Committee for the Environment

Report on the Planning Bill (NIA 7/10)

Other Papers Submitted to the Committee

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

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

2 On 15 September 2008 Mr Roy Beggs replaced Mr Sam Gardiner.

3 On 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong.

4 On 22 June 2009 Mr Danny Kinahan replaced Mr David McClarty.

5 On 29 June 2009 Mr John Dallat replaced Mr Tommy Gallagher.

6 On 3 July 2009 Mrs Dolores Kelly replaced Mr Patsy McGlone as Chairperson.

7 On 14 September 2009 Mr Adrian McQuillan replaced Mr Trevor Clarke.

8 On 1 February 2010 Jonathan Bell replaced Mr Adrian McQuillan.

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

10 On 12 April 2010 Mr Dominic Bradley was appointed as Deputy Chairperson.

11 On 13 April 2010 Mr Brian Wilson was appointed as a Member and Mr David Ford ceased to be a Member.

12 On 21 May 2010 Mr Patsy McGlone replaced Mr Dominic Bradley as Deputy Chairperson

13 On 13th September 2010 Mr Thomas Buchanan replaced Mr Jonathan Bell

14 On 13th September 2010 Mr Willie Clarke replaced Mr Daithi McKay

15 On 13th September 2010 Mr Trevor Clarke replaced Mr Ian McCrea

16 On 1 November 2010 Mr George Savage replaced Mr Roy Beggs

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Delegated Powers of Planning Bill

Planning Bill
Delegated Powers Memorandum

Introduction

This memorandum identifies provisions for delegated legislation in the Planning Bill. It explains the purpose of the delegated powers taken; describes why the matter is to be left to delegated legislation; and explains the procedure selected for each power and why it has been chosen. This memorandum should be read in conjunction with the Explanatory and Financial Memorandum accompanying the Bill.

Drafts of the regulations and orders referred to in this memorandum are not yet available. The work on these is considerable and once completed they will be subjected to public consultation by the Department.

Purpose of Bill and Main Provisions

The main purpose of the Bill is to reform the planning system and transfer development plan functions and the majority of planning control functions to district councils.

The Planning Bill provides the framework to:-

- create a streamlined local development plan system, allowing for speedier and more flexible development plans and providing greater clarity and predictability for developers and the community.
- deliver a more effective planning control system. As part of the new development management approach, the Department is creating a 3-tier hierarchy of development (consisting of regionally significant, major and local development). Greater resources will be directed at those applications with economic and social significance, with proportionate decision-making mechanisms tailored according to the scale and complexity of the proposed development. New processing arrangements for each type of development will be introduced within the 3-tier hierarchy. These will improve the predictability of timescales for processing and ensure effective engagement with the community and other stakeholders, as well as giving greater focus to economically and socially important developments.
- bring about a change in culture within the planning system – seeking to facilitate and manage development applications rather than mainly controlling undesirable forms of development and achieving stronger collaborative working across a range of stakeholders.
- deliver other development management proposals including:
- a duty for consultees to respond to consultation on planning applications within a prescribed period;
- reinforcing control over the partial demolition of unlisted buildings in conservation areas;
- placing greater emphasis on the enhancement of conservation areas.
- improving the appeal system, for example, by reducing the time limit for lodging an appeal from six months to four.

- strengthening enforcement powers through new provisions such as fixed penalty notices where enforcement notices are not complied with and a higher, premium fee for retrospective planning applications; and
- as part of the Review of Public Administration transfer the majority of planning functions from central government to the proposed 11 district councils (to a timetable to be agreed by the Executive) while retaining appropriate oversight and intervention powers.

Delegated Powers

The Bill confers powers on the Department to make orders and regulations in relation to a range of matters dealt with in the Bill. Some of the powers contained within the Bill are new, while others replace or update existing delegated powers. The powers conferred in the Bill are mainly procedural or of a technical nature. These include new procedures and rules which will be better made after some experience of administering the new planning system and are not essential to have as soon as it begins to operate.

Regulations under clauses 152 and 153 of the Bill, and Orders under Clause 208 of the Bill, shall not be made unless a draft of the regulations/orders has been laid before, and approved by a resolution of, the Assembly. All other regulations and orders are subject to negative resolution under the provisions of clause 242 of the Bill.

This Memorandum follows the structure of the Bill and the approach taken has been to identify all the new regulatory powers as a consequence of reform – these are discussed in detail at Annex A. In addition the Department has presented the existing delegated powers which have been updated, where necessary, to reflect the proposed two-tier planning regime in tabular format at Annex B.

Annex A

New Delegated Powers

Clause by Clause Analysis of the New Delegated Powers

Part 2 – Local development plans

Clause 3 - Survey of district

Clause 3 requires a district council to keep under review matters which are likely to affect the development of its area or the planning of that development. A district council may also keep matters in any neighbouring area under review, to the extent that those matters might affect the area of the district council, and in doing so they must consult the district council for the neighbouring area concerned.

Clause 3(2)(f) – power to prescribe matters which must be kept under review.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

The power in clause 3(2)(f) to make regulations will allow the Department to add to the list of matters which a district council must keep under review. This power provides the flexibility to respond to changes in circumstances - to cater for new or changed EU and international obligations for example - and to act quickly in the light of experience, if necessary, which primary legislation would not allow.

Clause 4 - Statement of Community Involvement

This clause defines a district council's statement of community involvement (SCI) as a statement of its policy for involving interested parties in matters relating to development in its district. It requires the district council and the Department to attempt to agree the terms of the statement and provides a power of direction for the Department where agreement is not possible. This statement will apply to the preparation and revision of a local development plan and to the exercise of the district council's functions in relation to planning control.

Clause 4(6)(a) – power to prescribe the procedure in respect of the preparation of the SCI.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to set out the procedures to be followed by the district council in the preparation of its statement.

Clause 4(6)(b) – power to prescribe the form and content of the SCI.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe the form and content of the SCI.

Clause 4(6)(c) – power to prescribe publicity for the SCI.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe the publicity requirements for the preparation and adoption of the SCI.

Clause 4(6)(d) – making the SCI available for inspection by the public.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe how and where the SCI should be made available by the district council for public inspection.

Clause 4(6)(e) – the manner in which (i) representations may be made in relation to the SCI and (ii) the consideration of those representations.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe how the public should be enabled to make representations to the district council if it decides to carry out a public consultation and how the district council must consider any representations made in the preparation of its SCI.

Clause 4(6)(f) – circumstances in which the requirements for the SCI need not be complied with.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe when the district council in certain and particular circumstances may not need to comply with the SCI preparation requirements.

The Department considers that due to the detailed technical and administrative nature of the material that will be included in the regulations for the SCI and the need to have flexibility to amend them as part of the evolution of this new procedure that it is more appropriate for subordinate legislation to be the vehicle adopted to accomplish this outcome.

Clause 7 – Preparation of timetable

Clause 7 places a requirement on the district council to prepare and keep under review a timetable for the preparation and adoption of its local development plan. The district council must attempt to agree the timetable with the Department, however if the timetable cannot be agreed then the Department may direct that the timetable is in the terms specified in the direction.

Clause 7(5)(a) – power to prescribe the procedure in respect of the preparation of the timetable.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to set out the procedures to be followed by the district council in preparing the timetable.

Clause 7(5)(b) – power to prescribe the form and content of the timetable.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe the form of the timetable and its content.

Clause 7(5)(c) – power to prescribe the time at which any step may be taken in the preparation of the timetable.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe when specific steps must be taken in the preparation of the timetable.

Clause 7(5)(d) – power to any publicity for the timetable.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe what publicity arrangements the district council should give to the timetable preparation, availability, adoption etc.

Clause 7(5)(e) – making the timetable available for inspection by the public.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe how and where the timetable should be made available by the district council for public inspection.

Clause 7(5)(f) – circumstances in which the requirements for the timetable need not be complied with.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department regulation making powers to prescribe when the district council in certain and particular circumstances may not need to comply with the timetable preparation requirements.

The Department considers that due to the detailed technical and administrative nature of the material that will be included in the regulations for the timetable and the need to have flexibility to amend them as part of the evolution of this new procedure that it is more appropriate for subordinate legislation to be the vehicle adopted to accomplish this outcome.

Clause 8 - Plan Strategy

Clause 8 imposes a statutory duty on the district council to prepare a Plan Strategy. (The Plan Strategy and the Local Policies Plan (see Clause 9) taken together constitute a local development plan) The district council must take account of the matters listed in this clause, including the Regional Development Strategy and must carry out a sustainability appraisal for the proposals in each document. The Department may prescribe the form and content of the Plan Strategy.

Clause 8(2)(c) – power to prescribe other matters the Plan Strategy must set out.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe additional matters which must be set out in the Plan Strategy.

The Department considers that this power is best placed in regulations as it will have the flexibility to amend them as part of the evolution of this new development plan system. It will also allow the flexibility to amend the regulations, for example policy in future may require local development plans to include certain matters in relation to future development.

Clause 8(3) - power to prescribe the form and content of the Plan Strategy

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the form and content of the Plan Strategy.

The Department considers that this power is best placed in regulations as it will have the flexibility to amend them as part of the evolution of this new development plan system. It will also allow the flexibility to amend the regulations, for example policy in future may require local development plans to include certain matters in relation to future development.

Clause 8(5)(c) – power to prescribe any other matters that the district council must take into account when preparing its Plan Strategy and Local Policies Plan.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe any other matters other than those listed in Clause 8 which the district council must take account of in the preparation of its Plan Strategy.

The Department considers that this power is best placed in regulations as it will have the flexibility to amend them as part of the evolution of this new development plan system. It would also allow for the flexibility to meet any changing circumstances which may arise which may require the local development plan to take account of specific matters that would affect future development in its area.

Clause 9 - Local Policies Plan

Clause 9 imposes a statutory duty on the district council to prepare a Local Policies Plan. (The Local Policies Plan and the Plan Strategy (see Clause 8) taken together constitute a local development plan). The district council must take account of the matters listed in this Clause, including the Regional Development Strategy and must carry out a sustainability appraisal for the proposals in each document. The Department may prescribe the form and content of the Local Policies Plan.

Clause 9(2)(b) – power to prescribe other matters the Local Policies Plan must set out.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe additional matters which must be set out in the Local Policies Plan.

The Department considers that this power is best placed in regulations as it will have the flexibility to amend them as part of the evolution of this new development plan system. It will also allow the flexibility to amend the regulations, for example policy in future may require local development plans to include certain matters in relation to future development.

Clause 9(3) - power to prescribe the form and content of the Local Policies Plan

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the form and content of the Local Policies Plan.

