during the consultation, the council may be able to fulfil its duty having received advice from the Department.

3130. The Chairperson: OK, but that brings us back to the question of front-loading the system and about getting it right from the start. I will not go down that route, so there is no need to respond.

3131. Mr McGlone: I have been involved in a couple of situations where revocations occurred, but it was at the request of the applicant. In both cases it was beneficial and suited the applicants to revoke one and substitute another planning application that was much more amenable to their needs and, indeed, to planning policy. It takes a wee while, but it got there. I can understand the need for that to be in there, but I can also understand what Maggie is saying. It is conceivable that there will be occasions when councils overstep the mark and the facility is required. However, say for example there is a planning application that is, shall we say, revocable, because of a slip made by, for example, the NIEA — contaminated land has not been properly found, or whatever.

3132. In that sort of situation, there is a duty of care to make sure that a site is not approved because of contamination latterly discovered and not initially known about. That sort of case will be the most contentious type, if it ever occurs. If a statutory agency did not fulfil its duties properly, lumbering the compensation for that onto a local authority would be very unfair.

3133. Ms I Kennedy: That would have to be teased out in those cases. That is where the facility for the Department to make a contribution to a council's compensation costs would kick in, if that were ultimately the outcome.

3134. Mr T Clarke: Chairman, I have just realised that we are a long way into this and I have forgotten to declare that I am a member of Antrim Borough Council. We are talking about council issues.

3135. The Chairperson: Can you please put that back on the first page? Do not record that. Would any other members like to declare interests?

3136. Mr Weir: I am a member of North Down Borough Council.

3137. The Chairperson: Would any other members like to declare while we are at it? Thank you.

3138. Are members content? Did we cover all the issues, Irene? We will come back to this issue. There are, obviously, potential costs to local authorities. However, you have clarified those points. Thank you very much.

3139. Mr T Clarke: In the statistics, we have compensation amounts. Just for clarity, compensation amounts paid in some years were larger than in others. Can we get the total number of applications that have been revoked as well? I am sure that compensation was not paid in all cases. Can we get the number?

3140. Ms I Kennedy: Certainly, I will see if we have that information. It is easier to get information on the ones with compensation. There will be a lot of other cases where there was no compensation issue. I will get that.

3141. The Chairperson: Can we have the breakdown of it, so that we have an idea what was involved?

3142. Ms I Kennedy: Some of that will cover discontinuance as well as revocation.

3143. The Chairperson: On clauses 179 to 181, other than the issue of the time to consider the clauses, no issues were raised. If you are content, gentlemen, I will move on to clause 182. Are members content?

Members indicated assent.

3144. The Chairperson: On clause 182, respondents requested clarity on the limiting of compensation to the timber value for — is that TPO5? It could be TPOs or TPO5. Will the Department please clarify that? The responses sought the inclusion of compensation in the legislation and also proposals for funding support in return for good stewardship. Is it TPOs or is it TPO5?

3145. Ms I Kennedy: I think it is TPOs. It is just a typo.

3146. The Chairperson: Yes. It looks like a 5.

3147. Ms I Kennedy: It was in a column that we received and I assume that it is TPOs.

3148. The Chairperson: Thank you for that.

3149. Ms I Kennedy: I refer members to the Planning (Trees) (Amendment) Regulations (Northern Ireland) 2007, and specifically to regulation 8, which states that:

"No compensation shall be payable ... for loss of development value".

3150. Thus, compensation can be paid for the loss of timber, but not for the loss of the development value of the land.

3151. The Chairperson: Have members any points in relation to that? No? Members are content. Thank you.

3152. Other than the time issue, no issues were raised in relation to clauses 183 to 186. This is why we are asking for the review of capacity-building training and how the process rolls out. Gaining knowledge of that is vital. Obviously, we are taking — [Inaudible due to mobile phone interference.] The Department has many years' experience in dealing with these issues, or perhaps they have not arisen at any point. It is important that we keep that, along with whatever guidelines are there for local councils or local authorities.

3153. On clause 187, the issue of funding mechanisms to support the councils' financial liabilities — [Inaudible due to mobile phone interference.]

3154. The Chairperson: No issues were raised about clause 188, so I propose to move on. That concludes Part 6 of the Bill. I turn members' attention now to the paper for Part 7. We are now at clause 189 of 248 clauses, 15 parts and 7 schedules. I am just taking a wee break from the clauses for a minute. Do not record that.

3155. There were concerns about the burden that clause 189 would place on councils. Some suggested that it was unnecessary, some wanted clarification of the term "reasonable use", and others suggested clarification was needed that it would only be operative in respect of decisions made following the devolution of planning functions to councils. Would the Department like to respond to that?

3156. Ms I Kennedy: [Inaudible due to mobile phone interference.]

3157. Councils will be responsible for decisions made once those responsibilities transfer. Purchases of estates of land are very rarely used. I think we have come across two cases in the past five years, but it is part of the planning regime and is something that we would wish to carry forward. [Inaudible due to mobile phone interference.]

3158. It allows someone to apply to the council if they have, as a result of a planning decision, been left with a piece of land that is not of reasonable beneficial use. The term "reasonable beneficial use", however, is not defined in this or in any equivalent legislation. I hesitate to say it, but each particular case will be very much considered on its own merits.

3159. The Chairperson: I suppose that this is not about purchase notices, but there was a case in my constituency — and correct me if I am bringing this up under the wrong point — where a road has cut through the land and has left a piece of land, say, a quarter of an acre in size, that is basically of no use to the owner. Now, in some cases there might be an alternative use for the site, possibly a business use. How do you perceive dealing with that?

3160. Ms I Kennedy: You are quite right; this clause would deal with that. The owner would have to demonstrate that the land had been left without reasonably beneficial use. You would have to make an assessment of what the land was currently used for, what the impact of the development was and what could be done with the remaining land.

3161. The Chairperson: And in terms of the existing planning policy statements, be it urban, rural or whatever the case? This would be specific to that?

3162. Ms I Kennedy: You would have to make an assessment: what can the land be used for, and is it reasonably beneficial?

3163. The Chairperson: Thank you. I was reading through this last night, and that is a prime example.

3164. Ms I Kennedy: That is the type of example that we would use.

3165. The Chairperson: OK. Thank you very much. Do members have any other comments to make?

3166. Mr T Clarke: I am still confused. In the example that you gave, why would anybody want to purchase that land? How could the Department or a council be forced to purchase that land?

3167. The Chairperson: The road has cut through land that could have been agricultural or anything and has left it practically valueless, because the person cannot do anything with it.

3168. Mr T Clarke: The Department for Regional Development (DRD) would compensate them for that.

3169. The Chairperson: Yes, but it is possible that there is an alternative use for it, other than sowing a bit of seed. There are examples of that happening.

3170. Ms I Kennedy: If there is a reasonably beneficial use, it is unlikely that someone would — [Inaudible due to mobile phone interference.]

3171. Mr T Clarke: If a purchase notice is applied for, must the Department buy it?

3172. Ms I Kennedy: No. There is an opportunity and a mechanism to respond to that. The Department can issue a counter-notice. Ultimately, that is one of the cases that could go to the Lands Tribunal.

3173. The Chairperson: I was dealing with that. You are certainly correct about DRD, but —

3174. Mr T Clarke: It is not even so much that, Chairman. I have never known of — [Inaudible due to mobile phone interference.]

3175. The Chairperson: In this case, it is a positive thing as far as what I am talking about.

3176. Ms I Kennedy: It is an established part of the planning system. Similar provisions apply in other jurisdictions — [Inaudible due to mobile phone interference.]

3177. Mr Mullaney: The practice is usually to issue a counter-notice. There may be circumstances in which a purchase notice would be accepted, but looking at the statistics — [Inaudible due to mobile phone interference.]

3178. The Chairperson: Thank you for that clarification. I will be talking to a gentleman tonight. However, moving on, no specific issues have been raised in relation to clauses 190 to 195. Unless the Department has anything else to add, we are content to move on. That concludes Part 7 of the Bill — [Inaudible due to mobile phone interference.]

3179. On clause 196, several submissions requested clear guidance on the role of different bodies in relation to listed buildings. Concern was also raised about the level of technical expertise required to carry out this function, the role of the Historic Buildings Council and the length of time a member may sit on that council. I refer members to schedule 5. A query was raised about a national register — [Inaudible due to mobile phone interference.]

3180. Ms I Kennedy: It would probably be helpful, as in other areas, that we would set out in guidance the different roles of the parties in relation to historic buildings. We have indicated the role of the Historic Buildings Council and that of the Department, which is to designate listed buildings. There are further provisions in the Bill that allow the Department to provide grant aid, to consider urgent works and to issue repair notices. Councils will have powers to issue building preservation notices, determine listed building consent applications and pursue enforcement and prosecution. In effect, the current powers, which are under the Northern Ireland Environment Agency, will remain with the Department while the current powers of the Planning Service will devolve to the district councils.

3181. The Environment Agency will continue to provide expert advice to planning authorities about listed building consent. Planning applications affecting listed buildings currently go to the Planning Service. The Historic Buildings Council's role will not be changed by our proposals. The national register of trees was referred to on Tuesday in a discussion of another clause.

3182. The Chairperson: The point about the Historic Buildings Council answered the query on schedule 5. Do members have any comments to make on clause 196?

3183. Mr Dallat: Perhaps we could return to some issues. A typical experience for me has been that the law has been pretty poor in protecting historic buildings; in fact, it has been incredibly poor. It seems that the Bill is an opportunity to do something meaningful. If transferring these powers means that local councils will have the same success as the Planning Service, our local heritage will continue to be plundered. A lot of it has already disappeared, and it will continue to disappear because [inaudible due to mobile phone interference.]. Somebody could burn it; that is one way to deal with it. Another way would be to bring a digger in early in the morning to demolish it, or a building could be downgraded to a stage when it is no longer considered viable enough to be listed. This Bill has been thrust upon us without our having the time to consider all the important issues that many around this Table have experience of and could contribute to improving. We do not have the opportunity to do that. It seems [Inaudible due to mobile phone interference.]

3184. The Chairperson: The issue about time has been raised on a number of occasions. However, we have to look at what is in the Bill and try to improve on it, while learning from the mistakes that were made. Mistakes have been made. One example is the digger and taking down the gable wall — the swing of a bucket, as they say. We need to try to protect those buildings. We saw an example of that in Newcastle last year when a building came down.

3185. Mr Dallat: Are we simply transferring existing laws to councils, or are we involved in a process of enhancing something?

3186. The Chairperson: This is our opportunity to enhance the Bill. There are new powers in Part 1 and Part 2, but we can amend any clause. You made a valid point. We need to look now to see whether we can do anything to enhance the legislation on listed buildings, because we have an opportunity to do that.

3187. Mr Dallat: I am amazed that more organisations and bodies did not express their opinions; they are always fairly vocal whenever the digger comes in. Perhaps that is not a valid criticism. Is it possible to come back to this clause?

3188. The Chairperson: The Committee certainly wants to look at this issue. We want to try to enhance the clause. Irene, you answered the point about the Historic Buildings Council. Am I right to say that it has a time frame for its period of membership?

3189. Ms Smith: Yes. You kindly shared with us the letter that you got from the Historic Buildings Council that referred to issues on the length of membership. Members are ministerial appointees. They are experts and are appointed for three years. The chairperson of the council made the point that the term of membership should be longer. At present, it is a three-year term, with a further three-year term. He would like it to be a five-year term, with a further five-year term.

3190. The Department wrote to the Committee in the past couple of days to tell it that we are starting to review the Historic Buildings Council along with the Historic Monuments Council and the Council for Nature Conservation and the Countryside. That review will consider the issues that the Historic Buildings Council raised in its submission to the Committee. We are very much aware of those issues.

3191. The Chairperson: Will the Department continue to assign those posts?

3192. Ms Smith: Those are external advisory bodies, so the people who are appointed to them have expertise in relevant areas and act as advisers to the Department.

3193. The Chairperson: How does that affect the Historic Buildings Council?

3194. Ms Smith: The Historic Buildings Council is constituted in the legislation to be an adviser to the Department of the Environment.

3195. The Chairperson: How will that body be married to local councils when the powers are transferred?

3196. Ms Smith: I cannot predict the outcome of the review, but, as things stand, we envisage that the Historic Buildings Council will remain as an adviser to the Department. It advises principally on the listing and de-listing of buildings. It is involved in cases that are concerned with listing or de-listing, and it provides expert advice from a range of perspectives.

3197. The Chairperson: It will remain in place, but whenever such a situation arises in a local council, will the case be passed on to the Department? What scope will councils have to get advice?

3198. Ms Smith: The built heritage division of the NIEA will continue to advise councils. They can take other advice as they see fit, but the NIEA will be there for them.

3199. Mr Dallat: I would have thought that there is a golden opportunity for local councils to have some responsibility for updating and maintaining an inventory of listed buildings. Is there any provision in the Bill for that? Is there any onus on councils to do that, or do they just do the usual and churn out a press statement?

3200. Ms I Kennedy: There is a power in the Bill that allows councils to issue building preservation notices, which are temporary listings.

3201. Mr Dallat: That is not what I asked. I asked whether there is an onus or an obligation on councils to maintain a record of buildings and identify those that could be added to a list.

3202. Ms I Kennedy: There is no specific requirement in the Bill for that.

3203. The Chairperson: Obviously, the Committee feels strongly about that. I know that you explained the point about responsibility, but we need to ensure that mistakes that were made in the past are not repeated. Listing and de-listing is an ongoing process, so we need to be careful.

3204. Ms Smith: Yes, it is. It is a statutory process that the Department carries out. The Historic Buildings Council has been involved in that process. It is envisaged that, as things are drafted, that power will stay with the Department.

3205. Mr Dallat: The argument remains that it would be better to have a lot of that responsibility transferred to local councils. We have to put responsibility on them to do the job better at a local level, yet we are told that there is nothing in the Bill to allow that.

3206. Mr Kinahan: My question might relate to a point that will come up later. John said that we should be looking after our historic buildings more, yet we are talking about councils having limited resources. If councils take responsibility for historic buildings, their costs will rise. We need to ensure that the Bill has a clear mechanism for looking at the cost of maintenance. Nevertheless, I want all those buildings to be preserved.

3207. Mr McGlone: I have just a wee question about all this. I am glad to hear of the role that the NIEA plays in dealing with historic buildings and the use that is being made of its expertise in that field. Is that likely to come at a charge to local authorities?

3208. Ms I Kennedy: Not at the moment.

3209. Mr McGlone: I know that you said "Not at the moment."

3210. Ms I Kennedy: Not at the moment, no.

3211. Mr McGlone: However, "not at the moment" is where we are at this present stage. Is there any anticipated mechanism, whereby —

3212. Ms I Kennedy: Not that we know of, no.

3213. Mr McGlone: Not that you know of? That is fine, because I am a bit concerned lest, in the transition, local government will start to be charged for the powers that remain at the centre. Can the Committee cover that contingency through what it is doing with the Bill? I know about all the discussion on full cost recovery. It is a wee bit like beauty; it is in the eye of the beholder, and it depends on who we talk to. The one thing about full cost recovery is that it does not go down. We need to get a bit of clarity on that, because when it comes to cost neutrality, the transition and the handover of powers, the more that we look at it, the more we see the potential for charging from regional to local.

3214. The Chairperson: To be fair, we can bring that point up again when we talk about resources. We will be talking about all the resources. However, you are right, and that matter has raised its head previously. I propose that we come back to this issue. The proposal is that it remain with NIEA for advice, but, if the Committee agrees with that, as Mr Dallat said, we need clearer guidelines and better co-operation and co-ordination if we do not propose to give those powers to local government. Clearly, that is not the issue.

3215. It is not about having a list or a booklet of listed buildings. We know about those, and I have seen them in my council area, which is fine. However, we need to learn from the experience of seeing buildings knocked down and people taking shortcuts and so forth. We need a better connection between local councils and the NIEA on listed buildings.

3216. Ms Smith: It may be helpful for me to clarify the powers that will stay with NIEA. They are the powers of listing and de-listing, which it has at the moment. That is the very expert, highly specialised work that is done to identify buildings that are to be conserved or preserved. The enforcement powers that apply to listed buildings would be transferred to councils, so they will be in a much stronger position.

3217. The Chairperson: That is 100%; that is fine. However, although you are correct in saying that the issue is down to enforcement, the connection between the NIEA and the local councils has raised its head. Honestly, in my experience, there has not been a great connection between the NIEA and the Planning Service in dealing with applications on a normal basis. Therefore, we need to ask how we tie all that in. Those bodies need to work more closely. A better way to do it might be to raise the enforcement element for listed buildings in the relevant Part of the Bill. However, you are right to say that enforcement is an issue. It is just the way it was raised that has made people ask questions, and the argument has come through in a different way.

3218. Ms Smith: The councils will be able to enforce on listed buildings.

3219. Mr McGlone: Chairperson, you are right to raise the fact that there is a wider issue to consider. This matter does not apply to just one agency, the NIEA, which is internal to the Department. There are past examples of issues with the Rivers Agency and consultations on planning applications. Therefore, we do not want to be sold a pup or to sell anybody else a pup on the issue of cost neutrality or anything else. When we go to their doors in the run-up to May, ratepayers will ask us where we stand on those issues. Those who are knowledgeable may even read the Hansard report of this meeting and ask specific questions about that.

3220. Therefore, you are quite right, Chairperson. It would be useful if we could explore that resource issue and any intentions, or the avoidance of any intentions, to charge for issues that are not currently charged for.

3221. Ms Smith: All I can say is that I am not aware of any intention to charge.

3222. I cannot comment on any of the specifics that you mentioned when you talked about the NIEA and the Rivers Agency. However, in the Bill — [Inaudible due to mobile phone interference.] — one of the previous sessions, there is provision to make regulations that will list statutory consultees. At the moment, the NIEA is not a statutory consultee, and the intention is that it would be for councils. [Inaudible due to mobile phone interference.] The relationship will change because some of the organisations will be statutory consultees and because there will be regulations on the time within which they should respond.

3223. The Chairperson: I know that it is an enforcement issue, but, through the guidance and subordinate legislation, can we look at how the statutory bodies and the link with councils will work?

3224. Ms Smith: Those organisations were set up with the purpose of advising the Department, and now they are under review. However, there is nothing to stop a council from setting up its own advisory panel if it wished.

3225. The Chairperson: Let us be straight about this point. What you are saying is that we are transferring 98% of the powers to councils and retaining some. We should forget about all the other bits and pieces of oversight in some clauses. We are saying that when we are dealing with councils, the NIEA should be in some way connected to giving advice to local councils. That is OK if they want it, but it is an extra cost. If they set up advisory councils, they will not be voluntary, which means that there will be a cost. We need to ensure that the bodies that will



remain in the Department, which are still statutory consultees in the normal planning route, are connected to the councils in some way.

3226. Ms Smith: If we separate the role of the NIEA, the intention is that it will be added to the list of statutory consultees. [Inaudible due to mobile phone interference.]

3227. The Chairperson: Listing and de-listing are separate — [Inaudible due to mobile phone interference.]

3228. Ms Smith: The intention is that because it is such a specialised area, listing and de-listing would stay with the Department. [Inaudible due to mobile phone interference.]

3229. The Chairperson: I understand, but we are just trying to marry the roles together to make sure that we get it right. I am speaking from experience of trying to get answers and time frames and so forth. We want to better the process. [Inaudible due to mobile phone interference.]

3230. Ms Smith: We talked another day about the fact that regulations will be made that will specify the time in which statutory consultees should respond to councils. [Inaudible due to mobile phone interference.]

3231. Mr Kinahan: [Inaudible due to mobile phone interference.]

3232. Ms Smith: I have to keep saying that it is under review, because I clearly cannot predict what we will do in the future. The Historic Buildings Council is essentially made up of a group of volunteers that assists the Department by giving advice from their various perspectives on specific listing and de-listing cases. The councils have been specifically set up to advise the Department, and it only advises [Inaudible due to mobile phone interference.]

3233. Mr Kinahan: [Inaudible due to mobile phone interference.]

3234. Ms Smith: As I said, the Historic Buildings Council is under review. [Inaudible due to mobile phone interference.]

3235. Mr Kinahan: [Inaudible due to mobile phone interference.]

3236. Ms Smith: [Inaudible due to mobile phone interference.]

3237. The Chairperson: [Inaudible due to mobile phone interference.]

3238. Thank you very much. Let us move on. I remind gentlemen that we have nearly 50 clauses to get through [Inaudible due to mobile phone interference.] We will have to move to another room later, because I do not think that we will get through all the clauses.

3239. Clause 197 deals with grants and loans for preservation or acquisition of listed buildings. The inclusion of grants and loans associated with listed buildings was generally welcomed, although clear guidance on the role of different bodies was requested. That will be handled in the guidance. Is there any word of when we will see that guidance?

3240. Ms I Kennedy: We are actively working on some parts of the subordinate legislation and guidance. [Inaudible due to mobile phone interference.]

3241. Mr Dallat: Who is responsible for the national register of trees? Is the Department of Agriculture and Rural Development (DARD) responsible for it?

3242. Ms Smith: There is no national register of trees at the moment.

3243. Mr Dallat: I just needed — [Inaudible due to mobile phone interference.]

3244. The Chairperson: The responsibility lies with —

3245. Mr Weir

3246. Are you saying that there should be one?

3247. The Chairperson: Yes, that is what is being asked.

3248. Ms Smith: A national register of trees is outwith the ambit of the Bill. It is a much wider issue. We are not sure whether it is an agriculture issue.

3249. Mr Dallat: The only reason I ask is because about two miles from where I live, there is a unique collection of oak trees that were planted in the 1930s. [Inaudible due to mobile phone interference.]

3250. Mr T Clarke: [Inaudible due to mobile phone interference.]

3251. The Chairperson: They are soaked in a bucket of water overnight. However, we will not get into that. Do not record that, please.

3252. We will ask about a register. It is a valid and important point. Disregard the remarks that Mr Clarke and I made about that.

3253. Clause 198 is about the acquisition of listed buildings by agreement. No issues were raised on that. If we are content, we will move on.

3254. Clause 199 is concerned with the Department's acceptance of endowments for listed buildings, and clause 200 is about the compulsory acquisition of listed buildings. The submission requested clear guidance on the role of local councils in endowments and compulsory acquisition. Will that be covered in guidance, or do you wish to comment?

3255. Ms I Kennedy: It is important to point out that Bill proposes that the Department retain these powers where endowments for listing buildings are concerned.

3256. Mr Dallat: That is probably a very good idea. [Inaudible due to mobile phone interference.]

3257. The Chairperson: That concludes our consideration of Part 8 of the Bill.

3258. We will now move on to Part 9, which concerns the Planning Appeals Commission. It begins with clause 201. One response suggested that the complexity of the Bill increased the chances of legal challenge where procedures and clauses have not been adhered to, and another called for clear guidance and rules for regulating procedures.

3259. Ms I Kennedy: We have noted those comments. Good guidance is essential. A lot of that guidance will be the responsibility of the Planning Appeals Commission, which already provides useful guidance on its website. [Inaudible due to mobile phone interference.]

3260. The Chairperson: Clause 202 deals with the procedure of the appeals commission. Several responses called for the inclusion of provision for the awarding of costs, as endorsed by the Government following the consultation on the policy proposals. [Inaudible due to mobile phone interference.] It also questioned whether that would be a function of the PAC.

3261. Another response was concerned that the Bill did not prevent the introduction of new material related to an application following the making of an appeal, thereby leaving the process open to frivolous appeals or means of allowing a decision to be made on the basis of information that was not available to the decision-making body at the time. [Inaudible due to mobile phone interference.]

3262. The Examiner of Statutory Rules advised the Committee that Planning Appeals Commission rules made by the Office of the First Minister and deputy First Minister (OFMDFM) are subject to no Assembly procedure, and he suggests that they should be subject to negative resolution.

3263. Mr T Clarke: Can the gap with new evidence not being available to the PAC not be closed now? There is an opportunity in the Bill to close that gap.

3264. Ms I Kennedy: Following the 2009 policy consultation, the Executive agreed that we would not take forward the provision [Inaudible due to mobile phone interference.].

3265. Mr T Clarke: I think that that is unfair, especially as there is no right of third-party appeal. We go to the PAC on the grounds of a decision made by the Planning Service, and its determination is based on the evidence with which it was supplied. Most of us have been in rooms to which, at the last minute, clever architects bring more clever people with new evidence that was not supplied to the Planning Service when it was making its judgement on the original application. The PAC then overturns the application based on that new evidence. That is also unfair to the community, because it has not had the opportunity to scrutinise the new evidence, except when a reasonable commissioner gives people 15 minutes to study it. However, there is not enough time to consult the wider public or to have an expert scrutinise it. We need to put something in the Bill to prevent that from happening. [Inaudible due to mobile phone interference.]

3266. Ms I Kennedy: That issue was consulted on and considered by the Minister, the Department and the Executive. The decision was that it would remain as it is and [Inaudible due to mobile phone interference.]. Obviously, I cannot speak for the Planning Appeals Commission, but I know that it always endeavours to ensure that, if new information is available, it is made public and distributed.

3267. Mr T Clarke: New information can vary from cutting a development down from 12 apartments to eight. Chairman, can the Committee look at drafting an amendment of its own for clause 202?

3268. The Chairperson: We will definitely have to come back to clause 202.

3269. We will call a halt to proceedings, and then we will move to another room.

Committee suspended.

On resuming —

3270. The Chairperson: We will resume with clause 202, which is concerned with the procedure of the appeals commission. The Examiner of Statutory Rules advised the Committee that Planning Appeals Commission rules made by OFMDFM are subject to no Assembly procedure, and he suggested that they should be subject to negative resolution. Do you have any comments to make on that?

3271. Ms I Kennedy: We would bring that to the attention of the relevant Department, which is OFMDFM, or to whatever the relevant Department is in that particular case.

3272. The Chairperson: A lot of councils deal with appeals. Is there anything that we can do to ensure that this is not just another tick-box exercise by making it up to the appeals mechanism to challenge whether the Planning Service assesses an application properly? On the face of it, it seems as though it is just a tick-box exercise and that no one stands over it. I have an issue with that aspect of the PAC.

3273. Ms I Kennedy: I suggest that you may wish to direct that to the Planning Appeals Commission.

3274. The Chairperson: It is OK to put this on to an independent group; that is fine. However, it is about how it assesses and looks at the appeals mechanism itself.

3275. Ms I Kennedy: The Planning Appeals Commission is an independent tribunal organisation.

3276. The Chairperson: It was part of DOE at one time.

3277. Ms I Kennedy: It currently has a sponsorship role in OFMDFM.

3278. The Chairperson: Are you saying that you will refer the issue of the Assembly procedure back to OFMDFM for us?

3279. Ms I Kennedy: Yes, if it is appropriate for us to do so. Clause 202 is an OFMDFM responsibility.

3280. The Chairperson: As there are no other matters, that concludes Part 9.

3281. We will move on to Part 10, which is on the assessment of council performance or decision-making. Clause 203 is about the assessment of a council's performance. Several councils expressed concern at the high level of scrutiny proposed by the Department throughout the Bill and suggested that the emphasis should be on helping, rather than exposing, poor-performing councils. Councils also sought clarification on how the Department would investigate councils that were collaborating. The councils wanted benchmarks in advance. Do you want to comment on that?

3282. Ms I Kennedy: I think that that is reasonable. It is important to point out that the Department's approach will be, first and foremost, to provide assistance and to disseminate good practice and guidance to councils. The powers in Part 10 are needed as part of the Department's oversight role. However, as I said, first and foremost, we want to work with councils to promote good practice. Additional guidance and performance standards will be issued in advance of the transfer of powers.

3283. Mr Weir: Obviously, RPA did not happen, but one aspect of it looked at the performance management regime, and, in the broader sense, one of the problems has been that not everybody has necessarily bought in to things and any comparisons have not always been done on the same basis. On a broader level, whether we are talking about governance or speaking generally, there is some degree of a better performance management side of it. Is the intention to try to marry this with the wider element, or do you see this standing as separate to that performance management framework?

3284. Ms I Kennedy: There will definitely be links across to the local government proposals, which are currently out to consultation. There will also be specific performance measurements for planning functions. [Interruption.]

3285. Mr Weir: We cannot even blame John Dallat on this occasion for that interruption. For once, he is an innocent man.

3286. The Chairperson: I apologise for that. I have been talking to some councils about the matter, and they were talking about the Department's performance, but the idea now is to measure councils' performance.

3287. Ms I Kennedy: Obviously, the Department has to attempt to meet its own performance targets as part of the Programme for Government.

3288. The Chairperson: I think that "attempt" was a good word, but we will leave it at that. There needs to be a lot of communication between councils when the guidance is being issued.

3289. Are members content with clause 203?

Members indicated assent.

3290. The Chairperson: Clause 204 is about assessment, and councils suggested that assistance, rather than criticism, should be focused on in this clause. Again, that is about the link-up between councils and the parameters and criteria that are set. If there are no comments, we will move on.

3291. Clause 205 deals with further provision in the assessment of performance or decision-making. There was a call for arrangements made under the clause to be drawn up in close consultation with local councils. I think that that is the way that we propose to go.

3292. Clause 206 deals with the report of an assessment. One organisation called for the word "may" in clause 206(7) to be replaced with the word "will". Councils also had concerns about the resource implications.

3293. Ms I Kennedy: We appreciate that the resource issues relating to that clause will be addressed as part of a wider discussion.

3294. The use of the word "may" provides flexibility to the Department's approach, because it takes all circumstances into consideration. It is very much line with legislation elsewhere. Our preference is to keep the word "may" to allow the approach to be dictated or influenced by the circumstances.

3295. The Chairperson: Do members have any questions about that issue? Irene, I know that you said that as long as a system follows good practice in other jurisdictions and is proven to work, it is OK to follow them in using that system.

3296. Ms I Kennedy: It is in line with what happens elsewhere.

3297. The Chairperson: As long as it is robust and stands up.

3298. That concludes Part 10 of the Bill. I refer members to Part 11, which is about the application of the Act to Crown Land. Clause 207 deals with application to the Crown. No issues were raised about that clause. If members have no further questions, I will move on.

3299. Mr McGlone: I cannot remember precisely when it was, but did we not ask for clarification on the issue of Crown land?

3300. The Chairperson: We asked for clarification when we were doing the Clean Neighbourhoods and Environment Bill.

3301. Mr McGlone: Did we get clarification on that?

3302. The Committee Clerk: We did.

3303. Mr McGlone: I did not see it.

3304. Mr Weir: [Inaudible]. It could be opposite to what it was on the Clean Neighbourhoods and Environment Bill.

3305. Mr McGlone: I will pick up on it again.

3306. The Committee Clerk: We will get that response back.

3307. The Chairperson: Clause 208 is the interpretation of Part 11. Stakeholders raised no issues about the clause. The Examiner of Statutory Rules advised the Committee that the power to alter the definition of "Crown Estate" in clause 208(1) is subject to affirmative resolution and that he had no comment to make on that matter. Are members happy enough?

3308. Clause 209 deals with urgent Crown development. Issues raised in connection with this clause related to the lack of requirement for consultation and a definition of what constitutes a public authority.

3309. Ms I Kennedy: The Bill does not contain a reference to a public authority. We checked through it, and there is a reference in clause 208 to "the appropriate authority". Public consultation will be available under clause 41(1), which provides that:

"A development order may make provision requiring"

3310. the publication of such applications. Under clause 56(1)(d), the Department may be required to consult with a council before either "granting or refusing planning permission".

3311. The Chairperson: Do members have any questions?

3312. Clause 210 deals with urgent works relating to listed buildings on Crown land. No issues were raised about that clause. If members have no further questions, we will move on.

3313. Clause 211 is concerned with enforcement in relation to Crown land. There was concern that clause 211 exempted any act or omission that was done on behalf of the Crown.

3314. Ms I Kennedy: I understand that clause 211(1) reflects the constitutional position, which is that the Crown cannot prosecute itself.

3315. The Chairperson: I am saying nothing as Chairperson. [Laughter.] Do not record that, please. Do members have any questions?

3316. Clauses 212 to 214 deal with references to an estate in land; applications for planning permission and so forth by the Crown; and service of notices on the Crown. I remind members that no issues were raised on those clauses. If members have no questions, we will move on.

3317. That concludes Part 11 of the Bill. I refer members to Part 12, which is on correction of errors. Clauses 215 to 218 deal with correction of errors in decision documents; correction notices; effect of corrections; and supplementary matters. No issues were raised on those clauses, so unless any members wish to raise questions, we will move on.

3318. Clause 219 deals with fees and charges. Several issues were raised on that clause, including the requirement for details of when the Department may require a council to contribute to expenses; clarification of compensation arrangements between councils in the event that support is not given to a proposal; the need for a review of fees and staffing of the existing Planning Service; the need for protocols; the suggestion that the devolution of planning functions to councils will be a cost-neutral process; the definition of multiple fees; and a requirement for commitment to subordinate legislation.

3319. Ms I Kennedy: There are a number of issues to consider, so we will run through them. Subordinate legislation will be needed, and subordinate legislation, which will be subject to regular review, currently covers the issue of fees. We touched on the costing issue and cost neutrality earlier, and I assume that you will wish to come back to that, perhaps when you discuss the issue of resourcing.

3320. You will be aware that a review of fees is under way, and we will come back to the Committee shortly with the outcome of the consultation on that. A wider review and restructuring of staffing in the Planning Service agency is also under way.

3321. A number of councils made comments about compensation. We probably covered those comments when we went through Part 6, which deals with compensation. If there is anything on which you particularly want me to elaborate, I will certainly come back to that.

3322. On the issue of expenses associated with another council, I refer you back to clause 222. There are likely to be few instances when one council is required to contribute to the expenses of another. It is expected that those occasions will be rare. They could relate to a case where there has been compensation following revocation or discontinuance of planning permission for development that perhaps straddles two council areas and from which both councils benefited. There are also likely to be voluntary agreements between councils, and the Department may require some reasonable contribution to that. There may also be situations where councils work jointly to prepare development plans, but those are likely to be voluntary agreements that councils arrange between themselves to cover expenses. Statutory undertakers can also make contributions when looking at the matters that have to be kept under review when local plans are being prepared.

3323. The Chairperson: Do members have any questions to ask? We will mention subordinate legislation again and the issue of whether the process will be cost neutral. Is draft affirmative resolution needed for the setting of fees across the board? Will there be a fee structure for local councils in setting fees?

3324. Ms Smith: The intention is that the Department will continue to set the fees for the first three years, and the situation will then be reviewed.

3325. The Chairperson: Are there any other questions, gentlemen?

3326. Mr McGlone: Will that review be with a view to allowing councils some independence to charge?

3327. Ms Smith: The intention is for fees to be set centrally by the Department for the first three years. It is the point about who makes the decision that will be reviewed after three years. The Bill will allow councils to set their own fees, but the intention is that that will not be commenced until we are three years into the new arrangements. So if things have settled down a bit —

3328. Mr McGlone: Does that mean that the review will not be commenced, or the actual process?

3329. Ms Smith: The process of councils setting their own fees will not start until three years in. That will be as a result of the review, so people will be able to take a view of how things are going.

3330. Mr McGlone: Are you saying that councils will be empowered three years after the Bill to set their own fees?

3331. Ms Smith: If that is the outcome of the review, yes.

3332. Mr McGlone: If that is the outcome of the review post-three years?

3333. Ms Smith: Yes.

3334. Mr McGlone: OK. Thank you.

3335. Mr Weir: We are talking about a review that has not happened. If we are talking about councils having the power to set their own fees, will that be on the basis that they will collectively set a rate, or will there be variations between them?

3336. Ms I Kennedy: Individual councils could set their own fee, if that is the outcome of the review.

3337. Mr Weir: There are ways to give the power to councils so that it is not variable. There could be discussions with the Northern Ireland Local Government Association (NILGA). Alternatively, one idea of the Innovation for Competitive Enterprises (ICE) programme is to have a collaborative model so that a collective decision can be reached. There could be some problems if one council tried to undercut its neighbours. Obviously, that is a matter for the review, rather than for the legislation.

3338. Ms Smith: Absolutely. The legislation clearly allows each council to have that power. Councils could choose to set one fee that suits them all, or they could set fees individually. However, that is a long way down the road from where we are now.

3339. The Chairperson: It is, but that is important. It is all about value for money. It is all right setting a rate, but rural areas are rural areas. This matter is particularly important for those areas that have bordering council peripheries. We need to be quite careful about that.



3340. Ms Smith: That underlines the importance of having a review and thinking through the implications.

3341. The Chairperson: I want to clarify one point before we move on. Armagh City and District Council wanted clarification on the circumstances in which the Department may require a council to contribute to expenses that are associated with the functions of another council. Did you respond to that?

3342. Ms I Kennedy: Yes. That could, for example, relate to a compensation payment for the revocation or discontinuance of a permission that perhaps straddled two or more council districts and where both councils benefited as a result. There will more likely be voluntary agreements between councils to work together on joint plans and associated expenses.

3343. The Chairperson: Are you happy enough, gentlemen?

Members indicated assent.

3344. The Chairperson: Clause 220 is about grants for research and bursaries. Councils sought clarification on the role of councils in the grant process.

3345. Ms I Kennedy: The grants under clause 220 are provided by the Department. They are grants for research and bursaries.

3346. The Chairperson: Thank you very much. Clause 221 deals with grants to bodies providing assistance for certain development proposals. There was a suggestion to amend clause 221(1)(a) by inserting the words "of planning policy proposals and" after the word "understanding" and by removing references to the consent and approval of the Department of Finance and Personnel (DFP).