The Department considers that this power is best placed in regulations as it will have the flexibility to amend them as part of the evolution of this new development plan system. It will also allow the flexibility to amend the regulations, for example policy in future may require local development plans to include certain matters in relation to future development.

Clause 9(6)(c) – power to prescribe any other matters that the district council must take into account when preparing its Local Policies Plan.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe any other matters other than those listed in Clause 9 which the district council must take account of in the preparation of its Local Policies Plan.

The Department considers that this power is best placed in regulations as it will have the flexibility to amend them as part of the evolution of this new development plan system. It will

also allow the flexibility to amend the regulations, for example policy in future may require local development plans to include certain matters in relation to future development.

Clause 10 – Independent Examination

Clause 10 requires the district council to submit its Plan Strategy and Local Policies Plan to the Department for independent examination and makes provision for the Department to cause an independent examination to be carried out by the Planning Appeals Commission or a person appointed by the Department. The purpose of the examination will be to determine whether the Plan Strategy or Local Policies Plan is sound and whether it satisfies the requirements relating to its preparation. Any person who makes representations seeking a change to the Plan Strategy or Local Policies Plan has a right, if they so request, to appear in person at the examination.

After completion of the independent examination, the person appointed to carry out the examination must make recommendations on the Plan Strategy or Local Policies Plan and give reasons for those recommendations.

Clause 10(3) –power to prescribe documents which should be submitted for independent examination.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe what documents in addition to the Plan Strategy or Local Policies Plan should be submitted to the Department for independent examination by the PAC or person appointed by the Department.

The Department considers that this power is best placed in regulations as it will have the flexibility to amend the list of documents required for the independent examination. These will include the SCI and timetable.

Clause 11: Withdrawal of development plan documents

This clause enables a district council to withdraw its Plan Strategy or Local Policies Plan at anytime before it submits it to the Department for independent examination. However, if either of these documents has been submitted for independent examination, it can only be withdrawn by direction of the Department.

Clause 11(1) – power to prescribe manner in which a district council may withdraw its Plan Strategy or Local Policies Plan.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the steps that a district council must take if it decides to withdraw its Plan Strategy or Local Policies Plan.

The Department considers that this power is best placed in regulations as it will merely set out various procedures the district council must follow in this event and will include matters such as

giving adequate publicity to the withdrawal. Regulations will also have the flexibility to allow the Department to revise procedures as the local development plan system evolves.

Clause 12 – Adoption

This clause requires the Department to consider the recommendations of the independent examination and provides a power of direction for the Department to undertake one of three options at this stage. It can direct the district council to adopt the development plan document as originally prepared; adopt the document with such modifications as may be specified in the direction or direct the district council to withdraw the development plan document. The district council must comply with the direction within such time as may be prescribed and adopt the Plan Strategy or Local Policies Plan by resolution of the council as directed.

Clause 12(3) – power to prescribe time within which development plan documents are adopted.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the timeframe within which the district council must adopt the Plan Strategy or Local Policies Plan.

The Department considers that this power is best placed in regulations as it may be varied dependent upon the size of the development plan document and whether modifications are required.

Clause 13 - Review of local development plan

Clause 13 requires the district council to carry out a review of its local development plan at such times as the Department may prescribe and to report to the Department on the findings of the review.

Clause 13(1) – power to prescribe when a review of the local development plan should be carried out.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to make regulations to prescribe when a district council should carry out a review of its local development plan.

The Department considers that this power is best placed in regulations as it will merely set out when the review should take place and regulations will also have the flexibility to allow the Department to revise procedures as the local development plan system evolves.

Clause 13(3) – power to prescribe the form of the review and its publication.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the form of the review and make regulations as to its publication.

The Department considers that this power is best placed in regulations as it will merely set out what form the review should take and the associated procedures the district council must follow in this event and will include matters such as giving adequate publicity to the review. Regulations will also have the flexibility to allow the Department to revise procedures as the local development plan system evolves.

Clause 14 - Revision of Plan Strategy or Local Policies Plan

This clause empowers a district council to revise a Plan Strategy or Local Policies Plan at any time (after adoption). If a review under clause 13 indicates that they should do so, or they are directed to do so by the Department, then they must carry out a revision. Revisions to a Plan Strategy or Local Policies Plan must comply with the same requirements as those which apply to the preparation of a Plan Strategy or Local Policies Plan.

Clause 14(2)(a) – power to prescribe when a revision should be made and the manner in which it should be made.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the times and manner a district council should carry out a revision of its Plan Strategy or Local Policies Plan and the manner in which the revision should be carried out by the district council.

The Department considers that this power is best placed in regulations as it will merely set out when a revision of the Plan Strategy or Local Policies Plan should take place and the associated procedures the district council must follow in carrying out the revision. Regulations will also have the flexibility to allow the Department to revise procedures as the local development plan system evolves.

Clause 17: Joint plans

This clause enables two or more district councils to jointly prepare (i) a joint Plan Strategy or (ii) a joint Plan Strategy and a joint Local Policies Plan. It also sets out the arrangements which are to apply in such a case. If any district council withdraws from an agreement to prepare (i) a joint Plan Strategy or (ii) a joint Plan Strategy and a joint Local Policies Plan, it will be possible for the remaining district council(s) to continue with the preparation of a corresponding Plan Strategy or Local Policies Plan.

Clause 17(7) – power to prescribe period within which a request that an independent examination is resumed should be made.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the timeframe within which a district council may request that a suspended independent examination should be reconvened. This period is likely to be 3 months from the date when the independent examination was suspended.

The Department considers that this power is best placed in regulations as it will only set out time within which a district council should apply to the Department and Regulations will also have the flexibility to allow the Department to revise this time if it considers it necessary as the local development plan system evolves.

Clause 17(9) – power to make regulations defining what constitutes a corresponding Plan Strategy or a corresponding Local Policies Plan document under Clause 17(7).

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe what constitutes a corresponding Plan Strategy or a corresponding Local Policies Plan that may be considered as a joint document at the independent examination.

The Department considers that this power is best placed in regulations as it will only define what constitutes a corresponding document that can be considered at the independent examination. Regulations will also have the flexibility to allow the Department to revise this if it considers it necessary as the local development plan system evolves.

Clause 21- Annual monitoring report

This clause requires district councils to report annually to the Department on whether the policies in the Plan Strategy or Local Policies Plan are being achieved. The clause also provides powers for the Department to make regulations prescribing what information an annual report must contain, the period it must cover, when it must be made and the form it must take.

Clause 21(2) – power to prescribe the information the report shall contain as to the extent the objectives in the local development plan are being met.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the information that is required in the report setting out how the objectives in the local development plan are being met.

The Department considers that this power is best placed in regulations as it will only set out the content and matters contained in the report, it also allows the Department to have the flexibility to amend them as part of the evolution of this new development plan system

Clause 21(3) – power to prescribe the form and content of an annual monitoring report, the time when it should be made to the Department and such other matters as are specified

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the form and content of the Annual Monitoring Report, when it should be made and any additional matters as may be specified.

The Department considers that this power is best placed in regulations as it will only set out the content and matters contained in the report and dates it should cover and when it should be made to the Department. It also allows the Department to have the flexibility to amend them as part of the evolution of this new development plan system.

Clause 22 - Regulations

This clause gives the Department the power to make regulations in connection with the exercise by any person of local development plan functions.

Clause 22 - this clause confers broad power on the Department to prescribe detailed provisions as to the preparation and approval of the Plan Strategy or Local Policies Plan.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Clause 22(1) contains a general power for the Department to make provision for the exercise of local development plan functions. This power is necessary because the Bill deals with a wide range of local development plan functions which relate to different stages in the process which are themselves set out in regulations in order to implement the intentions of the Bill.

Clause 22(2) makes particular provision for regulations on specific aspects of the provisions of Part 2 of the Bill. These include the procedures to be followed in undertaking the sustainability appraisal under clauses 8 and 9, the giving of notice and publicity, the nature of consultation and public participation, the making and consideration of representations, the timing of actions, the publication of documents and the monitoring of functions under Part 2.

This power is not entirely new as it is similar to that previously held by the Department under Article 10 of the Planning (Northern Ireland) Order 1991 albeit in more specific terms. It also mirrors the general regulations powers for development plans in England and Wales.

The Department considers that these considerable requirements as to what should be done by whom and when are procedural requirements and best placed in regulations.

Part 3 – Planning Control

Clause 25: Hierarchy of Developments

A new hierarchy of developments is defined and the Department can make regulations as to the classes of development which falls into either the major developments or local developments categories. The Department can require a specific application which would normally be local to be dealt with as if it is major.

Clause 25(2) – power to prescribe categories of major and local development

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to describe different classes of development and assign them as major or local development.

The Department considers that this power is best placed in regulations as it will enable the Department to re-categorise development if economic or other circumstances change.

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

This clause provides for the submission of certain planning applications directly to the Department for determination by it rather than by the council. Where a proposed development exceeds specific thresholds set out in Regulations, the applicant must, before submitting an application for planning permission, consult with the Department to enable the Department to decide if that application will fall to be determined by the Department or by the council. If the Department considers that the application is regionally significant or involves a substantial departure from the development plan, then it will deal with it itself. Applications under this clause follow the process similar to that previously used for Article 31 applications under the Planning (Northern Ireland) Order 1991, with the option for a public inquiry to be held by the PAC or a person appointed by the Department. The decision of the Department is final for these types of applications.

Clause 26(1) – Power to prescribe which applications the applicant must enter into consultation with the Department.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe in regulations which applications an applicant must enter into consultation with the Department upon. This will enable the Department to determine if the application is for a Regionally Significant development.

Clause 26(2) – power to prescribe the procedure to be followed by the proposed applicant in consulting the Department on the proposed application.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to specify in Regulations the procedure to be followed by the proposed applicant in consulting the Department on the proposed application.

The Department considers that this power is best placed in regulations as relates to the detail of a consultation process and will enable the Department to revise the procedures as the planning system develops or if economic or other circumstances change.

Clause 27 - Pre-application community consultation

Clause 27 places obligations on developers to consult the community in advance of submitting an application if the development falls within the major category. This includes those major developments which the Department will determine because they are of regional significance. The minimum period of consultation is 12 weeks, and regulations will prescribe the minimum requirements for the developer. Additional requirements may be placed on the consultation arrangements for a particular development if the district council or Department considers it appropriate.

Clause 27(4) allows for regulations to prescribe the form and contents of the “proposal of application notice" which developers must submit to the Department or district council in advance of a formal application.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the form and content of the proposal of application notice and a description of the development to be carried out, the address, site location, and contact details of prospective applicant.

Clause 27(5)(a) and (b) allows for regulations to specify who this notice must be given to, and with whom the developer must consult prior to submitting the application.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe as to what exactly is expected of the developer from pre-application community consultation, such as who the notice must be given to and who should be consulted and how. This information must be provided to enable the district council or Department to determine if further consultation beyond the legislative minimum is required for a particular development.

The Department considers that the above powers are best placed in regulations as they are procedural requirements and it will enable the Department to revise the procedures as the new planning system develops or if economic or other circumstances change.

Clause 28 - Pre-application community consultation report

After the community consultation in clause 27, a report must be produced and this is to be submitted with the application. Regulations can be made as to what this should contain.

Clause 28(2) makes provision for power to prescribe the form of the pre-application community consultation report.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department the power to prescribe the information that is required in the pre application community consultation report. This allows the detail to be provided as to the format the report should take.

The Department considers that this power is best placed in regulations as it will only set out the content and matters contained in the report. It also allows the Department to have the flexibility to amend them as part of the evolution of this new planning control system.

Clause 30 (1) - Pre-determination hearings

The Department can require the district council through subordinate legislation to provide the opportunity for the applicant to have a hearing before the district council, as part of the application process, for certain types of applications. The procedures for the hearings will be decided by the district council concerned, and it will decide on the parties which will have a right to attend the hearing.

Clause 30 (1) allows the Department to make regulations or a development order to set out which developments will be subject to pre-determination hearings.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations or Development Order)
Assembly Procedure: Negative resolution.

Gives the Department the power to make regulations or a development order which will set out the classes of development the pre-determination hearings will apply to.

The Department considers that this power is best placed in subordinate legislation to allow flexibility for further classes to be added easily, or some to be removed, once the operation of the hearings is assessed.

Clause 31 - Local Developments: Schemes of Delegation

This clause requires each district council to prepare a scheme of officer delegation, stating the application types were they will allow the decision to be taken by one planning officer rather than a full district council committee. The scheme must be kept under regular review. The decision will have the same effect as one taken by the committee. In individual cases the district council will be able to decide that an application which would normally fall within this scheme be determined by the full committee.

Clause 31(1) makes provision for the preparation of a “scheme of delegation".

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Subsection (1) allows the Department to prescribe the frequency with which the district council must prepare a scheme of officer delegation.

Clause 31(3) makes provision for the form and content of a “scheme of delegation".

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

This subsection allows the Department to prescribe the form and content of the scheme, the procedures to be followed by a district council in the preparation and adoption of the scheme, and the requirements for publishing the scheme.

The Department considers this is best placed in regulations as it will ensure schemes of officer delegation are kept up to date. The procedures will ensure each scheme is given adequate scrutiny before being adopted.

Clause 34 – Making and alteration of simplified planning zones

This clause enables a district council to make or alter a simplified planning zone scheme at any time in any part of its area. The exception is where a scheme has been approved by the Department rather than adopted by the district council. In such cases, the consent of the Department is required before a scheme may be altered by the relevant district council.

Clause 34(3)(c) enables the Department to prescribe or direct which additional matters the district council must take into account when making or altering a simplified planning zone.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

This subsection allows the Department to prescribe specific matters, in addition to the Regional Development Strategy and policy or advise contained in guidance issued by the Department, which the district council must take into account when making or altering a simplified planning zone.

The Department considers this is best placed in regulations as it will ensure the matters to be taken into account may be kept up to date by way of a statutory rule rather than by amendment of the primary legislation.

Clause 41 - Notice, etc. of applications for planning permission

The publicity requirements for applications in the Planning (Northern Ireland) Order 1991 which require that the Department must (a) publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated; and (b) shall, where it maintains a website for the purpose of advertisement of applications, publish the

notice on that website are moved to subordinate legislation; this clause reflects the situation in England, Wales and Scotland, where the power to specify the publicity requirements is contained in subordinate legislation. This will allow the requirements to be regularly reviewed to keep up to date with changing media.

Clause 41(1) makes provision for the form and content of Notice etc of applications for planning permission.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Development Order)
Assembly Procedure: Negative resolution.

This allows the Department by way of a development order to specify the publication requirements for giving notice of planning applications. It also makes provision for the detail to be contained in such notices.

Clause 41(2) makes provision for the applicant to provide evidence of development order requirements.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Development Order)
Assembly Procedure: Negative resolution.

This allows the Department by way of a development order to require the applicant to provide evidence that the publicity arrangements outlined above have been met.

Clause 50: Duty to decline to determine application where clause 27 not complied with

If the pre-application community consultation requirements in clause 27 have not been complied with, the district council or Department must decline to determine the application. The district council or Department can request additional information in order to decide whether to decline the application.

Clause 50 (2) – power to prescribe in regulations the time within which additional information should be submitted.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Regulations may prescribe the timeframe within which the additional information the Department or district council may require before it can determine if the duty to determine an application may be declined, should be submitted.

This is best addressed in regulations to provide flexibility should it be deemed necessary to make amendments.

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

The Department may make a development order to specify how applications are to be dealt with by itself or by district councils. It can direct that the district council is restricted in its power to grant permission for some developments, and require it to consider conditions suggested by the

Department before granting permission on an application. A development order may require district councils and the Department to consult specified authorities or persons before determining applications. A development order can also specify who applications need to be sent to under the Bill, and who should in turn be sent copies.

Clause 56 (1) + (2) – power to specify by way of a development order the method of dealing with applications or the directions that may be given by the Department to district councils as to their handling of applications.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Development Order)
Assembly Procedure: Negative resolution.

A development order can regulate the procedure for dealing with planning applications. This may include allowing the Department to restrict the ability of a district council to grant permission in certain cases. It may also enable the Department to give directions to district council requiring it to consider the imposition of a specified condition. Those with whom the council or the Department must consult before granting permission may be contained in this order also. The Order may also set out requirements to notify applicants of decisions within a specified time. The Order may state to whom applications can be sent and who must then be sent copies.

The Development Order will ensure applications are dealt with consistently across all district councils. It will provide uniformity for applicants who may be dealing with more than one district council.

The Department considers that these are procedural duties that are best dealt with by way of a development order.

Clause 58: Appeals

If an application made to a district council is referred or granted subject to conditions the applicant may appeal to the PAC. The time limit for lodging an appeal is reduced from 6 months to 4 or such other period as may be prescribed by development order. If the applicant or district council wish, they may appear before and be heard by the Commission.

Clause 58 (3) – power to specify any period (other than the specified 4 months) within which an appeal may be served upon the PAC.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Development Order)
Assembly Procedure: Negative resolution.

Under this provision the Department has the option to alter the appeal period limit of 4 months through a General Development Order where there are circumstances where the Department deems it necessary to do so.

This is best addressed in a development order as it provides flexibility and speed of impact should it be necessary to alter the appeal period.

Clause 66: Power to make non-material changes to planning permission

A district council may, upon an application being made to it, make a change to an existing planning permission. It may only make that change if to do so would not have any material effect on the permission. The power to make such a change includes the power to amend or remove conditions or impose new ones.

Clause 66 (5) and (8) - Power to specify by way of a development order the form and manner of an application to a district council in respect of a non-material change to an existing planning permission as well as consultation and publicity requirements.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Development Order)
Assembly Procedure: Negative resolution.

The development order will prescribe the form and manner of applications to the district council for a non-material change to an existing planning permission as well as consultation and publicity requirements. This ensures applications for non-material changes follow a consistent format across all district council areas and that the requisite information is included and procedures followed.

The Department considers that this procedural and technical approach is best addressed in a development order.

Clause 70: Procedure for making unopposed revocation or modification orders

This clause allows for an expedited procedure for revocation or modification orders made by district councils where the making of the order has not been opposed. It provides that the confirmation of the order by the Department is not required in such cases.

Clause 70 (2) – power to prescribe the procedure for advertising revocation or modification of planning permission.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

The expedited procedure requires the council to advertise the revocation or modification of the planning permission in the manner set out in Regulations.

The requirement as to the manner of advertisement is best addressed in regulations as it is a procedural issue and will ensure conformity in the approach to advertisement. The regulations will have flexibility to adapt to different requirements as the system evolves.

Clause 78: Land belonging to councils and development by councils

This clause introduces new powers setting out the procedure for dealing with district councils' own applications for planning permission. The new powers are introduced to ensure district councils do not face a conflict of interest in dealing with their own proposals for development. The principle remains that district councils will have to make planning applications in the same way as other applicants for planning permission. Provisions are introduced for district councils to grant planning permission for their own development or for development carried out jointly with another person and for development to be carried out on land owned by district councils.

Clauses 78(1)(b) and 78(3) and 78(4) and 79(5) – power to make regulations or development order for the provision of dealing with development on land belonging to the district council.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations) and (Development Order)
Assembly Procedure: Negative resolution.

Specifically, the new powers enable the Department to make regulations modifying the application of Parts 3 (Planning Control), 4 (Additional Planning Control - apart from Chapters 1 and 2 of that Part) in relation to land of interested district councils; and the development of any land by interested district councils jointly with any other persons. The regulations may deal with procedural arrangements and will ensure that conflicts of interest are avoided.

These are best dealt with as they deal with procedural and technical issues and may be too long and varied to be included in the primary legislation

Part 4 – Additional Planning Control

Clause 85: Applications for listed building consent

This clause specifies that applications for listed building consent must be made in a manner and format which will be specified in regulations. The regulations shall specify that applications for consent must include statements about design principles, access to the building, publicity for the application and requirements as to consultation. Regulations must also specify requirements for the district councils to take account of responses from consultees.

Clause 85(1) - Applications in form and manner prescribed

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

This enables the Department to prescribe the form and manner applications for listed building consent should be made to the district council. The Department may also prescribe the particulars and evidence that may be required to enable the determination of the application.

This provides flexibility by making it easier to change the provisions should policy relating to procedural and technical issues change.

Clause 85(2) - Applications to be accompanied by other information

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

This enables the Department to prescribe that certain applications for certain descriptions of listed building consent to be accompanied by a statement of the design principles and concepts that will be applied to the work to be carried out on the listed building. It may also prescribe that a statement of how issues related to access have been dealt with is required.

This provides flexibility by making it easier to change the provisions should policy relating to procedural and technical issues change.

Clause 85(3) – Information in form and manner prescribed

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

This enables the Department to prescribe the form and manner of the information required under 85(2) should be made to the district council.

This provides flexibility by making it easier to change the provisions should policy relating to procedural and technical issues change.

Clause 85(4) Applications for listed building consent

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Powers to establish how applications for listed building consent should be publicised were contained in primary legislation in Schedule 1 of the Planning (Northern Ireland) Order 1991. This power establishes that requirements such as publicity or consultation will now be prescribed by regulation.