3347. Ms I Kennedy: The insertion of the words "planning policy proposals" would strengthen clause 221(1)(a). The approval of the Department of Finance and Personnel given in clause 221(3) is an oversight role, if you like.

3348. The Chairperson: Did you say that the Department of Finance and Personnel needs to consider some grants?

3349. Ms I Kennedy: Yes.

3350. The Chairperson: Could you take that back to DFP on the Committee's behalf?

3351. Mr Weir: You could take it back to DFP, but, by the look of it, you could be talking to the wall.

3352. The Chairperson: I understand, but we need that done from a Committee of view. That Minister is not here, but you could be 100% right. What about the first suggested amendment, Irene?

3353. Ms I Kennedy: There seems to be merit in that suggestion. I think that it would strengthen clause 221.

3354. The Chairperson: Do you have any points to make, gentlemen?

3355. Clause 222 concerns contributions by councils and statutory undertakers. Several concerns were raised about the clause, including the definition of matters affecting development, notwithstanding the areas designated in clause 222; the requirement of relevant government agencies to work with local councils; and clarity on the provisions of the clause that require a council to contribute to another council's expenses or compensation costs.

3356. Ms I Kennedy: We have already spoken about the latter point. We talked earlier about the role that statutory consultees play in the preparation of local development plans, in many cases. It is very much in their interests to work with the councils to deliver their own statutory functions.

3357. We struggled to work out the point that the Belfast Harbour Commissioners raised, but Stephen has been able to —

3358. Mr Stephen Gallagher (Department of the Environment): The commissioners are talking about clause 3, which is in the Part of the Bill that deals with local development plans. Councils are required to "keep under review" certain elements that would affect development in their area. That would involve a survey. Clause 222 would allow statutory undertakers or other councils to contribute to a council's costs, including survey costs. Therefore, the Belfast Harbour Commissioners comment is slightly out of context. It makes a little more sense if you go back to their original letter, which states:

"It is unclear within this Part as to the definition of 'matters affecting development notwithstanding the areas designated within Clause 222. Belfast Harbour would only wish to contribute to any such review if it was likely to facilitate an easing of constraints with the Harbour Estate."

3359. They are laying down a marker as to when they would wish to contribute to one of those surveys and when they would not. In other words, the commissioners are saying that they would contribute only to those areas that would facilitate an easing of constraints in the estate.

3360. The Chairperson: Gentlemen, are you happy enough with that clarification?

Members indicated assent.

3361. The Chairperson: Clause 223 concerns contributions by Departments towards compensation paid by councils. No issues were raised about the clause, so, if you are content, we will move on. Are we agreed?

Members indicated assent.

3362. The Chairperson: That concludes Part 13. We now move on to Part 14, which deals with miscellaneous and general provisions. Clause 224 concerns the duty to respond to consultation. Several issues were raised about the clause, including the need for quick responses to consultation; who would pay for a local public inquiry; clarification on the intended obligations being placed on consultees; the status of a holding response; a response time to be identified on the face of the Bill; the status of a consultation if consultees have not responded in time; and a recommendation that the clause include the submission of performance data to councils. There are four or five issues to look through.

3363. Ms I Kennedy: Clearly, consultees' response times are a key part of the planning process. If I go through those queries, I will point out that if a Department calls a public inquiry, it will cover the costs.

3364. On the consultees' duty to respond, they will be required to do it within a given period, which will be set down in subordinate legislation. It is likely to be in the region of 21 to 28 days, or such period as may be agreed in writing for certain specific applications. That is because certain applications may raise certain issues and it may, justifiably, take the consultee longer to come back.

3365. The Chairperson: So long as we are not creating a loophole. "Specific" needs to be defined. It is all right to say that 21 to 28 days is a reasonable request for anybody, but to ask, in writing, again, to look at —

3366. Ms I Kennedy: Yes, and that has to be agreed.

3367. Ms Smith: Yes.

3368. The Chairperson: OK, it is an agreed time.

3369. Ms Smith: It is also important to relate that back to the idea of the development hierarchy, because the 21 to 28 days will be for small developments.

3370. The Chairperson: Yes, certainly.

3371. Ms Smith: If it is of major or regional significance, the period will have to be agreed and indicated.

3372. The Chairperson: I totally agree, so long as that is clearly identified, yes.

3373. What is the status of a "holding" response?

3374. Ms I Kennedy: That is not a substantive response. It will not fulfil the duty that we are putting in place. Consultees will be required to provide a substantive response within that time frame. As currently, councils can make a determination in the absence of a consultee response, but they will have to weigh up how material a response may be in any particular case and decide whether proceeding in the absence of such a response might result in challenge.

3375. The Chairperson: You say that consultees have not responded in time. How will that be dealt with? It is all right putting that in, but what are we saying will be done if they have not dealt with it in time?

3376. Ms I Kennedy: They will certainly be required to report on their performance. Those reports will be published, so people will be able to assess and see how different consultees are responding.

3377. The Chairperson: Yes, but I am saying move on another step. I know it is not in their best interests not to respond, but what will be done if it keeps recurring? If there is no mechanism, how do you deal with that? How do you make sure that they comply? It may be all right once or twice, but what are the outworkings of that?

3378. Ms I Kennedy: There will obviously be dialogue between the council, the planning authority and the consultee. There may well be a reason for the delay, and it is important to investigate why responses are not coming back within that time.

3379. The Chairperson: It is just that it is clearly not happening now, in some cases, no matter how long people are given. This whole process needs to be more efficient and effective. Councils certainly do not want to be in the position that we are in now.

3380. Ms Smith: Absolutely.

3381. The Chairperson: It will come down to the ratepayers' pockets.

3382. Ms Smith: That is why these provisions are being introduced. At the moment, a lot of organisations that we are talking about as consultees are not statutory consultees, so these powers will make a difference.

3383. The Chairperson: And obviously supply performance data as well. Those are most of the points. Do members have any comments? No?

3384. There were no issues in relation to clause 225. Are members content to move on?

Members indicated assent.

3385. The Chairperson: Responses to clause 226 called for decisions on local public inquiries to be made in close consultation with local councils, and for clarity on responsibility for the costs of a local inquiry.

3386. Ms I Kennedy: The Department will cover the cost of any inquiry that it causes under that provision.

3387. The Chairperson: OK. Thank you. Content, gentlemen?

3388. Mr Kinahan: Will councils be able to have local inquiries if they pay for them?

3389. Ms I Kennedy: The Bill does not provide for councils to hold local inquiries.

3390. Mr Kinahan: I just thought that I should ask, because it was definitely one way. However, it is the Department.

3391. The Chairperson: OK. There was a suggestion that the powers in clause 227 are excessive as they prohibit people from becoming involved with issues that affect their local community. It was also suggested that the circumstances when an inquiry could be held in private should be narrowed.

3392. Ms I Kennedy: It is important to reflect that the clause carries forward existing arrangements for dealing with applications containing sensitive security information that it is not in the national or public interest to disclose. Those provisions originated in the Planning Reform (Northern Ireland) Order 2006 and were accompanied by the removal of Crown immunity from planning control. They provide a balanced approach, although I have to say that, to date, they have not been used.

3393. The Chairperson: OK. Do members have any questions? I take it that the Crown will be an exception.

3394. We are getting into your realm now, Peter. No issues of concern were expressed in relation to clause 228, and I do not propose to ask any questions about it. Are members content?

Members indicated assent.

3395. The Chairperson: No issues were raised by stakeholders in relation to clause 229. However, the Examiner of Statutory Rules drew the Committee's attention to the proposal to give the functions under this clause to the Advocate General rather than the Attorney General, and suggested that it was out of place.

3396. Ms I Kennedy: We are discussing that with the Department of Justice.

3397. The Chairperson: OK. Any questions, gentlemen?

3398. The Chairperson: Clauses 230 to 236 relate to national security, rights of entry and estates in land. I wonder why no issues were raised on those clauses. However, no issues were raised, and, unless members would like to ask questions about clauses 230 to 236, I am content to move on.

Members indicated assent.

3399. The Chairperson: Under clause 237, it was suggested that the Department underwrite potential costs of future developments or alteration to the software required by councils. There was also a query about whether councils would be bound to existing systems or be able to develop their own.

3400. Ms I Kennedy: The Department wishes to engage further with councils in this area to discuss IT needs.

3401. The Chairperson: I think that it is a big area for discussion, to be honest.

3402. Ms I Kennedy: It is.

3403. Mr McGlone: The last I heard, there was supposed to be some assessment of compatibility between computers and software being conducted by the Department. In fact, I submitted a question for written answer to see whether there were any additional costs associated with that. It would be useful to have an update on that.

3404. Ms Smith: We will get you an update.

3405. The Chairperson: We are not going to comment any further on the system that is in at the minute.

3406. Mr McGlone: No, we heard enough about that earlier.

3407. The Chairperson: I am sure that there is a lot of such discussion. I am sure that there are good companies out there, if we can get this right. OK, gentlemen; any other comments to make?

3408. On clause 238, it was suggested that councils should have input into the decision to appoint bodies to assist in the functions of this Bill.

3409. Ms I Kennedy: This clause relates to a discretionary power for the Minister to make appointments in relation to the Department's functions under the Bill. I am not sure what the —

3410. The Chairperson: Obviously, councils have said that they want an input. On one hand, we are handing down the powers. I am caught between the issue of looking at how we will fund this model — the effect on ratepayers and everything else. At the minute, we may certainly need advisory bodies. Time will tell in relation to that. However, councils are saying that they should have an input, whereas there is going to be no input from them whatsoever.

3411. Ms Smith: Maybe I should say something about ministerial appointments. What would normally happen is a process that is laid down for such appointments that includes clearly set out criteria, open advertising, the constitution of an interview panel and a recommendation to the Minister. That process is clearly set down and is in line with the guidance provided by the Commissioner for Public Appointments. It is a process of advertising and selection. It is not a process in which people just sort of give views. Does that make sense? It is like a job interview.

3412. The Chairperson: No, I agree with you. However, the point is that as long as that is correct, the councils have to have a proper say. We are looking at transferring powers to the councils. There is a fear of the unknown; there is the question of what lies outside the councils' control. How will that interaction work?

3413. Ms Smith: If the Minister was appointing a panel, it would be in terms of the Department's responsibility.

3414. The Chairperson: Can you give us an example of that?

3415. Ms Smith: I am not sure to what extent we have used that power. I do not know whether it is in use at the moment.

3416. Ms I Kennedy: I am not sure. The only example that comes to mind is perhaps that of the Historic Buildings Council, which we were talking about earlier.

3417. Ms Smith: That would be an example. It is exactly the same process. These people are appointed as ministerial appointees. The process of appointing them follows exactly the guidance laid down by the Commissioner for Public Appointments.

3418. The Chairperson: OK. Do members have any questions?

3419. No issues were raised in connection with clauses 239-242. Are members content?

Members indicated assent.

3420. The Chairperson: That concludes Part 14 of the Bill. I refer members to Part 15.

3421. On clause 243, concern was raised about the inclusion of the phrase "outline planning permission" and the exclusion of the phrase "reserved matters". It was suggested that the phrase "nature conservation" should also be included.

3422. Ms I Kennedy: The phrase "reserved matters" is defined in subordinate legislation: the Planning (General Development) Order (Northern Ireland) 1993. We will wish to seek legal advice on the definition of "nature conservation" if an amendment is tabled to clause 243.

3423. The Chairperson: Are members content with the explanation?

Members indicated assent.

3424. The Chairperson: The need for close consultation with councils on the development of subordinate legislation was raised under clauses 244 to 246. Obviously we would like to see the subordinate legislation. What are your views on consultation with councils?

3425. Ms I Kennedy: Obviously, councils will be key consultees on the subordinate legislation.

3426. The Chairperson: On clause 247, there was a call for the commencement of the Bill to be carried out in close consultation with councils. In addition, the Committee has discussed the possibility of including in this clause a provision that would prevent the Bill from being commenced until local government reform has been implemented. Maggie, would you like to reiterate what you said to me at the start?

3427. Ms Smith: Yes.

3428. The Chairperson: OK, thank you. It is important to have the governance. We are well aware of that. Do you feel that we do not need to include that in clause 247?

3429. Ms Smith: We have talked to the Office of the Legislative Council about that. It is going to advise us.

3430. The Chairperson: Clause 248 — does that say clause 248? I cannot believe it — is the short title. No issues were raised in connection with it.

3431. We will go through the schedules. With the exception of schedule 5, no issues were raised. We talked about the minimum three-year membership of the Historic Buildings Council. We will look again at schedule 5.

3432. Ms I Kennedy: Yes.

3433. The Chairperson: A range of other issues that are general in nature apply to several Parts of the Bill or have been excluded from the Bill, and were brought to the Committee's attention in written responses. I will raise each issue in turn, ask the Committee to reach agreement on them and get a response from the Department.

3434. A major, overarching concern is resources. Apart from what we are trying to do with the Bill, we need to send the right message back to councils about exactly what way we propose to resource the whole process.

3435. Ms Smith: When the planning powers move to councils, the planners move to councils as well. We keep talking about the transfer of powers, but what we are really doing is transferring the bulk of the planning system from the Department to councils. We are very conscious, as we know councils are, of the need to make sure that what we transfer to the councils is going to provide an excellent service but also be affordable.

3436. We are looking at that from two angles. First, we are looking at the angle of making sure that the planning system that we hand over to the councils is the right size and shape. You have heard in previous discussions, not on the Planning Bill but on resourcing issues, a lot about what the Department is doing to make the Planning Service the right size in the wider context of making the Department the right size. The situation we are facing is that because of the downturn and the economic situation we are having to reduce the size of the Planning Service. That is one aspect.

3437. We are also making sure not just that we have the right number of people but that we have people in the right places. So we are looking at restructuring the Planning Service. At the moment, we are looking at the future shape of local planning offices. When the powers transfer to the councils, each council will have to have the resource to do its development plan work and its development management work. At the moment, as you know, all area offices deal with development management, but development plan work is dealt with in a different way. So, work is ongoing to start to reorganise the Planning Service so that each office has the capacity to do the development management work and the development plan work.

3438. That is not going to happen all of a sudden. A process has to be gone through to organise all of that and make sure that it is in place in time for the transfer to councils. That is about getting Planning Service the right size and shape, but we are also looking at the income. The fee structure does not reflect the amount of work that is involved in processing the applications. In particular, the fees for the very big applications do not cover the costs. As regards housing, for example, if someone applies for a single house in the countryside —

3439. The Chairperson: I am well used to that. It is a good example.

3440. Ms Smith: They could be faced with quite a substantial fee of, I think, up to about £8,000. However, a quite large housing development, in our terms, of 49 houses can be built for a fee of just under £12,000, so there is a clear disparity. If someone builds more than 49 houses, their planning fee does not go up; just under £12,000 is the cap. We have consulted on making the fees much more realistic by, rather than capping them at £12,000, extending the maximum fee upwards to take account of the realities of the sorts of planning applications that we could face. The proposal is for the maximum fee for housing, commercial and plant to rise from just under £12,000 to £250,000. That gives scope, when you get up to these very big regionally significant applications, or even the major applications that councils will have to process, to make sure that the amount of work that is involved in processing the application is met through the fees.

3441. Clearly, there will not be an even spread; very few applications will be at that very high end. As for people who put forward the small applications, such as the person who has the single house, the fee that is charged for a single house is on a scale, but the scale relates to the size of the site. It is proposed that a flat fee be introduced, which, for a single house, would be £800.

3442. The Chairperson: Are you listening, Mr Wilson? Rural communities are being picked on again.

3443. Mr B Wilson: Sure.

3444. The Chairperson: I think that £800 is not to be sniffed at.

3445. Ms Smith: It is about matching the fee to the reality of the cost of the work.

3446. The Chairperson: I totally agree.

3447. Ms Smith: It will also make it fairer, so that people are paying what is realistic and affordable in relation to the amount of investment, and, in lots of cases, the amount of profit that will come from a development proposal.

3448. The Chairperson: Mr Wilson, would you like to comment on the fact that Bangor has built 5,000 houses for £12,000 over the past five years?



3449. Mr B Wilson: It depends on the servicing — septic tanks and all those sorts of things — which are involved in single dwellings in the countryside. You have to have special roads and driveways and that sort of thing. I am not sure of exactly where the planning ends, but they should certainly pay a bigger whack.

3450. The Chairperson: A fee of £800 sounds about right. That said, that is obviously one element. The other element is the development plans and how those are paid for. Will that funding be transferred from central government, or will it be looked at through rates?

3451. Ms Smith: There will be a transfer.

3452. The Chairperson: OK. Other issues raised included lack of time for proper consideration of the legislation and the timing of the local government reform agenda; and, on governance, the degree of departmental responsibility and lack of discussion. We will tie those two issues together. There is obviously a commitment that this will go nowhere until local government reorganisation is in place. I am only going through the agenda.

3453. Ms Smith: Yes, the timing issue is really a matter for the Executive, because they agreed the timing. Last time that we met, you asked me about the Minister writing. I have spoken to the Minister about writing to you about the timing, the governance and the commencements, so that will come through to you.

3454. The Chairperson: OK. The lack of discussion with councils on governance — was some work done on that? I am just reading through here.

3455. Ms Smith: We are not aware that there was a lack of discussion.

3456. The Chairperson: The degree of departmental responsibility and lack of discussion. Are you saying that some work has been done? Are you happy enough with the Department's role in consulting with local councils?

3457. Ms Smith: As far as we are concerned, we are not aware of any lack of discussion.

3458. The Chairperson: OK. We come to the issue of capacity building and the training of staff and councillors.

3459. Ms Smith: That brings us back to the pilot projects; it is exactly what they are designed to do.

3460. The Chairperson: OK. Thank you. Members, feel free to ask questions.

3461. It is suggested that the pre-application consultations, which I take to be the community consultations or pre-application discussions, should be compulsory.

3462. Ms Smith: They are compulsory.

3463. The Chairperson: I think it is both.

3464. Ms Smith: The comment there is not correct. The Bill will make pre-application consultation a requirement, in so far as the planning authority, when dealing with major or regionally significant applications, must decline to determine the application if the pre-application consultation has not been done or has not been done properly.

3465. The Chairperson: The concern is from the Housing Executive, which states that the Bill does not make pre-consultation a statutory requirement, nor does it include regionally significant applications. Will you assure us that that is going to be the case or clarify that point?

3466. Ms Smith: It is the case. Pre-application consultation is for major applications and regionally significant applications. The Bill states that unless pre-application consultation as required under clauses 27 and 28 is done by the applicant, the planning authority "must decline to determine" the application when it is received.

3467. The Chairperson: We are talking about "regionally significant" and then about "other" applications, whether deemed major or not. Are you saying that the statute will treat the pre-application discussion as community consultation as well?

3468. Ms Smith: Ah, we are slightly at cross purposes here.

3469. The PADs process, which is the pre-application discussion —

3470. The Chairperson: I know. I think that that is the problem.

3471. Ms Smith: It is not covered in the Bill.

3472. The Chairperson: Do you have any questions, gentlemen?

3473. The Housing Executive stated that it would:

"like to highlight that an agreement was made with Planning Service that planning applications for social housing would be defined as a major development and therefore Pre Application Discussions and Performance Agreements would be made available."

3474. Would you like to comment on that point, please?

3475. Ms Smith: That is covered in subordinate legislation.

3476. The Chairperson: Is it a requirement?

3477. Ms Smith: Yes.

3478. The Chairperson: Will councils be consulted on guidance and regulations?

3479. Ms Smith: Absolutely.

3480. The Chairperson: Will area and local development plans be the primary basis for decision-making?

3481. Ms Smith: Yes.

3482. The Chairperson: We talked previously about RPA and the link to timing, so we have covered that point.

3483. Mr Kinahan: Greg Lloyd commented that everything should match the regional development strategy and fit in to the local plans. Is there a statutory link between those plans and the regional development strategy?

3484. Ms Smith: Yes. Development plans have to "take account" of the RDS.

3485. The Chairperson: Will NIW be included as a statutory consultee?

3486. Ms I Kennedy: Northern Ireland Water?

3487. The Chairperson: Yes.

3488. Ms I Kennedy: It is likely to be a statutory consultee. The list of statutory consultees will be in subordinate legislation.

3489. Mr Kinahan: I am always being pushed by anglers. Will angling associations be statutory consultees, or will their inclusion be optional?

3490. The Chairperson: They are a vital part of the community, so I second that.

3491. Ms I Kennedy: The approach will be to look at the types of applications and who should be required to be consulted. We have started some work on that. It is for further discussion, as well as for consultation.

3492. The Chairperson: Who will select all those consultees? Will councils have a say in that? Will the list of consultees include more than it does now?

3493. Ms I Kennedy: Yes. The current list of statutory consultees is very small.

3494. The Chairperson: That is why I am asking. Who will take over that process? Will the Department take it over?

3495. Ms I Kennedy: The Department will prepare a list of who should be consulted on what type of application. That will probably be in a general development order. It will expand on the current list.

3496. The Chairperson: Is there an option to include others if need be, depending on the type of —

3497. Ms I Kennedy: Yes. There may be a certain number of statutory consultees —

3498. The Chairperson: Is there an option to include others?

3499. Ms I Kennedy: Absolutely.

3500. The Chairperson: We will now move on to that small matter of third-party rights of appeal. Most respondents called for the inclusion of limited rights of third-party appeal. Who would like to respond to that?

3501. Ms Smith: We wrote to you about this matter and set out its history, but I will quickly go through it now. The decision in question was taken prior to 2009 and was made public in the consultation document that went out in March 2009. At that stage, it was clear that there were no proposals to include third-party rights of appeal in the Bill. However, because there was an interest in the matter, it was decided to ask some general questions to gather views. The Executive approved the document before it went out, and they looked at it again after responses came back from the consultation. The Executive concluded:

"that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and implementation of the RPA have settled down and are working effectively."

3502. Basically, they were saying that third-party appeals should be considered after powers have been transferred to councils and the councils were working effectively with them.

3503. The Chairperson: Are you saying that, although they are not ruling it out, they are waiting to see? Is the idea not being ruled out?

3504. Ms Smith: That is the Executive's wording. It was published in July 2010 in the Government's response to the planning reform consultation. They are saying that further consideration will be given to the matter after powers have been transferred to councils and are working effectively.

3505. The Chairperson: Do members have any questions on that?

3506. Mr Kinahan: They could keep being pushed on that.

3507. Mr Weir: To be fair, I suspect that a number of the parties and individuals have different views on the issue. It sounds a little bit as though the Executive are trying to some extent to keep everybody on board, which is a bit of a fudge, but not entirely unsurprising.

3508. Mr B Wilson: Obviously, like the vast majority of respondents, I am supportive of third-party appeals. However, I am disappointed, although not surprised, by the Executive's trying to put the thing on the long finger because they do not want to make a decision. I think that there will eventually be an amendment to the Bill to deal with it.

3509. The Chairperson: I will try to get a Committee position on the matter. Can I go and sit elsewhere? We have to look seriously at what the majority of respondents said. It would be fine, if you are saying that, after two years, once the whole process beds in and is operating properly, there will be a mechanism for third-party appeals. However, there are genuine concerns about the matter, so, regardless of whether the Committee agrees to table an amendment, people outside the Committee will certainly be looking at doing so in the Chamber.

3510. Ms Smith: I quoted the Executive. It is also worth thinking about the fact that one of the very important things that the Bill will do is introduce what we were talking about a couple of minutes ago, that is, pre-application consultation. That can be an extremely useful and powerful tool and is part of front-loading. Therefore, the community will be given an opportunity to influence developers as they draw up applications and decide what is going to be proposed. It is clear that that process must be complete. Reports on pre-application consultation must be provided with applications, so there will be a big opportunity for third parties to have an influence at that stage.

3511. The Chairperson: Do members wish to make any other points on that?

3512. Mr Kinahan: I am just nervous that we are going to have a huge debate on this in the Chamber, and, given that, we may need to look at options in case things do not work well in the early years.

3513. The Chairperson: I do not think that it is going to leave the Committee.

3514. Mr Weir: Irrespective of the various views, it is clear that it will be a major issue in the Chamber when it comes to debate.

3515. The Chairperson: There is no doubt about that. I was going to say that it has not gone away, you know, but we will leave it at that. Do not, under any circumstances, record that.

3516. We talked about sustainable development safeguards and codes of conduct, and we discussed e-PIC. Indeed, we could spend the whole day talking about that. I want to move on to PPS 1. We discussed that the other day, and we said that we are moving away from the issue of presumption in favour of or presumption against development to a plan-led system that will look at community needs. Can you comment on PPS 1, please?

3517. Ms Smith: We started a review of PPS 1, but it is clear that it has to follow the Bill, because it will set out the general principles that flow from that. Different pieces will slot together, including the framework, which is the Bill, and some of the details in the subordinate legislation, on which we will have to be precise and directive. There will also be the guidance, and, sitting alongside the subordinate legislation, will be PPS 1, which sets out the general principles. That is where we get to talk properly about sustainability, climate change and all those sorts of issues. As with PPSs in general, there will clearly be a lot of consultation and involvement on the way through, and it will be subject to full consultation and to the Committee's views.

3518. The Chairperson: Clause 1(1), which is on the general functions of the Department, states that:

"The Department must formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development."

3519. That has to be outlined clearly in PPS 1, and more than just "orderly" development is needed. The problem is with the way that it reads. Although there is best practice and better models out there, we need to look at the matter ourselves and the size of the area that we are talking about so that we can decide what we want. In the absence of doing that for clause 1, we can certainly look at strengthening PPS 1.

3520. The Committee will need to look at the issue of developer contributions and the community infrastructure levy. Unfortunately, however, some of the members who raised the issue are not here. We need clearer lines on what we are talking about. Some members have a fair understanding of what we are trying to do, but we still need a clear guideline on that. Obviously, you are not proposing the community infrastructure levy, but the developer contribution has been discussed.

3521. Ms Smith: What we once knew as article 40 is being taken forward as clause 75. It will give broader scope to how developer contributions will be used or can be used when they are part of a planning agreement. That in itself is very important, and our Minister has been working with the Minister for Social Development at looking at how developer contributions can be used to help fund social housing, for example. That will depend entirely on the change that will be made through the Bill, which will allow the contribution to go from a developer to a Northern Ireland Department. That simply does not happen at the moment, so that will be an important change.

3522. We do not have the community infrastructure levy in Northern Ireland. The difference between that and a developer contribution is that the contribution comes under the terms of an agreement or a condition on planning permission. It is tied to that development and is relevant to it in some way.

3523. The levy, which has been nicknamed a roof tax, is a sum of money, and it really has to do with the general funding of the infrastructure. It is a form of taxation, for want of a better word. Therefore, it is not really about planning; it is just that it happens to use the planning system as a way to collect money. It is much more about the general funding of the infrastructure. A levy would, therefore, be a debate for a different day.

3524. The Chairperson: I agree. Perhaps not all members would support this, but we are looking at something that will benefit the community, regardless of whether that is done through the levy or the contribution. You mentioned article 40, which is fine. However, we could look at different ways that the community could benefit. My understanding from what I have seen is that developer contributions are generally written into an agreement. That contribution could be a road structure, for example. However, we are talking about community-based places, which, in the context of article 40, means social housing for a lot of people. However, we need to think about the community benefit, and that is why the issue was raised.

3525. Ms Smith: The interesting point about the proposed changes is that there will clearly be community benefits, depending on how the planning agreement is written and what it is designed to do. At the moment, the money can come to only the Department of the Environment, so not a lot can be done with it. The Bill proposes to broaden that out, so that will create wider opportunities for planning agreements.

3526. The Chairperson: I agree. However, are you basically saying that there is a development right through a developer contribution under article 40?

3527. Ms Smith: Yes.

3528. The Chairperson: Does that restrict it to social housing?

3529. Ms Smith: No; I am using social housing as a real example of the greater flexibility that the Bill will create for planning agreements and developer contributions. It is not restricted to social housing. The key issue is that, if we are to bring forward proposals that will allow money from housing developments to be used to help fund social housing, we need a combination of planning policy and social housing policy. We also need the transfer opportunity that is set out in the Bill. So the planning part can take in the developer contribution and make sure that it reaches another Department, but it is really up to that Department to provide the policy on how the developer contribution could be used.

3530. The Chairperson: Yes, I can see that. It is then up to the Department to decide what it wants to do, which depends on who is in control of that Department. Do members have any views on the community infrastructure levy? I cannot speak for the Committee, but I think that this issue will come back. We will return to it on a day when we have a full quota of members.

3531. We talked a lot about the duplication of functions. We need to define those roles to ensure that councils understand what could happen with overlapping. That is because the matter of the functions of the Department and those of councils keeps raising its head. We need proper, clear guidelines and definitions.

3532. Do we need basic planning to be in the Bill, or are we content?

3533. Ms Smith: No. In fact, it could be limiting.

3534. The Chairperson: Do members have any views on that? The three-year review that has been built in will let us know whether it is limiting and what is or is not working.

3535. Where the regional development strategy is concerned, the Department was asked to provide an amendment to tighten the words for councils. That is OK; we talked about that.

3536. That brings us to infrastructural development, which includes linear development projects and cross-boundary considerations. Would you like to comment on that? I think that we discussed it.

3537. Other issues that were raised include retrospective claims and the fact that there is no liability on councils for decisions that were made prior to devolution of planning functions; departmental controls, which, again, is an issue under governance that we talked about; the need for better co-ordination and co-operation between the Department, agency and local government. We dealt with the clarification of roles, and we covered climate change. Do you have any comments to make on strategic oversight?

3538. Ms I Kennedy: I think that we covered that throughout the deliberations.

3539. The Chairperson: OK. We come to the issue of the ongoing relevance of open space, sport and outdoor recreation beyond what is in planning policy statements and so forth. That will be one of the major points that communities will ask about.

3540. Ms Smith: That is the sort of thing that councils will, for the first time, be able to have in their development plans.

3541. The Chairperson: What about addressing the cumulative impacts of all the proposals?

3542. Ms I Kennedy: We discussed that when we addressed the categorisation of applications.

3543. The Chairperson: Members, feel free to ask any questions. We discussed completion notices.

3544. Ms I Kennedy: Yes, we discussed those early on.

3545. The Chairperson: I know that we discussed this today, but we are back to benchmarking council performance. That is OK as long as we do not point the finger at any council. Are there any comments on councils' right of appeal?

3546. Ms I Kennedy: There are opportunities for councils to request hearings. That depends on their particular point or query.

3547. The Chairperson: Can we amend how clause 75 provides for the awarding of costs?

3548. Ms I Kennedy: It was not intended to relate to —

3549. The Chairperson: Has any consideration been given to that?

3550. Ms I Kennedy: For the award of costs?

3551. The Chairperson: Yes.

3552. Ms I Kennedy: Yes, we intend to bring that forward as an amendment.

3553. The Chairperson: Have you considered whether there is a need for a chief planner?

3554. Ms Smith: Yes. We talked a lot about the powers going to councils and about getting everything lined up for that. However, the Department will also retain a planning division that will have oversight and advice roles. It will work on marine planning, strategic projects and so on. The director of that division will be the head of profession for planners.

3555. The Chairperson: Are you sure about that? Is there still a need for a chief planner? Are there any comments on that?

3556. Finally, do we need simplified planning zones?

3557. Ms I Kennedy: There is an opportunity —

3558. The Chairperson: There will be a plan-led system, community involvement, spatial planning, planning policy statements, the regional development strategy and area plans. Do you still feel that we need simplified planning zones?

3559. Ms I Kennedy: Yes. It is a different tool and approach.

3560. The Chairperson: All things being equal, and beyond setting down your plan, if an area develops a proper plan, would you still feel that there is a need for simplified planning zones?

3561. Ms I Kennedy: I think that it is important that they are currently available and are made available for councils if they wish to use them.

3562. The Chairperson: If we were to request that simplified planning zones be removed from the Bill, would the Department not be in favour of removing clauses 132 to 138, I think it is? I forget the clause numbers.

3563. Ms I Kennedy: I think that that is in clauses 33 to 38.

3564. Ms Smith: Simplified planning zones are an opportunity that exists, and, the way that the Bill is drafted, they are an opportunity that councils will have in the future. Careful thought would need to be given to any plans to remove that opportunity.

3565. The Chairperson: Let us be honest and say we have taken a lot of views on simplified planning zones. We had a chat with Professor Greg Lloyd, who, even though he is just one person, is very knowledgeable in that field. He has studied how such zones have and have not worked. That is something for the Committee to consider.

3566. Unless members have any other questions, that brings our session to a close. Thank you very much.

## **8 February 2011**

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  
Ms Catherine McKinney Department of the Environment  
Mr Peter Mullaney  
Ms Maggie Smith

3567. 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)

3568. 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.

3569. 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.

3570. 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?

3571. 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.

3572. 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.

3573. 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.

3574. 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.

3575. Mr Dallat: Let us hope that we are all singing from the same hymn sheet. What exactly is meant by sustainable development?

3576. 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.

3577. 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.

3578. 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.

3579. 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?

3580. Ms Smith: No.

3581. The Chairperson: They are drafts at the minute.

3582. 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.

3583. 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.]

3584. Ms Smith: Roads Service and planning are the responsibilities of two different Departments. Roads Service makes a huge contribution to looking at planning applications.

3585. 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 —

3586. The Chairperson: Excuse me. Could you please talk into the mic?

3587. 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.

3588. 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 —

3589. The Chairperson: Excuse me, Mr Dallat. I cannot hear you. Please move your file over a wee bit.

3590. Mr Dallat: I am sorry about that.

3591. The Chairperson: We are going to sort out this mic thing some time today. Please bear with us.

3592. 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.

3593. 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.

3594. 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.

3595. 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?

3596. Ms Smith: Legal advice is that the wording in the Bill is the best.

3597. 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",

3598. the objective has to be "securing" sustainable development. The wording needs to be tighter.

3599. 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;"

3600. 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.

3601. 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.

3602. 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.

3603. 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.

3604. The Chairperson: Mr Dallat, is your comment on the same point?

3605. 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.

3606. Mr W Clarke: We could just go round in a circle, like we did in the past.

3607. 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

—

3608. 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—

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

3609. and so forth. That gives the latitude to measure lots of things.

3610. 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.

3611. 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.

3612. The Chairperson: It is like trying to define "sustainability".

3613. Do members have any other views? Are you saying that this question has to be looked at in the context of another policy?

3614. 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.

3615. 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?

3616. 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.

3617. The Chairperson: Do Committee members have any comments? Are you still adamant, Mr Clarke, after that explanation by the Department?

3618. 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.

3619. Mr Kinahan: Does that not come under social work?

3620. Mr W Clarke: Good parks and exercise as well. It comes under social work and well-being.

3621. 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.

3622. 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."

3623. There was a suggesting of replacing "contributing to" to "securing". Do members still feel strongly about "securing"?

3624. 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.

3625. 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)

3626. 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.

3627. 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.

3628. Are you content, gentlemen? Do members have any questions or want to seek clarification from the Department before I put the Question?

3629. Mr Dallat: Is there any definition of "community"?

3630. 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.

3631. The Chairperson: That concludes Part 1 of the Bill. We will obviously return to clause 1.

Clause 3 (Survey of district)

3632. 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?

3633. Mr Dallat: What is meant by "keep under review" in subsection (1)?

3634. The Chairperson: I am sorry; I did not hear that. Did you hear that, Angus?

3635. Mr Kerr: Yes. It essentially means "survey" or "gather information".

3636. The Chairperson: I did not hear, but did Mr Dallat ask for the definition of "survey"?

3637. Mr Kerr: He asked what was meant by "keep under review". It means "survey" or "gather information".

3638. The Chairperson: OK. Are you content with the explanation, Mr Dallat?

3639. 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?

3640. Mr Kerr: Yes, Chairperson. That —

3641. The Chairperson: Just adjust the microphone, please, John. Pull it towards you.

3642. Mr Weir: It is difficult to pick you up.

3643. Mr Dallat: It would be very unfortunate if I could not be picked up.

3644. The Chairperson: It is for recording purposes.

3645. Mr Dallat: I apologise for that. I want Peter to hear every single word that I say.

3646. Mr Weir: In a few minutes, I may request that you put the microphone back up again.

3647. 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?

3648. 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.

3649. Mr Dallat: I certainly welcome that. It is a sound basis for making planning decisions currently and in future.

3650. 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.

3651. Mr Dallat: Presumably, the councils will be given some kind of clear indication of what they must do.

3652. Mr Weir: Such as guidance?

3653. Mr Kerr: Yes, guidance will be issued.

3654. Mr Dallat: A review could mean two or three dodgy councillors meeting once a year and ticking boxes. You know what they do.

3655. Mr Kerr: There will be clear guidance on that.

3656. Mr Weir: I am not sure whether local government would embrace the expression "two or three dodgy councillors."

3657. The Chairperson: I do not even want to ask whether Hansard has recorded that. Mr Clarke, you mentioned climate change.

3658. 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.

3659. 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.

3660. 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.

3661. 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".

3662. It is very specifically put.

3663. 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?



3664. 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.

3665. 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.

3666. 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.

3667. 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.

3668. 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)

3669. 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.

3670. 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?

3671. 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.

3672. The Chairperson: Who is going to have responsibility for neighbour notification? Will it be developers in some cases or local authorities?

3673. 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.

3674. 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.

3675. Ms I Kennedy: We are saying that that will be determined by subordinate legislation rather than by the Bill.

3676. The Chairperson: Will it be written into subordinate legislation that either the local authority or the developer or both will have responsibility?

3677. 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.

3678. 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.

3679. 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.

3680. The Chairperson: I thought that you had taken it to the Minister.

3681. Ms Smith: We did —

3682. The Chairperson: I understand.

3683. 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.