This provides flexibility by making it easier to change the provisions should policy relating to procedural and technical issues change.

Clause 95: Appeal against decision

Under this clause an applicant can appeal to the PAC where their application to a district council for listed building consent or approval is refused or where they object to any conditions that have been imposed. As with appeals under clause 58 for planning applications, the appeal must be lodged with the Commission within 4 months or such other period as may be prescribed by development order.

Clause 95(3) Appeal against decision

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Gives the Department power to prescribe the appeal period in which an appeal relating to listed building consent must be made to the Planning Appeals Commission.

The Bill reduces the appeal period to 4 months. This delegated power allows the appeal period to be easily reduced or extended, without the necessity of using primary legislation, if 4 months turns out to be inappropriate.

Clause 99: Procedure for revoking or modifying listed building consent where there is no opposition to doing so

This clause applies where a district council has made an order under clause 97 revoking or modifying a listed building consent and the owner or occupier of the land and all persons who the district council think will be affected by the order have notified the district council in writing that they have no objections. The Department's confirmation is not required in such cases.

Clause 99(2)(a) Procedure for clause 97 orders: unopposed cases.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

This power requires councils to advertise, in a manner to be prescribed in regulations, that an unopposed order modifying or revoking listed building consent has been made.

It ensures that all councils advertise these orders in a standardised manner.

Clause 106: Application of Chapter 1, etc., to land and works of councils

This clause introduces new powers setting out the procedures for dealing with district councils' own applications for listed building consent. Regulations may be made under this clause modifying or excepting certain provisions of the Bill relating to listed building consent in their applicability to district councils.

Clause 106(1) Applications of Chapter 1, etc., to land and works of councils

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

Clause 79 makes provision for the listing of buildings of special or architectural interest. The power in clause 106(1) enables regulations to be made modifying or excepting clause 79 in its application to land owned by the council.

Clause 106(2) Applications of Chapter 1, etc., to land and works of councils

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

The power in clause 106(2) enables regulations to be made modifying or excepting various other provisions of the Bill relating to listed buildings in their application to district councils' own applications to demolish, alter or extend listed buildings.

The regulation powers are needed to cover any specific circumstances that may emerge when councils make applications for listed building consent.

Clause 108: Applications for hazardous substances consent

This clause is a regulation making power making provision for the form and content of consent applications. Regulations made under this clause may also require a district council to consult the

Health and Safety Executive (HSENI) before determining an application for hazardous substances consent.

Clause 108(4)(f) Applications for hazardous substances consent.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

Councils are prohibited from granting hazardous substances consent during a time period that may be prescribed.

This regulation making power is required to enable a “breathing space" before a council grants hazardous substances consent. This would for example allow the Department to consider calling in an application for its determination if, for example, the council was minded to grant consent against the advice of the Health and Safety Executive.

Clause 110: Grant of hazardous substances consent without compliance with conditions previously attached

This clause confers power for a district council or the Department to review the conditions subject to which the consent had previously been granted. Thus a person making a fresh application for hazardous substances consent can apply to have the conditions attached to the original consent reviewed.

Clause 110(2) Grant of hazardous substances consent without compliance with conditions previously attached

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

Regulations prescribe the form and content of such applications and the procedure to be followed.

The Department considers that these powers are best exercised through subordinate legislation as this will give flexibility to amend procedures if necessary.

Clause 114: Appeals

This clause gives a right of appeal when an application for hazardous substances consent is refused or granted subject to conditions. The appeal is made to the PAC.

Clause 114(3) Appeals

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

This allows the period for appealing an application for hazardous substances consent (currently set at 4 months) in clause 114(3) to be changed by development order.

This power is required to provide an easier and quicker way (other than the use of primary powers) to make a future change to the appeal period, should this become appropriate.

Clause 119: Applications by councils for hazardous substances consent

This clause introduces new powers setting out the procedures for dealing with district councils' own applications for hazardous substances consent. Regulations may be made under this clause modifying or excepting provisions of the Bill relating to hazardous substances consent in their application to district councils.

Clause 119(1) Applications by councils for hazardous substances consent

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

As the provisions in the Bill relating to hazardous substances consent may not be appropriate in their application to district councils' own applications for consent, this regulation making power enables those provisions to be modified or disapplied.

Part 5 – Enforcement

The Bill introduces, for the first time in the planning system, use of fixed penalty notices as an alternative to prosecution in relation to failure to comply with an Enforcement Notice and a Breach of Condition Notice. District Councils are given the power to retain the receipts from fixed penalty notices.

Clause 152 – Power to give fixed penalty notice – Enforcement Notice

Clause 152 gives an authorised officer of a district council the power to issue a fixed penalty notice in respect of the offence (Clause 146) of failure to comply with an Enforcement Notice.

Clause 152(8) – Power to Prescribe Form

Power conferred on: The Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Affirmative resolution

This power allows the Department of the Environment, by regulations, to prescribe the form that a fixed penalty notice should take.

Clause 152(9) – Power to Set Penalty Amount

Power conferred on: The Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Affirmative resolution

In order that the amount remains proportionate over time, this clause allows the Department of the Environment to set, by regulations, the amount of the fixed penalty.

The procedure for these Regulations is affirmative resolution which means that a draft of the Regulations must first be approved by the Assembly before they are made.

Clause 153 – Power to give fixed penalty notice – Breach of Condition Notice

Clause 153 gives an authorised officer of a district council the power to issue a fixed penalty notice in respect of the offence (Clause 151(9)) of failure to comply with a Breach of Condition Notice.

Clause 153(8) – Power to Prescribe Form

Power conferred on: The Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Affirmative resolution

This power allows the Department of the Environment, by regulations, to prescribe the form that a fixed penalty notice should take.

Clause 153(9) – Power to Set Penalty Amount

Power conferred on: The Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Affirmative resolution

In order that the amount remains proportionate over time, this clause allows the Department of the Environment to set, by regulations, the amount. Same as above

The procedure for these Regulations is affirmative resolution which means that a draft of the Regulations must first be approved by the Assembly before they are made.

Clause 154 – Use of fixed penalty receipts

Clause 154 enables district councils to use the receipts from fixed penalty notices issued under Clause 152 and Clause 153 of this Bill for the purposes of their functions under Part 5 of the Bill together with such other of their functions as may be specified.

Power conferred on: The Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

This power allows the Department of the Environment to specify by regulations other functions for which the district council may use the receipts – which may include any of its functions.

Clause 154(5) – Power to Make Provisions for Spending of Receipts

Power conferred on: The Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

This power allows the Department of the Environment to make provision through regulations for what a district council is to do with fixed penalty receipts pending their use or if they have not used them before a specified time, or for accounting arrangements to be put in place. The aim

of this power is to encourage good accounting practice and the prompt spending of fixed penalty receipts.

Clause 172 Appeals against refusal or failure to give decision on application

If an application is made to a district council for a “certificate of lawfulness of existing use or development" or a “certificate of lawfulness of proposed use or development" and the application is refused or there is failure to give a decision on the application the applicant may appeal to the PAC. The time limit for lodging an appeal will be 4 months or such other period as may be prescribed by development order.

Clause 172 (1) – power to specify any period (other than an accepted 4 months) within which an appeal may be served upon the PAC.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Development Order)
Assembly Procedure: Negative resolution.

Under this provision the Department has the option to alter the appeal period limit of 4 months through a General Development Order where there are circumstances where the Department deems it necessary to alter the time limit.

This is best addressed in a development order as it provides flexibility and speed of impact should it be necessary to alter the appeal period.

Part 11 – Application of Act to Crown Land

Clause 210 – Urgent works relating to listed buildings on Crown land

Clause 210 makes provision for the submission by crown bodies of applications for listed building consent directly to the Department rather than to district councils. Such applications may only be made if the crown body has certified that the works are or significant public importance and must be carried out as a matter of urgency. The purpose of the direct submission of such applications to the Department is to enable them to be processed as expeditiously as possible.

Clause 210(7) – power to prescribe how the Department must give notice of the application and documents that are available for inspection.

Power conferred on: The Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

Under this provision the Department as the determining body must give notice of the application and the fact that the application and any related documents are available for inspection in the manner that is set out in the regulations.

As these are procedural issues the Department is of the opinion they are best addressed in regulations.

Clause 210(8)(c) – power to prescribe whom the Department must consult in determining such an application.

Power conferred on: The Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution

Regulations will set out which persons, in addition to the district council, whom the Department must consult in determining such applications. It is envisaged that these persons would include the NIEA and other persons whose expertise is required to reach a determination.

As these are procedural issues the Department is of the opinion they are best addressed in regulations.

Part 13 – Financial Provisions

Clause 219 Fees and charges

Clause 219 deals with provisions for the payment of both charges and fees relating to planning and consent applications. The provisions extend the enabling powers for the Department to make regulations for the payment of charges or fees for the recovery of the costs of performing departmental functions to district council functions. OFMDFM may also continue to make regulations for the payment of a charge or fee in respect of deemed planning applications or planning appeals.

Clause 219 (2) and (4) – power to make regulations for charging multiple fees.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

These subsections introduce a new power for charging a multiple fee for a retrospective planning application. This would be a premium fee to deter commencement of development prior to submitting a planning application and as a means of encouraging developers to seek relevant permission/consent at the appropriate time.

Part 14 – Miscellaneous and general provisions

Clause 224: Duty to respond to consultation

This clause requires that those persons or bodies which are required to be consulted by a district council or the Department before the grant of any permission, approval or consent must respond to consultation requests within a prescribed period. The clause also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

Clause 224 – power to prescribe whom the district council/Department should consult in the determination of specific applications.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

A development order will list various classes of planning applications and the persons/bodies whom the district council/Department must consult in determining those applications. These persons/bodies will be known as statutory consultees.

The development order may also require the statutory consultees to respond to any consultation request within a prescribed period and to report to the Department on their performance.

The Department considers that this power is best exercised through subordinate legislation as it will provide flexibility to amend the procedural and classification of this process if necessary.

Clause 227 – Inquiries to be held in public subject to certain exceptions

Clause 227 establishes the general rule that any inquiry required to be held under the Act must be held in public and the documentary evidence relating to it open to public inspection. However it provides an exception to this general rule in instances where sensitive information may be involved. In such cases it enables the Secretary of State or the Department of Justice to direct that access to certain information should be restricted at the inquiry.

The clause provides that the Secretary of State will have responsibility for issuing a direction restricting access to information at an inquiry in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information relating to:

(a) national security; or

(b) the measures taken or to be taken to ensure the security of any premises or property belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department; or

(c) measures taken or to be taken to ensure the security of any premises or property which is used for the purposes of the armed forces of the Crown or the Ministry of Defence Police.

The clause also provides that the Department of Justice will have responsibility for issuing a direction restricting access to information at an inquiry in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information (contrary to the public interest) relating to the measures to be taken to ensure the security of any premises or property other than premises or property mentioned above.

Clause 227 is in broadly similar terms to Article 123A of the Planning (Northern Ireland|) Order 1991 the key difference being that the Secretary of State performed the function now being performed by the Department of Justice. This change is as a result of the devolution to the Department of Justice of certain matters relating to policing and justice.

General note: Clauses 228 to 230

The powers in clauses 228 - 230 are not new enabling powers, they are in essence broadly the same as those in the Planning (Northern Ireland) Order 1991 (see Article 123A), albeit they are now divided between the Secretary of State and the Department of Justice instead of, as

previously, resting solely with the Secretary of State again reflecting the devolution to the Department of Justice of certain matters relating to policing and justice. The powers are intended to form a package and for clarity are discussed here.

Clause 228 – Directions: Secretary of State

In instances where the Secretary of State is to make a direction as mentioned above, clause 228 provides that the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will, as a result of the direction, be prevented from hearing or inspecting evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

Clause 228(3) – Power for Lord Chancellor to make rules

Power conferred on: The Lord Chancellor
Power exercisable by: Statutory Instrument (Rules)
Procedure: Rules made under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

This power enables the Lord Chancellor, by rules, to make provision as to the procedure to be followed by the Secretary of State before a direction is given under clause 227 in a case where a person has been appointed by the Advocate General for Northern Ireland as mentioned above. It also enables him to make rules as to the functions of the person appointed. This power already existed in the Planning (Northern Ireland) Order 1991 and has been carried forward into the Planning Bill.

Clause 229 – Directions: Department of Justice

In instances where the Department of Justice is to make a direction as mentioned above, clause 229 provides that the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will, as a result of the direction, be prevented from hearing or inspecting evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

Clause 229(3) – Power for Department of Justice to Make Provisions for Procedure to be Followed Before a Direction is Given

Power conferred on: The Department of Justice
Power exercisable by: Statutory Rule (Rules)
Assembly Procedure: Negative resolution

This power enables the Department of Justice, by rules, to make provision as to the procedure to be followed by the Department of Justice before a direction is given under clause 227 in a case where a person has been appointed by the Advocate General for Northern Ireland as mentioned above. This power already existed in the Planning (Northern Ireland) Order 1991 although it rested solely for the Secretary of State and has been carried forward into the Planning Bill.

Clause 229(5) – Power for Lord Chancellor to Make Rules

Power conferred on: The Lord Chancellor
Power exercisable by: Statutory Instrument/Rule (Rules)
Procedure: Rules made under subsection (5) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

This power enables the Lord Chancellor, by rules, to make provision as to the functions of a person appointed by the Advocate General of Northern Ireland to represent the interests of those people who are prevented from seeing restricted material. This power already existed in the 1991 Order and has been carried forward into the Bill.

Clause 230 – National security

Clause 230 contains the procedures for the certification by the Secretary of State or the Department of Justice of planning applications, consents and approvals the consideration of which, may raise issues of national security or matters relating to the security of Crown or other properties and the public disclosure of such information would be contrary to the national or public interest. Procedures will enable decisions to be made where, for security reasons, details of the development cannot be revealed but where to withhold such details would impact on the ability of interested parties to fully participate in the planning process. The Department of the Environment will be required to hold a public local inquiry in such circumstances and this will enable a direction to be made under the preceding clauses restricting access to certain sensitive information.

The roles of the Secretary of State and the Department of Justice in relation to certification under this clause are split. The Secretary of State will have responsibility for the making of rules in circumstances where he has certified under this clause, the Department of Justice will have responsibility for the making of corresponding rules where that Department issues the relevant certification under this clause.

Clause 230(2) – Secretary of State Certification Rules

Power conferred on: The Secretary of State
Power exercisable by: Statutory Instrument/Rule (Rules)
Procedure: The rules shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

This power allows the Secretary of State, by rules to establish the procedure to be followed in certifying an application under this clause. The power also allows the Secretary of State to make rules authorising the Department of Environment to dispense with a public local inquiry in instances where no objections or representations have been received in relation to the application in question or where any such objections have been withdrawn. This power already existed in the Planning (Northern Ireland) Order 1991 and has been carried forward in the Bill.

Clause 230(5) – Department of Justice Certification Rules

Power conferred on: The Department of Justice
Power exercisable by: Statutory Rule (Rules)
Assembly Procedure: Negative resolution

This power allows the Department of Justice by rules to establish the procedure to be followed in certifying an application under this clause. The power also allows the Department of Justice to

make rules authorising the Department of Environment to dispense with a public local inquiry in instances where no objections or representations have been received in relation to the application in question or where any such objections have been withdrawn.

Clause 237 Planning register

In keeping with the transfer of functions to district councils clause 237 requires all district councils to keep and make available a planning register containing copies of the items listed, which include all applications for planning permission. The intention is each council should maintain a register for its area and that register will contain documents issued either by the council or the Department. There is to be a new power which will enable a development order to require the Department to supply the council with the necessary information in relation to the Department's functions.

Clause 237(2) – Power Requiring the Department to Provide Information to a Council.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Development Order)
Assembly Procedure: Negative resolution.

This clause introduces a new power so that a development order may require the Department to supply information to the relevant district council in relation to applications or other matters dealt with by the Department to enable the council to register the information on the register maintained by it.

Clause 244 Further Provision

This clause allows the Department to make subordinate legislation to give full effect to the Bill including transitional or transitory provisions and savings in connection with the coming into operation of any provisions. A draft of such an order must be laid before and be approved by resolution of the Assembly.

Clause 244 provides an enabling power to make such consequential and transitional provision as may be necessary as a result of the introduction of the Act.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Development Order)
Assembly Procedure: Negative resolution.

Subsection (1) enables the Department to make such consequential, incidental or consequential provision as it considers appropriate for the purposes of the Act or to give the Act full effect.

Subsection (2) enables the Department to make such transitional or savings provisions as it considers appropriate in connection with the coming into operation of the Act or in connection with any provision made by order under subsection (1).

An order under clause 244 may amend modify or repeal any statutory provision.

Schedule 1 – Simplified Planning Zones

Schedule 1 prescribes the procedure for preparation and adoption of proposals for a simplified planning zone (SPZ) scheme and other related matters.

Paragraph 2(2) and 2(3) – allows the Department to prescribe whom the district council must consult or notify and the steps it must take to fulfil publicity requirements

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

The Department considers that this power is best exercised through subordinate legislation as this will give the Department the flexibility to amend the procedures at a later date if the need is identified.

Paragraph 3(a), 3(b), 3(c) and 3(d) – this provision allows the Department to prescribe the places at which documents must be made available for inspection, the steps to be taken for advertising purposes, inviting objections to be made within a prescribed period and sending copies of the documents to the Department and any other persons specified in Regulations.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

This allows the Department to prescribe where the SPZ proposals should be made available for inspection and the steps to be taken by the district council for the purpose of advertising the proposals in the press and on its website. It will also allow the Department to prescribe the steps the district council must take for inviting objections to the proposals and the length of the consultation period. Additionally, the Department may prescribe that copies of the proposals should be sent to the Department and other bodies as may be specified by the Department.

The Department considers that this power is best exercised through subordinate legislation as this will give the Department the flexibility to amend the procedures at a later date if the need is identified.

Paragraph 4(2) – allows the Department to prescribe the requirements for the qualifications and appointment of the person who will conduct the independent examination

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

In the event that a district council decides to appoint a person other than the PAC to carry out an independent examination for the purpose of considering objections to a proposed SPZ scheme, this provision enables the Department to prescribe the arrangements for the appointment of such a person and the qualifications that such a person must hold. The Regulations may also enable the Department to direct a council to appoint a particular person, or one of a prescribed list or class of persons.

The Department considers that this power is best exercised through subordinate legislation as this will give the Department the flexibility to amend the procedures and/or requirements at a later date if the need is identified.

Paragraph 8(1) and 8(2) – allows the Department to make regulations with respect to every stage of the SPZ process, including the form and content of SPZ schemes, publicity requirements, the treatment of objections, giving notice to particular persons, charges for providing hard copies, notification of whether or not an independent examination will be held and consultation with specific bodies.

Power conferred on: Department of the Environment
Power exercisable by: Statutory Rule (Regulations)
Assembly Procedure: Negative resolution.

These provisions enable the Department to make regulations in respect of all stages of the SPZ process. In particular, the Department may prescribe the form and content of SPZ schemes; the procedures that must be followed in connection with each stage of the process; the notice or publicity to be given to the matters or proposed matters to be included in the SPZ scheme and to the adoption or approval of such a scheme; the arrangements for the making and consideration of representations; the circumstances in which representations are to be treated as objections; the provision of notice of adoption or approval of an SPZ scheme to persons who have submitted objections and have requested that such notice be given; and the requirement for such persons to pay a reasonable charge.

The Department may also prescribe that the district council must notify the Department and such other persons as may be specified by the Department of their decision to hold or not to hold an independent examination.

Finally, the provision enables the Department to make regulations requiring or authorising councils to consult with other persons before taking further steps in the SPZ process; requiring councils to provide copies of documents where these are requested (subject, if the regulations so provide, to the payment of a reasonable charge); and providing for the publication and inspection of an adopted or approved SPZ and for copies to be made available for sale.

The Department considers that these powers are best exercised through subordinate legislation as this will give the Department the flexibility to amend the procedures and/or requirements at a later date if the need is identified.

Annex B

Table – Retained Delegated Powers

Clause	Article1	Title	Purpose	Reason for power
23(3)(e)	11(2)(e)	Meaning of Development	To provide that a change of use is not development where the former use and the new	This allows development uses to be made and revised quickly.