3684. Mr T Clarke: Is it not too late for the developer?

3685. The Chairperson: I want something in the Bill to ensure that someone undertakes the duty.

3686. Mr T Clarke: Surely it is for the application stage?

3687. 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.

3688. 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.

3689. The Chairperson: Therefore, we are saying that the applicant needs to know. When he makes an application, he is duty-bound to neighbour-notify.

3690. 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.

3691. 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.

3692. Clause 41 states:

"A development order may make provision".

3693. 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.

3694. 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.

3695. 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.

3696. 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.

3697. 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?

3698. The Chairperson: Would the Department like to respond?

3699. 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.

3700. 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.

3701. 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, that 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.

3702. 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.

3703. The Chairperson: That is a valid point. However, "For Sale" notices do not generally come down.

3704. 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?

3705. Mr Kerr: That is current practice for adjacent properties within 90 m.

3706. 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.

3707. 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.

3708. The Chairperson: Have members had all their points answered or covered? Are you happy?

3709. 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 from deprived backgrounds who will be represented by their community group. That is worth looking at.

3710. 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.

3711. Mr Weir: That shows how forward-thinking we are.

3712. 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 4 to the Committee.

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

Clause 4 agreed to.

Clause 5 (Sustainable development)

3713. The Chairperson: Most respondents wanted to see a stronger commitment to sustainable development by replacing the requirement to contribute —

3714. 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)

3715. 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)

3716. 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.

3717. 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."

3718. There does not seem to be any obligation to do it within a time frame. Who defines "quickly"? Is it tortoises or greyhounds?

3719. 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.

3720. 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?

3721. 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.

3722. 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?

3723. 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.

3724. 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).

3725. Mr Dallat: You have no fears that it will be a case of déjà vu?

3726. 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?

3727. 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 —

3728. 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?

3729. Mr Dallat: OK.

3730. The Chairperson: The pilot programmes will show exactly what progress is being made. That is right. Thank you for reminding me about that.

3731. Ms Smith: The guidance will as well.

3732. 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)

3733. 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?

3734. Mr Kinahan: Where does it fit with the area plans that exist or do not exist at the moment?

3735. 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.

3736. Mr Kinahan: Will the ones that do not have area plans at the moment and are sitting in limbo be brought into line?

3737. 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)

3738. 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."

3739. 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.

3740. 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."

3741. 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?

3742. The Chairperson: It is a valid point. Will you respond to that?

3743. Ms Smith: Sorry?

3744. 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.

3745. 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.

3746. 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?

3747. 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.

3748. Mr T Clarke: That is not an answer.

3749. The Chairperson: Are there any other views?

3750. 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?

3751. 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.

3752. 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.

3753. 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.

3754. Mr Dallat: A lot of faith is required in this.

3755. 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.

3756. Mr T Clarke: Clause 10 states that:

"The council must submit every development plan".

3757. 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.

3758. 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.

3759. 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.

3760. 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.

3761. 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?

3762. 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.

3763. 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?

3764. Ms Smith: Yes.

3765. The Chairperson: But if it goes to an independent and not the PAC, the local authority will have to pay for it?

3766. Ms Smith: No. That is not what we are saying.

3767. The Chairperson: I am only asking. I am seeking clarification on who pays for it.

3768. Ms Smith: It will have to be paid for by the planning system.

3769. The Chairperson: Will that resource be there to cover it?

3770. Ms Smith: Yes.

3771. The Chairperson: So, the local authority does not pay for it?

3772. Mr Mullaney: It will be paid for out of fees.

3773. 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?

3774. Ms Smith: No, OFMDFM only covers the cost of the PAC.

3775. The Chairperson: Yes, that is what I am saying.

3776. Ms Smith: The planning system will need to pay for any independent examination. We are just about to look at the —

3777. Mr T Clarke: When you refer to the planning system, do you mean local councils or the planning department?

3778. Ms Smith: At the moment, we do not know. That has not been decided.

3779. 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.

3780. 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.

3781. The Chairperson: It all comes back to resources.

3782. Ms Smith: Yes, I know.

3783. 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?

3784. Ms I Kennedy: Not in relation to the independent examination of development plans.

3785. 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?

3786. 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.

3787. 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.

3788. The Chairperson: That is fine. I understand. How will the wording of the amendment read now?

3789. Ms I Kennedy: The wording of the amendment was forwarded to the Committee yesterday.

3790. 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?

3791. 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.

3792. Mr Dallat: What is the other option?

3793. Ms I Kennedy: The other option is that the Department can appoint an independent person.

3794. 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.

3795. 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?

3796. 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.

3797. 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.

3798. Mr T Clarke: That is called tennis.

3799. 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.

3800. Mr Kerr: The 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.

3801. 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.

3802. 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.

3803. Mr W Clarke: Will there be guidance and criteria around how independent examiners are appointed and their impartiality?

3804. Ms Smith: Yes.

3805. Mr Kerr: It will ensure that the examiners are independent and appropriately qualified.

3806. 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?

3807. Ms I Kennedy: First and foremost, it goes to the PAC, yes.

3808. 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.]

3809. Mr Kerr: Saved by the bell.

3810. The Chairperson: We were going to break for lunch anyway, gentlemen.

Committee suspended for a Division in the House.

On resuming —

3811. 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.

3812. 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?

3813. Mr T Clarke: Yes.

3814. 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"

3815. 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, policies and guidance. That is why the legislation is written in that way.

3816. The Chairperson: Mr Clarke, are you happy with that explanation?

3817. Mr T Clarke: I will let it go. Will we get an answer to the question about the fees?

3818. The Chairperson: What about the costs, Maggie?

3819. Ms Smith: We will come back to the Committee in writing on that.

3820. 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?

3821. 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.

3822. 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.

3823. 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."

3824. That is not an answer. NILGA, which represents all 26 councils, asked a direct question about the cost.

3825. The Chairperson: Would you like to respond to that?

3826. 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.

3827. The Chairperson: Tell me this, Maggie; do you need to go back to the Minister about this matter?

3828. Ms Smith: Yes.

3829. 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?

3830. Ms Smith: OK.

3831. The Chairperson: Are there any other points?

3832. 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?

3833. 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.

3834. The Chairperson: I am concerned about that.

3835. 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.

3836. Mr Weir: Is that so that we can hopefully speed things up a bit?

3837. 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.

3838. Mr T Clarke: This is Tuesday, so surely the Department can communicate to us by Thursday before we accept this clause.

3839. 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.

3840. 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?

3841. The Chairperson: Yes, that is possible. Alternatively, we may have to revisit something that we already agreed.

3842. Mr Weir: Let us keep rolling, then.

3843. The Chairperson: I was just informing members that that was the case.

3844. Irene Kennedy outlined that the resource issue has nothing specifically to do with this clause; it is an amendment to give powers to —

3845. 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.

3846. 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?

3847. 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.

3848. 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)

3849. 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)

3850. 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)

3851. 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)

3852. 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)

3853. 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)

3854. 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)

3855. 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)

3856. 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?

3857. 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.

3858. 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)

3859. 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)

3860. 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.

3861. 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.

3862. The Chairperson: I advise members that that concludes Part 2 of the Bill. No doubt we will return to it.

3863. Let us move to Part 3, which is "Planning Control".

Clause 23 (Meaning of "development")

3864. 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.

3865. Has the Department any comments to make before I put the Question?

3866. Ms I Kennedy: Currently, consent for demolition is required only in a conservation area, an area of townscape character or a listed building.

3867. The Chairperson: Thank you. I am content with that explanation.

3868. Mr T Clarke: Are those the only cases in which consent for demolition has to be applied for?

3869. Ms I Kennedy: Yes.

3870. Mr T Clarke: Will a listed building be protected by natural heritage only if it is in a conservation area?

3871. Ms I Kennedy: I am sorry. I meant a listed building anywhere.

3872. 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)

3873. 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.

3874. Are there any other comments from the Department?

3875. 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)

3876. 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.

3877. 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.

3878. 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)

3879. 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)

3880. 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.

3881. 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)

3882. 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.

3883. 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.

3884. 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?

3885. 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.

3886. Mr T Clarke: That is OK. I was concerned that there was another way for somebody to delay the process unduly.

3887. 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.

3888. Mr T Clarke: If the proper process were followed, would it take any longer?

3889. Ms Jackson: No.

3890. 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)

3891. 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?

3892. Mr T Clarke: Was the issue of compensation raised about call-in?

3893. The Chairperson: The Bill deals with compensation later.

3894. Mr T Clarke: Does it apply to call-in?

3895. The Chairperson: Would you like to respond to that, Maggie?

3896. 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.

3897. 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".

3898. My reading of that is that the Department will be calling into question something that was already approved.

3899. Ms Jackson: No. It does not happen at that stage.

3900. Ms Smith: The Department can call in plans for a determination.

3901. Ms Jackson: An application would be called in only during its determination stage. Call-in would not occur after an approval were issued

3902. The Chairperson: Are you satisfied with that, Mr Clarke?

3903. Mr T Clarke: It was just the wording, Chairperson.

3904. The Chairperson: Can we deal with that issue later when we look at the area of compensation?

3905. 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.

3906. Mr T Clarke: Would it also apply when applications go to a council for approval?

3907. Ms I Kennedy: The power applies only to approval for reserved matters.

3908. Mr T Clarke: Where does it say that?

3909. Ms I Kennedy: Clause 29(1) refers to:

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

3910. A development order is a reserved matters application.

3911. The Chairperson: Do you want more clarity on that, Mr Clarke?

3912. Mr T Clarke: No, I will let it go. It is not a die-in-a-ditch issue.

3913. The Chairperson: If you are not happy with the explanation, I want the explanation to —

3914. Mr T Clarke: No, it is OK. Will call-in happen only prior to a decision being made?

3915. Ms I Kennedy: Yes.

3916. Mr T Clarke: OK.

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

Clause 29 agreed to.

Clause 30 (Pre-determination hearings)

3917. 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.

3918. 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)

3919. 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.

3920. 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.

3921. 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.

3922. 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.

3923. 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.

3924. 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.

3925. 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.

3926. 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.

3927. 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 —

3928. 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 —

3929. The Clerk of Bills: Do you mean making commencement subject to draft affirmative resolution?

3930. 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.

3931. 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.

3932. 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.

3933. The Clerk of Bills: Yes.

3934. 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.

3935. 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.

3936. 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 —

3937. 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.

3938. Mr McGlone: We are back to the —

3939. 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.

3940. 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.

3941. 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?

3942. Mr McGlone: We need the mechanism to tie it all in, because that is our duty as a Committee.

3943. 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.

3944. 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.

3945. 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.

3946. The Chairperson: OK. I am content with that. Therefore, you will come back with —

3947. Mr McGlone: Will you give us the options, then?

3948. 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?

3949. The Chairperson: I am content with that, yes. Are we agreed, gentlemen?

Members indicated assent.

3950. 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)

3951. 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?

3952. 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.

3953. 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)

3954. 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.

3955. 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?

3956. 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?

3957. The Chairperson: Yes.

3958. Ms I Kennedy: It will be very much up to them whether they wish to have any, and when.

3959. 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?

3960. 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.

3961. The Chairperson: I agree. There are some issues that have to be looked at. Should we consider a planning policy statement?

3962. 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.

3963. Mr McGlone: They will not have planning zones anyway, because they are designated separately.

3964. Ms Smith: Yes. That is why they are listed in the exclusions.

3965. 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.

3966. The Chairperson: You would not be looking at certain criteria and business plans.

3967. 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.

3968. 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)

3969. 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)

3970. 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)

3971. 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.

3972. 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.

3973. 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.

3974. 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.

3975. 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".

3976. It is back to proving proof of ownership, where there have been loopholes in the past. Is that something new?

3977. Ms I Kennedy: There is no change from the existing legislation. The provisions carry forward from the Planning (Northern Ireland) Order 1991.

3978. 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.

3979. Mr McGlone: It stays clear from it.

3980. Mr T Clarke: We need something in there to make that clear.

3981. 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.

3982. 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."

3983. Mr T Clarke: Is that new?

3984. Ms I Kennedy: No. It is carried forward.

3985. Mr T Clarke: They are not using it.

3986. The Chairperson: You have heard Mr Clarke's concerns. I have clearly marked that we will have to come back to this clause.

3987. Mr T Clarke: On how many occasions has the Planning Service actually used that power?

3988. The Chairperson: OK. We will come back to that.

Clause 44 (Appeal against notice under section 43)

3989. The Chairperson: I remind members that the Committee did not raise any issues with this clause. Have members any points to make?

3990. 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.

3991. Ms Smith: This came up at the last session, and we have got something coming back to you on that.

3992. The Chairperson: You will come back to us on that. That is fine. That is why the point is made.

3993. 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.

3994. 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 —

3995. 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.

3996. Ms Smith: This was in the letter that came through on —

3997. 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.

3998. 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.

3999. The Chairperson: I can see complications. Maggie, you will come back to the Committee and we will discuss that again.

4000. 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.

4001. 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)

4002. The Chairperson: No issues were raised by the Committee. Do members wish to raise any issues now?

4003. 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.

4004. 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 —

4005. Mr T Clarke: [Inaudible.]

4006. Mr McGlone: It is.

4007. 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 —

4008. Mr McGlone: I know that.

4009. 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.

4010. 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?

4011. 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.

4012. 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.

4013. 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.

4014. Mr Mullaney: No, because you —

4015. 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.

4016. 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.

4017. 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.

4018. 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?

4019. 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.

4020. The Chairperson: Is there a clause that refers to that?

4021. Mr T Clarke: Was it clause 44?

4022. 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.

4023. 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.

4024. Mr Mullaney: A fundamental premise is that planning permission relates to the land.

4025. The Chairperson: Yes, exactly right. That is correct.

4026. Mr Mullaney: Not to the person, unless there is a particular circumstance such as an occupancy condition.

4027. The Chairperson: We understand. I am only saying that the member asked for something in the Bill.

4028. 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.

4029. The Chairperson: Yes, there is an application process, Peter. Is there anything there?

4030. 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.

4031. 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.

4032. Mr T Clarke: No, it would not, Chairperson. The agreement of the landowner could be obtained without actual ownership.

4033. The Chairperson: I agree, but it is back to clause 42, yes? We need more information, and we need to look at it.

4034. 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.

4035. The Chairperson: No, I totally agree. Do you understand what we are talking about, Peter?

4036. Mr Mullaney: Absolutely.

4037. 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.

4038. 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.

4039. 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.

4040. Mr Mullaney: This discussion has illustrated that it is a broader issue and has wider consequences, as Mr Clarke and Mr McGlone have said.

4041. 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".

4042. 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".

4043. 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.

4044. 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.

4045. 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.

4046. 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?

4047. Mr Mullaney: Certificate C?

4048. Mr T Clarke: Yes.

4049. 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.

4050. Mr T Clarke: I cannot remember the name of the form.

4051. Ms I Kennedy: P2.

4052. 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".

4053. It goes on to suggest that it is on behalf of the person who owns the land and what have you.

4054. Ms I Kennedy: There are three options under that: certificate A, B or C.

4055. 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.

4056. Mr T Clarke: You can tell that the system is very complicated.

4057. 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.

4058. 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.

4059. 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?

4060. 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.

4061. 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.

4062. 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.

4063. The Chairperson: We need to look at clause 42, and the Department needs to come to the Committee with an amendment.

4064. 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.

4065. 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)

4066. 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?

4067. 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.

4068. 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)

4069. The Chairperson: You are welcome back. We have one hour left.

4070. I remind members that the Committee did not raise any issues with this clause.

4071. 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)

4072. 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.

4073. There is no response on the issue of how aftercare conditions will be delivered in the event of insolvency.

4074. Excuse me, Willie, do you have to go? We cannot take any decisions with only four members.

4075. Mr W Clarke: Can you give me two minutes?

4076. The Chairperson: OK.

4077. I am disappointed with the lack of response on landfill aftercare.

4078. 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.

4079. 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.

4080. 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?

4081. 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.

4082. Mr T Clarke: Does this come back to the stop notice?

4083. 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.

4084. 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.

4085. 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.

4086. Mr T Clarke: Do they believe that to be enforceable?

4087. Ms I Kennedy: That is certainly what our discussions with them have been about.

4088. 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?

4089. 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.

4090. Ms Smith: That would be a significant financial burden on the owner.

4091. The Chairperson: We are not considering an amendment to the clause, because you believe in the current system.

4092. 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?

4093. Mr T Clarke: Landfill comes under different legislation.

4094. The Chairperson: I am only asking.

4095. Mr T Clarke: It lasts for 99 years.

4096. The Chairperson: I think that that was raised originally. Is it dealt with in different legislation?

4097. Ms Smith: Yes.

4098. The Chairperson: We will have to suspend, because we are inquorate for the purpose of taking decisions.

Committee suspended.

On resuming —

4099. 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)

4100. 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?

4101. 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)

4102. 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)

4103. 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)

4104. 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)

4105. 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)

4106. 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)

4107. 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)

4108. The Chairperson: The Committee has raised no issues in respect of this matter.

4109. 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.

4110. Mr Mullaney: I am not sure, to be honest.

4111. 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.

4112. 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.

4113. Mr McGlone: But that is the issue.

4114. 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.

4115. 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?

4116. Mr Mullaney: I do. I do not know the answer; I think that I will have to take advice on that.

4117. Mr McGlone: Thank you.

4118. The Chairperson: I need some clear explanation on clause 70 and the textual amendment.

4119. Ms I Kennedy: Are we going back to clause 70?

4120. The Chairperson: It has been agreed already, but we could not pick it up exactly. Will you clarify the textual amendment?

4121. 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.

4122. 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?

4123. 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)

4124. 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)

4125. 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?

4126. Mr McGlone: Where is that community infrastructure levy? Maybe I am on the wrong clause.

4127. 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)

4128. 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.

4129. Ms I Kennedy: Under clause — [Interruption.]

4130. The Chairperson: If you clarify that, we will finish with this clause.

4131. 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).

4132. 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.

## **10 February 2011**

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 Danny Kinahan  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

Witnesses:

Mr Stephen Gallagher  
Ms Irene Kennedy  
Mr Angus Kerr           Department of the Environment  
Ms Maggie Smith  
Mr Peter Mullaney

4133. The Chairperson (Mr Boylan): Welcome back, Irene, Stephen and Angus. We will go through each clause one by one, starting at Part 4. We will continue from clause 79. I will seek the Committee's position. We will deal with deferred clauses after we have dealt with the schedules and before we look at any other issues. I remind members that this is their last opportunity to respond to the clauses. I also remind members that they are more than welcome to bring whatever amendments they feel have not been talked through in Committee to the Floor of the House at Consideration Stage.

4134. Therefore, we will start clause-by-clause scrutiny from Part 4, which covers additional planning control. OK, gentlemen. With all of that in mind, and now that you are appropriately armed with all of the information and documents, we will move on.

Clause 79 (Lists of buildings of special architectural or historic interest)

4135. The Chairperson: Councils wanted further clarification of their role with regard to the clause. The Department stated that there would be no change in council responsibility.

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

Clause 79 agreed to.

Clauses 80 to 82 agreed to.

Clause 83 (Issue of certificate that building is not intended to be listed)

4136. Mr McGlone: Why is there a need to issue a certificate for a building that is not intended to be listed? I thought that a certificate would only be issued for a building that is intended to be listed. Why would you go to all the bother of being that official? A letter would, probably, suffice.

4137. Ms Irene Kennedy (Department of the Environment): It is really is not much more than that. The certificate provides certainty for the developer or person who owns the property that the building will not be listed within the next five years.

4138. Mr McGlone: It seems a very formal way to simply say no. That has just struck me. It is a bit like getting a certificate from the doctor to say that you are not sick. [Laughter.]

4139. The Chairperson: You can put laughter in the record. Are you content with that explanation, Mr McGlone?

4140. Mr McGlone: Whatever floats your boat.

4141. The Chairperson: I am not putting that to the Committee.

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

Clause 83 agreed to.

Clause 84 (Control of works for demolition, alteration or extension of listed buildings)

4142. The Chairperson: I remind members that the Committee did not raise any issues in relation to clause 84.

4143. Mr Savage: I am concerned that some of our towns have quite a lot of listed buildings that have deteriorated to such an extent that they are having an adverse effect on those towns. I am thinking of a building in one town in particular, the whole left side of which has deteriorated. Some of the planners here will know exactly where I am talking about. Nothing is happening, and something needs to be done, either to help the owner to do something about it or knock it down and replace it with a new building.

4144. As it stands, people want to develop old listed buildings. They were all right in the days of the horse and cart. The planners will not let the owners make any alterations. Something has to be done in that case. It is no secret that I am talking about Lurgan. Mr Mullaney knows exactly where I am talking about. There needs to be some relaxation so that the owners of buildings at the top end of the town can modernise. They want to do that, but they are subjected to restrictions. Something has to be done about that.

4145. The Chairperson: We will find out the name of that town yet. Mr Mullaney's name was mentioned there.

4146. Mr W Clarke: I have a question about the £30,000 fine. I do not believe that that is a deterrent. During the boom, £30,000 was nothing. It would not even have covered the cost of a garage in a new development. We should look at an amendment that would increase that amount to around £100,000.

4147. Mr Kinahan: I agree. I was going to suggest that to the Department, because it should have the power to impose a suitable fine. I know that a row of eight Victorian houses in Ballycastle were flattened in one weekend. A £30,000 fine would have been a pittance in that case.

4148. Mr Ross: I would not disagree. During the boom years, as Willie says, it would have been factored into the overall cost.

4149. The Chairperson: Would you like to respond to Mr Savage's point?

4150. Mr Peter Mullaney (Department of the Environment): I will not comment on the specific town, although I am aware of the circumstances to which Mr Savage referred. The purpose of listing a building in the first place is to protect the built heritage. There is provision in the legislation to apply for listed building consent to alter a building. Whether consent is forthcoming is the issue, but the provision does and will exist.

4151. Mr Savage: All I want is something that will help owners to modernise and upgrade their buildings. They cannot do so because of restrictions placed on them by the Department. The big issue is that people are land-locking quite a bit of property. Others cannot get to the back of their properties because of the old buildings along the front of the street. To be quite honest, for £30,000, it would be far better to knock those buildings down. People want to stay within the law, and something needs to be put in place to bring those buildings into play.

4152. The Chairperson: There are two issues. Will you consider an amendment to the fine, which Mr Kinahan, Mr Clarke and Mr Ross were —

4153. Ms I Kennedy: It is important to look at clause 84(6) and at the current offences and penalties. It states:

"A person guilty of an offence under subsection (1) or (5) shall be liable?

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £30,000, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both,".

4154. Mr W Clarke: I see that, but can the Department tell me of one developer who was jailed for knocking down a listed building? I am not aware of any; certainly not for two years. I do not know of any who were imprisoned for six months; not in my constituency, anyway. Even a fine of £100,000 during the boom would not have been a deterrent, but it is certainly more of a deterrent than £30,000. As Alastair said, people took that into consideration when they thought about developing the site and looked at how many houses they were going to put there. It is similar to what George said: taking the listed building out of the way provided for another site and paid for whatever fines they would face. It is the same with tree preservation orders as well: trees were just ripped out of the road and people took the fines. When the Ministers were asked questions about that type of behaviour, the response from the Department was that the matter was in the hands of the courts and that it could not interfere. We want the Bill to state that the deterrent will be at least £100,000 because I cannot see people going to prison for it.

4155. Mr Kinahan: I agree.

4156. Ms I Kennedy: Clause 84(6) points out that:

"in determining the amount of any fine ... the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to that person in consequence of the offence."

4157. There is flexibility in that provision for, potentially, a hefty fine. However, as Mr Clarke indicates, it is a matter for the courts.

4158. Mr W Clarke: If the legislation states that the maximum fine is £30,000, the judge will be influenced by that. He will give the maximum fine.

4159. Ms I Kennedy: That is for summary conviction. Conviction on indictment would be in a different court.

4160. Mr Buchanan: What difficulty does the Department have in raising the fine from £30,000 to £100,000?

4161. Ms I Kennedy: I am drawing to the Committee's attention that there is flexibility in the provision.

4162. Mr Buchanan: With due respect, that flexibility does not seem to have been used over the years. I know case in which listed buildings have been demolished and the developers got a slap on the wrist more or less, and that has been it. No action was taken against them. At least, if the fine were raised to £100,000, it would be some sort of deterrent for someone who knows that there will not be a court case and that they will not have to go to prison.

4163. Ms Smith: I am more than happy to ask the Minister whether he would be content with that amendment. Alternatively, it may be something that the Committee might want to put forward.

4164. The Chairperson: I agree. I think that the Committee would be willing to propose an amendment. It would be far stronger. Will you bring the matter to the Minister? We will certainly consider an amendment. We will leave this clause, gentlemen? Are you content?

4165. Mr W Clarke: I do not think that we should leave the clause. We should table an amendment, and, if the Minister comes back to the Committee, we will remove our amendment.

4166. Ms Smith: That is fine.

Question, That the Committee is content with the clause, subject to a Committee amendment, put and agreed to.

Clause 84, subject to a Committee amendment, agreed to.

Clause 85 (Applications for listed building consent)

4167. The Chairperson: The Committee did not raise any issues with this clause. However, the Department has since advised that it will be make two textual amendments to this clause to ensure a consistent approach throughout the Bill. Are there any comments from departmental officials?

4168. Ms I Kennedy: They are minor amendments to clarify that any particulars in clause 85(1)(b) must be verified by such evidence as required by the regulations — that would be the list of building consent regulations — or by any direction. The amendments will also clarify, at clause 85(4), the time within which applications are dealt with by councils or the Department, because, in some cases, the Department will deal with such applications.

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

Clause 85, as amended by the Department, agreed to.

Clause 86 agreed to.

Clause 87 (Call in of certain applications for listed building consent to Department)

4169. The Chairperson: The Department stated that the use of the call-in power would depend on the circumstances of each case. Are there any comments on the clause?

4170. Mr Kinahan: I have a general comment on listing, and it relates to my colleague's comment that the difficulty is that buildings are either listed or not listed. We sometimes need a middle ground. Listing tends to keep a certain structure. However, doing so sometimes prevents buildings being put to other uses. We need to look at this with a view to seeing whether it is within the powers of councils or others to vary what is retained in a building rather than just, religiously, save that building. The approach prevents a lot of buildings being used for other things. I know that that is a difficult one. I am just not sure how to get round it.

4171. Mr Mullaney: The situation pertains at the minute. Obviously, an assessment has to be made on the merits of the development proposal vis-à-vis the listed building, and the classic case is facade retention. There are clearly cases of listed buildings being amended or altered in a way that retains the integrity of the building and enabling development to proceed. It is always going to be a case of looking at the particular circumstances of each case. The intention behind listing a building is to retain it in its entirety. However, the other issue, which brings me back to Mr Savage's point, is that the purpose is to have a use for that building. Buildings decay if they are not put to use, so we have both those considerations.

4172. Mr Kinahan: I should at least declare an interest. I do not want to be fined £100,000 for knocking my room down.

4173. The Chairperson: Before we move on; which clause can we strengthen in response to Mr Savage's point about the use of buildings and everything else? Can we do anything?

4174. Ms I Kennedy: I think that that is more of a policy issue.

4175. Mr Mullaney: It is. It falls under PPS 6. The point that I made on clause 85 was that, as in the 1991 Order, there is provision to apply for listed building consent. I also made the point that the issue is one of outcome. To follow up on what I just said to Mr Kinahan, each case has to be judged on its merit. The purpose is to retain the listed building as much as possible.

4176. The Chairperson: That is the problem. In some cases, we need to use a bit of flexibility and common sense. Obviously, you have to look at policy first.

4177. Mr Mullaney: That is set out in PPS 6.

4178. The Chairperson: We will put a recommendation on that matter in the report.

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

Clause 87 agreed to.

Clauses 88 to 92 agreed to.

Clause 93 (Duration of listed building consent)

4179. The Chairperson: No issues were raised by the Committee. We clarified the point that was raised by Belfast City Council. It requested further consideration on the duration of listed building consent, which is granted for five years.

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

Clause 93 agreed to.

Clauses 94 to 96 agreed to.

Clause 97 (Revocation or modification of listed building consent by council)

4180. The Chairperson: I remind members that, at its meeting on 1 February the Committee requested that the departmental officials report back to the Committee on the need for and provision of arbitration in relation to listed buildings and conservation. The Department's response suggests that the proposed powers are a safeguard only to be used in rare, exceptional circumstances if a council fails to fulfil its duties. The Department is required to give notice or consult with councils before carrying out those actions. On that basis, it does not consider it necessary to establish formal arbitration arrangements.

4181. Mr Savage: That is the one that I have been talking about. I had better declare an interest as a member of Craigavon Borough Council. I would like some clarification on this matter, and I suppose that the Department has gone some way towards providing that. Councils cannot hold people to ransom who want to modernise listed properties. Half of those properties do not even have foundations. People want to do something to those buildings but are being restricted from doing so. I want to see something in the Bill that helps owners to go ahead and spend money on such properties in order to bring them into play.

4182. The Chairperson: Does anybody wish to comment? The Department is saying that this matter is covered by PPS 6. The Committee has previously discussed how planning policy statements are out rolled, and at the minute, we are seeing inconsistencies with PPS 21. However, the division is getting better at that. Mr Savage has obviously raised an important, valid point about what is happening in his constituency. If the Department is saying that PPS 6 covers this issue, it needs to ensure that guidance is sent out, otherwise we will need look at the Bill.

4183. Ms Smith: PPS 6 will cover it.

4184. The Chairperson: Can you give us that assurance?

4185. Ms Smith: Yes.

4186. The Chairperson: Mr Savage is correct: half the buildings have no foundations. Will you keep the Committee informed on whether the Department will give guidance about PPS 6 on the matter? Do members have any other points?

4187. Mr W Clarke: The Chairperson has clarified that guidance will be given. If a building is worthy of listing, then it is not a matter of whether it has a foundation. Centuries ago, a lot of buildings had no foundations. If it is a matter of keeping facades and interiors, that is fair. I do not know the particular circumstances in Craigavon, but people cannot just knock down listed buildings to encourage development. If there is a historical aspect to a building, it has to be preserved. People cannot just continually knock down our heritage until we are left with only glass and concrete. There has to be a line drawn. It is fair to consider the need for flexibility, but people just cannot take out buildings to put in new developments.

4188. The Chairperson: I do not disagree, but this comes to down to common sense. Sometimes frontages and doorways are not kept, but that usually depends on what a person wants to do with the building for modern living. That is something that people need to be very sensitive about. I agree that the facade is kept in most cases.

4189. Mr W Clarke: George was talking about buildings being taken down completely to open up opportunities for new developments.

4190. The Chairperson: To be honest, it is down to PPS 6.

4191. Ms Smith: Yes, it is.

4192. The Chairperson: It is on a case-by-case basis.

4193. Mr Kinahan: I was just going to say that I agree. It will get to the point where an old building is in such bad order that no one will be able to afford its upkeep.

4194. The Chairperson: I do not think that there is anything wrong with your building, Mr Kinahan. We will be down for breakfast one of these days.

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

Clause 97 agreed to.

Clause 98 (Procedure for section 97 orders: opposed cases)

4195. The Chairperson: I remind members that councils expressed concern about the degree of scrutiny being retained by the Department. The Department stated that this clause is part of its oversight role. We have continuously asked for a two-year review to be built into this. We will discuss that at the end. All that I am saying is that the councils keep reminding us about all of these things.

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

Clause 98 agreed to.

Clauses 99 and 100 agreed to.

4196. The Chairperson: Gentlemen, we have scrutinised 100 clauses; only another 148 clauses and a few other matters to go.

Clauses 101 and 102 agreed to.

Clause 103 (Conservation areas)

4197. The Chairperson: I remind members that, at its meeting on 1 February, the Committee requested that departmental officials report back to the Committee on the need for and provision of arbitration in relation to listed buildings and conservation areas. I refer members to the Department's response. I will give Mr Kinahan a minute. Do members wish to comment? No.

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

Clause 103 agreed to.

Clause 104 (Control of demolition in conservation areas)



4198. The Chairperson: I remind members that the Committee did not raise any issues. However, the Department has since advised the Committee that it wishes to make two textual amendments to ensure a consistent approach throughout the Bill.

4199. Ms I Kennedy: It is simply a matter of putting in "conservation area".

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

Clause 104 agreed to.

Clause 105 agreed to.

Clause 106 (Application of Chapter 1, etc., to land and works of councils)

4200. The Chairperson: I remind members that the Department stated that further details on this clause would follow in guidance and subordinate legislation. In addition, the Department has since advised the Committee that it wishes to make textual amendments to the clause to ensure a consistent approach throughout the Bill. We are now relying a lot on guidance and subordinate legislation.

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

Clause 106 agreed to.

Clause 107 (Requirement of hazardous substances consent)

4201. The Chairperson: No issues have been raised in Committee. Do members have any comments to make about hazardous substances?

4202. Mr W Clarke: Just on the £30,000 fine, again.

4203. The Chairperson: Indeed. Armagh City and District Council raised the issue of the £30,000 fine.

4204. Mr W Clarke: There is a huge amount of money to be made from removing hazardous waste.

4205. The Chairperson: Do members have any comments?

4206. Ms Smith: I am happy to raise that matter with the Minister, but it might be something that the Committee will [Inaudible].

4207. The Chairperson: For clarification: that comment relates to clause 116, Mr Clarke.

4208. Mr W Clarke: I see that now, Mr Chairperson.

4209. Mr Savage: Some big containers of hazardous waste have been brought into certain areas recently and just detached from lorries. That has happened quite a bit in the Craigavon area. Who has the power to remove them?

4210. Ms Smith: That is in the Waste and Contaminated Land (Amendment) Bill.

4211. The Chairperson: A protocol is being put into place, through the Waste and Contaminated Land (Amendment) Bill, to see who deals with what. It is valid to raise the point. However, that relates to clause 116.

4212. Mr McGlone: How does this Bill fit in with the role of the Northern Ireland Environment Agency (NIEA) with respect to what is interpreted as a hazardous substance constituting pollution?

4213. Mr Savage: It sat there for six months —

4214. The Chairperson: Hold on.

4215. Mr McGlone: There is also the issue of fines. Could there be two issues: a hazardous substance that is illegal and one that constitutes further pollution, which is also illegal? What is the role of the local council, as it might be intended to be, and the NIEA, as it could be intended to be?

4216. Ms I Kennedy: I do not have an answer to that.

4217. Mr McGlone: It was not clear to me either.

4218. Ms Smith: The Planning Bill relates to planning. We cannot comment on waste, but we could come back to the Committee on that matter.

4219. The Chairperson: You know the issue.

4220. Ms Smith: Yes.

4221. The Chairperson: The key point is about the waste issue. However, that will depend on the protocol. Mr McGlone asked about the NIEA and its responsibility as opposed to that of the local council. A waste protocol is being agreed on the amounts and types of waste. Perhaps you could come back to the Committee about that. Mr Savage also raised specific issues in his council area. Will you respond to us in writing on behalf of the Minister on the issue of hazardous materials?

4222. Ms Smith: Yes, we will.

4223. The Chairperson: Are there any other comments, gentlemen? Are you content with that, Mr McGlone?

4224. Mr McGlone: Yes.

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

Clause 107 agreed to.

Clauses 108 to 112 agreed to.

Clause 113 (Call in of certain applications for hazardous substances consent to Department)

4225. The Chairperson: I remind members that the Committee raised no issues about the clause. However, the Department has since advised that it will be making an amendment to the

text of the clause to ensure a consistent approach throughout the Bill. The text of the draft amendment is in members' papers.

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

Clause 113 agreed to.

Clause 114 agreed to.

Clause 115 (Effect of hazardous substances consent and change of control of land)

4226. The Chairperson: I remind members that the Committee did not raise any issues, but there is again an amendment to the text of the clause to ensure a consistent approach throughout the Bill. The text of that amendment is in members' papers.

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

Clause 115 agreed to.

Clause 116 (Offences)

4227. The Chairperson: This clause deals with offences. I remind members that, at our meeting on 1 February, the departmental officials agreed to report back to the Committee on the possibility of criminalisation being included in this clause. The Department's response is included in members' papers, and indicates that it is already an offence. This clause creates a criminal offence if there is contravention of hazardous substances control. Mr Clarke, this relates to the fine as well. Will the departmental officials clarify the matter?

4228. Ms I Kennedy: It is a criminal offence and those are the penalties for it.

4229. The Chairperson: The £30,000 has been raised again; in these economic times. Mr Clarke, you had an issue about the fine in clause 116.

4230. Mr W Clarke: I would like the Committee to consider an amendment. Is there a schedule of substances so that we can get an idea of what we are talking about?

4231. Mr Stephen Gallagher (Department of the Environment): Substances are listed in the regulations, along with the relevant quantities. I would have to go back and look at them; it is a technical issue that I am not really qualified to talk about.

4232. Mr W Clarke: It would just give me a better idea. Why is there no custodial sentence?

4233. Mr S Gallagher: It matches other jurisdictions. We were asked to go back and look at that, and we can confirm that prison sentences are not handed down in other UK jurisdictions. That is where the Health and Safety Executive (HSENI) pointed us. We went back to the HSE to get its views on the imprisonment issue, and I will quote from its letter:

"While HSENI holds no expertise in planning law I recall the introduction of the 1993 Planning Hazardous Substances Regulations."

4234. As operators of sites —

4235. The Chairperson: Excuse me; just for reference. What you are reading from needs to be handed to Hansard staff once you are finished with it.

4236. Mr S Gallagher: I will do that, yes. In essence, the HSE was pointing out that:

"As operators had sites in both jurisdictions it was seen as essential that the enforcement regime was persuasive and proportionate as well as comparable across the UK."