Clause	Article1	Title	Purpose	Reason for power
			use are both within the same class.	
23(4)	11(2)(A)	Meaning of Development	To allow the Department to specify in which circumstances the increase of the internal floorspace of a building may be taken to be development.	Allows for procedures to be made and revised quickly.
32	13	Development Orders	This clause provides the power to make a development order. The development order may itself grant planning permission for specific categories of development without the need for a planning application or it may make provision for an application for planning permission to be made to the council or the Department.	A development order contains procedural rules which are more appropriate for subordinate legislation. It also specifies types of development which do not require an application for planning permission. This is also more appropriate for subordinate legislation as it enables those categories to be amended more easily than would be the case if they were within primary legislation.
33(4)(c)	14(4)(c)	Simplified Planning Zones	This provides that a Simplified Planning Zone must – in addition to the matters specified in clause 33(4) – contain such other matters as may be set out in Regulations.	Allows for specific matters that must be specified to be amended quickly.
38(1)(d)	18(1)(e)	Exclusion of certain descriptions of land or development	This provides power to specify in Regulations descriptions of land which should not be included in a simplified planning zone.	Allows for descriptions of lands that may not be included in a SPZ be amended quickly.
39(6)	19(6)	Grant of planning permission in enterprise zones	Power to make Regulations setting out the procedure for excluding certain types of development from permission that would otherwise be granted by virtue of the designation of an enterprise zone.	It is more appropriate to deal with procedural matters such as these in subordinate legislation.

Clause	Article1	Title	Purpose	Reason for power
			Also power to deal with certain procedural matters relating to the grant of permission by virtue of the designation of an enterprise zone.	
40(1) 40(3) 40(4)	20(1) 20(2A) 20(2)(B)	Form and content of applications	A power to make a Development Order dealing with the form and content of applications for planning permission and the matters that must accompany such applications.	It is more appropriate to deal with procedural matters such as these in subordinate legislation.
42(7)	22(7)	Notification of applications to certain persons	A development order may specify the form and content of any certificate issued.	This ensures clarity for those issuing certificates.
45(2) 45(3)	25(2)	Determination of planning applications	This allows the Department to set out in a development order the minimum period for consideration of planning applications, and the period of time during which representations on an application are considered.	Allows for procedures to be made and revised quickly.
51(1) 51(2)	25(B)(1) 25(B)(2)	Assessment of environmental effects	Regulations to specify those types of applications which require consideration of potential environmental effects.	Allows for procedures to be made and revised quickly.
53(7)	27A(3)	Power to impose aftercare conditions on grant of mineral planning permission.	Regulations may prescribe that the period for which the aftercare conditions is a period other than 5 years.	Allows for flexibility in situations where the Department considers 5 years is too short or too long a period.
54(2)	28(2)	Permission to develop land without compliance with conditions previously attached	Development Order may prescribe the form of the application and how it should be made.	Allows for procedures to be made and revised quickly.

Clause	Article1	Title	Purpose	Reason for power
59	33	Appeal against failure to take planning decision	This provides a power to specify in a development order the time within which the council must determine a planning application or certain other types of applications.	As this relates to the setting of a time period, it is more appropriate for it to be dealt with by subordinate legislation as it may be amended more easily.
76(5) 76(8) 76(10)	40A(5) 40A(8) 40A(10)	Modification and discharge of planning agreements	Allows the Department to prescribe procedures and time frames for applications for the modification and discharge of agreements. It also enables the Department to prescribe the form and content of such applications and the giving of notice and consideration of representations made for same.	Allows for procedures to be made and revised quickly.
77(3)	40B(3)	Appeals in relation to an application to modify or discharge a planning agreement.	Power to set out in Regulations the time for submitting an appeal and the manner in which the notice of appeal must be made.	Allows for procedures and forms to be made and revised quickly.
79(5)	42(5)	Lists of buildings of special architectural or historic interest	Power to set out in Regulations the type of notice that is required to be served by the Department on the owner of a building which is included or excluded from the list.	Allows for procedures and forms to be made and revised quickly
84(9)	44(9)	Control of works for demolition, alteration or extension of listed buildings	Allows the Department to appoint a date upon which the exemption of ecclesiastical buildings or buildings included in the schedule of monuments compiled and maintained under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 shall cease.	Allows the flexibility to remove these exemptions to Listed Building Consent quickly to meet any change in policy.

Clause	Article1	Title	Purpose	Reason for power
86(2) See clause 42(7)	Insofar as listed building applications would apply to 22(7)	Notification of applications for listed building consent to certain persons	Power to prescribe the form of the certificate relating to ownership of the land to which the application for listed building consent relates.	This ensures clarity for those issuing certificates.
94(2)	5(2)	Consent to execute works without compliance with conditions previously attached	Power to set out in Regulations procedural matters relating to an application to carry out works on a listed building without complying with the conditions of a listed building consent.	It is more appropriate to deal with procedural matters such as these in subordinate legislation as it may be amended more easily.
96	Schedule 1 Para (8)	Appeal against failure to take decision	This provides a power to specify in Regulations the time within which the council must determine an application for listed building consent.	It is easier to change the period in which a decision is to be made if the period is established in subordinate legislation
103(5)(b)	50(3)	Conservation areas	Provides a power to set out in Regulations the persons with whom the Department must consult before it designates a conservation area or it cancels or varies such a designation.	Provides flexibility as to the persons to be consulted
104(6)	51(4)	Control of demolition in conservation areas	This power enables the Department to make Regulations which modify various listed building provisions in the Bill in their application to conservation areas.	Provides flexibility so that the listed building preservation powers can be modified before applying them to conservation areas if circumstances require it.
107(4)	53(4)	Requirement of hazardous substances consent	Regulations must specify substances that are hazardous substances and the quantity which is to be the controlled quantity of any such substance. Regulations may provide that hazardous substances consent is or is not required. Regulations may provide that all	Hazardous substances may present a health and safety risk so it is important that regulations exist which can be quickly and easily amended to keep up with changing circumstances

Clause	Article1	Title	Purpose	Reason for power
			hazardous substances within a specified group are to be treated as a single substance.	
108(1) 108(2) 108(4) (a) to (e)	54(1) 54(2) 54(4)	Applications for hazardous substances consent	Regulations may be made as to form and manner in which applications for consent are made, particulars which accompany applications, advertising and timescale. May also provide that applications must include a certificate in a prescribed form and make provision as to who is to be treated as in possession of land. May require publicity and consultation in relation to applications and provide for their determination within prescribed time.	It is more appropriate to deal with procedural matters such as these in subordinate legislation as it can be amended more easily.
115(3)	60(3)	Effect of hazardous substances consent and change of control of land	Regulations may be made as to form and manner in which applications for the continuation of a hazardous substance consent are made, particulars which accompany applications, advertising and timescale. Regulations may provide that applications must include a certificate in a prescribed form and make provision as to who is to be treated as in possession of land. Regulations may require publicity and consultation in relation to applications and provide for their determination within a prescribed time.	It is more appropriate to deal with procedural matters such as these in subordinate legislation as it can be amended more easily.

Clause	Article1	Title	Purpose	Reason for power
121(4)	65(2)	Tree preservation orders: councils	Power to make Regulations as to the form of tree preservation orders and the procedure to be followed with making and confirming such orders.	It is more appropriate to deal with procedural matters such as theses in subordinate legislation as they can be amended more easily to adapt to changing policy.
127(1)	66B(1)	Power to disapply section 126	Regulations to specify circumstances in which it is not an offence to carry out certain activities which could damage a tree in a conservation area.	Regulations provide flexibility in that they can be amended to adapt to changing policy.
128(2)	63A(2)	Review of mineral planning permissions	A development order can make the review of old mineral permissions provisions in schedules 2 & 3 applicable to planning permissions granted by development order.	Provides flexibility to adapt to changing policy.
129 (1)	67(1)	Control of advertisements	Power to make Regulations governing the display of advertisements with regards to dimensions, appearance position etc; powers to make provision in relation to consent for the display of advertisements; powers also to make provision prohibiting the display of advertisements in areas of special control.	Provide flexibility to adapt to changing policy. Existing regulations are extended to allow councils to designate areas of special control and to require such designations to require confirmation by the Department.
135(1)(b)	67A(1)(b)	Temporary Stop Notices: Restrictions	Regulations may prescribe that a temporary stop notice does not apply to specified types of activity or in specific circumstances.	To allow flexibility to adapt to new policy quickly.
139(7) 139(10)	68A(10)	Contents and effect of enforcement notice	Regulations may be made specifying any matters – other than those set out in this clause - which must be	To allow the detail on enforcement notices and replacement buildings to be laid out in subordinate, as these

Clause	Article1	Title	Purpose	Reason for power
			complied with in constructing a replacement building to comply with an enforcement notice; regulations may also be made specifying any matters – other than those set out in this clause - which may be included in an enforcement notice.	are inconsequential items.
161(4)(c) 161(10) 161(12)	81(4)(C) 81(10) 81(12)	Hazardous substances contravention notice	Powers to make Regulations dealing with various aspects of hazardous substances contravention notices including the persons on whom they must be served, their content and appeals against them.	It is more appropriate that the detail of the processes relating to hazardous substance contravention notices is included in subordinate legislation.
170(1) 170(4) 170(8)	83C(1) 83C(4) 83C(8)	Certificates under sections 168 and 169: supplementary provisions	These provisions contain powers for a Development order to specify the manner in which an application for a “Certificate of Lawful Use or Development" (CLUD) must be made as well as the format in which the certificate must be issued. They also contain powers for a development order to regulate matters as to the revocation of a CLUD.	This is all procedural detail, and it is best practice to include this in subordinate legislation.
180(1)	65(1)2	Compensation when listed building consent is revoked or modified	Regulations may prescribe the manner and time within which a claim for compensation must be made.	These are procedural requirements and it is more appropriate that they should be dealt with in subordinate legislation so that they can be amended to adapt to changing policy.
184(3)	67(3)3	Compensation for loss due to stop notice	The time and manner within which a claim must be made is	These are procedural requirements and it is more appropriate that they should be dealt

Clause	Article1	Title	Purpose	Reason for power
			specified by development order	with in subordinate legislation so that they can be amended to adapt to changing policy.
185(2)	67A(2)4	Compensation for loss or damage caused by service of building preservation notice	The manner and time within which a claim for compensation must be made is prescribed.	These are procedural requirements and it is more appropriate that they should be dealt with in subordinate legislation so that they can be amended to adapt to changing policy.
186(5)	67B(5)5	Compensation for loss due to temporary stop notice	Power to make a development order which specifies the time and manner of a claim for compensation.	These are procedural requirements and it is more appropriate that they should be dealt with in subordinate legislation so that they can be amended to adapt to changing policy.
189(4)(a)	94(4)(a)	Service of purchase notice	The manner in which a purchase notice is served and the time within which it must be served is specified by development order	Subordinate legislation provides flexibility to adapt to changing policy.
202(5)	111(5)	Procedure of appeals commission	Allows for rules to be made to regulate PAC procedures	This power is conferred on OFMDFM
208(1)(c)	118(1)(c)	Interpretation	Allows Order to specify other estates that may be classified as crown estate.	Provides flexibility to adapt to different estate that may fall into this category.
213 (2)	112D(2)	Applications for planning permission, etc, by Crown	Regulations may modify or exclude any statutory provision as it applies to applications for planning permission etc made by the Crown.	Subordinate legislation provides flexibility to adapt to changing policy.
215(4)	17(4)6	Correction of errors in a decision document	A period is specified by development order after which a council may not correct an error.	Provides flexibility to adapt to changing policy.
218(2)(i)	20(2)(j)7	Supplementary	To enable the Department to prescribe any type of decision,	Provides flexibility to adapt to changing policy.

Clause	Article1	Title	Purpose	Reason for power
			that is issued under the Planning Bill, as a decision document. This will allow the correction of errors in that document.	
219(1) 219(7) 219(8)	127(1) 127(2) 127(3)	Fees and charges	The Department may make Regulations setting charges or fees in connection with any of its functions under the Act. OFMDFM may make Regulations setting charges or fees in relation to deemed planning applications and appeals to the PAC under the Act.	Subordinate legislation provides greater flexibility to amend fees as necessary.
226(3)	123(2)	Local inquiries	Regulations may allow for the procedure to be followed in connections with public inquiries held under this Bill.	Provides flexibility to adapt to changing policy.
237 (1)	124(1)	Planning register	The manner in which a planning register is to be kept by the district council may be specified by a Development Order made by the Department.	It is more appropriate that a procedural matter such as this is dealt with in subordinate legislation.
242	129	Regulations and Orders	Power to make regulations and orders for prescribing anything which is authorised or required under the Bill. All Regulations and Orders under the Bill are subject to negative resolution excepting clauses 152 and 153 of the Bill, and Orders under Clause 208 of the Bill.	General enabling power for prescribing anything which is authorised or required to be prescribed.
Schedule 2 Para 6(12)	Schedule 1A Para 6(12)	Review of Old Mineral Planning Permissions	Power to prescribe period after which an applicant may make a non-determination appeal to the PAC.	Allows for flexibility to adapt to any variances for determining ROMP applications.

Clause	Article1	Title	Purpose	Reason for power
Schedule 3 Para 4(1)	Schedule 1B Para 4(1)	The first review date (periodic review of mineral permissions)	To allow the Department to specify a different review date by order subject to negative resolution.	It is appropriate to deal with this matter in subordinate legislation as it enables the alternative date to be specified more quickly than would be the case if the amendment was included in primary legislation.
Schedule 3 Para 4(3)	Schedule 1A Para 4(3)	The first review date (periodic review of mineral permissions	To allow the Department to specify a different review date by order subject to negative resolution	It is appropriate to deal with this matter in subordinate legislation as it enables the first review date to be specified more quickly than would be the case if the amendment was included in primary legislation
Schedule 5 Para 4(4)	Schedule 3 Para 4(4)	The Historic Buildings Council	Allows the Department to make regulations relating to the appointment, constitution or functions of the Historic Buildings Council committee.	It is more appropriate to deal with procedural matters such as these in subordinate legislation.

(Footnotes)

1 Similar existing delegated powers under Article of the Planning (Northern Ireland) Order 1991

2 Article 65(1) of the Planning (Northern Ireland) Order 1972 No. 1634 (NI 17)

3 Article 67(3) of the Planning (Northern Ireland) Order 1972 No. 1634 (NI 17)

4 Article 67A(2) of the Planning (Northern Ireland) Order 1972 No. 1634 (NI 17)

5 Article 67B of the Planning (Northern Ireland) Order 1972 No. 1634 (NI 17)

6 Article 17 of the Planning Reform (Northern Ireland) Order 2006 No. 1252 (NI 7)

7 Article 20 of the Planning Reform (Northern Ireland) Order 2006 No. 1252 (NI 7)

Speaking Notes Part One and Part Two
13 January 2010

Environment Committee Presentation
Planning Bill

Part One and Part Two

13 January 2011

- Part 1 of the Planning Bill 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 (RDS). Planning Policy Statements (PPSs) together with the RDS will continue to provide a robust planning framework within which the new councils will be able both to prepare their local development plans, and to manage development.
- The duty on the Department to contribute to the achievement of sustainable development has been carried forward from the 1991 Order by clause 1 sub-section 2(b). This 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 considered it necessary to retain its ability to undertake surveys or studies to gather evidence on any particular planning issue. Members should note that the matters which the Department may survey at Clause 1 sub-section (4) have been expanded to include social and environmental characteristics, as well as physical and economic.
- Part 1 also re-enacts a duty on the Department to prepare a statement of community involvement which sets out the Department's policy for involving the community in the planning process. This duty is in relation to Part 3 of the Bill and we will of course come to the detail of this later in the scrutiny process.
- Moving on then to Part 2 which introduces a new local development plan system.
- Local development plans will be prepared by district councils for their council areas; these will replace current Department of the Environment development plans.
- I should say at the outset that the Minister is confident that councils will carry out all of their development plan duties. However, the legislation needs to cater for the unlikely event that a council is unable to fulfil its responsibilities. As a safeguard, the Bill therefore provides for the Department to intervene at various points in the local development plan process should it need to.
- Local development plans will comprise two documents; a Plan Strategy and a Local Policies Plan. These must be prepared, examined and adopted separately. Preparation of both must take account of the Regional Development Strategy, of policy or advice contained in guidance issued by the Department and of any other matter the Department may prescribe.
- The Plan Strategy will be prepared and adopted first. It will set out 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 will set out the detail. It will incorporate the detailed site specific plan policies and proposals for various topic areas such as housing, commercial or industrial growth, and appropriate maps will show where the various activities may be developed.
- This approach will have 3 key benefits:

- Firstly, it allows the Plan Strategy document to be adopted quickly within approximately 2 years. This will ensure there is early strategic direction in place for an area and 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 – this will make the preparation of the local policies plan document easier and faster;
- Thirdly, it will ensure that representations are more focused by being submitted and examined at the appropriate stage of the plan process.
- Under Clause 3 councils will be required to keep under review issues which may affect development and planning in district council areas. These include key physical, economic, social and environmental characteristics of the district; how land is used; population distribution, communications and transport. They are matters which will inform the production of the local development plan.
- 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. This 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 from preparation to adoption of the council's local development plan and when each will be achieved. The timetable will assist in programme management and help ensure faster plan production. It will help the public, stakeholders and consultees plan their involvement with the process.
- The council must attempt to agree both the Statement of Community Involvement and timetable with the Department. As a safeguard in the event of disagreement the Department can specify the terms of either document.
- Once they are agreed, the Statement of Community Involvement and the timetable together set the framework for local development plan preparation.
- Clause 5 requires the council and others involved in the development plan process to exercise these functions functions with the objective of contributing to the achievement of sustainable development.
- Clauses 8 and 9 require a Sustainability Appraisal to assess the environmental, social and economic effects of development plans. It will run throughout the plan preparation process.
- Clause 10 requires the Councils 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 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.
- 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, policy and guidance; and
- the coherence, consistency and effectiveness of the content of the plan document.
- The presumption 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 to suggest what needs to be done to make it sound.

- Any person who makes representations seeking to change a development plan document must (if they request) be given the opportunity to appear before and be heard by the person carrying out the examination.
- After the independent examiner has submitted their report to the Department, the Department will issue a direction to the council to adopt the development plan document.
- At present in Northern Ireland there is nothing in legislation requiring monitoring and review of development plans. Better monitoring and regular reviews of local development plans will enable district councils to keep plans up to date by readily reflect and adapt to changing circumstances. It will serve a useful purpose in improving the transparency of the planning process, and help keep the council, the community and business groups informed of development plan issues facing the area.
- Therefore, clauses 13 and 21 ensure local development plans will be reviewed at 5 yearly intervals and monitored annually. The district council will be required to report annually to the Department on the degree to which the objectives of its plan 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.
- Powers are also introduced at clause 17 for councils to work jointly in preparing local development plans if they so wish. This means that two adjacent councils can combine resources and prepare either a plan strategy or both plan documents jointly.
- Clause 18 gives the Department the power to direct two or more councils to prepare a joint plan. This 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 with the affected district councils on such a course of action before issuing the direction.
- As mention earlier, the Department also proposes powers of intervention, which are an important safeguard, as part of this new local development plan regime. Ensuring that central government has an appropriate oversight role, like our counterparts in other jurisdictions, means that policies and objectives set by the Executive and the Department for the region as a whole will be effectively delivered at the local level.
- Clause 15 allows 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.
- The default powers contained in Clause 16 also allow the Department to intervene by taking over the preparation or revision of a district council's plan strategy or local policies plan if it thinks the district council is failing properly to carry out these functions itself. The district council must reimburse the Department for any expenditure it incurs in exercising these powers.
- 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 local development plan with the council's new community planning responsibilities.

- That completes our presentation aimed at familiarising members with the key aspects of Part 1 and Part 2 of the Planning Bill.
- We welcome now any questions you may have.

Community Involvement Speaking Notes
18 January 2010

Environment Committee Presentation
Planning Bill

Community Involvement in the Planning Process

18 January 2011

- A key objective of planning reform is to ensure that the planning system allows for full and open consultation and actively engages communities in the planning process.
- This is part of the change in the culture of the planning system being introduced through the Planning Bill, whereby citizens will have a more effective input into planning decisions that will affect them.
- I will talk first 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 in Development Management.
- The Department regards community in its widest sense. It includes everyone with an interest in the area. As well as people who live in an area, it can 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.
- The Department and councils, as public authorities, will continue to be expected to meet their obligations under sections 75 and 76 or the Northern Ireland Act 1998, the Human Rights Act and anti-discrimination legislation. It is in this context that the Statement of Community Involvement will be developed.
- The Committee will already be 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. Within the ethical standards regime there will be a mandatory code of conduct which will include a section on planning. As you are aware a consultation on these issues was launched by the Minister on 30th November 2010 with a view to bringing forward legislation in the next Assembly.
- As mentioned in earlier presentations, the Planning Bill contains powers for the Department to intervene, if necessary, in a council's delivery of planning functions. These are included as safeguards in the unlikely event that a district council is unable to fulfil its responsibilities under the legislation.

Statement of Community Involvement (Clause 2 and Clause 4)

- The first provisions in the Bill relating to community engagement are clauses 2 and 4 which require the Department and each council to prepare a statement of community involvement.