4237. It went on to say:

"Currently, there is interaction on parity of the enforcement regimes though better regulation colleagues, with site operators taking note of any perceived differences within the UK. HSENI would hold the view that a comparable enforcement approach should be maintained within the UK."

4238. We received that letter, which reflects the HSE views, yesterday.

4239. The Chairperson: Are we not devolved?

4240. Mr W Clarke: Exactly.

4241. The Chairperson: I know that we could talk about this all day. Mr Clarke, did you want to put a figure on that? The clause states a "fine not exceeding £30,000". What matters to the Committee is how many people have been prosecuted. Let us be honest, we know how enforcement has worked before and how the process has been rolled out. There have been very few convictions in cases in which hazardous substances have been involved and most of those cases were cleared by councils. That is the general belief anyway.

4242. Mr Kinahan: Where do the fines go? Do they go to Northern Ireland or to the Treasury?

4243. Ms Smith: My understanding is that fines go into the Consolidated Fund.

4244. Mr Kinahan: Which is where?

4245. Ms Smith: It is in the Treasury; sorry.

4246. The Chairperson: You do not need to apologise. The money goes back to the Treasury.

4247. Ms Smith: I will find out the answer to that question for you.

4248. The Chairperson: This relates to our earlier discussion of the other fine. Do members want to propose an amendment or leave the matter until we come back?

4249. Mr W Clarke: I want some clarity about whether the provision will apply to a particular site where substances are buried?

4250. Ms Smith: Yes.

4251. Mr W Clarke: I am trying to get my head around this. Are we talking about building sites or some other sites?

4252. Ms I Kennedy: More often, the sites would be industrial complexes in which chemicals are used for certain processes. Another example would be a water treatment works. The provision is

not necessarily concerned with waste, this concerns the consent for hazardous substances to be on sites. There are very few applications, because the regulations exempt many of the normal day-to-day chemicals that are needed for industrial processes.

4253. The offence could attract a fine of over £30,000 for conviction on indictment. The Committee should also be aware of that.

4254. The Chairperson: The Committee sought clarification on that matter and you provided that clarity with a slightly different explanation.

4255. Mr Savage: The issue of the disposal of hazardous waste is again raised in clause 116(3)(a)(i), which states that an appropriate person means:

"any person knowingly causing the substance to be present on, over or under the land".

4256. Hazardous waste is a big issue. A container load of it could be left on a farmer's land, and when the Department comes along the farmer will be the fall guy and will lose his single farm payment.

4257. I am a member of the Southern Waste Management Partnership (SWaMP), and the Chairperson's colleague also sits on that partnership. We were faced with the issue of containers of waste being hooked off on farmers' land six months ago. Those responsible could not dispose of the waste and no one would take the decision about who owned the waste or who should dispose of it. It sat there for ages and ended up costing the various councils a fortune. It probably cost the DOE two fortunes before it was eventually removed. I would love some powers in this Bill so that such waste could be removed.

4258. The issue is a big one and it will raise its head more often in the future. If people are doing things that they should not be doing and are under pressure, they may put the waste on a container and, under the cover of darkness, dump it outside anyone's place. I would love some clarification on that.

4259. The Chairperson: That does not apply to the Planning Bill, but perhaps Maggie would clarify the position.

4260. Ms Smith: That is a very important issue, and I am more than happy to come back to the Committee on it.

4261. The Chairperson: Mr Savage, are you happy for us to return to that issue later?

4262. Mr Savage: I am quite happy to leave it in your hands.

4263. Ms Smith: OK. Thank you.

4264. Mr Savage: I am only drawing it to your attention.

4265. The Chairperson: Given that clarification and the clarification on the fine; the issue has been cleared up.

4266. Mr W Clarke: I want more clarification, because I am totally confused.

4267. The Chairperson: We will have to leave it then.

4268. Mr W Clarke: I would also like to see what the fine is in the South.

4269. The Chairperson: Unfortunately, we will have to leave clause 116. How soon can you come back to us in relation to this matter?

4270. Ms Smith: Can I clarify where we are in relation to the fine? Are you asking us to go back to the Minister on the size of the fine? Is that correct?

4271. The Chairperson: What else?

4272. Mr W Clarke: We would like to find out how often it is being used and how big an issue it is. Then we can decide whether the fine is an appropriate deterrent.

4273. The Chairperson: That is fair. Whatever we do not clear up today we will clear up on Tuesday at lunchtime. It will only take half an hour.

Clause 116 referred for further consideration.

Clauses 117 to 120 agreed to.

Clause 121 (Tree preservation orders: councils)

4274. The Chairperson: I remind members that, at the meeting on 1 February, the departmental officials agreed to report back to the Committee with further thoughts on the issues raised by the submissions on the clause, particularly the approach to dead or dying trees. Members also requested that the Department report back on the need for arbitration on the issue. The Department's response is in members' papers and argues that the clause provides that tree protection orders in relation to trees, groups of trees, or woodlands, include areas of trees, and it does not see a requirement for expanding on that. It does not intend to change its approach to dead, dying or dangerous trees.

4275. That is very disappointing. Can we change our attitude towards dead or dying trees, if not our approach? OK members, the issue is clarified, unless anyone would like to make any points in relation to it.

4276. Mr Kinahan: My point may be a more general one, but I have a concern that, at the moment, many historic or important trees are not governed by tree preservation orders. People cut them down at weekends and there is nothing we can do about it. Is there any guideline coming through on trees and groups of trees? There are not that many tree preservation orders, so trees are often cut down and then everyone says that they wish they had saved them.

4277. Mr Mullaney: Obviously, we are talking about the future, when it will be for the council to impose tree preservation orders in relation to the amenity or historical value of a tree or group of trees. I would think that, broadly speaking, that is already established. Whether, as with other things, further elaboration and guidelines are needed —

4278. Mr Kinahan: Could it be part of the local development plan to look at which trees need to be protected and which do not?

4279. The Chairperson: I think that I touched on the protection of trees within development plans or developments at another meeting.

4280. Ms Kennedy: Development plans could indicate areas where there is a particular landscape character.

4281. Mr Mullaney: Trees could be part of that.

4282. Mr Kinahan: I am happy.

4283. The Chairperson: We will put that in our report anyway.

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

Clause 121 agreed to.

Clauses 122 and 123 agreed to.

Clause 124 (Replacement of trees)

4284. The Chairperson: I know that I said that this matter was not raised in Committee before, but I would like to seek views on it. We know about the issues involved in replanting trees at individual houses, never mind in urban developments. There is clearly an issue about who goes back to check whether the work has been carried out, because that does not happen. Looking at the Bill and looking forward, maybe something can be done to ensure that that is part of the role of building control or local councils.

4285. Mr Mullaney: There are two separate issues. Clause 124 covers the replacement of trees that are covered by a tree preservation order. I think that the point that you are raising relates generally to conditions in which trees are required to be planted. That is a separate issue concerning the follow-up of conditions. I think that it is something that the Committee has raised before.

4286. The Chairperson: You are correct; I am sorry. When I read "replacement of trees", it brought to mind the non-compliance with conditions.

4287. Mr Mullaney: That is the point that you raised, but this is a specific point.

4288. The Chairperson: Are there any clauses that I can look at in relation to that matter?

4289. Mr Mullaney: There is obviously the general ability to impose conditions. It is really practice and resources that are the issue.

4290. The Chairperson: We will be happy to look at that.

4291. Mr Kinahan: It is a great clause, and I empathise with it. However, I want to raise an issue because of something that happened in my local area. If a diseased tree that is covered by a TPO comes down, it cannot be replaced, because the spot that it was on is diseased. There needs to be something in the Bill about that. Clause 124 represents the right thing to do, but diseased trees cannot be replaced because the ground is diseased.

4292. Mr Mullaney: This is covered by clause 124(3)(a), which states:

"In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed ...by planting the same number of trees—

(a) on or near the land".

4293. Mr Kinahan: OK.

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

Clause 124 agreed to.

Clause 125 (Penalties for contravention of tree preservation orders)

4294. The Chairperson: I remind members that, on 1 February, departmental officials agreed to consider the possibility of codifying — that is a new word for us — the two offences in clause 125 in a way that retains flexibility but strengthens the law applying to trees. The Department's response indicates that it does not believe that the clause should be amended, as the current balanced approach benefits landowners and councils.

4295. Mr W Clarke: I seek a Committee amendment to the clause. The fine is outdated and not fit for purpose. For consistency in the Bill, we should look at a £100,000 fine, for the same reasons that we outlined earlier. During the boom times, trees were taken out, and the fine was built into the development costs.

4296. The Chairperson: Do you wish to raise the fine for contravention of a tree preservation order?

4297. Mr Kinahan: I want to play devil's advocate. Tree preservation orders are put on groups of trees. I only know that from the experience of a developer who said that it was all right, and that he could prove that that tree and that tree and that tree were not very important. The end result was that, out of 200 trees, only 10 were important. There needs to be an appeal system or some system for challenging that. The fine is right — whatever level we put it at — but there must be a way of looking at which tree or group of trees is important. Do you see my difficulty?

4298. Mr Mullaney: There are two things there. One is the penalty and the other is the remedy afterwards. In that sense, it is not just sufficient to have a penalty; there has to be some outcome that requires the planting of replacement trees, which goes back to the previous clause. There is obviously the deterrent or the penalty aspect, but what do we want to achieve? Although it is regrettable to be in such a situation, we want a replacement.

4299. Mr T Clarke: Surely, if the tree preservation order has been taken out before the development takes place, the appeal should be to the tree preservation order and not to the contravention of planning.

4300. Mr Kinahan: Yes, it is an appeal of the tree preservation order.

4301. Mr T Clarke: That should happen before the contravention of the planning. If a tree preservation order is put on a tree, which would happen before a planning application is made, the appeal should be to the preservation order, not to the contravention of the planning that comes afterwards.

4302. Mr Kinahan: I think that is right.

4303. Mr Mullaney: Mr Clarke is quite right: the tree preservation order has authority in its own right, irrespective of whether there is a planning application.



4304. Mr T Clarke: If there is an appeal to be made, it should be made at the outset when the preservation order is made, not subsequently when someone decides to make a planning application to try to use it as a tool to get the application passed. The appeal should be made as soon as the preservation order is put in place.

4305. Mr W Clarke: I agree with Trevor. If someone is trying to revoke a tree preservation order because a tree is diseased or whatever, it can be done in that process. I am talking about a number of trees together. I am thinking about Newcastle in my constituency, where a number of trees were taken out. The fine of £30,000 was not a deterrent at all; it was just added to the development costs. We are trying to achieve a deterrent. For consistency, we should put it up to £100,000, because it is outdated. Perhaps when it was set, £30,000 was a lot of money — it is still a lot of money.

4306. Mr T Clarke: But it is nothing compared to the value of a site.

4307. The Chairperson: Are members content?

4308. Ms I Kennedy: There is no appeal mechanism when a TPO is applied. The appeal would kick in when someone applies for consent to do works to the tree and that consent has been refused. There is then the opportunity for appeal.

4309. The Chairperson: Are members happy to raise the fine?

Members indicated assent.

4310. Mr W Clarke: Will you bring that back to the Minister?

4311. Ms Smith: Yes, we will.

4312. The Chairperson: Depending on what the Minister says, we will agree the clause subject to amendment. If the Minister agrees to go with it, the Committee will withdraw its amendment.

4313. Ms Smith: So, the Committee's amendment will be to raise it from £30,000 to £100,000.

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

Clause 125 agreed to.

4314. Mr T Clarke: There is a difficulty with how it is worded. It is a fine "not exceeding £30,000". Unfortunately, when people go to court, they seem to stay away from the upper limit of the fine. While we might set a fine not exceeding £100,000, would it be in order to include "not less than" as well? A fine of £100,000 may be introduced. However, there was a case recently when a judge fined someone £1 for not wearing a seatbelt, while there was a maximum penalty.

4315. Mr Kinahan: It could be "not less than £50,000".

4316. Mr T Clarke: Yes, something like that.

4317. Mr Ross: I do not necessarily go along with that. There has to be discretion. The point that the Committee tried to make about having a £100,000 fine in the Bill is that it looks like more of a deterrent. We are not the people responsible for it.

4318. The Chairperson: I agree. It is the deterrent, and we want to raise that. It sits on the face of the Bill.

4319. Mr Ross: We want to give the judges discretion. We are not giving them direction.

4320. Mr T Clarke: We are not giving them direction. We are just saying "not less than".

4321. Mr Ross: That is a sort of direction.

4322. The Chairperson: Gentlemen, are you content with the clause, subject to amendment? Do we need clarification on that? Do I need to read it again? Are you happy enough? I know that we are bandying figures around. Please do not record this bit. That is fine. It is about time that we raised the fines.

4323. Ms Smith: Whatever amendment you are saying —

4324. The Chairperson: If the Minister agrees to raise the fine, that is OK, but if not, we will withdraw our amendment.

Clause 126 (Preservation of trees in conservation areas)

4325. The Chairperson: The Committee did not raise any issues in relation to clause 126. We had discussions with the south Belfast residents, and only one of a number of groups. They talked about the protection of conservation areas, how that is enforced and how people comply with the conditions and everything else. There seems to be a problem with that. They raised that issue in relation to trees as well. We need to look at that. Maybe the solution lies with building control in local councils.

4326. Mr Mullaney: There is a wider issue about enforcement in conservation areas. However, clause 126 protects trees in conservation areas. That is an important provision.

4327. The Chairperson: It does do that, but we have seen cases where trees have been removed, and things have been changed that should not have been changed. I know that we are talking about imposing fines, but in time, generally, there may be a role for building control officers or somebody else to ensure that conditions are complied with.

4328. Mr Mullaney: It is a point that we have dealt with before. It comes down to the practice of enforcement.

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

Clause 126 agreed to.

Clause 127 agreed to.

Clause 128 (Review of mineral planning permissions)

4329. The Chairperson: At the meeting on 1 February, the departmental officials agreed to report back to the Committee on the need for centralised expertise in this area. There was a feeling that such expertise is not required on a frequent basis and may be costly for councils. The Department recognises that there are a number of specialised areas in the planning system which councils will wish to consider how best to deliver. It suggests that one option might be a shared service delivery model. That is fairly reasonable.

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

Clause 128 agreed to.

Clause 129 agreed to.

4330. The Chairperson: That concludes Part 4 of the Bill. I refer members to the clause-by-clause summary of Part 5, which deals with enforcement.

Clause 130 (Expressions used in connection with enforcement)

4331. The Chairperson: At the meeting on 3 February, the Committee requested details of the number of staff transferred from Planning Service to the enforcement section and a reply on how the issue of legal costs influences decisions on enforcement action. Members also requested figures on the number of enforcement cases that the Department considered it expedient to pursue.

4332. The departmental response indicates that in 2004-05, enforcement teams were bolstered throughout the planning agency, with each divisional office and headquarters having dedicated enforcement staff. The number of staff employed in enforcement in 2009-2010 was 50. The response also notes that legal costs do not influence the Department's decisions to take enforcement action.

4333. The key objectives for planning enforcement are: to bring unauthorised activity under control; to remedy the undesirable effects of unauthorised development; and to take legal action where necessary. The Planning Service will investigate all alleged breaches but will prioritise those which, in the Department's opinion, are likely to cause the greatest harm. Lists of indicative numbers of breaches and enforcement actions in 2009 have been provided. There are currently 3,928 open cases and 5,415 closed cases, and 406 enforcement notices have been issued. Does anyone want to raise any points?

4334. Mr T Clarke: I would like more time to dissect it.

4335. The Chairperson: We can defer it and get clarity from the Department.

4336. Mr T Clarke: I can see possible questions in it. I would like more time to analyse it.

4337. The Chairperson: We can defer it until the next meeting if you wish, as we have a couple of other clauses to come back to.

4338. Mr T Clarke: OK.

4339. The Chairperson: No problem. We will defer clause 130. Do we need more information?

4340. Mr T Clarke: I have not had time to look at this, but it talks about the number of cases opened, the number of cases closed, and the number of enforcement notices. I appreciate that some of the cases are closed. Were they closed because it was not expedient to pursue them, or because they concluded what they set out to do? I do not see a column for that.

4341. Ms Smith: In that group, there will be cases that are closed because they have been seen through to fruition, and there will be cases that are closed because they are not being pursued.

4342. Mr T Clarke: That is the point that I was trying to make the last day. That does not actually tell us anything. We are all aware that there are many cases where people have breached planning or flouted the rules. I appreciate that there is a team, and we have the figures here to show how many people are involved in enforcement. However, it does not tell us how many of those cases have actually been successful. To bring the figures for files that have been closed because they have not been expedient and files that have been closed because they have been resolved into one sum does not give us a clear picture of what is happening.

4343. The Chairperson: Can you clarify some of those points?

4344. Ms Smith: We can get some.

Clause 130 referred for further consideration.

Clause 131 (Time limits)

4345. The Chairperson: At the meeting on 3 February, the departmental officials agreed to consider an amendment to reduce the timescale for change of use from 10 years to four years. We have not received a response to that.

4346. Ms Smith: I can tell you what the decision is —

4347. The Chairperson: Tell it like it is, Maggie.

4348. Ms Smith: We have an amendment, but it has not reached you on paper yet. The Minister's amendment raises the four-year period to seven years and reduces the 10-year period to seven years. Therefore, in each case, it is seven years.

4349. Mr T Clarke: That is called playing chess.

4350. The Chairperson: I do not know about that. I will have to defer the clause. I have been having some discussions on it, and I think that I will defer it until Tuesday to allow for some discussion.

4351. Just for clarity, I know that Mr Clarke asked about enforcement. A number of cases are sitting in the bracket of four to 10 years. We need to be serious. It could be any building. They are mostly residential, but may not be residential, buildings. They are buildings that are sitting there for four years and cannot be touched, practically. There is also change of use. There are quite a number of applications for retrospective planning permission to retain a business use that are not within the 10-year bracket. If we went four and four, a substantial amount more would have to be looked at, unless you are going to say that there is a clean break from that period. Seven and seven is a bit extreme.

4352. Mr T Clarke: Four and four would be much better.

4353. The Chairperson: Maybe we will look at that again; we will certainly come back to this clause.

4354. Mr T Clarke: Surely any breach is from the date, so, if a file on that were open, the breach would have been made already.

4355. Mr W Clarke: This would not apply.

4356. Mr T Clarke: This would not apply. The breach would have been made already. Is that right, Maggie?

4357. The Chairperson: You may find that some of the enforcement cases have not been followed through.

4358. Mr T Clarke: Yes, but the breach has applied.

4359. The Chairperson: Once you come back with more information on Tuesday, we will find out exactly what has been going on. We will come back to this clause on Tuesday.

4360. Mr T Clarke: To be fair to the Department, I am asking for figures on cases that are closed as opposed to those that are open. We would nearly need an indication of what some of the open cases are for. Are they because of change of use or because of unauthorised development?

4361. Mr W Clarke: Can we get clarity about the cases that being dealt with now? Will the legislation apply to cases that are already in progress?

4362. Ms Smith: Any amendment would not apply until the legislation comes into force.

4363. Mr W Clarke: So it would impact on investigations that are ongoing now?

4364. Ms Smith: No, it would apply once the Bill comes into force. The Bill is tied into the whole issue of the governance arrangements, the ethical standards and the transfer to councils, so that is some way away.

4365. The Chairperson: Seven and seven, Maggie. It is always good to come back with that. It is like playing a game of chess. We will talk about it on Tuesday. We will defer clauses 130 and 131 to Tuesday.

Clause 131 referred for further consideration.

Clause 132 agreed to.

Clause 133 (Penalties for non-compliance with planning contravention notice)

4366. The Chairperson: At the meeting on 3 February, the departmental officials agreed to consider an amendment to raise the level of fine to level 5. The departmental response indicates that the Minister will bring forward an amendment to clause 133(4) to that effect. In addition, the Department has since advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill:

"At clause 133, page 85, line 21, leave out '3' and insert '5'."

4367. That raises the fine to level 5. What is the amount of fine at level 5?

4368. Ms I Kennedy: Level 5 is £5,000.

4369. The Chairperson: Please do not mention figures. We have mentioned £100,000 enough as it is.

4370. Mr W Clarke: I did not start it; you did.

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

Clause 133 agreed to.

Clause 134 (Temporary stop notice)

4371. The Chairperson: Departmental officials agreed to provide further information on the number of stop notices that have been issued. The departmental response is that, since 2009, 10 stop notices and seven temporary stop notices have been issued. Of the temporary notices, three were followed by a notice and one by an injunction.

4372. The Department notes that clauses 149, 150, 184 and 186 also relate to stop notices. Professor Lloyd indicated that he could see the need to have stop notices but hoped that they would not have to be used under the new planning system. In addition, in response to queries raised by south Belfast residents' groups about stop notices, the Department said that powers to issue temporary stop notices are carried forward into the Bill at clause 134. That enables the Department to prevent unauthorised development at an early stage without first having to issue an enforcement notice. The provisions also impose certain limitations on activities and specify that contravention of such a notice is a criminal offence punishable on summary conviction by a fine of up to £30,000 or on indictment by an unlimited fine.

4373. That was welcomed by residents in Armagh city and south Belfast residents' groups. It is there to be used. Obviously, that will be down to local authorities, but it is about all types of enforcement, information and ensuring compliance, as you well know, Mr Mullaney. The question is how that system will roll out. There has to be a role in a local authority for a specified person to carry that out.

4374. Mr Mullaney: Again, it is a matter of resources and practice. One would have thought that each council, as planning authority, would take its enforcement duties seriously and put in place a structure, whatever that structure may be, to meet its obligations under enforcement powers.

4375. The Chairperson: Building control has a certain responsibility. We have noticed on a number of occasions, even in enforcement cases, that it has been a phone call to the office and a complaint. Whether or not people believe in that way of doing things, once somebody receives planning permission the condition should be complied with, as opposed to the system that operates at the minute.

4376. Mr Mullaney: That is the same point. It is a question of the planning authorities — the councils — prioritising whatever they wish to undertake and looking at the resources for that.

4377. The Chairperson: Again, resources are an issue that we will be talking about.

4378. Ms Smith: Yes.

4379. The Chairperson: Do you have the issue of resources sorted for the end, Maggie? Do you have a whole file ready to tell the members of the Committee how that will be rolled out?

4380. Ms Smith: We can tell you some things when we get to that.

4381. The Chairperson: Any other points on stop notices, gentlemen? I am content with that.

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

Clause 134 agreed to.

Clauses 135 to 137 agreed to.

Clause 138 (Issue of enforcement notice by Department)

4382. The Chairperson: There were no major issues with this clause. The Department said that this is an oversight power.

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

Clause 138 agreed to.

Clause 139 agreed to.

Clause 140 (Variation and withdrawal of enforcement notices by councils)

4383. The Chairperson: This is an oversight power of the Department. Do members have any comments?

4384. Mr McGlone: Belfast City Council made a relevant point, if I pick it up right, that this should be the responsibility of a single authority. That could be to ensure consistency of application. Councils may be less diligent or more diligent. How will the overall consistency of the circumstances under which enforcement notices are withdrawn or varied be monitored?

4385. Ms Smith: When the powers move to councils, they will be the authorities with the responsibility for enforcement, so they will be able to make sure that their enforcement is properly designed and exercised to address the needs of their areas.

4386. Mr McGlone: Maybe I did not articulate myself properly at all there, Maggie. We will work with the 26-council model, since it was raised during the week. Under that model, you could have 26 variants of the circumstances under which you had a variation or withdrawal of an enforcement notice. I am looking at the consistency of application of the circumstances under which you vary or withdraw an enforcement notice. It is relatively simply at the minute insofar as it complies or is referred up to headquarters for guidance or whatever, if it is that complex or complicated. How do you ensure consistency when you have multiples, just as you ensure consistency of interpretation of ordinary planning policy throughout?

4387. Ms Smith: Every council will need to comply with the legislation in how they do that. Ultimately, however, the council is the authority and will take decisions for itself. There will be differences in the way that councils do things.

4388. Mr McGlone: That is my concern. In most cases, enforcement notices boil down to interpretation of policy, whether a planning application adheres to policy and all that stuff. However, it is a question of ensuring consistency of application. I live in Cookstown District Council area, but move down the road a wee bit and I am into Magherafelt District Council's area. You could conceivably have different variants or emphases, with one planning application going to enforcement and one being withdrawn in more or less the same types of cases. Not every case is the same, but the mechanism that is put in place must ensure that policy is applied fairly consistently across the board.

4389. Ms Smith: I will ask Irene to clarify what is in the Bill on that point, and I will then say something about the overall position.

4390. Ms I Kennedy: Part 10 of the Bill may assist with that, because it deals with the Department's audit powers. The Department could conduct an audit or appoint someone to conduct an audit into how councils deliver the different functions, or, indeed, particular functions, under what will be the Act. Obviously, the aim of that type of audit and assessment work is to disseminate best practice, but it could also be used as a mechanism to review how a particular council delivers its functions.

4391. Mr McGlone: I am trying to get my head around that. Would that function include an audit of the application of policy, in the same way as an auditor audits the books, how money is spent and whether the system complies with proper practice and due process? Would that audit be built in to the handover process? Would it also be a regular and consistent feature that would be carried out on an annual basis, for example? If it were, everyone would know that a particular council would be audited at some time in that year. I am also interested to hear how the good practice will roll out from those audits. I presume that the auditors will all be fully qualified planners with an audit function. Indeed, they would have to be, because how else could it be determined how policy was interpreted?

4392. Ms I Kennedy: Obviously, councils are expected to be aware of policy and the language that relates to enforcement, and they are also expected to follow that policy in the delivery of their functions. The Bill does not stipulate that a council's performance will be assessed every year. The best way to deliver the Department's audit function still has to be resolved.

4393. Mr McGlone: I am trying to get a handle on how that mechanism will work post-handover.

4394. Ms I Kennedy: A lot still has to be worked out about precisely how all that will work. There will be discussions with councils to make them aware of that.

4395. Mr McGlone: I would like to think that the powers will be in place before those discussions with the councils happen. Perhaps I picked you up wrong, Irene, but I am talking about this all being dealt with before the powers are handed over.

4396. Ms Smith: Yes, and it will be. At the moment, we are putting the framework in place. We have the legislation and PPS 9, but other work within that framework, including that on those practical matters, needs to be done before the handover. Work also needs to be done on what the relationship between the Department and the councils will be. The audit function is part of that relationship. However, it will be looked at, and the arrangements will be put in place.

4397. Mr McGlone: Will it be looked at with a view to some structure and mechanism being set up, along with a way to let us know how it is working?

4398. Ms Smith: Absolutely. The Department is putting in place structures that are as close as possible to those that will be in place when the councils get the powers. We are starting that process now to make sure that everything is lined up and the functions are there and ready to take over on day one.

4399. Mr McGlone: Is there more to come?

4400. Ms Smith: Yes.

4401. The Chairperson: Thank you, Maggie. I was getting ready to wind that discussion up.

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



Clause 140 agreed to.

Clauses 141 and 142 agreed to.

Clause 143 (Appeal against enforcement notice — general supplementary provisions)

4402. The Chairperson: The Department stated that this clause is part of its oversight powers and that it would have to consult the councils before using it, which is welcome.

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

Clause 143 agreed to.

Clause 144 (Appeal against enforcement notice — supplementary provisions relating to planning permission)

4403. The Chairperson: The Committee did not raise any issues with this clause. However, the Department has since advised that it will be making a textual amendment.

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

Clause 144 agreed to.

4404. The Chairperson: We are at the halfway stage.

Clause 145 (Execution and cost of works required by enforcement notice)

4405. The Chairperson: The Committee did not raise any issues with this clause. However, the Department has since advised that it will be making a textual amendment to ensure a consistent approach throughout the Bill.

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

Clause 145 agreed to.

Clauses 146 and 147 agreed to.

Clause 148 (Enforcement notice to have effect against subsequent development)

4406. The Chairperson: At the Committee's meeting on 3 February, departmental officials agreed to consider an amendment to the clause to raise the level of the fine from level 5. The Department's response indicates that the Minister takes the view that it would be proportionate to raise the fine to £7,500, and it will bring forward an amendment to that effect. I think that members would welcome that.

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

Clause 148 agreed to.

Clause 149 (Service of stop notices by councils)

4407. The Chairperson: Departmental officials agreed to provide further information on the number of stop notices, which are also dealt with under clause 150, that have been issued. This matter has already been discussed under clause 134, and members were content with the information that was provided.

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

Clause 149 agreed to.

Clauses 150 and 151 agreed to.

Clause 152 (Fixed penalty notice where enforcement notice not complied with)

4408. The Chairperson: The Committee did not raise any issues with this clause.

4409. Mr T Clarke: Does this tie in with something that we were saying on Tuesday about fixed penalty notices not being complied with? It probably goes back to the statistics that we were asking for. Is the clause strong enough? I think that we should park the matter until Tuesday, when we will get the figures about closed cases. Notice has not necessarily been complied with just because cases have been closed for expediency. Is the clause strong enough?

4410. The Chairperson: Once we see the figures, we will discuss the clause again on Tuesday.

4411. Mr T Clarke: We do not actually want an enforcement section, but we need one, because people breach planning. Where we have an enforcement section, we want it to be effective, so that councils can prevent people from abusing the system.

4412. The Chairperson: We will park clause 152.

Clause 152 referred for further consideration.

Clause 153 (Fixed penalty notice where breach of condition notice not complied with)

4413. The Chairperson: We will need to park this clause as well. This is like taking a taxi. We are going to park clauses 152, 153 and 154.

4414. Mr T Clarke: I think that we can reach a resolution easily, as long as we make sure that there are effective measures in those clauses.

4415. The Chairperson: We are going to leave those clauses until Tuesday.

Clauses 153 and 154 referred for further consideration.

Clause 155 agreed to.

Clause 156 (Issue of listed building enforcement notices by councils)

4416. The Chairperson: The Committee raised no issues on this clause. Do members have any comments to make?

4417. Mr McGlone: I raised an issue when we were dealing with this matter previously, and I see that Armagh City and District Council and Belfast City Council raised the same issue. It concerns the whole question of from where the expertise and resources are going to come and the practical outworking of that. Those rest with the Department at the moment. Has there been any further information about that?

4418. The Chairperson: There will be a response to that later, so we will raise the issue at that point. We will discuss the issue of resources later.

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

Clause 156 agreed to.

Clauses 157 to 159 agreed to.

Clause 160 (Urgent works to preserve building)

4419. The Chairperson: An issue was raised about this clause. At our meeting on 3 February, the departmental officials agreed to provide further clarification about ownership. The Department's response is in the tabled papers and indicates that, under this clause, the planning authority may carry out and recover the costs of urgent works to either a listed building or a building in a conservation area whose preservation is important for maintaining the character or appearance of that area. The owner must be given at least seven days' notice of the work to be carried out, and it will have 28 days to appeal.

4420. In addition, the Department has since advised that it will be making two textual amendments to ensure a consistent approach throughout the Bill. Do members have any comments to make on that?

4421. Mr W Clarke: Does that also apply to scheduled buildings and monuments?

4422. Ms I Kennedy: It applies to listed buildings and those that are in a conservation area for which the Department has given a direction. Scheduled monuments come under different legislation.

4423. Mr W Clarke: Are they covered in the same way as listed buildings?

4424. Ms I Kennedy: I am not sure whether there is the same provision for urgent works.

4425. Ms Smith: We can check that. Different legislation is involved.

4426. The Chairperson: Are there any other comments? Are members content with the Department's explanation? Mr Clarke, we will receive more information about your query.

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

Clause 160 agreed to.

Clause 161 (Hazardous substances contravention notice)

4427. The Chairperson: The Department stated that the HSENI's role under this clause would be left to guidance. Do members have any comments to make on this clause? Can we have clarity

on the HSENI's role? It is not defined in the Bill, so are you saying that it will be defined in guidance?

4428. Ms I Kennedy: Yes.

4429. The Chairperson: Do members have any comments to make on clause 161?

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

Clause 161 agreed to.

Clauses 162 to 166 agreed to.

Clause 167 (Enforcement of orders under section 72)

4430. The Chairperson: The Department stated that this clause will form part of its oversight powers. In addition, the Department advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill.

4431. Mr T Clarke: What does "under section 72" mean?

4432. The Chairperson: Will you please clarify that?

4433. Ms I Kennedy: Clause 72 deals with:

"Orders requiring discontinuance of use or alteration or removal of buildings".

4434. That is the enforcement provision that will allow those orders to be enforced under what will be section 72.

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

Clause 167 agreed to.

Clause 168 (Certificate of lawfulness of existing use or development)

4435. The Chairperson: The Committee did not raise any issues about clauses 168 or 169. Do any members want to ask questions about those two clauses?

4436. Mr T Clarke: Does this go back to what we were saying about what happens after four years and 10 years? Is it tied into that type of stuff again?

4437. Ms I Kennedy: They are linked. After four years or 10 years, a certificate might be issued to say that the development in question is lawful.

4438. Mr T Clarke: That answers my question.

4439. The Chairperson: It would still apply every few years, no matter what year it was issued in. The certificate still needs to be issued.

4440. Ms I Kennedy: Those years would have to be taken into consideration before a certificate were issued. The time limit is one of the factors.

4441. The Chairperson: You will get that sorted out. It still does not matter, because we can park it. I think it applies anyway.

4442. Mr T Clarke: They come separately. That does not tie us down. Whatever we agree on the years, if we can get an agreement, regardless of what it is, that ties us to the agreement. However, it does not tie us to anything specific itself.

4443. Ms I Kennedy: I am just scanning the provision at the moment. It does not mention those —

4444. The Chairperson: I agree. However, we can still agree the clauses today. We are definitely going back to these clauses.

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

Clause 168 agreed to.

Clauses 169 to 171 agreed to.

Clause 172 (Appeals against refusal or failure to give decision on application)

4445. The Chairperson: The Committee had no issues with this clause. However, the Department advised that it will be making a textual amendment to this clause to ensure a consistent approach throughout the Bill.

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

Clause 172 agreed to.

Clause 173 agreed to.

Clause 174 (Enforcement of advertisement control)

4446. The Chairperson: No issues were raised about this clause. However, the Department advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill.

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

Clause 174 agreed to.

Clause 175 (Rights to enter without warrant)

4447. The Chairperson: The Department stated that clauses 175 to 177 will allow the Department or councils to enter land.

Question, That the Committee is content with the clause 175, put and agreed to.

Clause 175 agreed to.

Clauses 176 and 177 agreed to.

4448. The Chairperson: That concludes Part 5 of the Bill. We will now turn to Part 6, which deals with compensation.

Clause 178 (Compensation where planning permission is revoked or modified)

4449. The Chairperson: Departmental officials agreed at the meeting on 3 February to provide information on both the total number of applications that were revoked and the amount of compensation that was paid. They also agreed to consider an amendment to require the Department to pay the compensation that is due when a council is not fulfilling its responsibilities under the legislation and when the Department exercises its power to revoke a planning permission. The Minister will not bring forward an amendment to make the Department responsible for compensation if it revokes an application. Did we receive information on the number of revocations of applications?

4450. Ms I Kennedy: Yes, I am sorry; that came to you late.

4451. The Chairperson: Members have that information now. I think that Mr Clarke brought up the issue of compensation.

4452. Mr T Clarke: Was it about the PAC?

4453. The Chairperson: It was about revoking planning applications.

4454. Mr T Clarke: Yes, I brought that subject up. The departmental officials were to give us an indication of the number of properties involved.

4455. The Chairperson: Members have that information in their tabled papers.

4456. Mr T Clarke: We had a table to consider at the previous meeting, but I cannot remember the figures. The information that I am looking at details the number of revocations over a period of years, but I cannot remember the cost.

4457. Ms I Kennedy: The costs were provided in the clause-by-clause table.

4458. The Chairperson: Sorry, what page is that?

4459. Ms I Kennedy: The Department's response might assist.

4460. Mr T Clarke: The figures show that there were 24 revocations between 2000 and 2006. I am not trying to be awkward, because it is very difficult to tell the figures for each year, but in 2005-06, you paid out £43,500. It is difficult to know whether that was for one or more cases. Given the value of the sites, it would probably be for one of those years. In 2007, £11,000 was paid out, but that would not compensate anyone for the loss of a site.

4461. Mr S Gallagher: For reasons that I will come to in a moment, we have difficulty in tying compensation payments to revocation and modification cases. As I said, our records show that there were 24 revocation and modification cases between 2000 and 2006.

4462. Compensation for revocation and modification is dealt with under the Land Development Values (Compensation) Act (Northern Ireland) 1965, also known as the 1965 Act. Prior to 2000, the 1965 Act also dealt with both compensation and refusal of planning permission in certain very closely controlled and specified cases. The last of those cases went through the system around 2006. Unfortunately, however, our records do not distinguish between the two, so there is a mixture of compensation payments for both the refusal of planning permission and for revocation and modification. We cannot tell what payment was made for which circumstance before 2006. However, we are clear that no payments were made for revocation and modification between April and November 2010 and in the financial years 2009-2010, 2008-09, 2007-08 and 2006-07.

4463. We can say that it is normal practice to revoke or modify planning permission only with the agreement of the parties concerned, so, in those cases, no compensation liability would arise. It is very likely that those 24 revocation and modification cases did not give rise to compensation, but the records mean that we cannot be categorically certain about that.

4464. Mr T Clarke: That is a bit clearer, in that someone will not lose anything if there is agreement. Can we have something in the clause that will ensure that people are protected if there is no agreement and that compensation will be paid at a particular value? The number of cases is low, and, as Stephen said, compensation has been paid only by mutual agreement between the applicant and the Planning Service. That is fair enough if that agreement can be reached. I am concerned that, in cases where mutual agreement cannot be reached, we will revoke someone's planning permission and they will be at a loss. I know that the number of cases is low, but can a protection measure be built in for people in those circumstances?

4465. Ms I Kennedy: Most cases will be settled by agreement. For example, one person will go off the site for which they have approval to another site, and compensation will not be applicable. However, the legislation provides that, in other cases in which revocation is necessary, the person concerned is in a position to claim for compensation.

4466. The Chairperson: Does that mean that it is built in?

4467. Ms I Kennedy: It is; it is in the legislation.

4468. Mr T Clarke: So is it there already? That is good.

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

Clause 178 agreed to

Clauses 179 to 181 agreed to.

Clause 182 (Compensation in respect of tree preservation orders)

4469. The Chairperson: The Committee did not raise any issue on clause 182. Do members have any comments to make?

4470. Mr Kinahan: I am happy enough with it.

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

Clause 182 agreed to.

Clause 183 (Compensation where hazardous substances consent modified or revoked under section 115)

4471. The Chairperson: No issues were raised in relation to this. Stop notices were discussed, but I like to think that we would not get that far, Peter, in terms of compensation for issuing temporary stop notices if there is proper compliance.

4472. Mr Mullaney: Quite so, Chairman.

4473. The Chairperson: We discussed that at clause 134.

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

Clause 183 agreed to.

Clauses 184 to 186 agreed to.

Clauses 187 to 195 agreed to.

4474. Mr McGlone: Sorry, Chairperson. Clause 189 is about the purchasing of land. There seems to be an issue around clarification being required about the term "reasonably beneficial use". Where has that gone, or what is the response from the Department in that regard?

4475. Ms I Kennedy: Reasonably beneficial use will vary in each case. In some cases it may be pretty obvious, but, otherwise, it has to be looked at in a bit more detail. I am afraid that each case is determined by the piece of land, where it is, what the surroundings are and the circumstances. It is very difficult.

4476. The Chairperson: It is based on its own merits.

4477. Mr McGlone: It has been raised as an issue, so is it about interpretation?

4478. Ms I Kennedy: It is.

4479. Mr McGlone: OK. Thank you.

4480. The Chairperson: That completes Part 7. I ask members to turn to the clause-by-clause summary paper for Part 8.

Clause 196 (Historic Buildings Council)

4481. The Chairperson: At the meeting on 3 February, the departmental officials agreed to provide information on the current system for dealing with listed or historic buildings. The Department's response indicates that it is responsible for the listing and delisting of buildings of special architectural or historic interest.

4482. Mr Kinahan: There is quite a lot here. Can we deal with this on Tuesday, or will that cause problems?

4483. The Chairperson: Just take a minute to read the departmental response about the current system for dealing with it.



4484. Mr T Clarke: The issue the last day was that some people believed that the DOE would not be taking any responsibility and that it would be over to the Historic Buildings Council. This clarifies that situation: the DOE will still be responsible through the NIEA and the Historic Buildings Council. There was a concern the last day that the councils would go directly to the Historic Buildings Council. Was that not the issue?

4485. Ms Smith: The Department will still be responsible for listing and delisting. However, it seeks advice from the Historic Buildings Council, which is a statutory advisory body whose members have relevant expertise in historic buildings.

4486. The Chairperson: It is something that Mr Dallat raised.

4487. Mr T Clarke: I thought that he was concerned that the councils had to go directly to the Historic Buildings Council and that there were not enough measures there. The fact that the Department will still be doing that is there.

4488. Ms Smith: The responsibility for listing and delisting will stay with the Department, because it is a highly specialised and technical area.

4489. Mr T Clarke: His concern was that taking that responsibility away from the Department would cause dilution; he was under the impression that the councils would have that responsibility instead.

4490. The Chairperson: No, it will not. We sought assurances about that and have received information on it today.

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

Clause 196 agreed to.

Clause 197 (Grants and loans for preservation or acquisition of listed buildings)

4491. The Chairperson: At the meeting on 3 February, departmental officials agreed to provide clarification on whether councils will be charged for services by NIEA and information on who would be responsible for a national register of trees. The Department's response indicates that statutory bodies will be designated through subordinate legislation as statutory consultees to the planning system. A list is being compiled with a view to public consultation. So far, there has been no discussion of fees with any of those bodies. The Department also noted in an earlier response on statutory consultees that clause 224 will place a duty on those bodies to respond within a given time frame. It also indicates that there is no statutory national register for trees and that the Department of Agriculture and Rural Development is responsible for forestry.

4492. Mr T Clarke: Does that mean that, if and when the Department is likely to consider implementing fees, it will put that out for consultation before doing so?

4493. Ms Smith: Yes. In fact, we have just been out to consultation on the fees.

4494. Mr T Clarke: No, this is about the fees for consultative work, about which the councils had raised concerns. Your response says that there are no fees, although I do not think that you actually said that. However, the Department might consider implementing them at a later date. So, if it did, would it go to consultation first? Our agreeing to this today does not mean that we agree to the Department's bringing in fees, because we should have an opportunity to consult on that at a later date.

4495. Ms Smith: There are no plans whatsoever. That issue has not been raised as regards the statutory bodies.

4496. The Chairperson: Listen very carefully while I read out the Department's response:

"Some statutory bodies will be designated through subordinate legislation as statutory consultees to the planning system, a list is being compiled with a view to public consultation. So far, there has been no discussion about fees with any of these bodies."

4497. Mr T Clarke: "So far" means that the Department has not ruled that out. If consideration is given to fees in the future, will that be subject to a consultation process? Our agreeing to clause 197 today does not mean that we agree to the Department's implementing fees. We are agreeing to the clause as drafted, but they can consult on fees at a later date.

4498. Ms Smith: Yes, the fees are a completely different matter.

4499. Mr T Clarke: That point was raised because the councils were concerned about the fees. So, we are really addressing their concern. We are not agreeing to fees.

4500. The Chairperson: No.

4501. Mr T Clarke: That is all right.

4502. The Chairperson: No problem.

4503. Mr Kinahan: As regards the comment that there is no national tree register, someone — I know this because I have met him — is being paid by the Irish Government to go round Ireland logging all important trees.

4504. The Chairperson: Logging them? [Laughter.]

4505. Mr Kinahan: There is someone doing that.

4506. The Chairperson: Excuse me a minute, please. Sorry about that; apologies. With that in mind, and with all that information, is the Committee content with clause 197?

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

Clause 197 agreed to.

Clause 198 agreed to.

Clause 199 (Acceptance by Department of endowments in respect of listed buildings)

4507. The Chairperson: The Department confirmed it will retain the powers in respect of listed buildings. I think that we are content with that, gentlemen.

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

Clause 199 agreed to.

Clause 200 agreed to.

4508. The Chairperson: That concludes Part 8 of the Bill. We are in the home straight.

Clause 201 agreed to.

Clause 202 (Procedure of appeals commission)

4509. The Chairperson: Departmental officials agreed at the meeting on 3 February 2011 to consider an amendment to stop the practice of new information being presented at appeals. The Department's response indicates that the Minister will bring forward such an amendment. I will defer this one until Tuesday. I need to look at it, because there may be issues. Mr Trevor Clarke brought that issue forward.

4510. Ms Smith: You do not have the amendment because it is an amendment that makes quite a difference. It takes quite a lot of drafting and is being worked on.

4511. The Chairperson: Will we have it for Tuesday?

4512. Ms Smith: Yes.

4513. The Chairperson: All things being equal, I am slightly concerned. The principle behind the idea is fine in terms of what Mr Trevor Clarke raised last time, but I need to have a look at that again.

4514. Ms Smith: Would you like us to say something about the detail of the amendment, or would you prefer to leave that until later?

4515. Mr T Clarke: We cannot agree it without the wording.

4516. The Chairperson: No, we cannot agree without the amendment.

4517. Mr T Clarke: We are better waiting until we get the wording.

4518. The Chairperson: I agree. We need to look at it again.

4519. Mr McGlone: This issue is about what some would call late evidence and others would call new evidence. There is the principle of natural justice: you could have new evidence that was relevant to the case but, for whatever reason, people just had not got it. Where do the principles of reasonableness or natural justice figure with regard to the admission of what might be called late evidence? I can see situations when flexibility could be needed.

4520. Mr T Clarke: I suggested that the last day because when a case is taken to the PAC it is for non-determination or determination of a planning application by the Planning Service on the information provided. I am sure that many of us have been at appeals where developers come in and make an amendment to the scheme at the last moment and present it on the day of the hearing. The planners, who have never seen that information, are then given half an hour to view it.

4521. That is unfair to objectors and the Planning Service. Developers are very good at that because they usually put in for a large development, get it turned down, go to the PAC, and come in with a late submission, especially on the day of the hearing, which is the first time that the Planning Service has set eyes on it. The commissioner looks at the information and the PAC takes it as a material consideration. It is an abuse of the system to take the Planning Service to

the Planning Appeals Commission because it has taken a decision on the basis of the information provided. That is all that the commission should take into consideration.

4522. Mr McGlone: I was not even thinking of developers there. I hear completely what Trevor is saying in the case of non-determination. I can understand that. However, I hope that cases of non-determination should be fewer now.

4523. Mr T Clarke: A case should only be before the PAC for non-determination or because of a planning decision by the Planning Service. Most of the ones I have seen are where developers change applications, particularly for apartments. They reduce the number of apartments and bring the revised scheme to the commission on the day of the hearing. That is the first the Planning Service sees of it, and it is unfair.

4524. We have all asked for statistics on the decisions made by the Planning Service. Approximately 33% of its decisions are overturned at the Planning Appeals Commission. That is unfair as well, because Planning Service has not judged all those applications as they appear at the PAC. Some of those statistics are based on new information provided at the PAC hearing. If that were provided before it got to that stage, the chances are that the Planning Service would have come to the right decision in the first place. The ball is in the court of the developers to provide the information before it gets to the stage of a refusal.

4525. The Chairperson: I have an issue with this. Principally, Mr Clarke is right. All the information should be brought forward. However, I suggest that, in the amendment, Planning Service be given a period of time to see it before the appeal on the day. I do not rule out bringing the new information but, if Planning Service were to see it a day or two beforehand, that would be another matter.

4526. Mr T Clarke: That is still not fair, because —

4527. The Chairperson: No. I understand that, but I am entitled. We can look at many decisions over the last five years, that is, my time in council. Many a decision was unfair and mistakes were made by Planning Service. We are going to discuss this amendment on Tuesday. I am just throwing it out here. I agree that all the information should be provided.

4528. I have another issue, as I have said before on this Committee, and that is about the issue of the PAC being independent and it just being a tick-box exercise. It is only assessing whether the Planning Service has assessed the application properly. There is no flexibility or common sense and it is strictly down to policy. In one case, a person can make a decision interpreting policy in a particular way; in another area, they might look at it in a different way. Planning is about individual applications assessed on their own merits, no matter what size it is, no matter what the development is, generally speaking. There are issues with some of the developments, problems and decisions.

4529. We need to be careful. I will have to bring this one back and we will discuss this on Tuesday. All new information should be brought forward.

4530. Mr T Clarke: Applicants have the opportunity for a discussion with planners and can speak to them about what the application is about. The first time an application goes to council it may be refused, but the applicant has an opportunity to defer that and bring new information to the table again and meet the planners, provide the new information and amend their schemes. If the applicant is not prepared to do it at that stage, he has exhausted his opportunities. They are given ample time.

4531. While I often disagree with the Planning Service and do not know how it arrives at its decisions, there is recourse to the PAC. Applicants have opportunities on at least two occasions to meet the Planning Service face-to-face and put forward their case. Planning Service may even make suggestions as to what can be done to make the scheme more suitable for them to approve. If an applicant does not take those opportunities, he should not be given the opportunity, after refusal, to go to the Planning Appeals Commission.

4532. The Chairperson: I understand where you are coming from, and we can talk about this. I can argue the point back to agents putting in applications and then they are refused. I am only talking about single applications that are dealt with over a long period of time and then go to appeal. If people were given proper information at the very start, and proper advice we can talk about that all day. We will consider this clause again on Tuesday, but members have heard the debates about it. It is up for discussion on Tuesday.

Clause 202 referred for further consideration.

4533. The Chairperson: That concludes Part 9 of the Bill.

4534. Mr T Clarke: I agree with what you said about information. However, if the wording reflected an amendment to a plan, it is usually an amendment to a plan that is the biggest flouting of the rule. It is one thing if there is new evidence that makes a case different, but changing a development from 24 houses to 16 is altering a plan, Patsy. That is a complete change of the original plan. However, if they provide new information that the Planning Service has overlooked, that is slightly different.

4535. Mr McGlone: Yes, that is the bit that I am on about.

4536. Mr T Clarke: It is a question of the choice of words and what material is considered.

4537. Mr McGlone: Words such as "reasonable" or "complying with natural justice". I am thinking of special needs cases.

4538. The Chairperson: You are correct. You know the planning system as well as I do, Mr Clarke. You are right: we will discuss that issue. Also, an issue has been raised with regard to clause 102. With your agreement, gentlemen, we will maybe look at that again on Tuesday. It is in relation to acts causing, or likely to result in, damage to listed buildings. With your agreement, we will come back to clause 102 on Tuesday.

Members indicated assent.

4539. Mr W Clarke: That is what I am talking about; it is like arson attacks.

4540. The Chairperson: OK. We will talk about that on Tuesday, Mr Clarke.

4541. Mr Buchanan: There are too many Clarkes on this Committee.

4542. The Chairperson: Yes, that was Mr Willie Clarke, just for the record. OK, let us turn to the clause-by-clause summary paper for Part 10.

Clauses 203-205 agreed to.

4543. Mr McGlone: Presumably that level of scrutiny is tied in with the audit function and the likes. We are getting more detail on that anyway

4544. The Chairperson: Yes, we are getting more detail.

Clause 206 (Report of assessment)

4545. The Chairperson: The Department stated that "may" in this clause provides greater flexibility for the Department.

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

Clause 206 agreed to.

4546. The Chairperson: That concludes Part 10 of the Bill, gentlemen. We now move to Part 11.

Clause 207 (Application to the Crown)

4547. The Chairperson: Members requested a departmental response on Crown land in the Clean Neighbourhoods and Environment Bill. Will you give us some clarification on that response?

4548. Ms I Kennedy: I think that that was between the Committee and the Clean Neighbourhoods and Environment Bill. We do not have sight of the response. It is more —

4549. The Chairperson: That is fine. That is OK.

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

Clause 207 agreed to.

Clause 208 (Interpretation of Part 11)

4550. The Chairperson: The Committee did not raise any issues with this clause. However, the Department has since advised that it will be making two textual amendments to the clause to ensure a consistent approach throughout the Bill. I am content with that.

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

Clause 208 agreed to.

Clauses 209 to 214 agreed to.

4551. The Chairperson: That concludes Part 11. I ask members to turn to the clause-by-clause summary paper for Part 12.

Clause 215 (Correction of errors in decision documents)

4552. The Chairperson: No issues have been raised by the Committee in respect of clauses 215 to 218.

4553. Mr McGlone: I seek a bit of clarity. I am a bit thrown by the double negatives. Clause 215(3) states:

"But the council must not correct the error unless not later than the end of the relevant period it receives a request mentioned in subsection (2)(a) or sends a statement mentioned in subsection (2)(b)."

4554. I think that there is a double negative there. That is probably legalistic stuff.

4555. Ms I Kennedy: It is just pointing out that there will be a time frame within which the council must correct the error.

4556. Mr McGlone: I am sure that the English is brilliant and all that, but it is a wee bit unintelligible to me. There are double negatives in a sentence and stuff, and an "unless" thrown into the middle of it. It is probably perfectly right, but at 1.00 pm in the day —

4557. The Chairperson: Is the Bill Office OK with it?

4558. Mr McGlone: Can you make sense of it?

4559. The Clerk of Bills: I can make sense of it, but it is not necessarily my job to comment on the drafting. I can see that it is specifying that a time period will be given in the development order, and it is saying that any error must be corrected within that time period. I see the double negative, and it may be necessary to read it a couple of times.

4560. Mr McGlone: The language used is cumbersome. I do not know whether it can be changed.

4561. Ms I Kennedy: We can certainly talk to our legal people.

4562. Mr McGlone: It is just that I read it and I am only —

4563. The Chairperson: This is a clause that we were going to agree, but if we need to change it, Mr McGlone —

4564. Mr McGlone: I am not saying that we need to change it. I am suggesting that it might be written more simply, in a way that is more intelligible. The language is cumbersome.

4565. The Chairperson: I will defer a decision on clause 215, and we will bring it back on Tuesday.

4566. Mr McGlone: Thank you.

Clause 215 referred for further consideration.

Clauses 216 to 218 agreed to.

Clause 219 (Fees and charges)

4567. The Chairperson: The Department has stated that a review of fees is under way and that it will set the fees for the first three years before the situation is reviewed. I am content with that.

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

Clause 219 agreed to.

Clause 220 agreed to.

Clause 221 (Grants to bodies providing assistance in relation to certain development proposals)

4568. The Chairperson: At our meeting on 3 February, departmental officials agreed to contact the Department of Finance and Personnel to discuss the possibility of removing its oversight role under this clause. Officials also agreed to consider the proposed amendment from Community Places.

4569. Members have the Department's response, which indicates that the Minister will bring forward amendments to remove DFP's oversight role in issuing grants and to expand paragraph 221(1)(a) to include the words "of planning policy proposals and". Do members have any comments to make about that?

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

Clause 221 agreed to

Clause 222 (Contributions by councils and statutory undertakers)

4570. The Chairperson: No issues on this clause were raised, but the Department has since advised that it will be making four textual amendments to the clause to ensure a consistent approach throughout the Bill. Members have a copy of the draft amendments.

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

Clause 222 agreed to.

Clause 223 (Contributions by departments towards compensation paid by councils)

4571. The Chairperson: No issues were raised on the clause. Once again, the Department has advised that it will be making a textual amendment to ensure a consistent approach throughout the Bill. Members have a copy of the draft amendment.

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

Clause 223 agreed to.

4572. The Chairperson: That concludes Part 13 of the Bill, so we will move on to Part 14, which deals with miscellaneous and general provisions.

Clause 224 (Duty to respond to consultation)

4573. The Chairperson: The timescale to respond to consultation is likely to be 21 to 28 days, and holding responses will not fulfil that duty. In addition, the Department has since advised that it will make two textual amendments to the clause to ensure a consistent approach throughout the Bill. Members have a copy of the draft amendments.

4574. Mr T Clarke: What happens if people do not respond to the consultation after 28 days?



4575. Ms I Kennedy: Obviously, the local authority will chase up the response. The local authority, that is, the council as the planning authority, could make a decision based on the information that it has. It would have to decide whether it could proceed and make that decision in the absence of the consultation response.

4576. Mr T Clarke: What would the Department be likely to do if it did?

4577. Ms I Kennedy: That will be a decision of the council, so it will be the council's responsibility.

4578. Mr T Clarke: Will the Department have oversight of council decisions?

4579. Ms I Kennedy: Yes.

4580. Mr T Clarke: Invariably, the NIEA is slow. I suppose the councils are also slow, but that is in-house, so it is different. However, if the Environment Agency is slow to respond and the council makes a decision, what happens if the decision has been made in the absence of the Environment Agency? What then happens if the Environment Agency's response is negative?

4581. Ms I Kennedy: The council will have to take responsibility for its decision.

4582. Mr T Clarke: I do not like that, because if the consultee is asked to respond within 28 days and does not do so within that statutory time, the council should not be held responsible for the decision that it made as a result of the consultees not responding within the given time. The onus has to go back —

4583. The Chairperson: I totally agree. However, as we talked about with the Planning Appeals Commission, people are given a bite of the cherry to appeal within the given time. The consultees in this case are given 28 days to respond, and we need to ensure that they do so within that time. If the decision is made on the twenty-ninth day, that is fine. In the South, the council has to make the decision. It is as simple as that. Somebody else is accountable, therefore. I would say that that would happen in extreme cases. It should not be happening, and we are dealing with it now. However, Mr Clarke is saying that, if it happens on the odd occasion, we should look at what is built in to the legislation.

4584. Mr T Clarke: We do not want it to happen, but I am concerned that, as Irene said, councils will be held responsible for their decisions. Councils make decisions based on information that they have or have not been given. If a council has not been given information that is detrimental to an application, but it comes afterwards, the council should not be held responsible because an agency did not respond within the given time. Something has to be built in to the Bill to punish agencies.

4585. The Chairperson: If it is a matter of compensation, the agency would be responsible. For example, are we saying that the NIEA would be liable to pay compensation for decisions that were made as a result of its failure to respond within a specified time?

4586. Ms I Kennedy: I am not sure that that would be the case.

4587. Mr T Clarke: Why are we saying 28 days? Why not just say that people can have for ever? For example, we could give a consultee 28 days to respond, but they decide to respond after that time, say, 56 days later. The council may have issued its decision based on the fact that the consultee has not responded. In that situation, the council cannot then be held responsible,

because it gave the consultees an opportunity to respond but they did not take that opportunity. If it takes consultees twice as long to come back, the council cannot be held responsible.

4588. Mr McGlone: From what I know, in the rest of Ireland, planners can say that a consultee has a certain length of time to respond, and, if they do not respond within that time, the planners make a determination. That system has focused attention on a lot of statutory consultees to get their act together. I know that some of them are under work pressures, but, in some cases, they are just coddling about. How many times have any of us in this Room attended meetings where, all of a sudden, a file is hoked out from the bottom of a pile or it has been sitting on somebody's desk and was not being attended to, or somebody has been off sick and the matter has just been forgotten about? Therefore, we should build that in to sharpen the efficiency of planning and put a wee bit more focus on to agencies.

4589. The Chairperson: I will suggest that the decision cannot be overturned. Let us be serious about this, Peter. The days of people being given 30, 40, 50, or 60 days and of people being off sick and not being accountable are over. I propose that, if a council makes a decision based on information that it received within a specified time frame, that decision cannot be overturned, irrespective of who comes back. Would that be a fair way to deal with it?

4590. Mr McGlone: That would be the case as long as the emphasis on third-party appeals does not open up an opportunity for consultees to appeal the decision. I know that third-party appeals may not appear in the Bill, but it has been an issue as well. Technically speaking, if the third-party appeal mechanism were opened up, an agency could use it, and we could wind up in a crazy situation.

4591. The Chairperson: If a third-party appeal mechanism were introduced, it would be specific, and the people in question would be involved from the start.

4592. Mr T Clarke: In fact, they would not be a third party.

4593. The Chairperson: They would not be a third party. We can talk around the houses about this. Trevor Clarke made a valid point. We are saying 21 to 28 days. Therefore, if a council makes a decision without having the appropriate information, I would certainly support that decision, which, no matter what it is, should not be overturned.

4594. Mr Mullaney: Although I am open to correction, my understanding is that, in the Republic, there is what is commonly referred to as deemed approval. In other words, after a certain period of time, although I am not sure what that time is, if the planning authority does not make a decision, approval is deemed to have been granted. That obviously focuses people's minds, including those of consultees and the planning authority, to reach a determination within that time, otherwise it goes by default.

4595. The Chairperson: That is 100% correct.

4596. Ms Smith: On the relationship between councils and consultees, regulations to come will set out, first, who the consultees are and, secondly, the time periods in which they must respond. The time period for responding would be proportionate to the decision that has to be made on the application.

4597. Mr T Clarke: I do not mean this to be rude, although it will probably sound rude, but decisions would not take so long if the Planning Service were more robust in following up consultees. Councils are the biggest offenders. For example, I was involved in a case recently when, after four months, environmental health had still not gone back to the Planning Service. However, if it were given 28 days to assess an application and was then responsible if a wrong

decision were made, nothing would exercise its mind more than if it were put behind the eight ball.

4598. The problem at the minute is that applicants are left in limbo, because environmental health, the Environment Agency, Roads Service, which is actually not the worst, and the Water Service do not respond. That means that applications are being held in the system with the Planning Service. We do not want that situation to occur when the powers go to local councils.

4599. Ms Smith: Everybody, including the Planning Service, is very aware of that problem. That is why we wanted to bring those organisations into the statutory framework. At the moment, most of them are not statutory consultees. They are consulted, but not within any statutory framework. That is why the Bill provides for regulations to be made, first, to list organisations and to establish that they have responsibilities in the planning system, and, secondly, to set out the time frame within which they must reply.

4600. The time frame relates to the hierarchy of development that we talked about. At the local, lower end of the hierarchy, the period to reply will probably be around 21 to 28 days. However, once major applications come into play, especially regionally significant applications, it is clear that much bigger issues will be at stake. The aim in that is to make sure that the timetable for the statutory consultee to come back is laid down at beginning of the relationship on any particular application. That means that everyone will be clear from the beginning how the process will work.

4601. Mr T Clarke: That is fair, and there is no problem with it. However, the issue is the given time. The time will obviously be longer for a major application, and there is no problem with that. I was involved with a case recently of a farmer building a shed. The council had still not come back to him about it four months later. It had not got back to him four months into the project, and that was not even a major application.

4602. Ms Smith: You are absolutely right about making sure that there is a shorter and more predictable timescale. That is what the regulations will be designed to do.

4603. Mr T Clarke: Is there no penalty in the regulations?

4604. Ms Smith: Not at the moment. The intention is that the statutory consultees will have to publish performance records.

4605. Mr T Clarke: Irene's answer on this clause makes me nervous. If councils make the decision, and it turns out to be the wrong decision because the agency did not respond, we are saying that, by agreeing the clause as it is worded, the responsibility is on the council. The responsibility has to be on the agency. That would mean that, if a stage is reached where compensation has to be paid on the revocation of a planning application, it should be paid by the agency that did not respond within the given time frame. It should be paid not by a council or the Department, but by the agency that did not respond within the time.

4606. Mr McGlone: Trevor's point is very valid. The issue is not so much that the council is empowered to override a non-opinion, if you like, by a consultee; it is that a statutory consultee's non-opinion is deemed to be an approval. I can see them all of a sudden saying to people that they can go ahead. The Planning Service can do that at the minute anyway and make a determination if it disagrees with the consultee, be it environmental health or the NIEA. However, that then becomes a liability issue, and people accuse the Planning Service when it overrode a decision and approved planning on, for example, a flood plain. The question for us is that a non-response within a reasonable time is deemed to be an approval by that consultee. That is the issue that needs to be dealt with.

4607. The Chairperson: That is a fair point, and we will have to come back to it. Maggie, you are right about major planning applications and developments. However, a system is already in place for discussions, if nothing else. People should be involved from the very start.

4608. I am concerned about the staff budget. I know that it will be transferred to local government, but I am using examples of what has already happened [Inaudible due to mobile phone interference.] Staff will possibly be moved from that Department. Councils will then have responsibility for the NIEA, which I am using just as an example.

4609. You need to talk to the Minister about bringing back an amendment. The 28-day issue needs to be nailed down. A single application for the countryside normally has to have approval within 12 weeks. If a council agrees a time frame for a response, a deemed approval should be given if an organisation does not respond within that time, or compensation will be required. Will you talk to the Minister about that?

4610. Ms Smith: We will talk to the Minister and let you know about it as soon as possible.

4611. The Chairperson: That is only but fair. So, we will park clause 224.

4612. Mr McGlone: Maggie said that the time frame will be commensurate with the extent of development required and that the Department has already worked out a framework of deadlines.

4613. Ms Smith: Yes.

4614. Mr McGlone: It might be useful if we got a bit of a handle on those.

4615. Ms Smith: I will ask Angus Kerr to correct me if I am wrong, but the intention of the regulations is that the time frame for a local development will be around 21 to 28 days. However, it would be a set period in the regulations. The response time frame for major developments, particularly those of regional significance, will depend on the nature of the development, because some will be much more complicated than others. An agreement would then be made that is commensurate with the scale and complexity of the development.

4616. The Chairperson: We will park clause 224.

Clause 224 referred for further consideration.

Clause 225 agreed to.

Clause 226 (Local inquiries)

4617. The Chairperson: The Department stated that the Bill does not give councils the power to hold local inquiries. Do members have any comments to make about clause 226?

4618. Mr McGlone: There was an issue about apportioning costs.

4619. The Chairperson: There was indeed.

4620. Mr McGlone: For example, who would bear the cost of involving external agencies if a public inquiry is held?

4621. The Chairperson: Belfast City Council responded by saying that:

"the decision to hold public inquiries should be made in close consultation with local councils."

4622. That is fine. The Department said that it would pay for any inquiry. However, the question was whether local councils would be able to hold an inquiry. Is that correct? I am content with the Department's response. Do members have any comments to make?

4623. Mr McGlone: I am unclear as to what those inquiries are for and their scope. A council can take on the costs of an inquiry if it wants. However, I am thinking specifically about the remit of the Planning Bill. An inquiry into a local development plan, for example, would be extensive and expensive and would involve barristers and such people floating about the place. In previous inquiries, barristers represented the Department, depending on the level of legal representation that was made for area or development plans.

4624. So, I am conscious that we could be into big territory with considerations of defrayment of costs and of who bears them. The regional development strategy will be coming up shortly, and that could take us into local inquiries, depending on how it impacts on capped figures and suchlike. That is even before we get to the length of local development plans. We are getting into interesting territory about who defrays those costs.

4625. The Chairperson: I agree, but clause 226 states that:

"The Department may cause a public local inquiry to be held"

4626. and the Department says that it will pay for it.

4627. Ms I Kennedy: Yes, that applies under that clause. I think that Mr McGlone is talking about the independent examination of a development plan. That would be held under —

4628. The Chairperson: We will come back to the issue of independent examination.

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

Clause 226 agreed to.

Clauses 227 and 228 agreed to.

Clause 229 (Directions: Department of Justice)

4629. The Chairperson: The Examiner of Statutory Rules drew the Committee's attention to the proposal to give the functions under this clause to the Advocate General rather than to the Attorney General for NI. The Examiner of Statutory Rules also suggested that that was out of place. The Department stated that it would seek the Department of Justice's position on the clause. Do we have a verbal update on that?

4630. Ms I Kennedy: As of this morning, we have not had a response from the Department of Justice, but we are chasing that up.

4631. The Chairperson: So, we have to park this clause until Tuesday.

4632. Ms I Kennedy: I may be able to check over lunch.

Clause 229 referred for further consideration.

Clause 230 agreed to.

Clause 231 (Rights of entry)

4633. The Chairperson: The Committee did not raise any issues with this clause. However, the Department has advised that it will be making four textual amendments to the clause to ensure a consistent approach throughout the Bill. The draft amendments are in members' tabled papers.

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

Clause 231 agreed to.

Clauses 232 to 236 agreed to.

Clause 237 (Planning register)

4634. The Chairperson: At the meeting on 3 February 2011, departmental officials agreed to report back to the Committee on the compatibility of council and departmental IT systems. The Department provided two responses on that issue. It indicates that planning systems conform to IT best practice and that they use Civil Service strategic tool sets. Those enable the exchange of information, as well as integration, with other IT systems. It also stated that the compatibility of departmental and council IT systems will be dealt with under the pilot projects with local councils.

4635. The Department also noted that, under this clause, councils will be required to keep and make available a planning register. A development order may require the Department to populate the register of the relevant district council when an application is submitted directly to it or when it issues a notice under departmental reserve powers. Would you like to expand on that?

4636. Ms I Kennedy: They are just very simple amendments.

4637. The Chairperson: I was talking about the link between councils' IT systems. Concerns were raised about that.

4638. Ms Smith: I beg your pardon. The systems comply to the same standards, so there is an expectation that they will be compatible most of the time. Again, however, that will have to be looked at on a case-by-case basis, because it will be about the compatibility of a council's planning office with whatever platform it needs to share information. That will be looked at as councils increasingly work together through the pilot projects.

4639. The Chairperson: Let us be honest. The Committee went to Scotland and saw an IT programme that did not work too well. If the reports about e-PIC are anything to go by, we would need to ensure that we get this right.

4640. Ms Smith: Yes, absolutely. In fairness to e-PIC, it is early days for it.

4641. The Chairperson: Even though it has been going since 2006?

4642. Ms Smith: No; I am talking about its implementation.

4643. The Chairperson: Maggie, we will not go down that route.

4644. Mr McGlone: It is a costly baby.

4645. The Chairperson: We have been dealing with e-PIC for four years. Certainly, the plans should be possible with modern technology.

4646. Ms Smith: Yes, they should be.

4647. The Chairperson: Besides that, you are talking about pilot projects. We are relying a lot on pilot projects, so we need to make sure that we get it right.

4648. Ms Smith: Yes, and they are a very important part of making sure that the integration between the offices happens.

4649. Mr McGlone: I know that this is not your remit, Maggie, but that of the technical buffs who got e-PIC so wrong at the start. However, they all knew four years ago and before then that the RPA was coming, yet here we are scratching ourselves. Even the existing programmes are not working properly, and websites have to be re-jigged to make them accessible to the public. I find it incredible that £16 million was spent on that and the guys involved did not even think about the RPA coming down the line or that a lot of computer systems out there might need to be looked at. It is incredible that we are still looking around for computer systems that could be available for councils.

4650. The Chairperson: We have every assurance that the pilot projects will crack that.

4651. Mr McGlone: The problem is that it will cost somebody somewhere a fortune to do that again. We saw that at the Public Accounts Committee, and we heard about it here from the people responsible. It is just incredibly bad management.

4652. The Chairperson: I want to maintain the quorum, gentlemen, just to quickly get through the last 10 clauses.

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

Clause 237 agreed to.

Clause 238 agreed to.

Clause 239 (Time limit for certain summary offences under this Act)

4653. The Chairperson: The Department advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill. I am happy enough and content with that.

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

Clause 239 agreed to.

Clause 240 (Registration of matters in Statutory Charges Register)

4654. The Chairperson: There will be a textual amendment to the clause.

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

Clause 240 agreed to.

Clauses 241 and 242 agreed to.

4655. The Chairperson: That concludes Part 14 of the Bill. We will now move to Part 15, which deals with supplementary issues.

Clause 243 (Interpretation)

4656. The Chairperson: The Department stated that the term "reserved matters" in relation to the clause would be defined in subordinate legislation. I am content with that.

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

Clause 243 agreed to.

Clauses 244 to 246 agreed to.

Clause 247 (Commencement)

4657. The Chairperson: I propose to defer consideration of clause 247 until after lunch. We may have to look at a Committee amendment.

Clause 247 referred for further consideration.

Clause 248 agreed to.

4658. Mr T Clarke: What is the purpose of the amendment to clause 247?

4659. The Chairperson: We are going to talk about how the commencement of the Bill will not take place until governance arrangements and a code of conduct for councils is in place for local government reform. The Executive made a commitment about that. If you are happy to stay, we will discuss that now.

4660. Mr T Clarke: Go ahead, but you can pay my speeding ticket.

4661. The Chairperson: Do not record that, please. Mr Clarke will honour us with another bit of time.

Clause 247 (Commencement)

4662. The Chairperson: At the meeting on 3 February 2011, departmental officials agreed to report back to the Committee on discussions with the Office of the Legislative Counsel about how the commencement of the Bill is linked to local government reform. There does not appear to be a response from the Department on that. Before I continue, do we have a response, Maggie?

4663. Ms Smith: No. I am sorry, Chairperson. I understood that the Committee was going to —



4664. The Chairperson: You are leaving that to us. OK.

4665. Ms Smith: That the Committee was going to —

4666. The Chairperson: No, that is fine. I was just seeking clarification. We have been dealing with a lot.

4667. A draft Committee amendment suggests that the commencement of Part 3, which deals with planning control, could be made subject to draft affirmative procedure.

4668. The Clerk of Bills: That is a revised version of the amendment that was tabled but was not acceptable. Some members, in particular Mr Weir, raised issues about linking the commencement of planning to boundary changes and elections. He made the point that perhaps governance arrangements might be agreed in advance of such boundary changes or elections. It was suggested that that be left open so that planning powers could be devolved once those governance arrangements were in place.

4669. So, because we cannot refer specifically to such governance arrangements or to any particular relevant legislation, it was discussed that the Committee might delay some of the commencement orders on some of the key provisions and make those subject to draft affirmative procedure. In other words, the Bill will have to go back to the House before those powers can be transferred. The House would be left to decide when those provisions might be commenced.

4670. Mr T Clarke: OK.

4671. Mr McGlone: Was there any particular reason why we are dealing with social well-being, climate change and sustainable development?

4672. The Chairperson: We deferred some clauses, and we will be coming back to those this afternoon.

4673. Mr McGlone: I am sorry, I am reading this paper wrong. That is OK. Sorry, excuse me.

4674. The Chairperson: Are members content that the Committee amendment will deal with a requirement that councils cannot carry out planning control functions until an order has been laid before and approved by a resolution of the Assembly.

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

Clause 247 agreed to.

Schedules 1 to 4 agreed to.

Schedule 5 (The Historic Buildings Council)

4675. The Chairperson: At the meeting on 3 February 2011, the Department agreed to provide further clarification in the Bill on the role of the Historic Buildings Council. We discussed that under clause 196 and were content.

4676. Question, That the Committee is content with the schedule, put and agreed to.

Schedule 5 agreed to.

Schedules 6 and 7 agreed to.

4677. The Chairperson: Thank you very much, gentlemen. We will now break for lunch.

Committee suspended.

On resuming —

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

4678. The Chairperson: At last Tuesday's meeting, the Committee was content with the proposed departmental amendment to clause 1(3) that would change the words "have regard to" to "take account of", making the clause consistent with clause 8(5). However, before agreeing the clause, the Committee agreed to ask the Department to consider including a reference to well-being and to reconsider strengthening the obligation to sustainable development. Members also requested that a draft Committee amendment covering those points be provided for discussion.

4679. A departmental response indicates that the Minister is prepared to amend in clause 1(2)(b) the words:

"contributing to the achievement of sustainable development"

4680. to "contribute to sustainable development". However, the Department says that it is not possible to refer to well-being in the Bill.

4681. We will discuss the sustainability issue first, and I will let the Department speak a wee bit on that. I will then go to the Committee amendment. What exactly would the departmental amendment do?

4682. Ms Smith: We spoke at the previous meeting about how sustainable development is a wide-ranging responsibility to which many organisations, including all Government Departments, contribute. The idea behind the amendment is to reflect the fact that the Department contributes to sustainable development. Departments and councils have a responsibility to contribute to sustainable development, and, within that framework is the planning system. Therefore, it is about contributing to sustainable development.

4683. The Chairperson: Basically, you would remove the word "achievement". The Committee wanted strongly to get this issue tied down. You are correct to say that the responsibility is cross departmental and that everybody has to play their part. However, this is primary legislation, and we need to try secure something stronger if we are to adhere to sustainability. You raised that issue, Mr Clarke.

4684. Mr W Clarke: I agree with you, and I will not rehearse what was said. As you said, this is a big piece of primary legislation, and, in my opinion, every other Department will feed off it. This Bill will be the central plank, so it is important that we make it as strong as possible.

4685. The Committee wanted the words "the securing of sustainable development" to be added to the clause, but I understand that the Bill Office had problems with that wording. The Committee amendment would remove the words "contributing to the achievement of" and would insert the word "furthering". I would be happy enough with that amendment.

4686. The Chairperson: I will ask the Clerk of Bills to go through that.

4687. Mr Weir: Would that then read "contribute to furthering sustainable development"?

4688. The Chairperson: We have two proposed amendments —

4689. Mr W Clarke: The word "contributing" would be removed, because it is weaker.

4690. Mr Weir: I am just trying to clarify what Mr Clarke said.

4691. The Chairperson: I propose that the Clerk of Bills take us through the first amendment, because the Committee may bring its own amendment.

4692. The Clerk of Bills: The draft Committee amendment would leave out line 11 in its entirety. It would leave out the words:

"contributing to the achievement of sustainable development"

4693. and replace them with the words "furthering sustainable development". Although the Bill Office cannot offer a cast iron guarantee on statutory interpretation, that seems not to preclude the notion of co-operating or to suggest in any way that the Department was entirely or solely responsible for sustainable development. However, it appears to me to be somewhat stronger than "contributing to".

4694. Mr W Clarke: I propose that amendment.

4695. The Clerk of Bills: Do you want me to address social well-being?

4696. The Chairperson: How would the Committee amendments read in the Bill?

4697. The Clerk of Bills: The clause would read:

"The Department must —

(a) ensure that any such policy is in general conformity with the regional development strategy and

(b) exercise its functions under subsection (1) with the objective of furthering sustainable development and (2) promoting or improving social well-being."

4698. The Chairperson: There are two amendments there.

4699. Mr Weir: Those are two separate issues: sustainable development and well-being.

4700. The Chairperson: So, the first amendment would add the words "the objective of furthering sustainable development" and remove the words "contributing to the achievement of". Did every member hear that?

4701. Ms Smith: We would need to go back and ask the Minister whether he would adopt the words "furthering sustainable development".

4702. Mr W Clarke: We could table our amendment, and the Minister could then come back to us.

4703. The Chairperson: Yes, OK.

4704. Ms Smith: Yes, that is fine.

4705. The Chairperson: The second part of the amendment aims to promote or improve social well-being. How does the Committee feel about that?

4706. Mr Weir: I do not have a major problem with the broad concept behind that. However, is the issue not that the term "well-being" is not defined anywhere? The amendment may be meaningless if that term is not defined. That is my only concern.

4707. The Clerk of Bills: The Committee would be at liberty to request that I go off and bring back an appropriate definition. However, I understand that the definition of social well-being was aired and is to be addressed as part of other related legislation. Therefore, the Committee may wish to leave that for the moment. If the amendment were made, it would then be open for the Department or Minister to come back with a definition that was consistent with what is in either progress or planning for the other related bits of legislation. It would be sufficient to make clear the Committee's intention or desire.

4708. The Chairperson: Would you like to take those thoughts away with you and see what the Minister will not say?

4709. Ms Smith: Yes.

4710. The Chairperson: Obviously, he indicated what he thinks about the well-being issue.

4711. Ms Smith: The well-being issue comes back to what we talked about when we discussed governance arrangements and ethical standards. Well-being does not exist in statute at the moment, but it is in the consultation document that is leading up to the next local government Bill. That is our issue with well-being.

4712. We can certainly ask the Minister about furthering sustainable development. We can also ask him again about well-being, but our position on that is as I stated.

4713. The Clerk of Bills: The other wee point to note about well-being is that if it goes into clause 1, it will impact on the way that the Department exercises its general duty under clause 1(1), which is that:

"The Department must formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development."

4714. The Committee would, in effect, be asking the Department to take on some responsibility to consider social well-being as part of the development of its policies and general duty under clause 1(1). I understand that any time that social well-being has been discussed in the past, it has generally been in connection with the next level of government down. Any such discussions have been about local government considering social well-being by identifying local populations and quality-of-life issues in their areas. That means that the concept would be used in a very different context in the Bill.

4715. Mr Weir: I would not die in a ditch about this, but would it not make sense if social well-being came under the duties of a council rather than the Department, especially if it is more about looking at a community holistically? Leaving aside the comments that we made about definition, it may be better to make some reference to well-being. It may be more appropriate for it to be dealt with at the local government rather than the departmental level.

4716. Ms Smith: The power of well-being will go to the councils. It will not really lie at departmental level. The power of well-being is also about the purpose of the planning system and what it is there to do. The planning system, as clause 1 states, is about:

"the orderly and consistent development of land".

4717. So, it is about the land, rather than social well-being. Social well-being is about the state of the people, which is a different matter.

4718. Mr W Clarke: It is my opinion that we are moving away from a land-based to a spatial planning system, and fundamental to spatial planning is citizens' well-being. So, I think that well-being very much fits in with that. It also fits in with other elements of the Bill, such as those on councils and so forth. However, it has to be at the start of the Bill and listed with the general functions, so that the Department's role would be to consider the well-being of the community and its citizens.

4719. Mr Weir: I think that the responsibility for well-being is more appropriate for councils, because they have to be more focused on citizens in how they interpret planning matters. However, if the term "well-being" were clearly defined, it would have to lie with the Department and with councils. The complication is that, if the same responsibility were given to two groups, there is a danger that neither, rather than both, would consider well-being.

4720. I would feel more comfortable if there were a reference to social well-being in the development side of councils' duties. It would also fit in with councils' responsibilities to consult with the community and community involvement. Well-being fits more naturally there, rather than on a high, esoteric level with the Department.

4721. The Chairperson: How do we nail down well-being in statute, if it is not in the Bill? Where do we put it?

4722. Ms Smith: If we are talking about the slightly different term of social well-being, that would take us back to community planning and councils' responsibilities for plans. The community plan goes much wider than the development plan and is concerned with all sorts of areas of life in a council area. The development plan is the spatial aspect of the community plan. We are now talking about what councils would do through their community plans and other policies that Government Departments bring forward. In our context, however, we are talking about the community plan.

4723. The Chairperson: That is fine, Maggie, but how do we put that in statute? Where do we go with legislation?

4724. Ms Smith: Community planning is out for consultation in the local government reform consultation. That will come in along with governance, ethical standards and the power of well-being. All that goes together.

4725. The Chairperson: I agree. That would be fine, if we were talking about local government reform. If well-being is not going into the Planning Bill but into community planning, members

may or may not be happy to go down that route. However, we need assurance from the Department that that will happen.

4726. Mr W Clarke: That is not good enough. We should table the amendment, and, if it is competent, it can go forward and be debated in the Chamber.

4727. Mr Weir: The Committee will agree the amendment or Mr Clarke will table it. I can see the general concept, but this is not the right place to put the amendment. Therefore, I would oppose it in a Committee vote.

4728. Mr W Clarke: We should vote on it.

4729. Mr Weir: The Planning Bill may not even be the right legislation for it, to be perfectly honest.

4730. The Chairperson: Do you have any other views, gentlemen? I am just looking at the possibility of different clauses for it. Is there an opportunity to put social well-being in PPS 1?

4731. Ms Smith: We can certainly think about it in that context. The Bill is really about the planning system. If we start to talk about social well-being, we go way into all sorts of other responsibilities that the Bill is not designed to meet.

4732. The Chairperson: Could you consider putting it into PPS 1?

4733. Ms Smith: Yes, we could.

4734. Mr Angus Kerr (Department of the Environment): PPS 1 would be an appropriate place for it.

4735. The Chairperson: Could it be included under guiding principles? I am trying to be reasonable about what exactly we are looking at in primary legislation and at what fits in the Bill.

4736. Mr W Clarke: That is fair enough, Chairperson. If you do not want to take that route, do not take it.

4737. The Chairperson: No, I am opening up the issue for discussion. I am only saying.

4738. Mr W Clarke: We will be talking in circles all day. I am proposing the amendment, so we either put it to a vote or we do not.

4739. The Chairperson: I asked whether any other members had a comment to make. We have a Committee amendment, and I can put it to a vote.

4740. Mr Weir: I know that we are trying to get all the outstanding issues resolved, but we can have a final bite at this on Tuesday.

4741. The Chairperson: I was just going to say that we will have to park this clause again.

4742. Mr Weir: Perhaps the Department can come back with something in writing about the suggested PPS 1 route. That might inform any decision that we make on the matter on Tuesday.

4743. The Chairperson: We will come back to that, and you and I will debate it, Willie.

4744. Mr W Clarke: We will go back to the same scenario.

Clause 1 referred for further consideration.

4745. The Chairperson: Moving on to —

4746. Mr W Clarke: What about the issue in clause 1 on sustainable development?

4747. The Chairperson: Yes, I am sorry; we will come back to that again on Tuesday.

4748. Mr W Clarke: We do not need to come back to it.

4749. Mr Weir: I do not think that there is a major issue from a Committee point of view with the words "furthering sustainable development".

4750. The Chairperson: The problem is that we cannot agree the clause in part.

4751. Mr W Clarke: We could agree that element of it.

4752. Mr Weir: Presumably we could agree at least that part.

4753. The Chairperson: Excuse me, gentlemen, I will tell you what we will do. We will come back to the clause on Tuesday.

4754. Mr McGlone: Will we do the whole clause then?

4755. The Chairperson: Yes. There is no point trying to agree the clause in part and then adding another part to it. We will agree or disagree the clause, whatever the case may be.

Clause 3 (Survey of district)

4756. The Chairperson: Members deferred this clause until they had an opportunity to consider a Committee amendment that would require climate change to be in the survey of a district. A draft Committee amendment is in members' tabled papers. I will get the Clerk of Bills to go through the amendment. You are overwhelmed, Maggie, and cannot wait to put that in the Bill. Would you like to comment?

4757. Ms Smith: I have to apologise for what I said earlier when we were talking about well-being. I was getting mixed up between the two clauses. What we are saying about well-being for the survey is that well-being does not exist in statute. It is also off the subject of the Bill.

4758. The Chairperson: Are there any issues about climate change?

4759. Ms Smith: We explained before the previous meeting that there are international UN standards for the collection of climate change data and that that is done at a UK level.

4760. The Chairperson: I will ask the Clerk of Bills to take us through the Committee amendment to clause 3.

4761. The Clerk of Bills: Clause 3 is broken into subsections. Clause 3(2) concerns matters by which a council would derive factual information about the district. Clause 3(3) refers to:

"any changes which the council thinks may occur".

4762. I suggest that councils consider any potential impact of climate change as one of those changes that might occur. So, there would be a new subsection (a) after 3(3) that would read:

"The matters also include the potential impact of climate change".

4763. The Chairperson: Are there any comments on that?

4764. Mr W Clarke: I propose the amendment.

4765. Mr Weir: The councils are not going to be recording the information. How can they assess the potential impact and take account of it if it is recorded on a national basis?

4766. Mr W Clarke: You are getting into constitutional stuff when you talk about a "national basis".

4767. Mr Weir: Leaving aside broader constitutional issues, whatever way you look at it, the recording of the data is done on a national basis.

4768. The Clerk of Bills: That is why the amendment is drafted to say that councils have to take into account the potential impact; it is not asking them to collect data, assess it or adapt it.

4769. Mr Weir: If you are looking at a local plan but the information is collected at a national level, councils will be trying to apply national information locally. I am not questioning the competence of the amendment; I am questioning its appropriateness.

4770. Mr McGlone: Sure you are not going to have local information on climate change.

4771. Mr Weir: That is exactly my point. How can you assess the potential impact of something at a local level if you do not have any local information?

4772. Mr McGlone: You have to do it in the global sense with the information that you have got. That is the nature of climate change.

4773. Mr W Clarke: As Mr McGlone said, the councils will be taking account of worldwide best practice on climate change and configuring it into their plans for flood defence and planning zones for the lifetime of a local plan. Obviously, councils will have to take in factors such as that. For example, if they got information that sea levels were going to rise by a metre in a year, they would have to take it on board.

4774. Mr Weir: If sea level rises by a metre in the space of a year, the Four Horsemen of the Apocalypse will be going past. [Laughter.]

4775. Mr W Clarke: You are saying that the councils would ignore that information. We are saying that it should be put in so that councils are aware of it.

4776. Question, That the Committee is content with the clause, subject to a Committee amendment to incorporate climate change, put and agreed to.

4777. Clause 3 agreed to.

Clause 5 (Sustainable development)



4778. The Chairperson: Last Tuesday, we deferred this clause, pending the decision on the reference to sustainable development in clause 1. Will the Department confirm that its amendment to clause 1 will also apply to clause 5?

4779. Ms Smith: Yes.

4780. The Chairperson: To confirm, the amendment is on "furthering sustainable development".

4781. Question, That the Committee is content with the clause, subject to a Committee amendment to further sustainable development, put and agreed to.

Clause 5 agreed to.

Clause 10 (Independent examination)

4782. The Chairperson: At Tuesday's meeting, we sought clarification on who would pay in the event of an independent examiner being appointed. At that meeting, the Department confirmed that it would amend the Bill so that it:

"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."

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

Clause 10 agreed to.

Clause 33 (Simplified planning zones)

4783. The Chairperson: The Committee agreed to defer a decision on clauses 33 to 38, pending a note of the meeting with Professor Lloyd being made available and further information being provided from the Assembly Research and Library Service. The Committee also asked the Department to consider an amendment that removes those clauses.

4784. Professor Lloyd suggested that risks associated with simplified planning zones include confining them to a set period, reducing the number of planning policy statements, introducing a threshold and requiring a sound business case. The Department's response indicates that the Minister will not consider such an amendment. A research paper has also been provided.

4785. Ms Smith: You asked us to consider an amendment to basically remove simplified planning zones. The Minister thinks that simplified planning zones are a useful tool that councils may want to use, so he is leaving the provision in the Bill.

4786. The Chairperson: Gentlemen, any issues? Mr McGlone, you brought up the issue of simplified planning zones at the last meeting.

4787. Mr McGlone: I see from the papers that there are a number of grounds on which it can be introduced, including a planning policy statement. However, I am not at all convinced that it is a useful tool. Other than the Department's wish for it to be in there, any evidence that we have heard has been to the contrary. I do not know whether the Committee can propose an amendment to remove the provision. I seriously do not see any merit in it being there other than to say that it is there.

4788. The Chairperson: I raised the issue of whether or not we need simplified planning zones at the last meeting. Can the departmental officials clarify things for us? We are talking about a plan-led system. Will you give us an example of where this would be of benefit?

4789. Mr Kerr: It will be an option open to councils, over and above the local development plan, to pick out a particular area, usually an industrial area or an area that has been earmarked for economic development, do some work in the preparation of the scheme and bring about a situation where the uses that that it sees as being appropriate and important can come forward without the need to put in planning applications. The idea is that it can foster rapid economic development and take away the need for developers to put in applications. Therefore, you get faster development and do not get bogged down in bureaucracy.

4790. Mr McGlone: I am listening very carefully, Angus, to try to get my head around this concept. I have not got my head around it yet, but maybe I am just slow on the uptake. You give the example of an area that is zoned for industrial development within the boundary of a village or a town, wherever it might be. There would be a presumption in favour of development there anyway. Are you saying that somebody could be deemed to have planning approval without submitting a planning application? How can that work?

4791. Mr Kerr: When you prepare a simplified planning zone, it does not necessarily have to be on industrially zoned land, it could be that the council has decided that it is important that an area be developed quickly.

4792. Mr McGlone: I was just taking your example.

4793. Mr Kerr: There is quite a lot of work involved in building the scheme itself, because you are assessing what is acceptable on that land. [Interruption.]

4794. The Chairperson: I remind all members to switch off their mobile phones.

4795. Mr Weir: It is not necessarily the members for once.

4796. Mr McGlone: For once it is not me. [Laughter.]

4797. Mr Weir: For once, we have an alibi.

4798. The Chairperson: It is OK. Hansard will come back the next day, and we will do the recording all over again.

4799. Mr McGlone: Rewind there, Chairperson. What did you say?

4800. Maybe I will rewind a bit. We will stick with the example of an industrial proposal. There is a presumption in favour of development anyway; at the minute a developer has to put in a planning application. Earlier, we were trying to resolve whether someone could receive planning approval in circumstances where the consultees had not replied within a certain period of time. Their consultation would be deemed to be positive.

4801. In a simplified planning zone, there is no consultation with environmental health officers, no consultation with Rivers Agency, no consultation with Roads Service and no consultation with NIEA. If it is deemed to not require planning permission because it is that simple to get it, I would be interested to hear about the other examples to see how complicated they could quickly become, rather than being simplified.

4802. Mr Kerr: The idea of a simplified planning zone is that the planning authority does all of that work up front. That could be in an area where a council wants to see certain types of development coming forward quickly. It might be high-tech communications development or something like that. The planning authority will consult all of the relevant bodies, almost as if it is an application, and clear the way for the uses that are specified in the simplified planning zone scheme. In other words, there would already be full consultation for particular uses to make sure that they are acceptable and to identify any conditions, so a developer could look at a scheme and know that he or she does not need to submit a planning application for a certain use under a certain condition.

4803. Mr McGlone: Forgive me if I go with this. I do not want to make something that is termed "simplified" any more complicated than it is. You could have a simplified planning zone with all of the boxes ticked by the statutory consultees, but six months later, depending on the nature of development that is around it and on the nature of the proposal that is being suggested, the nature of the consultation itself could be completely different. For example, there is a big difference between an architect's office and an engineering works. The consultations on the potential for noise nuisance, or, say, a sawmill or whatever it might be, would be entirely different in those two. One might get through and the other might not.

4804. Maybe I am wrong, but from sitting through discussions on many planning applications and stuff, I have learnt that no two are precisely the same, although you can have certain precedents that read across. I do not see how anything could be that simple and not be further complicated by a change in the type of application or in the circumstances in and around a site. You have been there and know that much better than I do.

4805. Mr Kerr: What I am telling you is based on looking at other schemes that have come forward in the other jurisdictions. We have not —

4806. Mr McGlone: That is part of the problem. The information and the evidence that we are getting from the experts in the field is that this does not work and creates more problems than it has attempted to resolve. When somebody like Greg Lloyd says to me, based on his experience and academic expertise, that this is problematic and refers to it as a Pandora's box, it leads me to think that they are peculiar. Simplified planning zones are not as simple as their title would lead you to believe. They are probably fraught with a lot of difficulty.

4807. Mr W Clarke: I am trying to get my head around this. If I am hearing you right, it allows a council the opportunity to send in business where other areas have — no, I will correct that. My understanding is that if a council decides that it wants to zone an area for activity tourism, for example, there will be strict criteria set and the consultation has already been carried out and you will get the go-ahead with regard to that. However, there will be strict criteria from the council that a developer has to meet.

4808. The same will apply to the zoning of an area for renewable energy businesses; all of the boxes in the criteria set by the council will have to be ticked. Similarly, if a council zoned the land beside a hospital and wanted health businesses to be located there to create a one-stop shop, it could do that. That makes sense and will provide good opportunities for a council. Is that correct? Am I reading that right? They can do that?

4809. Ms Smith: Yes. It is important that the zone is specific to particular types of development. The work is done by the council — all of the consultations, all of the assessments and examinations — in order to set the zone up. Once the line is drawn, it is only in the context of those assessments and those consultations. Only applications that fit the very precise criteria set by the council will be allowed. That is why the individual applications do not need planning permission.

4810. The whole process that you would normally go through with a planning application will have been done beforehand by the council. It is almost like an area for which the council has processed the application. That is the arrangement that allows those types of development.

4811. Mr W Clarke: That is worthwhile and is a very useful tool for councils. It will create jobs for a start and will bring in investment. If somebody has a particular idea, they can slot neatly into a council's zoned area.

4812. Mr Buchanan: It makes good economic sense to have something like this tied into the Planning Bill.

4813. Mr Weir: Mr Clarke has teased it out quite well. One of the things that we are sometimes told, particularly when various Ministers go off in terms of investment bits, is that particular companies say that if they were in the United States they could set up their operations in six weeks. The scale of land is very different there, but here, even if the proposal is a no-brainer and everybody is in favour of it, with the amount of hurdles that have to be overcome, boxes that have to be ticked and the time delays, you can be waiting 18 months to get the thing.

4814. Creating a zoned area for high-tech business or environmental business — whatever it happens to be — getting block planning permission at an early stage and then allowing flexibility is something that makes sense. The only issue is that there have clearly been teething problems in other jurisdictions. The key thing is ensuring from an implementation point of view that it is done correctly. I agree with Mr Clarke that this is an opportunity to embrace something that can be of benefit, in terms of jobs or whatever, and has got proper criteria.

4815. Mr B Wilson: The old enterprise zones did not have much success. My concern is that each council, instead of creating new jobs, could end up displacing jobs from other council areas. Is there any experience of that sort of thing?

4816. Ms Smith: The zones will be tools that councils can use; this is not an exhortation to councils. Not only will all the planning work have to be done before the zones are set up, but the councils will also need to look very carefully at the economic implications, because the whole thing has to be based on a very sound business case. It is something that has to be looked at broadly, and you are absolutely right that the impact on jobs, both positive and negative, needs to be taken into account in the business case.

4817. The Chairperson: You have hit it on the head. We need to make sure that a sound business case is one of the criteria. At the last meeting, I mentioned producing a planning policy statement in relation to this. I suppose that that would defeat the purpose, or would it set out proper guidelines?

4818. Mr Kerr: Guidance would be essential.

4819. The Chairperson: There is talk about thresholds, and there was a good discussion the other day about having a set period or a time frame to keep a hold on the piece and what you are trying to achieve. You would not go down the line of a planning policy statement, but you will look at guidelines, is that right?

4820. Mr Kerr: Yes.

4821. The Chairperson: How would that stand up to challenge? Planning is all about interpretation.

4822. Mr Kerr: Obviously, anything that a planning authority does is open to challenge. In that sense, a simplified planning zone will be no different from a local development plan or any planning decision. The councils will be working very hard with their planners and officers to carry out whatever task they are doing correctly and in line with both the guidance and legislation, but you can never rule out the possibility of challenge.

4823. The Chairperson: I am in and out with respect to this. I can see both advantages and disadvantages. I want to park it until Tuesday. Can you bring some examples of how you would nail the guidance down and ensure that it is properly adhered to and that the zones are beneficial to the local authorities? I want to know that there will be proper control and certain criteria, such as a sound business case. Will you bring something to the table in respect of that? We will look at it again on Tuesday.

4824. Mr W Clarke: You mentioned disadvantages, but I do not see any disadvantages. Clause 34 talks about a council being able to alter a zone at any time. A lot of that is covered. I am happy enough to wait until Tuesday, though.

4825. The Chairperson: I am only looking for examples. It is not about individuals; it is about the system itself.

4826. Mr W Clarke: There will be a great deal of community involvement. A council is not going to decide overnight to do something.

4827. The Chairperson: I agree, but I have to stop you there. We are going through a plan-led process for councils, and communities are involved from the start. Let us be open and honest. The system is front-loaded. I could very well argue that we should get the plan right from the start and be done with it. Land should be zoned in a certain way with the community's involvement and aspirations and be based on need. A plan should be based on need when it comes to housing and allowing for business and economic development.

4828. I could argue that there is no call for this. I can see merit in it, but the enterprise zones have not worked in other areas. If we are going to introduce something like that, we have to make sure that it is beneficial for local communities. That is all that I am saying. So, there are criteria that we need to look at.

Clause 33 referred for further consideration.

Clauses 34-38 referred for further consideration.

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

4829. The Chairperson: The Committee deferred its decision on this clause and on clause 42, pending a response from the Department on neighbourhood notification and site notices. The response indicates that the Minister has agreed to bring forward —

4830. Ms Smith: Yes, he has agreed to make regulations for neighbourhood notifications and site signs.

4831. The Chairperson: I am absolutely delighted. To clarify, are we saying that in some instances it will be the developer and in others it will be the local authority, or will it always be down to the developer?

4832. Ms Smith: We need to look carefully at the best way to do it, but the agreement is there.

4833. The Chairperson: Obviously we will need to consult on those regulations.

4834. Ms Smith: Yes. The regulations will be subject to the normal process. There will be research done and proposals produced, the proposals will go out for consultation, and the report will come to the Committee. The full process will be gone through.

4835. The Chairperson: Mr Willie Clarke noticed the issues of neighbourhood notification and site notices, and the Committee was in favour of it.

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

Clause 41 agreed to.

Clause 42 agreed to.

Clause 44 referred for further consideration.

4836. The Chairperson: There are other issues that we need to consider, which are relevant but are not covered in the Bill. The first one is the small matter of resources, capacity building and training. I remind members that this was the single biggest area of concern that was brought to the Committee's attention. No respondents felt that the process should be considered to be cost neutral by the Department.

4837. Ms Smith: We will start with capacity. We are very conscious of the whole issue of capacity building. We are aware of capacity building in terms of the people who work in the Department, council employees and councillors.

4838. It is something that councils, councillors and the professional organisations have been raising with us. That is one of the very important reasons behind the Minister's announcement that there will be pilot projects.

4839. The specification for the pilot projects is being drawn up. Central to that is how the Department and the councils will work together in each area, and central again to that is the issue of capacity building, what can be learned on both sides and what needs to be learned so that a smooth transition can take place. That is capacity building in a general sense.

4840. We are also talking to NILGA, the Environmental and Planning Law Association for Northern Ireland (EPLANI), the Royal Town Planning Institute (RTPI) and the Royal Institution of Chartered Surveyors (RICS) about more specific training, because particular issues are involved with councils taking on the responsibilities. That means that specific, formal training will be brought forward in conjunction with those organisations.

4841. The Chairperson: Do members have any questions to ask on capacity before we move on to resources?

4842. Mr W Clarke: Would it not be useful to specify a date, for example, just after the next local elections, for training programme on planning for councillors and council staff to begin?

4843. Ms Smith: Do you mean the election in May?

4844. Mr W Clarke: Yes.

4845. Ms Smith: Our aim is that the first of the pilot projects will be starting around April or May, so effectively the training will be starting from that point. The first step is to get a couple of pilots in place, after which the programme will be rolled out. We are talking with the organisations that I mentioned about the specific content of the formal training, which will then be put in place.

4846. Mr W Clarke: I am saying that a tailor-made training programme should be set up almost immediately after the elections for councillors to attend. I am not talking about a NILGA conference that will last one day; I am talking about a properly resourced training programme that lasts a couple of years. I am not talking about sitting and waiting for a couple of pilot schemes to be rolled out, while everybody else is in the dark about what is happening. We need to start the training now. From reading all this material, I know that I will need plenty of training. I should have declared an interest as a councillor.

4847. The Chairperson: We should bear in mind that we do not know who will be on the councils come May.

4848. Mr W Clarke: That is why I said that it should happen straight after the council elections.

4849. The Chairperson: Maggie, you mentioned all the other groups that you have been talking to, and you said that there is a role for them to play. There is no doubt about that.

4850. Ms Smith: There is; absolutely.

4851. Mr Buchanan: Following on from what Councillor Clarke said, I want to add my concerns about rolling out a pilot scheme. Pilot schemes are all very well in their own place, but if one is rolled out, a few councils and a few councillors will get involved, but many will get left behind. The pilot scheme could run for 12 months. If people are not happy with the scheme, they will turn to something else. How long will that go on? If that happens, people will be sitting on councils with these powers coming to them, yet they will have no training and will know absolutely nothing about them.

4852. Ms Smith: Perhaps I can clarify the term "pilot". Every council will eventually be involved in the pilots that we are talking about. What was said about the pilots is absolutely right. However, we will start with a couple of councils. It will be the councils' responsibility to make sure that they have their arrangements in place so that the powers can be transferred very smoothly. Therefore, a couple of councils will be involved in the pilots to start with.

4853. That will happen at the beginning of the financial year. By March 2012, every council will be involved, and they will be working with the planners in their own areas to start to put in place the arrangements for transition. By the time that we have the transition of powers, councillors will really understand their roles, and the planning staff and other council staff will be working together and will also fully understand their roles.

4854. We want to be able to give people the opportunity to rehearse the new system. Effectively, therefore, they will be playing the roles that they will be playing after transition, even though the councils will not yet have the powers. Although council staff will not be able to make the planning decisions, they will be able to go through the process for themselves and will come to understand, not just through formal training but through practice, what is required when the powers transfer. That means that when the powers transfer, we will have a very confident and competent cadre of councillors ready to take them up.

4855. Mr Buchanan: You hope.

4856. Mr W Clarke: Councillors will still need tailor-made training over a number of years on community plans, well-being, climate change and development plans. [Laughter.]

4857. The Chairperson: I do not think that they will need training on that last one.

4858. Mr W Clarke: They will also need professional training on spatial planning that will last over a number of years, not just over 18 months.

4859. The Chairperson: I totally agree. I am saying that there is a role for the advisory groups, which Maggie mentioned, and we need to look at that.

4860. Our two-year review is the key to all this, and that includes the pilots. All you have to do is say yes, Maggie. I believe that, even with the best intentions in the world, there will be serious problems, given all the training and the capacity building that is needed. Having said that, depending on who will be on the councils, there is a lot of experience in councils.

4861. Mr Weir: That is a good argument for keeping double-jobbing.

4862. The Chairperson: Yes. We will talk about the two-year review before you leave today.

4863. Ms Smith: I can deal with it now.

4864. The Chairperson: If you say yes, we are going to do a two-year review.

4865. Ms Smith: You asked us whether the Minister was willing to mention a review in the legislation. Our reply to you, which is on its way, will say that it is not necessary to put it in the Bill, because the legislation can be reviewed at any time.

4866. The Chairperson: So, it is not going in the Bill, but it will be done.

4867. Ms Smith: I am not in a position to say whether it will.

4868. The Chairperson: OK, but you will have that answer for me on Tuesday.

4869. Mr Savage has been waiting patiently to ask a question.

4870. Mr Savage: I have been listening very carefully to the conversation that has been going on for the past half an hour. Obviously, the whole system will be more streamlined.

4871. Ms Smith: Yes.

4872. Mr Savage: Will the planners hold on to their identity, or will they become council employees?

4873. Ms Smith: When the planning powers transfer to councils, the planners will become council employees. That means that, on the day of the transfer, responsibility for each area office will move from the Department to the relevant council, and the staff will become council employees.

4874. Mr Savage: That is fine.

4875. Mr Weir: I appreciate that I came in midway through this session. That point may be clarified on Tuesday, but it strikes me that there may be things that we can recommend in our



report. Issues connected to training are vital. They may not be legislative, but they are things that we can include in our report.

4876. Mr McGlone: This may be discussed later, but George touched on an important matter, which is about getting clarity on the distinction between the development control staff and those charged with policy development or whatever else. We have not had any clarity on what the charge for that will be; however, that clarity may be coming. In other words, who will have responsibility for those who may be involved in other aspects of planning, such as policy development? I mean those such as your legal people and the likes. How will that merge, not merge, co-exist or whatever with the new authorities? That again takes us down the route of resources, charges and costs for planning applications and fees. I raised that issue here previously. Some clarity may be coming on that, but it is clearly something that councils, let alone ratepayers, would need to know about.

4877. Ms Smith: The powers that will go to councils include the development management and the development plan functions. Staff who are working on those functions in local areas will transfer to councils, and their resources will go with them. The fee will also transfer. Fees, which at the moment come to the Department, will go to the council in the same way. In preparation for the transfer of functions, we are looking carefully at the fees and the structures. As you know, we have been out to consultation on proposals for a new fee structure. We are finalising our report on that to the Committee, and it should be with members in the next few days.

4878. We aim to ensure that the fees cover the costs, because, at the moment, they do not. Therefore, we have planning applications that take a huge amount of work to process and for which we charge only a very small proportion of the cost in fees. That part of the service has been running very much at a loss. We propose to make the fees much more realistic and fairer by raising the maximum fees. At present, for a developer who puts in a planning application for housing, for example, the maximum fee payable will be less than £12,000, no matter how many houses are to be built. That is the equivalent to the fee for 49 houses. Therefore, the builder of a development of more than 49 houses basically gets each additional house for free. That work is simply not being paid for.

4879. The proposal is to extend that maximum up to £250,000, within which there would be a realistic sliding scale. Therefore, the system that we will pass over will be much better resourced from fees, and that will reflect the work that is involved in planning applications.

4880. Mr McGlone: For £250,000, most of us could probably get an awful lot of work done for an awful lot of people. I do not know how many planning applications would get through quickly in the private sector. However, that discussion is for another day.

4881. Ms Smith: I will just clarify that point. I suspect that we will never see a housing application for which the fee is £250,000, because that would take us up to a couple of thousand houses. Therefore, that process illustrates that we are building flexibility into the system for the Department in the short-term and, in the longer-term, the council, to charge the fee for the job.

4882. Mr McGlone: I appreciate that, and I sort of sidetracked us into that issue. However, I am conscious that, maybe unintentionally, I am hearing that, the higher the fee, the more responsibility there will be for a council. Yet, to my mind, that does not follow sequentially, because some responsibilities are currently paid for as part of the planning process, but the planning fees would not provide enough work at council level for one of the individuals involved.

4883. Other aspects of the planning process that dip in and out of our policy development are needed once in a blue moon, whether they are legal services or whatever. A council may need them sporadically here or there, maybe once every six months or so, depending on what issue

arises. I am trying to get it clear in my mind that, regardless of the fees' issue, there will be clear demarcation of the responsibilities that need to be transferred. That demarcation will be between those functions that can be devolved and those that it will be totally impracticable to devolve, such as each council having a legal officer associated with planning issues. That would be the equivalent to the Departmental Solicitor's Office (DSO). I am trying to get my head round the collective responsibilities that sit with the Planning Service and with the Department so that I can establish how many functions will transfer and what others cannot be transferred or do not need to be transferred because they are so big. Those would be of a regional, as opposed to a council, nature.

4884. Ms Smith: Most of the Bill is about what will transfer to councils. We are talking about the development plan system and the determination of the majority of planning applications in a council area. The applications that will stay with the Department are those that are of regional significance and that are, therefore, very big. However, the council will also advise on development management and development plans.

4885. Mr McGlone: The council?

4886. Ms Smith: I am sorry; I meant the Department. Planning policy will stay with the Department, because that is a function of it and the Minister. When it comes in, responsibility for marine planning will stay with the Department, which will also provide advice on landscape and design.

4887. The Planning Service does not have its own lawyers; it buys in its legal expertise. We routinely use lawyers in DSO who are experts in planning matters. If we need one, a barrister is hired through DSO for a particular case on the basis of their expertise and experience.

4888. Mr McGlone: Does the Planning Service or the Department pay the DSO?

4889. Ms Smith: No, I do not think that we do.

4890. Mr McGlone: Responses to my Assembly questions state that there is some sort of a fee-type structure, or the cost is factored in. If it is factored in there, it would be factored in elsewhere. There are some loose ends, if you like, and I would like to get them tied up to make sure that the ratepayer does not end up paying.

4891. The Chairperson: I have a wee simple question for you. The answer may not be simple, but it is a simple question. Fees will cover those planning applications. Development plans are paid for out of the central government block. Will that funding be transferred to councils?

4892. Ms Smith: I will have to refer you to the discussion that you had with my permanent secretary about that. I understand that he made it clear that our aim is to ensure that the resources transfer with the functions.

4893. The Chairperson: That is all we need to hear.

4894. Mr McGlone made a good point about legal services. I know that councils have their own legal services, but proper legal expertise would be needed for the planning system. I am not sure whether the legal expertise in councils would be able to manage planning

4895. Mr McGlone: They could not handle it.

4896. The Chairperson: Are we saying that resources will go towards that as well?

4897. Ms Smith: Our aim is to make sure that the councils get the resources that they need to carry out the function.

4898. The Chairperson: I understand that 100%. However, I need clarity on this point. If the Planning Service seeks legal advice for any reason, you said that that expertise was not in-house.

4899. Ms Smith: That is right.

4900. The Chairperson: Do you pay for it, or is a facility available in the Department? Is departmental legal advice given if it is required? What happens?

4901. Ms Smith: I have to express ignorance here, because there are different arrangements with DSO for different parts of the Department. I will check whether we pay hard cash for DSO advice, because I genuinely do not know.

4902. The Chairperson: No problem. I was trying to tease that out, because those questions have been asked. I know that all councils have legal advice.

4903. Mr McGlone: That is an important issue, because an Assembly question about legal costs would uncover what I found, which is that, although not exclusive to the Department of the Environment, an amount is factored in to be paid to the DSO for bookkeeping or whatever. That figure is a cost that is associated with the Department or whatever agency is involved. Secondly, and getting to the nub of the issue, the permanent secretary appeared before the Committee a few weeks ago, and he said that he was not able to give an assurance that the transition would be cost neutral. That sent shockwaves through the representatives from the body corporate, local government — you name it — who were at that meeting.

4904. The clarification was given that there could be no guarantee that the transition would be cost neutral. On top of the fee structure that will be introduced, all that makes the argument that the fees should be bumped up unreasonably. I am a bit fearful that what might have been cost neutral four years ago is not cost neutral now. There will be the same number of staff to pay and so forth. The only consequence will be that fees will be bumped up unreasonably.

4905. The Chairperson: I know, and we can certainly look at that, Patsy. However, I have to be honest; the fees structure over the past five, six or 10 years has been absolutely ridiculous. Fees should have risen with inflation every year, as opposed to being left. We are now faced with going from one extreme to the other. Maggie mentioned that someone could have submitted a planning application for 500 houses for less than £12,000, despite the work that is involved in processing such a plan. Is that not why there are problems in your bringing forward that workforce financial model for me? I know that it is difficult and that we have to be reasonable. There are two elements to consider. I am glad that you confirmed that resources will follow functions and that fees will go to local government.

4906. Ms Smith: I gave you the same line that the permanent secretary gave.

4907. The Chairperson: That is 100%. That is fine, and I take that on board. It is OK; it is recorded in the report.

4908. Ms Smith: I am giving you the same line that the permanent secretary gave you. So, our aim is —

4909. The Chairperson: Are you asking me to get the permanent secretary back in just to clarify that? It is OK. Let us be serious about this; the fees will cover the ordinary applications, the area plans and everything else, and the resources need to go down to councils. If, in years to come, it is a case of looking at the issue of generating rates, which you mentioned, that will be a different matter to be considered in time.

4910. Ms Smith: Can I clarify a couple of points, the first of which is Mr McGlone's about the temptation to bump up fees "unreasonably"? There is very strict guidance on what fees can and cannot cover. All that a fee can charge for is what is called full cost recovery. Unless it is for something that is part of processing the planning application, it cannot be paid for out of fees. The fee has to relate to the amount of work that is involved.

4911. Mr McGlone: Again, for the record, the permanent secretary specifically said that he could not guarantee that the transition would be cost neutral. Full cost recovery now, with, as you know, what is probably an excess number of staff, and full cost recovery four years ago, when there was an adequate complement of staff, could be presented in two different ways. I do not need to be an accountant to talk about that. A big concern of local government is that, without proper management of the transition of staff, one of the major issues facing it will be a need to look at the number of staff. There will be a transition of a planning body, and the first thing that a council will say is that it has far too many people. So, that is another issue to consider. Therefore, I realise that the costs, the issues, full cost recovery and all those sorts of things can be well presented in a way that looks hunky-dory, although the underlying associated issues may be far from that.

4912. The Chairperson: I understand, but, to be fair, we will be making a case about the fees structure, the receipts being down and the number of staff that are there at the minute. The only issue that I have with that is that when things were good and the fees were coming in, not all of them went into the Planning Service for employment and everything else. Some of those moneys went back to the block. That is the problem, but once we guarantee that the fees will go to local councils, the responsibilities will lie with them. Obviously, councils have an underlying fear that they will have to look at the planning structures as they roll out and at the number of people who are involved.

4913. Maggie, you dealt with the issues with resources, capacity building and training. Did you say that that you will have it rolling out from next Monday? No, I know that it will start in May. We all understand that this is a major and serious transformation.

4914. You have dealt with those issues, so we will move on to the award of costs. The Minister indicated he will bring forward an amendment through a new clause allowing costs to be awarded where a party has been put to unnecessary expense and where PAC has established that the other party has acted unreasonably. I think that we are content with that.

4915. Marine spatial planning has not been mentioned.

4916. Ms Smith: Marine spatial planning is not in the Bill. It will be dealt with in separate legislation. The Executive agreed the policy memorandum before Christmas, so the next stage is for a Bill to be drafted. It was always intended to introduce legislation on that in the next Assembly mandate, rather than in this one. We can look forward to that in the next session.

4917. The Chairperson: If we are looking at the development of land, community planning and everything else, marine spatial planning certainly needs to be included. What legislation is coming?

4918. Ms Smith: A marine Bill is due to come forward in the next Assembly session. Having said that, I should also say that that is the bit of the legislation that we will make. A lot of work has already been done. A UK-wide Bill that was enacted in 2009 was the first step in the process of introducing marine planning. Part of what we will be doing in marine planning is in that Act, because it deals with reserved and excepted matters. Following on from the Marine and Coastal Access Act 2009, which is the UK legislation, there is also a UK-wide marine policy statement. That is doing the rounds at the moment, and we expect that that will be laid in this parliamentary session and in the Assembly. The third step will be the Northern Ireland marine Bill. As I said, the Executive have agreed the policy for that, which is intended for introduction early in the next session. That Bill will give Northern Ireland its first marine plan, which should be available in 2014.

4919. Mr McGlone: Can we not do it next week?

4920. The Chairperson: There is no point in saying that we are transferring powers and giving local government the authority to develop plans without the knowledge base for marine planning issues. Are you saying that the marine plan will not be available until 2014?

4921. Ms Smith: The plan will be ready in 2014.

4922. The Chairperson: What is in place? By the time that we have looked at the process, 2014 will not be that far off. Is there something in marine planning that local government can refer to? Some of the councils in coastal areas could develop their plans, for example, for wind power, in the context of economic regeneration. Although we are talking about land use, that element should be considered.

4923. Ms Smith: You are absolutely right. There will be one marine plan for the whole of Northern Ireland. The responsibility for marine planning will stay with the Department, and we are preparing now for the development of the marine plan. Although the legislation has not been introduced and DOE is not yet the planning authority for the inshore area, we are starting the work to look forward to the marine plan. It will be interesting to see the overlap between the marine plan for the high tide area and the terrestrial plans, which go out to the low tide area. Therefore, there will be no gap, and arrangements will be put in place for the management of that overlap.

4924. The Chairperson: The North has slipped up with some of the renewable energy projects that could have been in place up to now. However, that is a separate matter.

4925. Mr Savage: I want to follow up on what you were saying. The powers that are going to the new councils will mean that councillors will be taking on greater responsibilities that will take up quite a bit more of their time. Do you feel that they are prepared for that? Anyone who is involved in councils now knows that it is a full-time job. Will councillors be remunerated for taking on that extra responsibility?

4926. Ms Smith: I am sorry, Chairperson; I am not in a position to comment on that.

4927. Mr Savage: They will be taking on a big responsibility.

4928. Ms Smith: I cannot answer that.

4929. The Chairperson: I know. Be careful what you wish for.

4930. Mr Weir: Councils will have added responsibility, but at the end of the day, although the council will be the judge and jury in making final decisions, I presume that, each time, planning officers will still provide a schedule with a suggested route. It is not as though councillors will be poking around each house to see what is there.

4931. On one level, while there is added responsibility, there is also a slight shift as well because, under the ethical standards side of it, councillors will not be able to hear representations from developers, applicants or objectors. So, that side of it will be taken out a little bit. They will be barred from taking decisions if they are involved with any of them. So, there is a wee bit of swings and roundabouts —

4932. Mr McGlone: That would be some culture change.

4933. Mr Weir: Absolutely; it would be some culture change.

4934. The Chairperson: You will be sitting at home watching the football when the decisions are being made.

4935. Mr Savage: I will have to leave very soon. All the planners in Craigavon do not get credit for the work that they do. I really mean that. A lot of the planners in Marlborough House do not know where their future is, and they have been redeployed in various places. That is why I asked the first question. Will they be under the control of councils or still under the control of the DOE? I do not want those people to be bumped about from pillar to post, because they have played a big part in Northern Ireland. I want them treated with respect.

4936. The Chairperson: That is a fair parting shot, Mr Savage. There are very good staff in Newry and Mourne and Armagh council areas. Marlborough House is very good.

4937. Ms Smith: I will reflect that back.

4938. The Chairperson: You can reflect that back. We have dealt with that issue. We will try to move the marine planning Bill forward from 2014 to 2012 or 2013.

4939. Ms Smith: The aim is that it should be introduced early in the next Assembly mandate, but that is, clearly, a matter for the Assembly.

4940. The Chairperson: That is OK. Is there any word on completion notices? Has that been mentioned?

4941. Ms I Kennedy: Completion notices are in the Bill. We spoke about the other tool, notices of completion, at a previous session. We had consulted, through the policy consultation, about introducing them. They are notices where developers, at different stages in the process, provide a notice to the council to say that they have commenced the development or, perhaps, have got to a certain phase. They then provide a notice that the development is complete. The policy decision of the Minister and the Executive was to not take those forward at this time. So, notices of initiation and completion of development are not in the Bill.

4942. The Chairperson: That was not too hard, Irene, was it? We should look at something in relation to completion notices. Are there any other comments on that? It is an issue that was raised here, gentlemen.

4943. Ms I Kennedy: It adds quite a lot of bureaucracy to the process if developers have to inform the council when they are initiating development and at the various stages. We have to

be mindful of functions transferring to councils, the functions that the councils already have in the building control process and the various stages at which developers will be notifying the council. One of the options was to look at this in the future when those functions are together in the councils.

4944. The Chairperson: There does not seem to be any appetite within the Committee for it. Could it be part of the role of building control officers?

4945. Ms I Kennedy: That is one of the options. Certainly, with the family of building control and planning functions together, there may be ways of looking at it. We were mindful of that.

4946. The Chairperson: Would the Committee like to make a recommendation in the report? It is not just that role but other roles for building control.

Members indicated assent.

4947. The Chairperson: Are there any comments on the community infrastructure levy?

4948. Ms Smith: As we explained, clause 75 includes the provision to transfer money, as part of a planning agreement, from a developer to a council or to a Northern Ireland Department.

4949. The Chairperson: No problem. I know that we have talked enough about it. What are members' views?

4950. Mr McGlone: I raised the issue, and we have talked a lot about it, but I am still not clear in my mind. You can make provision for it in the Bill, but I am not clear about the distinction between the community levy and the developer contribution. As we have just heard, they are both apparently coming from the developer. I know that the whole concept or idea of developer contributions has been talked about at the Executive backwards and forwards. In the times that are in it, I do not want people to be hit with a double whammy. I have already made the point that I would rather one be done well than two done poorly.

4951. The Chairperson: We talked to Professor Greg Lloyd about this, and other people have raised the issue. There is a clear distinction between the developer contribution and the community levy. That is not in the Bill. What is in the Bill is an opportunity, under clause 75 —

4952. Ms Smith: What is in the Bill is transfer within a planning agreement. Planning agreements go much wider than financial transfers; they can also be things that are built or developed as part of the application. The community infrastructure levy does not exist in Northern Ireland at the moment. Effectively, it is a levy or a form of taxation.

4953. Mr McGlone: I do not have any difficulty with a community infrastructure levy if it ticks the boxes and achieves everything that it is supposed to do. However, I have a difficulty with double levies.

4954. The Chairperson: But there is no double levy.

4955. Mr McGlone: Sorry, I know that that is not in the Bill.

4956. The Chairperson: Even at that, there would not be. In my knowledge and experience, the developer contribution has been for putting in a road or a connection to a main road. There have not been too many. The community levy would be for the benefit of the community. However, the Bill does not state a community levy one way or the other. You can be assured of one thing,

community levy or not: the community will pay for it. If it is in a private development and people want to get some community benefit out of it, it will be put on the price of the houses. People will be paying one way or another, whether it is a store or something else. It will be paid in one way from the community and it will be taken back out again. At the end of the day, just like the ratepayer, the community will pay for it. We should not be under any illusion. It is not as though a developer will have to give some money to the levy or be levied on a development; he will probably just put £500 or £1,000 on to the price of each house. Let us not say that it is down to the developer having to hand back more money or being levied twice, because that is generally what happens. Even with developer contributions, the business plan is geared to that in the first place.

4957. Mr McGlone: I know that it is beyond the scope of the Planning Bill and all that sort of stuff, but we have given a fair bit of time to it. Is there any update from the Executive on where the developer contribution is?

4958. Ms Smith: PPS 22.

4959. Mr McGlone: Leading on from that, are there any PPSs coming up that have either the intention or the potential to introduce a community infrastructure levy?

4960. Ms Smith: Yes, for developer contributions. PPS 22 is geared towards helping to provide funding for social housing. The community infrastructure levy is way beyond the planning system and the PPS. It would be a whole new levy, which would require legislation. It is a big issue that would need to be dealt with in the appropriate way. It would not be a DOE issue; it would be more a Department of Finance and Personnel (DFP) issue. It is not about planning, although it uses the planning system. It is really about taxation and paying for infrastructure, so it is a finance issue.

4961. The Chairperson: Taxation of the people, Maggie. Do not ever forget that.

4962. Mr W Clarke: I agree that developers will not be doing this out of their kindness; it will be the people who buy the homes. The way I see the community levy, or call it what you may, rolling out, if it is included in the Bill, is what we touched on in relation to the very first clause: well-being. On a development of a certain size, a levy is placed to provide community infrastructure, be it a community hall or a crèche. At the beginning of our discussions on the Bill, I was trying to tease that out. The spatial planning aspect, which is at the heart of the Bill and driving it, is going to improve the well-being of citizens. That is where I see this dovetailing in. Something needs to be there so that, in a development of a certain scale, so much will be paid towards community infrastructure. It is not about roads. If a developer were to build 200 or 300 houses, they would, through developer contributions, put in the road infrastructure for that. The community levy is different. It is primarily for the well-being of the community. It would be useful if a clause or an amendment were included for that.

4963. Ms Smith: The things that Mr Clarke is talking about — roads, something which is going to develop the community that is being built — can be negotiated through the existing planning agreement arrangements, which are covered in clause 75. That will be very useful to the councils, because, through their development plan system and that whole process, they will have a clear idea of what the needs of a particular area might be. Through planning agreements, they will have the flexibility to achieve the sorts of things that are being talked about.

4964. Mr W Clarke: Do you not see that needing to be strengthened? I am saying that, with a development of a certain scale, that levy needs to be made. There is an agreement, but maybe an amendment is needed to say that a levy has to be made, and a schedule could set out a sliding scale of development. A development of 200 homes or 150 homes should not take place



without any community infrastructure. I include the Housing Executive and housing associations in that, not just private developments. Without community infrastructure, a large housing area with new families living in it is a recipe for disaster at times.

4965. Ms Smith: Just to clarify the term "agreement", the agreement is something that is negotiated, and it is legally binding. It is negotiated before planning permission is given, so it is a strong agreement between the developer and the planners.

4966. Mr W Clarke: Maybe some guidance on that would suffice.

4967. Ms Smith: There should already be guidance. We will send that over.

4968. Mr W Clarke: On the particular stuff that we are talking about?

4969. Ms Smith: Yes, on planning agreements.

4970. Mr W Clarke: I have not seen it.

4971. Ms Smith: They are what we call article 40s, at the moment.

4972. Mr McGlone: With regard to the sort of developments that take place and the community well-being aspects of them, I suppose that we are talking about existing policies on green areas and how they can be expanded and adapted to take into account the well-being concept in an area. However, based on the policy, we have the agreement, and that agreement, as you rightly said, is a legally binding document.

4973. Unfortunately, a lot of those have fallen down recently when developers have gone belly up. The only recourse for Planning Service, Roads Service, NI Water or whoever it might be is the use of the bonds. The big, number one question is: is the bond that is held to ensure that that is done big enough to ensure that the work is carried out and to be used for carrying out the work, be that the installation of property and sewers, the adoption of roads or street lighting or whatever? Secondly, there is an awfully elongated process before we get possession of the money that is held as a bond, so that we get the work done and get it rolled out, if, for example, the contractor on the site has gone belly up, which is, unfortunately, increasingly seen in society. We see it in our constituencies more and more often.

4974. I am probably saying that, if you look at the agreement, there is probably a need for a bigger financial bond to be required, but, secondly, the process of reinstating or leaving those estates at a proper spec should be much quicker and more efficient. Now, that may well be to do with legal process and stuff that I do not know. However, I find it interminably slow to get to the point where people who bought their houses in good faith are able to drive in and out of their homes over a proper footpath, with proper street lighting and sewerage systems.

4975. The Chairperson: I totally agree. We have all dealt with cases. I am dealing with one at the minute. There is a wee letter on its way at this very moment. However, it is a valid point. The aim is to ensure that the developer does the job. The problem is that, in the case of the levies, it is a different matter. Can we insert a provision in the Bill, bar that in clause 75, to introduce a community infrastructure levy at some point again?

4976. Ms Smith: That is beyond the scope of the Bill, because it is not really about planning. It is really about taxation and infrastructure.

4977. The Chairperson: Is it in any other legislation?

4978. Mr W Clarke: Chairperson, it is about well-being.

4979. The Chairperson: I know that. Class ingenuity to bring that back round again by accident. Look at other legislation. You say to me that it is not in other legislation. We looked at other legislation here and there to see what best practice was. Is it in any other legislation? If I were to look at the Scottish legislation, would there be a facility in it? I am only saying.

4980. Ms Smith: It is in England.

4981. The Chairperson: There you go. So, it is in England. OK. Although, that may not be a good thing to say. All that I am saying is that you have heard the Committee's views, and what if the facility was there to use? I can see it coming up again on Tuesday. It is something that we can talk about outside.

4982. Mr McGlone: What of the ability to enforce the agreements more efficiently, whatever about the community infrastructure levy? Even if we cannot introduce that, what is being done at the moment is not being done effectively.

4983. The Chairperson: It is down to enforcement again.

4984. Mr McGlone: It is slightly more than that.

4985. The Chairperson: I know where you are coming from. Whether it is a private developer whom you might meet down the street on a Friday night, or a housing association or anything else, there needs to be something there to ensure that, at each step in the development process, that should move on. It is not happening.

4986. Mr McGlone: It is not being done efficiently at the moment. I do not know how that happens or in what way, but people have been left for years in limbo. That is not good enough. You could argue that their solicitor should have advised them not to buy until it was done, but then you are in different territory. It is about getting done what has not been done much more efficiently, and that is the issue that I have at the moment, irrespective of whether we move to DFP with the infrastructure levy or not.

4987. Ms Smith: It is an enforcement matter.

4988. The Chairperson: It is an enforcement issue. We can put a recommendation in the report.

4989. Mr McGlone: It may well be more than an enforcement matter.

4990. The Chairperson: It certainly is, Mr McGlone. When a developer is given planning approval, it is up to the developer to undertake that development. Unless you put a time frame, as we were saying about a completion notice, that person, whoever it is, has to complete the development up to standard. The bond ensures that the work is done properly.

4991. Mr McGlone: That is correct, but the bond does not cover that at the moment in some cases.

4992. The Chairperson: Maybe not, but the only other way to do it is by enforcement. I am saying that there may be a role for a building control officer, not just to issue stop notices but to ensure that the completions are carried out, perhaps at each phase. I do not know —

4993. Mr McGlone: Maybe I am not making myself clear enough. I am speaking from a point of ignorance. I do not know what the control of the bonds is, nor do I know whether it is fixed as a percentage of the projected cost of the scheme. I do not know whether it is a realistic figure based on what it would cost to properly reinstate the roads, the pathways, the sewers or whatever. I do not know whether that is fixed somewhere so that someone can say that, for example, where a project costs £2 million, 10% must be taken as a bond. I do not know whether we can establish that.

4994. The Chairperson: To my knowledge, the bond is paid at the start, but at the time of completion, for example, the road or footpath in question must be surfaced properly. That is generally what the bond is. If you do not complete that, the bond will not be surrendered. That is the basic principle. That may or may not be dealt with in this Bill, but we may look at a future role for someone in a local council to ensure that. We are not going down the road of completion notices, so we need to look at things in another way.

4995. Mr Mullaney: The road bond that you are referring to is included in related legislation: the Private Streets (Northern Ireland) Order 1980. It is a determination by Roads Service.

4996. The Chairperson: Who is on the Committee for Regional Development? Do not even mention it. Do members wish to make any other points in relation to that matter?

4997. Mr W Clarke: Are we coming back to the community infrastructure levy?

4998. The Chairperson: Yes, we will come back to that on Tuesday.

4999. Mr W Clarke: Maybe we can look at some sort of amendment.

5000. The Chairperson: We are starting at 6.00 am on Tuesday and hopefully we should be out by noon. I am only joking, Peter.

5001. Mr Weir: You can be here at 6.00 am if you want, but I will not be here. [Laughter.]

5002. The Chairperson: We will move on to land use strategy.

5003. Mr Kerr: Clause 1 allows DOE to create a land use strategy. Obviously, the regional development strategy is already in place, which was prepared by the Department for Regional Development, and that will continue. However, under clause 1, DOE will still be able to prepare PPSs, but also a land use strategy for the region.

5004. The Chairperson: It all ties back in to the simplified planning zones and how this is rolled out in general. We are supposed to conform to the regional development strategy, and you are trying to balance that up with giving local councils an opportunity to develop economically as well. How do we ensure that that is consistent in decision-making and giving the local councils opportunities?

5005. Mr Kerr: Whatever particular direction a council wants to go in with their local development plan, it has to do it within the parameters of the regional development strategy. When it comes to the independent examination, that, along with all the other aspects of the plan, is taken into account and considered to make sure that that alignment that you are talking about in a sense between the local level and the regional level is achieved.

5006. The Chairperson: What about the call-in application process? One example that was in the news a couple of years ago was the golf course in Scotland. Was it Donald Trump?

5007. Mr W Clarke: Do you want one?

5008. The Chairperson: No, I am only using the example of that whole process.

5009. Mr Kerr: As we have discussed before, there is the opportunity for the Department to call in regionally significant applications, which that example, presumably, would have been in Scotland. If there were a similar proposal here, there is the possibility for that to happen within those thresholds.

5010. The Chairperson: It is about the basis on which something is called in. The Department could call something in, but it has to strike a balance between the proper use of land — that is not a good term to use — but giving local councils opportunities to develop while protecting the land as well in the regional development strategy, the area plans and the planning policy statements. On what basis will the call-in work?

5011. Mr Kerr: As we have discussed, there are safeguards and oversight provisions throughout the Bill in respect of the applications and the policies that will come through a plan so that there is the opportunity for regional government to ensure that there is that level of consistency and compliance with the direction that is being set centrally.

5012. The Chairperson: To be honest, Angus, we are asking for a review to make sure that we get it right. It is about consistency. People have interpreted planning policy all along in different ways. Generally, the broad majority has been fine, but not the interpretation in divisional offices. Some members are keen on simplified planning zones, which is fine for economic growth. However, if it was an area that backed on to a residential area or something, there would be problems. We need to be very careful in that respect. Do members have any questions?

5013. There is only one other question in this session, which is about the chief planner.

5014. Ms Smith: When the powers move to councils, they can, if they wish, designate the person who is in charge of planning as a chief planner. It is not something that needs to be put in to legislation; they can do that within their own arrangements. They can have a chief planning officer if they want, or they can give that post a different title.

5015. The Chairperson: Any questions? I think that that is it.

## **15 February 2011**

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 Danny Kinahan  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Mr Stephen Gallagher  
Ms Irene Kennedy  
Mr Angus Kerr           Department of the Environment  
Mr Peter Mullaney  
Ms Maggie Smith

5017. The Chairperson (Mr Boylan): I welcome Maggie Smith, Irene Kennedy, Angus Kerr and Stephen Gallagher from the Department of the Environment (DOE). I know that you are hoping that this will be the final session, Maggie. If we can get Committee agreement, we will be fine.

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

5018. The Chairperson: Members deferred making a decision on the clause until the Department had responded on the wording of the Committee's suggested amendment to further sustainable development. The Department's response states that the Minister has agreed to an amendment referring to "furthering sustainable development". A departmental amendment is in members' tabled papers. Are members content for the Department to bring forward an amendment requiring it to further sustainable development?

Members indicated assent.

5019. The Chairperson: The Department also indicated that it will similarly amend clause 5. Members agreed clause 5 last week, subject to a Committee amendment to do that in the light of the Department's response. The Committee will now not table that amendment at Consideration Stage. Are members content with that further consideration of the clause?

Members indicated assent.

5020. The Chairperson: Members also asked the Department to reconsider the inclusion of a reference to well-being as per the Committee's draft amendment. In its response, which is in members' tabled papers, the Department reiterated its position, stating that:

"Well-being does not appear in statute and so cannot be referenced in the Bill."

5021. Are members content with the Committee's amendment requiring the Department to "promote or improve social well-being"? Are there any comments about that, gentlemen?

5022. Mr W Clarke: Perhaps the Clerk of Bills could take us through the wording of the Department's response and discuss whether the language of the amendment is competent.

5023. The Clerk of Bills: The Committee's amendment, including the reference to furthering sustainable development, was drafted prior to the Department's commitment to now include that in the amendment. That means that they now overlap somewhat. If the Committee agrees that, it would be tabling just the latter part. The words "promoting or improving social well-being" would be inserted in clause 1(2)(b) after the reference to furthering sustainable development. It could be tabled as is, and both could be voted on. However, they would be alternatives.

5024. Mr W Clarke: That is fine.

5025. Mr Kinahan: Have we taken any legal advice about whether that will cause us problems? I empathise with what the amendment is trying to do.

5026. The Clerk of Bills: The Committee has a number of options at this point. However, the reference to social well-being is indicative of the Committee's intentions, albeit that it may not be 100% complete in terms of legislative effect. Nevertheless, it would provide a vehicle for debate at Consideration Stage and could be remedied, should it be made [Inaudible]. That is an option for the Committee, given the pressures of time.

5027. The Chairperson: Do any other members have any comments to make about amending the clause to include promoting or improving social well-being? We may have to vote on that. We could agree the Department's amendment and then perhaps take the Committee amendment to the House. However, I would like some other comments. Are we happy enough to include that?

5028. Mr McGlone: I am happy enough with that.

5029. Mr W Clarke: I am happy.

5030. The Chairperson: The Department has agreed to insert the words "furthering sustainable development". I need an indication from the Committee now before I put the Question. Do we need to vote on a Committee amendment requiring the Department to promote or improve social well-being?

5031. Mr Buchanan: I cannot accept the amendment, simply because the Department made it clear that well-being is not yet in legislation. Therefore, we are upsetting the whole issue by trying to add something such as that to the Bill when there is no legislation for it. I would have to vote against it.

5032. The Chairperson: I will put the Question on whether the Committee is content with the Department's proposed amendment to insert the words "further sustainable development" and with the Committee's proposed amendment requiring the Department to promote or improve social well-being.

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

Question put:

That the Committee recommend to the Assembly that the clause be amended as follows: In page 1, line 11, at end insert (2) "promoting or improving social well-being". — [The Chairperson (Mr Boylan).]

The Committee divided: Ayes 4; Noes 2.

AYES

Mr Boylan, Mr W Clarke, Mr Kinahan, Mr McGlone.

NOES

Mr Buchanan, Mr Ross.

Question accordingly agreed to.

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

Clause 1 agreed to.

Clause 33 (Simplified planning zones)

5033. The Chairperson: I will move on to clauses 33 to 38, which deal with simplified planning zones (SPZ). Members were provided on Thursday with further information from Research Services on simplified planning zones and with a note of the meeting that I had with Professor Lloyd. Members have also been provided with a response from the Department indicating that the Minister was not prepared to drop clauses 33 to 38 from the Bill.

5034. Members they deferred decision on the clauses and asked the Department to provide examples of guidance on SPZs and to consider including references to time limits, thresholds and the need for a business case.

5035. The note and the research have been provided, along with the relevant extract from the Committee's summary table of the clauses and an example, which the Department provided, of an SPZ for the Slough trading estate. The Department's response is provided, and it informs the Committee that, in Scotland, there is guidance on SPZs. In England and Wales, planning policy guidance 5 (PPG) on simplified planning zones was published in 1992 but was cancelled and replaced in 2009 by planning policy statement 4 (PPS), which relates to planning for sustainable economic growth, in which there is a brief reference to simplified planning zones.

5036. The Department also notes that the Planning Bill sets the time period for SPZs at 10 years, and councils will be able to set their own thresholds when they prepare their SPZs in accordance with local circumstances. We asked questions that were raised about those matters. I had a chat with Professor Lloyd, and I am content that the Department has taken on board the time limits, the thresholds and local circumstances. Do members have any other comments to make?

5037. Mr McGlone: Can I ask the officials to expand on that?

5038. Mr Angus Kerr (Department of the Environment): The timescales are set in the Planning Bill at 10 years. The thresholds would be at the discretion of the council, depending on what they are trying to achieve in the particular simplified planning zone and on the circumstances that would prevail in the area in question. For example, if an economic development-focused SPZ were involved, the council may want to set certain size limits for which planning permission would be deemed to be granted through the scheme or beyond which a formal planning application would need to be submitted.

5039. Mr McGlone: What is the significance of the 10 years in operational terms? Why is 10 years so golden or otherwise?

5040. Mr Kerr: At the time of developing the Bill, we took account of the approach that is taken elsewhere, and 10 years seemed sensible. The length of time is a wee bit shorter than it would be for a local development plan. That seemed appropriate, because it enabled a review, if necessary. It is quite a strong provision for a council to use when it decides to come down and do this. That is why it is slightly shorter than some other forward-planning tools that we use.

5041. Mr McGlone: I am still puzzled. Why 10 years? Will a specification be built in to the Bill to say that local development plans are done every 10 years? To my mind, there should be some synchronicity with the local development plan or area plan — call it what you will — and the

simplified planning zones. I am wondering why that works in the way that it does. I still do not have that concept in my head yet. Perhaps I am continuing to have a thicko moment, but I still do not get it.

5042. Mr Kerr: In a sense, the simplified planning zone is similar to local development plans, but the fundamental difference is that it is a separate tool that a council can use, even if it has prepared its local development plan. There are two scenarios where it could occur. First, a council could prepare a local development plan in which it may flag up, particularly in the plan strategy part, that it has a problem with an area, and at some point in the future — it may indicate a timescale — we intend for it to bring forward a simplified planning zone in that area. The council may have decided that it does not want to do it in a local development plan, because it would delay the plan. Quite a lot of work is involved in it. It is a case of flagging it up in the local development plan, and it would appear in years to come.

5043. Secondly, a council could prepare a local development plan, it could carry on for a number of years, and, when an issue arises, it could decide to either amend the local development plan or to go ahead with a simplified planning zone. If, four or five years into the plan, there is a regeneration or economic development issue that was not anticipated when the original plan was prepared, this tool provides the flexibility for them to go straight in, designate the area and introduce the scheme. There can be links, but not always.

5044. Mr McGlone: I am not sure whether we got the response to this question. What happens if circumstances change on one of the so-called designated simplified planning zones, be they amenity or development changes, that alter the impact of what the proposed development may be in that zone? The more I talk about this, the more it sounds like a complicated planning zone, rather than a simplified planning zone. I am foreseeing circumstances where this sort of situation could occur. I am dealing with a case regarding industrial zoned land where complications have arisen. You are the practitioner, so you would know better than I that one of the greatest complexities in balance is the difference between residential and industrial land and the problems that are involved in accommodating them. I am intrigued by how this would work. In fact, I have been intrigued from the word go.

5045. Mr Kerr: That is a good point. If a simplified planning zone were in place and circumstances changed either in it or adjacent to it, as you are suggesting, there is the opportunity for the council to amend the simplified planning zone to take account of that. The council could even withdraw it, if the circumstances were so strong that that were found to be necessary. If it were withdrawn, the council would then revert to the normal planning process.

5046. Mr McGlone: I am still not over the line.

5047. The Chairperson: I suppose we could sit here all day. Do you have any other points, Mr McGlone? Are you not convinced?

5048. Mr McGlone: No, I am not.

5049. The Chairperson: Are there any other comments about simplified planning zones?

5050. Mr Buchanan: We discussed them in detail at the previous meeting. It was fairly well thrashed out at that meeting, and most members were fairly content with it. There were concerns at the beginning of the debate, but, the longer it went on, the more clarification was given, and I think that most members were satisfied with it.

5051. The Chairperson: I am interested to know whether anybody has any objections to it, but I asked some questions about thresholds and time frames, and I am content.



5052. Mr McGlone: I am simply not content with it as an operational concept. If the rest of the Committee wants to run with it, I will be the abstaining voice.

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

Clause 33 agreed to.

Clauses 34 to 38 agreed to.

5053. Mr McGlone: I do not agree.

5054. The Chairperson: That has been recorded.

New clause

5055. The Chairperson: Clause 58 deals with appeals. During the informal clause-by-clause scrutiny of clause 202, the Committee asked the Department to consider an amendment to stop the practice of new information being presented at appeal. Last week, the Department advised that the Minister was content to bring forward such an amendment, but it was not available at last week's meeting. The amendment is now provided in the Department's response. It indicates that the amendment to bring about the requirement will be made in a new clause after clause 58. The proposed amendment will prevent any new material being presented unless it can be demonstrated that it could not have been raised at the time when the appeal was lodged or that the reason for it not being raised was due to exceptional circumstances. Trevor Clarke raised that issue. Gentlemen, any comments about the amendment?

5056. Mr McGlone: I thank the Department. This makes provision for the exceptional circumstances that a lot of us deal with.

5057. Mr T Clarke: It covers both. You and my colleague beside me raised concerns that were the opposite of what I suggested, but this captures both. Although it allows for some, it does not allow for them all. It is very good, so I concur with what Patsy said.

5058. The Chairperson: Any other comments?

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

New clause agreed to.

5059. The Chairperson: The Committee agreed clauses 84 and 125 subject to Committee amendments raising the scale of fine from £30,000 to £100,000. The Committee agreed that if the Minister subsequently agreed to bring forward amendments to the same effect, the Committee would not table or not move the Committee ones.

5060. Mr Kinahan: Anyone who is looking at planning at the moment and has trees that they think might receive a tree preservation order (TPO) will be cutting them down over the next while. We will lose a lot of trees. I know that it is a bit late in the day, but it is a dangerous one because that is what they do; they cut them down at the weekend so that no one can put a TPO on them.

5061. Mr Weir: Is that not, to some extent, what we have already? It is the same if they think that there will be some sort of listing; they will get the bulldozers in. I am not sure how we can legislate to prevent current bad action in light of — [Inaudible.]

5062. The Chairperson: We will put a recommendation in the report. Are you happy enough? The clauses have already been informally agreed subject to Committee amendments to raise the level of fine. They will be tabled at Consideration Stage. We did make an agreement, and the Minister is content to move forward, so are we happy enough?

Members indicated assent.

Clause 102 (Acts causing or likely to result in damage to listed buildings)

5063. The Chairperson: The Committee agreed to revisit this clause at today's meeting to consider the implications of arson, in particular, in relation to damage to listed buildings. Will the Department comment on that, please?

5064. Mr Peter Mullaney (Department of the Environment): Quite clearly, it is not always possible to say whether something is arson. Obviously, there could be destruction to a listed building in a number of ways. The Department does not have any statistics in relation to arson. If it is arson, it becomes a criminal prosecution matter, to be raised through the police rather than the Department.

5065. Mr W Clarke: I flagged this up, and I agree with your comments and where you are coming from. There is a lot of spontaneous combustion in listed buildings in my constituency, and then, suddenly, there is a development. I think that they are right. There is no faulty wiring; it is arson. There are very few proper police investigations into these incidents because they generally involve old buildings in a bad state of repair. In my opinion, the police generally do not treat those fires as arson. I want at least to increase the fine to make it a more serious offence than it seems to be. I am speaking just from experience. I do not have statistics either, but it is mysterious that those fires occur and then the building is tossed and a development of numerous houses put in its place. We are looking to strengthen the legislation.

5066. The Chairperson: Will you consider looking at that?

5067. Ms Maggie Smith (Department of the Environment): The Minister would be content to raise the fine to level 5, which would be a £5,000 fine.

5068. Mr W Clarke: That is something of a deterrent.

5069. Mr T Clarke: I hate to break the habit of a lifetime and agree with somebody on the opposite side of the room. [Laughter.] If you are actually trying to prevent something, £5,000 will not prevent someone from burning a house if that would give them the opportunity to redevelop it. A fine of £5,000 is not a strong deterrent.

5070. Mr W Clarke: Are we limited under that scale?

5071. The Chairperson: I do not know whether we are limited. Mr Clarke, are you proposing to raise that fine?

5072. Mr T Clarke: I think that £5,000 is meaningless if it means the difference between being able to develop or not develop.

5073. The Chairperson: Would you like to comment, Maggie? Obviously, you will have to go back to the Minister about that. We would like to get the clause agreed, perhaps subject to an amendment depending on the level of fine. Is that outside the scope of the Bill? Can we only go to level 5?

5074. Ms Smith: We have only got a line that covers to level 5. What level of fine were you thinking of?

5075. Mr W Clarke: I am talking about a fine for those circumstances involving arson. There could be other parts of the clause for when damage has occurred or a wall has been knocked down. Knocking a wall down would not justify a £50,000 fine. I want to address the extreme nature of arson. Perhaps we need an amendment for that.

5076. Mr T Clarke: It is still "up to".

5077. The Chairperson: There were other cases when the fine could be raised on indictment. Is there any chance of putting in a clause in relation to that? Can we look at that?

5078. Ms I Kennedy (Department of the Environment): Currently there is only provision for summary conviction.

5079. The Chairperson: Can we look at putting in an amendment ourselves, gentlemen?

5080. Mr T Clarke: That might be quicker.

5081. The Chairperson: I think it is right. At the minute we have a level 5. If there is arson, especially in a listed building, the walls would practically fall down themselves in some cases, so a £5,000 fine, and depending on what a developer puts in after that —

5082. Mr T Clarke: Perhaps the Clerk of Bills could draft something and we could agree that before we finish this meeting. She knows the thoughts of what some of us are considering.

5083. The Chairperson: OK, we will come back to clause 102 at the end of the meeting.

5084. Mr Kinahan: What about wilfully not rewiring a building so that it is at risk and then catches fire? Where does that fall, given that the cost of rewiring most old buildings is sometimes prohibitive? If you chose not to, someone could easily argue the case that —

5085. Mr Weir: I am very supportive of higher fines. On the point that Danny has made, I suspect that the really big problem is that the deterrent or the incentive will not be the level of the fine but the difficulty of getting caught. I suspect that a court would not be able to convict in the case of someone wilfully not rewiring a building. One of the big problems is that, although a fire report will be fairly clear cut in showing that is arson, it will be difficult to prove who carried it out. That is not an argument against raising the fine to a higher level, but there may well be limitation on the basis that people will take the chance that they will not get convicted. I suspect that it will be quite difficult to prove.

5086. Mr W Clarke: It also applies to an owner who asks someone to carry out an act.

5087. Mr Weir: I am not denying that. I do not have a great deal of experience, but I suspect that it is relatively difficult to get the level of evidence in court, unless someone is caught red-handed and confesses that Joe Bloggs who owns the place bunged them some money to torch it. Nine times out of 10, however, the evidence will not be there to get a conviction. That is no argument against a higher fine, which I still support.

5088. The Chairperson: We are content to table an amendment, so I will put that at the end of the meeting. I will leave that to the last clause. Are members content to defer the clause?

Clause 102 deferred for further consideration.

5089. The Chairperson: Members agreed clause 107 as drafted, but requested more information from the Department to clarify the respective roles of the planning authority and the Environment Agency (NIEA) in relation to its enforcement. The Department's response indicates that hazardous substances must be disposed of in ways that render them as safe as possible and minimise their environmental impacts, in line with NIEA regulations. I know that Mr McGlone raised that issue. We are seeking clarity on responsibility.

5090. Mr Stephen Gallagher (Department of the Environment): The planning authority will be responsible for issuing hazardous substance consent. It will also be responsible for deciding whether consent is required, and it will enforce that.

5091. Mr McGlone: So the likes of NIEA will not have any involvement in that?

5092. Mr S Gallagher: It will not have any involvement in hazardous substances consent. It will have a limited involvement in the control of major hazard regulations, which are an EU thing, but that is a separate issue.

5093. Mr McGlone: That is fine. I just wanted a bit of clarification on that.

5094. The Chairperson: The clause has already been formally agreed. We were just seeking clarification.

Clause 116 (Offences)

5095. The Chairperson: As with clauses 84 and 125, the Committee considered tabling an amendment to raise the £30,000 fine in this clause to £100,000. However, we deferred making a decision until we had more information on the hazardous substances to which the clause might refer, how often the fine has been used to date and where the money generated from the fine will go. Members also sought an indication of the level of fine for a similar offence in the South.

5096. The Department's response indicates that only one warning letter has been issued in recent years and that the Department aims to avoid breaches by conducting regular meetings to discuss upcoming or potential cases in advance. A list of hazardous substances is provided in the same document. The Minister has indicated that he is minded to support an increase from £30,000 to £100,000, and an amendment is provided in the tabled papers.

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

Clause 116 agreed to.

5097. The Chairperson: Three other clauses also refer to fines of £30,000: clauses 136, 146 and 149. Those clauses were formally agreed by the Committee last week. However, the Minister has indicated that he is willing to support levels of increase in the level of fine to £100,000. The Department has provided draft amendments. Are members content to accept departmental amendments to that effect if tabled at Consideration Stage?

Members indicated assent.

Clause 130

5098. The Chairperson: Members agreed to defer clause 130 and clauses 152 to 154 until they had received further information relating to current and past breaches. In particular, members wanted to know how many closed cases had been brought to a natural conclusion and how many had been dropped having been assessed as not expedient to pursue. Also, members wanted to know the types of breaches that were currently open. Details have been provided, along with last week's response from the Department on breaches and its enforcement strategy.

5099. The Department's response indicates that of the 4,899 closed cases in 2009-2010, 1,093 were resolved, 842 had planning permission granted, 978 were deemed to be not expedient to pursue, 1,636 were found to not be a breach, 324 were immune and 26 had appeals allowed or notices quashed. Further information is also provided on breach of conditions and material change of use cases only. Members have been provided with a further response from the Department.

5100. Mr Mullaney: Hopefully, Chairman, the figures are self-evident. Concerns were raised last week, particularly in relation to the "not expedient" category. Although I have not worked it out as a percentage, I estimate that somewhere in the region of 15% to 25% of cases are closed because they are not expedient.

5101. Mr McGlone: To be honest, it is very difficult to absorb that detail of information from tabled papers. For me to make any conclusion on this, I would like to take a bit of time to look over it.

5102. Mr T Clarke: While I appreciate what Patsy says, appendix 1 gives a quick summary. The table that Patsy referred to goes into a lot of detail, but the shorter table gives a quick summary of cases not expedient to pursue in respect of breach of condition and material change, which would probably come under the 10-year rule. First of all, there are not many cases to start with. Of 1,200 cases, only 229 were not expedient to pursue. The whole thrust is that we are pushing the time frames to try to get the two to work together.

5103. The Department suggested last week an amendment of seven and seven. I think that the Committee should be looking at tabling an amendment to make it five and five. We will go one way on one, and the Department has obviously made a move on the other. I suggest that the Committee come up with an amendment to make it five and five.

5104. The Chairperson: I take on board what Mr McGlone is saying. We have to try to do this —

5105. Mr McGlone: I know, Chairperson. However, most of us were here very late last night, and we have only received the papers this morning.

5106. The Chairperson: Certainly.

5107. Mr McGlone: Those papers were only tabled today, and you do not need me to tell anybody here that that does not allow us to do justice to scrutinising them properly. We are normally given at least a couple of days to go through stuff. I cannot draw any definitive conclusions from that other than maybe just to absorb some bit of the detail that is in front of us.

5108. Mr Mullaney: Mr Clarke is right about the 10-year rule aspect. Quite clearly, there are a number of reasons why cases are closed. As Mr Clarke said, that table sets out the various categories. I have not calculated the number of "not expedient" cases as a percentage, but I imagine that it is somewhere between 15% and 20%, although I am not sure exactly. However, quite clearly, it is a minority of cases. It is significant that one of the two categories in which there are over a thousand cases is the "remedied/resolved" category. The whole purpose of

enforcement is not necessarily to penalise people but to get a satisfactory outcome on the ground, and it is satisfying that a significant number of cases — over 1,000 — have resulted in that. Similarly, planning permission was granted for a number of others. Taken together, those two categories make up a significant number.

5109. It is also significant that in some cases there was no breach. I think that it was Mr Dallat who raised an issue last week about vexatious bad-neighbour-type claims. Quite clearly, it is incumbent on us and any planning authority to investigate every case, even if there has been no breach. There are a whole variety of reasons. Some people maybe do it to be vexatious and others may do it for genuine reasons because they think that there has been a breach of control. However, quite clearly, our evidence shows that, in a significant number of those cases, there had not been a breach. If you take all those together and remember that the purpose of the exercise is to try to achieve a satisfactory resolution on the ground, you will realise that a significant proportion of those cases fall into that category.

5110. The Chairperson: Are there any other comments? I am content with the tables. Taking on board what Mr McGlone is saying, members are entitled to bring amendments to the Floor of the House. I think we have gone through this. We sought clarification on the numbers today. I am going to have to put it to the Committee —

5111. Mr McGlone: I have no problem with numbers and stuff like that. However, I have a problem with tabled papers with that level of detail being presented —

5112. The Chairperson: I understand. We are all in the same boat.

5113. Mr McGlone: We are all in the same boat. However, it is for us to ensure that we are not in that boat at all. Anyway, that is a separate thing. Mr Clarke has a very valid point about five and five —

5114. The Chairperson: Hold on, that is the next clause. In relation to these clauses, I am content with the clarification from the Department on the figures. I am going to have to put it to a vote. Can members indicate whether or not they are content to move on before I put the Question?

Members indicated assent.

5115. Mr McGlone: Go ahead. I just think that we need to learn from —

5116. The Chairperson: I completely understand and certainly agree. I will say this again: we have a limited amount of time in which to get through this, but we have been very focused. However, Members should bear this experience in mind the next time that they stand in the Chamber and support a Bill's coming to this Committee knowing rightly that we will have only four to six weeks to go through it. That is something that we maybe need to look at.

5117. Mr T Clarke: You have done a great job.

5118. The Chairperson: The issue is simple. We have these tabled papers like everybody else. I am content. I will put it to the vote. Those in favour of moving on, before I put the Question on these clauses?

5119. Mr McGlone: You do not need a vote.

Clause 130 agreed to.

Clauses 152 to 154 agreed to.

Clause 131 (Time limits)

5120. The Chairperson: The Committee deferred a decision on clauses 131 and 44 pending a response from the Department relating to the requirement for the 10-year period being reduced. At last week's meeting, officials indicated that the Minister was prepared to introduce an amendment that would make both time limits for breaches of planning control seven years. The amendment was not available at that meeting. Members agreed to defer a decision until they had had an opportunity to consider the implications of such an amendment and also asked the Department to clarify whether new time limits would be applied retrospectively or at what point they would become applicable. No further information on that specific issue was provided in the Department's written response, but there is more detail on breach statistics.

5121. Ms Smith: Time limits will not be applied retrospectively. At the time of the last session, the Minister had proposed seven years and seven years, but members were not comfortable with that.

5122. Mr T Clarke: That makes sense. It could not be applied retrospectively, because that would open the floodgates on cases that are already open. However, I propose the amendment that I was a bit premature with the last time, which is that the Committee amends it to five years and five years, and accept what the Department has said about it not being applied retrospectively.

5123. The Chairperson: Let us get this issue ironed out before we deal with the numbers issue. So it will not apply retrospectively?

5124. Ms Smith: No.

5125. The Chairperson: At present, a number of businesses are sitting in the four- to 10-year rule — change of business use — and that will not apply to them. Is that correct?

5126. Mr McGlone: Can I have clarification? As any of you who have been planning officers will know, retrospection is a key part of this. How do you define retrospection in a practical application if, for example, someone says that their business has been up and running for 10 years, or that their house has been there for four years? What aspect of retrospection are you dealing with? I want to get it perfectly clear in my mind. I am sorry for being a wee bit laborious on this. Nevertheless, it is important.

5127. Mr Mullaney: Irrespective of whether the time limit is four years or 10, if a building's use or development has become immune from action, it is immune: it already is immune. In the case of a building it will be four years, and in the case of a change of use it will be 10 years.

5128. Mr McGlone: Maybe my definition of "retrospective" is a wee bit different. If a person is able to retrospectively prove that their dwelling has been there for four years — they can look back and prove four years plus — are we still in that position with what has been proposed?

5129. Mr Mullaney: Yes, because you are not reducing it below four years. The proposition on the table of seven years or, as Mr Clarke suggests, five years, would not reduce it below four years. To take the example of four years, if you had had a building up for four years —

5130. Mr McGlone: And you can prove four years plus, that is OK?

5131. Mr Mullaney: Yes. To the Department's satisfaction.

5132. Mr McGlone: That is clear enough. Thank you.

5133. Mr T Clarke: But you still have to make an application for your permitted development or new use.

5134. Mr Mullaney: You do not have to. However, you can, for peace of mind or financial reasons or whatever.

5135. The Chairperson: Do members have any other questions to ask?

5136. Mr Weir: I am happy enough with the retrospection issue. We were talking about numbers, and the time limits of seven years and seven years, and five years and five years were mentioned. [Interruption.]

5137. The Chairperson: I ask members and people in the Public Gallery to switch off their mobile phones.

5138. Ms Smith: I am sorry about that, Chairperson.

5139. Mr Weir: I was just going to ask about the time limits of seven years and seven years. Mr Clarke mentioned five years and five years. Is there any further information about the right balance of the numbers? Do you have a view on that?

5140. Ms Smith: Yes, if you mean maintaining the same numbers.

5141. Mr Weir: I appreciate that the numbers are the same in both instances. Are you reasonably relaxed about whether a seven-year time limit or a five-year time limit is appropriate? What is the position on that?

5142. Ms Smith: We were sitting at seven years and seven years. Are you now asking us —

5143. The Chairperson: I want to talk about the retrospection issue, because Mr Clarke asked about five years and five years. I think that we got a seconder for that. That is how things sit at present. I have another proposal.

5144. Mr T Clarke: Can I answer Mr Weir's point? It is as well that I am sitting down here today and not beside him, because he might hit me. I suggested five years and five years because previously, it was four years and 10 years, which was confusing. The time limit was four years for residential developments and 10 years for commercial use or change of use. I could be asked why I suggested five and five instead of settling for seven and seven. The Planning Service should have been more proactive over the past few years. If someone were to build a house in the countryside, I would find it very strange if the Planning Service had not been able to find out about it within four years. I am saying that, if it is going to be that slow, give it another year. By suggesting the five-year time limit, I am bringing it into line with the time limit for commercial use or change of use. It may be disadvantageous, however, to some people who fall into the permitted development or lawful use category, to push them into a seven-year time limit for residential developments. That is why I suggested five years and five years.

5145. Mr Weir: I am just trying to establish the numbers. It seems to be common sense to have an equalisation of the time limits. I am trying to tease out the Department's specific views about the numbers and whether five and five or seven and seven are reasonable.



5146. The Chairperson: I am going to propose four years and four years.

5147. Ms Smith: We can go to five and five; we cannot agree to four and four.

5148. Mr McGlone: You cannot agree to four and four? Who suggested that?

5149. Mr Weir: He was about to suggest that.

5150. The Chairperson: I hardly got it out of my mouth and you turned me down. [Laughter.]

5151. You could take on board what Trevor Clarke said, which is fine. Likewise, however, if you look at the four years and five years, there is an extra year to find breaches. Let us be honest, there are a lot of live issues at the four-year mark already.

5152. Mr T Clarke: They are not live, Chairperson.

5153. The Chairperson: Can I have a seconder for my proposal for four and four?

5154. Mr T Clarke: Mr McGlone was the seconder.

5155. The Chairperson: That was for five and five, not four and four.

5156. Mr T Clarke: A case is never live until an enforcement action is opened on it. If a case is sitting there today, which you seem to be concerned about, it does not matter whether the time limit is five or six years. I threw six into the mix, because it is a totally different figure that has not been mentioned. A case is not live until an enforcement action is opened.

5157. The Chairperson: I am not concerned about the four-year ruling for buildings. That is not my issue, to be honest. I am concerned about the change of use and business use, and the 10-year ruling on that was the major issue. Let us try to define this. Can you give me some clarification, please? There is a proposal for five and five. You turned me down flatly on four and four, even before I got someone to second the proposal. I am not sure whether Mr Clarke was going to second it.

5158. Ms Smith: I beg your pardon, Chairperson.

5159. The Chairperson: Will you please clarify why the Department would accept five and five?

5160. Ms Smith: Trevor Clarke made the point that enforcement officers should be able to see a building within four years.

5161. The Chairperson: That did not apply to the boy in England who had bales around the building. They did not find him for six or seven years.

5162. Mr T Clarke: That is called an Englishman's castle.

5163. Ms Smith: The experience is that it can take longer than four years to spot a change of use. Mr Weir and others made the point that it can be confusing when two different lengths of time are involved.

5164. The Chairperson: I agree. Four and four is not confusing; four and 10 is, as is four and six.

5165. Ms Smith: The aim of keeping the two periods the same is to remove that confusion and to make sure that everyone is clear that, if they are operating without planning permission, there is one period.

5166. There is a tension that four years is not sufficient time to pick up on all the cases, particularly cases of change of use. A dwelling can be changed to an office building, for instance, quite quietly, and it is possible that people would not notice it for a long time. That is why the Minister is prepared to go to five and five.

5167. The Chairperson: I thought that we got all our planning policy statements right. I thought that PPS 21 was good.

5168. Mr McGlone: Some of us did not think that.

5169. The Chairperson: Mr McGlone, you are agreeing to five and five. I will make a proposal for four years. Would anyone like to support that proposal?

5170. Mr Kinahan: From what Ms Smith is saying, I am sure that we should make it for longer.

5171. The Chairperson: That would be the five and five. It is four years now for enforcement for a building and 10 years for change of use to business use. I propose four and four. Do I have someone to second my proposal?

5172. Mr W Clarke: I will second it.

5173. Mr Weir: You were almost shamed into that.

5174. Mr W Clarke: It was the puppy dog eyes.

5175. The Chairperson: Thank you. There are two proposals. Are members in favour of five years and five years? I will put the Question.

5176. Mr T Clarke: Is the Committee making the amendment, or is it a departmental amendment?

5177. The Chairperson: The Department is content to make the amendment.

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

Clause 131 agreed to.

Clause 44 agreed to.

Clause 202 (Procedure of appeals commission)

5178. The Chairperson: We deferred clause 202 pending an amendment from the Department that would allow costs to be awarded where a party has been put to unnecessary expense and where the Planning Appeals Commission has established that the other party has acted unreasonably. Members have been provided with details of the clause and with the Department's response from last week referring to new information at appeals, which is dealt with in clause 58. The Department's recent response is provided, and it indicates that two new clauses will be brought forward after clause 202 to allow for the awarding of costs.

5179. I think that we are content with the awarding of costs. Is the Committee content with the departmental amendment, including introducing new clauses to allow for the wording of cost by the appeals commission where a party has been put to unnecessary expense?

Question, That the Committee is content with the new clauses, put and agreed to.

New clauses agreed to.

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

Clause 202 agreed to.

Clause 203 (Assessment of council's performance)

5180. The Chairperson: Although members agreed the clause last week, the Committee requested more information on how the level of scrutiny under the clause will tie in with the audit function.

5181. The Department's response indicates that clause 203, together with clauses 204 to 206, forms a key part of the Department's audit role in councils' performance of their planning functions. The local government auditor is currently responsible for financial and value-for-money audits, which is very different from the planning audit function. It is the Department's view that a central government statutory audit and/or inspection function could cover a general or function-specific assessment of local government's planning functions, reviewing planning processes and the application of policy with a focus on quality assurance, advice and the promotion of best practice. Are we content with the Department's response?

Members indicated assent.

Clause 215 (Correction of errors in decision documents)

5182. The Chairperson: The Committee was concerned about the cumbersome wording in the clause and asked the Department to consider an amendment. The Department indicated that it will amend the clause, and the draft departmental amendments have been provided. Mr McGlone, I think that you brought this subject up. Are you content with the response, or do you need any more clarification?

5183. Mr McGlone: It seems to be a bit clearer.

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

Clause 215 agreed to.

Clause 224 (Duty to respond to consultation)

5184. The Chairperson: The Committee was concerned when the Department indicated that, in the event of a late or non-response from a statutory consultee, a council would be liable for its decision. That would apply even if a decision that had been made after the agreed time limit had to be revoked as a result of information coming forward from a statutory consultee that had not responded in time. The Committee asked the Department to consider an amendment to ensure that councils would not be held liable for decisions where a statutory consultee had failed to respond within the required period.

5185. The Department's response indicates that it will not bring forward such an amendment. A draft Committee amendment has been provided that would require statutory consultees to be liable for any compensation payable after a decision is revoked as a result of information that the consultee could have provided, if planning permission were granted after the time allowed for a response to be made by that consultee had lapsed. I will ask the Clerk of Bills to go through that.

5186. The Clerk of Bills: My understanding of the Committee's concern was that it wanted a provision to ensure that the council would not have to pay compensation where it took a decision in a situation where it had not received information that might have influenced the decision to grant planning permission, such as where a statutory consultee either did not respond or responded too late, with the result that the council then went ahead.

5187. The Department may advise that there is a better procedural or technical method for achieving the objective. I propose that a new clause to rule the council out from liability in such circumstances be inserted towards the end of the Part of the Bill that deals with compensation. I will now go through that. A number of things would have to happen at the same time. First, the consultee would not have responded in accordance with an agreed or set time period. Secondly, the council would go ahead and make a decision after the agreed time period has expired. Thirdly, planning permission would be revoked because of the absence of information that subsequently emerges. The council could reasonably have expected that information to be in a response from that consultee. Fourthly, the council could decide to revoke or modify the planning permission because of information that comes to light later, and, finally, the council would be liable for compensation in that situation. We want to say that the council would not be responsible if all those criteria were met, but that the relevant Department would pay to the council the compensation payable. In other words, rather than trying to change the whole system here, effectively, the Department would reimburse the council. Members will notice that I said "relevant Department", rather than "agency". Subject to what the Committee might wish or advise, I drafted the amendment that way so that it would have a broader back, if you like. Referring to the Department, rather than to specified agencies, would deepen pockets for the Department. I suspect that the definition of the term "relevant Department" would need some tweaking, but I have provided a draft amendment to indicate the Committee's intention as far as I understand it.

5188. Mr T Clarke: I thank the Clerk of Bills. I like the intention, but I am concerned about what she said about the council subsequently receiving information that it could "reasonably expect" to have been included. What does "reasonably" cover, given that the time period to respond is either 21 days or 28 days?

5189. The Clerk of Bills: "Reasonable" is a term that is understood in law. If that word were not included, in some ways, the amendment would be less effective, because a council could come along and say that it thought that it would have been in that report, whereas that might not have been a reasonable expectation. An agency might come along and say that it would not have included that information, because it is not in their purview to do so.

5190. Mr T Clarke: Does it not weaken it?

5191. The Clerk of Bills: A reference to reasonableness should not alter the position; it should just clarify what would be the case in law anyway if there were a judicial review.

5192. The Chairperson: Are members content with that explanation?

Members indicated assent.

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

New clause agreed to.

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

Clause 224 agreed to.

Clause 229 (Directions: Department of Justice)

5193. The Chairperson: On the advice of the Examiner of Statutory Rules, the Committee questioned the reference to the "Advocate General" in the clause instead of to the "Attorney General". I advise members that the details of the clause have been provided. The Department's response indicates that the Department will bring forward an amendment to change the reference to "Attorney General".

5194. Ms Smith: We now have that amendment, and we can give it to the Committee Clerk.

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

Clause 229 agreed to.

Clause 102 (Acts causing or likely to result in damage to listed buildings)

5195. The Chairperson: The Committee must consider whether it wants to table an amendment to the clause, so that a person who is currently guilty of an offence under it may be liable on conviction of indictment to a fine. Fines on indictment are not subject to the limits of a standard scale, although the clause is currently drafted to suggest that that is the case. The Department has also proposed an amendment to raise the level of fine for summary conviction to level 5 on the standard scale.

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

Clause 102 agreed to.

5196. The Chairperson: The Department has advised that it will be making textual amendments to clauses 8 and 9 and to schedule 6 to provide a consistent approach throughout the Bill. The Committee has already agreed those clauses and the schedule. However, if the Committee is content to accept those amendments now, it will be noted in its report, and the Committee position will be clear when the Bill comes back for consideration. Do Members agree with that approach?

Members indicated assent.

5197. The Chairperson: The Committee asked the Department to consider an amendment introducing a mandatory review period of the new planning system once it has been devolved to local authorities. The Department's response in its members' tabled papers, and it indicates that the Minister is not bringing forward an amendment on that issue. Members have been provided with a draft Committee amendment, which suggests the introduction of new clause 223A entitled "Review of Planning Reform Act." That clause will require the Department to review the system within three years of the Bill's commencement and at least once every five years thereafter. The

terms of such a review will be set out in regulations, and the amendment to clause 242 would require such regulations to be subject to draft affirmative procedure and would mean that it would come back to the Assembly for debate. I will ask the Clerk of Bills like to go through that amendment, before I put the Question.

5198. The Clerk of Bills: Once again, this issue did not appear to fall neatly in any of the clauses of the Bill. Therefore, I propose that a new clause be added at the beginning of the Part of the Bill that deals with its miscellaneous and general provisions. The new clause would set out the time frame in which the first review of the implementation of the Act would take place. It would also require a five yearly review thereafter and a report on the implementation of the Act to be published. The detail is not clearly set out in the proposed clause, and the easiest way for the Assembly to have input to or make decisions on the content of the review or the report is to set those out in regulations. Those regulations would then need to come back to the House to be approved, thus allowing it to have some further input to the details.

5199. The Chairperson: Are there any comments on that proposed new clause? It will make provision for a review to be carried out no later than three years after the Bill is enacted.

5200. Mr Kinahan: Did you say no later than three years?

5201. The Chairperson: It is giving it a chance in two years, and, hopefully, it will be completed by three years.

5202. Mr T Clarke: What is the Department saying about that?

5203. The Chairperson: The Department is not content.

5204. Ms Smith: The Bill already provides for the Department to assess the way that councils are implementing their responsibilities under the legislation. [Inaudible due to mobile phone interference.] Arguably, that would cover the review.

5205. The other point is that it would be open to a future Environment Committee or to the Assembly to review any piece of legislation that [Inaudible due to mobile phone interference.]

5206. Mr Weir: I appreciate what is being said about [Inaudible due to mobile phone interference.]

5207. The Chairperson: I would like to see a review. I will have to put it to a vote.

5208. Mr T Clarke: Why would something be reviewed so soon? The process will take a while to bed in and go through its outworkings. If we try to agree to a review taking place too soon, we are not giving it an opportunity to work properly.

5209. The Chairperson: I think that two years is a reasonable time. [Inaudible due to mobile phone interference.] To a certain extent, the Bill will have to hit the ground running. I am building in a mechanism that the process can be reviewed by trying to make sure that the resources and everything else are there. It will be trial and error in some cases. I support a review.

5210. Mr Kinahan: [Inaudible due to mobile phone interference.]

5211. Mr W Clarke: I agree with having a review. [Inaudible due to mobile phone interference.] Surely we are learning from best practice in England, and surely the implementation should be

more streamlined here in the North. It would give some degree of comfort to councils. You touched on that when we discussed resources and capacity for training. It will give a review of things overall and will show where improvements have to be made. That is sensible.

5212. The Chairperson: We have heard all the views on that, so I will ask the Committee whether it is in favour of a Committee amendment that deals with the review.

Members indicated dissent.

5213. The Chairperson: I will move now to the community infrastructure levy. At last week's meeting, the Committee asked for examples of guidance on planning agreements and information on developer contributions. The Department provided a response on the community infrastructure fund or developer contributions on 3 February. Professor Lloyd's comments on a community infrastructure levy are provided for members, as is the Department's latest response. The Department has indicated that it believes that contributions to support the infrastructure that is necessary to deliver economic and social development is a cross-cutting issue and that it should be considered at Executive level. The Department has also provided an example of guidance on planning agreements.

5214. A draft Committee amendment is also provided. It would make provisions for a community amenity levy to be introduced if and when the Department deems it appropriate. I will ask the Clerk of Bills to go through that.

5215. The Clerk of Bills: The first point to note is that, as has been mentioned, the community infrastructure levy is legislated for in Britain in very different circumstances. Councils there have a greater range of powers and greater budgets than they do here. Therefore, the suggested amenity levy will reflect that difference. According to my understanding of what the Committee talked about, the intention is about leaving such funds for amenities in council areas. [Inaudible due to mobile phone interference.]

5216. The Chairperson: Any comments on that?

5217. Mr Kinahan: I have a slightly oblique comment. [Inaudible due to mobile phone interference.]

5218. The Clerk of Bills: That would be slightly at odds with this amendment. That is another issue that the Committee may wish to explore, but it would not sit neatly within the confines of this amendment.

5219. Mr W Clarke: It is an important clause to have in. We discussed the rationale behind it at the last meeting, where there is large-scale development and no community infrastructure is in place. That goes for private development and housing associations and the likes of community provision, community halls and play areas. Those should be subject to a contribution from the developer. Again, for the well-being of that community, a crèche might be required. There are a number of ideas that could be out there. We are trying to say that the well-being of the community is at the heart of the new development, and there is no point putting 100 houses in without the necessary community infrastructure. That will put a burden on local authorities. We are trying to look at when the new powers come down. There are greater powers across the water. We are hoping that the clause will be used at that stage, when the powers are delivered down to improve the well-being of the community.

5220. Mr T Clarke: I have a bit of difficulty with this. If we go in that direction, we will create a rod to beat the councils' backs. If we suggest that, every time there is development in an area,

you have to use that money to build community facilities, once the facilities are built, the councils will be left to run them. The council has —

5221. The Chairperson: They will not. It goes into a central pot of money. Can we have some clarity on that?

5222. The Clerk of Bills: As the amendment is drafted, there is no such level of detail yet, so there is flexibility on the regulations of the detail that will come forward as a result of this.

5223. There is another really important point that I meant to mention. Given the nature of this as a levy, it potentially engages section 63 of the Northern Ireland Act 1998, and a recommendation may be required from the Finance Minister. That is just a cautionary note.

5224. Mr T Clarke: The other problem with this is that it is a levy in relation to the community. However, there is also a levy in relation to other infrastructures that the developers have to do in relation to the development. If we put too many levies on this, we will have no development at all.

5225. The Chairperson: I will answer that quickly, Mr Clarke. Developers put it on the property. Even Tesco gets the money back. This nonsense that developers will not develop — they will put £1,000 on each house.

5226. Mr T Clarke: So you want to flog the people even more?

5227. The Chairperson: I do not; it is up to the people who want to buy the house.

5228. Mr T Clarke: That is what I mean.

5229. The Chairperson: It is up to individuals whether they want to live in or buy that house. We talked last week about a developer paying £11,000 for a planning application to develop any number of houses thereafter.

5230. Mr T Clarke: That is a different argument.

5231. The Chairperson: No, it is ridiculous. Let us be under no illusion about this, Mr Clarke: it is up to people if they want to buy a house. That will go on to that house. I am not saying that it will go on to the people.

5232. Mr T Clarke: But you are saying that this levy is used for community development. I welcome development in any area that I live in. When someone moves into an area, he is enlarging the rates base, which is contributing to the running of the council. That is how those things should be funded. A developer should pay for the development of the road structure. I agree with that. Road structure has to be improved for the developer to make his development. However, he should not have to put money up for community development as well.

5233. The Chairperson: The road infrastructure that he is developing is putting back —

5234. Mr T Clarke: Yes, I agree with that.

5235. The Chairperson: This is about building a community centre or something for the benefit of the community. There is a lot of scope for councils to draw down match funding and everything else. Community groups can draw down match funding. That is the way that most



public representatives work with community groups to try to encourage them to look after communities.

5236. We could go round the houses with this argument over who is responsible and who is not. All I am saying is that a levy is a good idea. What it will be will have to be worked out, but it will go into a central pot. It could pay for something that the community needs, go to the community plan or anything else — whatever those people decide. That will mean the local council will take a decision on it.

5237. Mr Weir: There are couple of points. I take Trevor Clarke's point as well. The charge will make a pot, which may well then be used for capital. However, the issue is that there could be a complication of downstream annual year-on-year expenditure which may not necessarily be covered. There is a danger of that.

5238. The developer contribution is a big issue, and I have heard what has been said as regards a potential issue over finance. It is something that will have to be tackled, in terms of things. I am not sure how clearly this has all been thought through. There is a level of vagueness. I am not sure that this is the appropriate place for an amendment. It is something that will have to be gone back on, but I am not minded to make an amendment to this particular Bill. Something in the broader development contribution issues is going to have to be decided upon. I do not think that this is the right place.

5239. Mr W Clarke: This is a unique opportunity for us to build a mechanism and put it in place. We should give the local authority at least the powers or the tools to benefit communities. Particularly in areas of deprivation where greater development is taking place, this ensures that the developer takes on the responsibilities as regards putting proper planning into place for communities and does not just stick a number of houses into an area without thinking about the amenities needed for that community.

5240. It could be a community park, a play park, a hall, a crèche — there are a number of things that it could be. It is to give at least the flexibility when the application has been made. We talk about front-loading systems where the developer can come on board and say that, as a part of his proposal, he would like to put in place some of the community infrastructure. That is what it is about. [Inaudible due to mobile phone interference.]

5241. I am not a professional planner. The Department will have to come back and give us more detail, and touch on the finance aspect as well. The clause needs to go in there to ensure that we have better communities.

5242. The Chairperson: OK gentlemen, I will have to put that to the Committee. Is the Committee content with inserting a new clause to address the issue of a community levy?

Members indicated dissent.

5243. The Chairperson: That is something. Are members content with putting in a recommendation to explore ways of doing that?

5244. Mr T Clarke: Yes. That is different. I agree with that.

5245. Mr Weir: Yes. I just think the issue needs to be thought out.

5246. The Chairperson: No problem. Thank you. We will bring it back and ask for further explanation of the form of words.

5247. Can we put something in the report in relation to the three-year review?

5248. Mr T Clarke: We had a vote on it.

5249. The Chairperson: I am only asking the question.

5250. Mr T Clarke: I am only answering you.

5251. The Chairperson: OK, there is no appetite for it.

5252. Let us turn to the land use strategy for the North. At last week's meeting we asked the Department on what basis, or against what framework, decisions on major regional planning applications would be made to ensure consistency.

5253. Mr T Clarke: Is that in north Antrim?

5254. The Chairperson: That was in response to Professor Lloyd's comments on the need for a land use strategy. In its response, the Department indicates that it will base decisions on regionally significant applications on the policy framework provided by the regional development strategy, planning policy statements, local development plans and other relevant material considerations.

5255. Angus, we are still going with the regional development strategy. Conformity, conformity, conformity. PPSs and everything.

5256. Mr Kerr: We feel that that is an appropriate framework on which to make the decisions.

5257. The Chairperson: Do members have any comments to make on land use strategy? What about the final report on the land use strategy?

5258. Mr T Clarke: How can you put it in if we have no comments?

5259. The Chairperson: I am asking the Committee for comments.

5260. Mr T Clarke: Given that there is no thought or feeling in relation to that, why would we want to put anything in? I suggest that we leave it out.

5261. The Chairperson: So, Mr Clarke, you are content that the local development plan and community plans will roll out along with the suite of planning policy statements and the area plans, and they are all going to conform to the regional development strategy, along with the simplified planning zones that you supported last week and today. Are you content that that the way land strategy will develop?

5262. Mr T Clarke: You are not coming with any proposals. Why would you put something in a report, when you have nothing to put on the table?

5263. The Chairperson: I did. If you had read Professor Lloyd's notes, which I referred to —

5264. Mr T Clarke: So, it is Professor Lloyd's suggestion, as opposed to yours.

5265. The Chairperson: It is only a suggestion. Likewise, Mr Clarke, you have supported many people who have come to the Committee to make presentations.

5266. Mr T Clarke: Where was it?

5267. The Chairperson: I do not think that there is any appetite for that.

5268. I forgot to mention planning agreements. We did not get a chance to talk about them. Would you like to touch on that?

5269. Mr Weir: Not really.

5270. The Chairperson: Disregard that remark.

5271. Ms Smith: Planning agreements are at clause 75, I think.

5272. The Chairperson: You are struggling, Maggie. It is OK. This is the last day of scrutinising the Bill, and, to be fair, we have gone through a concentrated piece of work. The Bill has 248 clauses. We are going to wind up today, but I would like something on planning agreements.

5273. Ms Smith: Planning agreements are agreements which are negotiated during the process of agreeing planning permission, and they must be agreed before planning permission is granted. They are between the developer and the planning authority. Planning agreements can provide opportunities to include, as part of the planning permission, requirements on the developer which are relevant to the development. That links back to what Willie Clarke said earlier. That might include things like road junctions that service the development. It could also include the sorts of community amenities that you were talking about earlier.

5274. In the main, clause 75 is carried forward from the Planning (Northern Ireland) Order 1991. However, there is an extra provision in this Bill that relates to financial contributions, because there may be situations in which, as part of the agreement with the developer, the planning authority might wish to negotiate that a sum of money be paid over for some purpose.

5275. The Bill, as drafted, provides that that sum of money can go either to the planning authority, which would be the DOE or the council, or to a Northern Ireland Department. Some work is ongoing in the area of social housing, whereby we are using planning policy and Department for Social Development (DSD) housing policy in the context of that new provision. That will allow developers to contribute money to DSD, through planning agreements, which can then be used by the Housing Executive and the housing associations to provide social or affordable housing.

5276. The Chairperson: Thank you. Did you also want to mention the proposed amendment to schedule 2?

5277. Ms Smith: Yes.

5278. The Chairperson: I have tabled a question for oral answer in the Chamber, so can you just mention that briefly?

5279. Ms Smith: I apologise for bringing this in at this late point. Schedule 2 deals with dormant mineral sites, and paragraph 1 of that schedule refers to sites being dormant if they were not used between 31 December 1993 and 1 June 2007. That provision was never commenced under the previous legislation, so those dates are clearly out of date. Rather than setting specific dates, the Department proposes to amend schedule 2, paragraph 1 to read:

"within a period of 15 years, ending on the date on which this schedule comes into operation".

5280. The Chairperson: OK. Thank you. Members were provided with a written submission on the Bill from the Belfast Civic Trust. Are members content to note that submission and to include it in the Committee's report?

Members indicated assent.

5281. The Chairperson: That concludes the Committee's formal clause- by-clause consideration of the Planning Bill. A draft report of the Committee Stage will be produced for members' consideration on Tuesday 22 February. I thank everyone for their patience. I also thank Maggie and her team for their sharp focus. We got through it.