- Clause 2 requires the Department to prepare a statement of community involvement. It will set out the Department's policy for involving the community in the exercise of its development management functions under Part 3 of the Bill.
- Regarding content, the Department's statement of community involvement will set out the methods by which the public can express their views at the various stages of the processing of regionally significant applications.
- Clause 4 requires district councils to prepare a statement of community involvement. This is defined in the legislation as a statement of the council's policy for involving interested parties in matters relating to development in its district.
- Clause 4 also requires the district council and the Department to attempt to agree the terms of the council's statement and provides a power of direction for the Department where agreement is not possible.
- The purpose of the statement of community involvement is to set out the council's procedures for involving the community in both the preparation and revision of local development plans and the processing of planning applications.
- This will ensure that community groups, the voluntary and business sectors, and the wider public are aware of what community involvement will take place and how and when they can become involved.
- The statement of community involvement will allow councils to clearly demonstrate 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.
- With regard to the local development plan process, councils must have a statement of community involvement in place before any consultation on the 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, from the early stages of plan preparation through to adoption. It will indicate the proposed methods of involvement relevant to the community, the stage of plan preparation at which it will take place and the scope of community involvement.
- In relation to the processing of planning applications the statement will set out the methods by which the public can express their views at the various stages of processing a planning application.
- The Department will prepare guidance to assist councils in the preparation of a statement of community involvement. This will address such matters as its purpose, the content of the statement and the preparation process, and 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. This said, councils will have the flexibility to take their own approach to community consultation to reflect local circumstances.

Consultation as part of development plan process

- Now I will outline the methods by which the community can become involved in the local development plan process. As we discussed on Thursday, the local development plan will comprise a Plan Strategy which sets out strategic objectives and policies and the much more detailed Local Policies Plan which includes maps showing what development is acceptable where.

- 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, at publication of the draft Plan Strategy, at publication of the draft Local Policies Plan 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 contained in the subordinate legislation.
- The first opportunity for public consultation in the plan preparation process is at the preferred options stage. 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.
- It will contain a series of options for dealing with the key issues in the plan area. It will also set out the implications of those options, as well as the district council's preferred options and a justification for the preferred options.
- It is envisaged that the preferred options paper will help interested parties to become involved in a more meaningful way at this earlier stage of plan preparation and provide them with an opportunity to put forward their views and influence the local development plan.
- The Department considers that 'front-loading' the plan preparation process with community and stakeholder involvement will have 2 main benefits. Firstly, more meaningful engagement should help to gain a consensus with the community about the plan earlier in the process. 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.
- After preferred options, the public and stakeholders will be further consulted when the draft Plan Strategy and the draft Local Policies Plan are published.
- Following publication of both the draft Plan Strategy and 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.
- After the close of the consultation period for both draft development plan documents, councils will consider all representations received before submitting the plan document for independent examination.
- At the independent examination of the development plan document, 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.

Consultation in development management

- Now I will outline the methods by which the community can become involved in the development management process. Applicants who are bringing forward proposals for major or regionally significantly development are required to engage with the community before they submit their applications.
- Pre-application community consultation as set out under clause 27 provides an opportunity for communities to get involved before the application is submitted. Early involvement of communities can bring about significant benefits for applicants, for communities and for planning authorities. It allows developers to resolve issues raised by the community and to include mitigating measures as necessary. This will improve the quality of the application and, ultimately the development.

- 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 to be contained in the proposal of application notice. In addition, to ensure consistency of approach across all council areas, subordinate legislation will contain minimum requirements such as the holding of at least one public event, and advertising arrangements.
- Clause 28 of the Bill introduces a requirement on applicants to prepare a pre-application consultation report. 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. If the district council or Department does not feel the applicant has carried out adequate consultation, it can request additional information.
- In addition, a new power is being introduced under 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. This is to ensure that the community has been consulted in a meaningful way, and that their views are properly taken into account regarding what the developer is proposing, and is not just a case of following a set of procedures.
- Clause 30 gives councils the power to hold pre-determination hearings. These 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 taken.
- Subordinate legislation will set out the instances where a pre-determination hearing will be mandatory. This is likely to include applications for major developments which 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 these hearings will operate in their area. District councils may of course wish to consider other types of development application for which they could hold pre-determination hearings.
- That completes our presentation aimed at familiarising members with the key aspects of the Planning Bill dealing with community involvement.
- We welcome now any questions you may have.

Development Management Speaking Notes
18 January 2010

Environment Committee Presentation
Planning Bill

Development Management

18 January 2011

Development Management

- The new development management system contained within Part 3 of the Bill represents, along with the new development plan system, one of the two central

features of the reformed planning system. This will bring about a modernised planning application system that will be fairer, more predictable and efficient.

- I intend to set out to you now the main changes we are bringing forward through the Bill under development management. The focus of Development management is to deliver sustainable outcomes through encouraging earlier engagement on development proposals, promote greater transparency and deal with applications in a proportionate way.

(Hierarchy of development clause 25)

- Clause 25 introduces a hierarchy of development containing the categories of regionally significant, major or local. For the purpose of the Bill, major development includes the category of regionally significant development which in effect forms the 'top slice' of the major development category, dealt with by the Department under Clause 26.
- I refer you to the Schedule which we forwarded to you in advance of today's meeting which identifies 9 classes of development under the headings of regionally significant and major development. These will be consulted on through subordinate legislation but give an initial view of the development categories and thresholds to be applied to both. Local developments will comprise all other developments not falling into regionally significant or major categories.
- The categorisation of applications within the development hierarchy is intended to streamline the processing of applications so greater resources can be targeted on 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 timeframe.
- Councils will determine all major (other than regionally significant development) and local developments.
- Of note is the power for the Department to direct that a specific application which would normally be local be dealt with as it is a major development. This builds a degree of flexibility into the hierarchy, where for example, a local application which is just under the threshold of major development, would benefit from the statutory pre-application requirements of community consultation.

(Department's jurisdiction in relation to Regionally Significant Development clause 26)

- 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, and these are identified in the Schedule I have already referred to. If the proposed development exceeds the thresholds the applicant must enter into consultations with the Department.
- The Department will determine if an application is regionally significant based on the 2 criteria identified, which are, firstly, if the development is of significance to the whole or substantial part of Northern Ireland, or secondly, 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 would not be regionally significant the application is instead to be made to the appropriate council and dealt with as a major development.

- Processing of regionally significant applications following pre-application stage, will be either through public inquiry, or notice of opinion.
- Clause 26 also introduces a new proposal for considering representations, where the Department can appoint persons other than the PAC for the holding of a public inquiry or hearing. This will provide flexibility for the scheduling of inquiry / hearing cases which will help speed up the process and overcome delays.

(Call-in of applications clause 29 and 56)

- 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.
- The Planning Bill under 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 only to intervene or call-in an application under certain circumstances and not to cause unnecessary delay to councils in issuing decisions.
- For this reason we are working on the basis that councils will be required to notify the Department, through a Direction on Call-in, for major applications where:

a) a government department or statutory consultee has raised a significant objection; or

b) it consists of a significant departure to the local development plan.

Again this will be subject to consultation along with the subordinate legislation.

- In addition, clause 56 (1) (b) of the Planning Bill allows the Department to apply conditions to an application which is referred to it, instead of having to unnecessarily call-in a planning application, where a condition would satisfy any potential Department concerns. The application would then be returned to the council. This allows an element of flexibility and greater expediency in dealing with notified planning applications.
- In exceptional circumstances the Department may give a direction to call-in any planning application (other than those notified to it) where an issue is raised that may be considered regionally significant – this acts as an important safeguard and is similar to that provided in the other jurisdictions.
- Where an application is called in, the processing route will follow that of a regionally significant application which had been submitted directly to the Department.

(Local developments: schemes of delegation clause 31)

- Clause 31 provides for schemes of delegation as a means of improving efficiency in the decision making process. These will enable certain decisions with the category of local development to be made by an appointed officer of the Council. Schemes of delegation will provide the maximum scope for officials to determine straightforward local applications thus ensuring that elected members can focus attention on more complex or controversial applications.
- A safeguard is provided to allow a council to determine an application itself which would otherwise fall to be to be determined by an appointed officer. This will provide some flexibility on a case by case basis. Where a decision is taken to refer an application to

elected members this way, the Bill requires a statement of reasons to be provided to the applicant.

(Duty to consult (clause 56) and to respond to consultation clause 224)

- 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 relevant bodies known as statutory consultees with regard to planning applications. The proposed list of statutory consultees and circumstances in which they would be consulted will be set out through subordinate legislation.
- In addition clause 224 introduces a requirement for statutory consultees to respond to consultation requests within a prescribed period. It is intended to provide a proportionate timeframe in subordinate legislation which will link time periods to categories within the development hierarchy. This is an important step in terms of providing greater efficiency and timeliness in the decision making process.
- Furthermore, clause 224 also gives the Department power to require reports on the performance of consultees in meeting their response deadlines. This responsibility will inevitably highlight which statutory consultees are responding to consultation within the prescribed timeframe, and those who are not.

(Appeals clause 58 & 59)

- In addition to speeding up the response of statutory consultees, the Bill also introduces a change to the appeal period. The time in which an appeal must be lodged with the Planning Appeals Commission, is reduced from 6 to 4 months in clause 58(3). This will give a greater element of certainty on timescales. The Bill also enables the Department to amend the appeal period through subordinate legislation if necessary.
- That completes our presentation aimed at familiarising members with some of the key aspects of the Development Management provisions within 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.
- We welcome any questions you may have.

Enforcement Speaking Notes 18 January 2011

Environment Committee Presentation Planning Bill

Enforcement

18 January 2011

- 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 a planning permission or consent has not been complied with.
- Currently the Department carries out all enforcement functions under PART VI 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 respective areas.
- Councils will be responsible for enforcement for all breaches of planning control. The Department, however, will retain powers to issue an enforcement notice, listed building enforcement notice or stop notice (Clauses 138, 157 and 150) 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 (Clauses 175 and 176).
- All enforcement functions delegated to councils will be restricted to their particular council area. The Department's powers will cover all council areas.
- The Bill also introduces new powers to strengthen enforcement within 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 provide a more cost-effective, less time-consuming and more flexible means of enforcing the legislation. This short, sharp remedy is a proportionate and effective response in line with the Department's Better Regulation agenda.
- The amount of the penalty will be prescribed in Regulations and is reduced by 25% if paid within 14 days. The amount of the penalty has not been determined at this stage. Regulations prescribing the amount must be laid in draft before, and be approved by a resolution of the Assembly. The amount should be set to be 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 £2000 for fixed penalty notices in relation to the failure to comply with the requirements of an Enforcement Notice and £300 in relation in relation to 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.
- Moving then 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 on an application for a certificate within a period of two months, or an extended period agreed with the applicant, the applicant may submit a planning application in respect of the development, or appeal the decision to the Planning Appeals Commission.
- Unlike other forms of appeal there is currently no time limit for making such appeals. The Bill at 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. This provides a time limit for such appeals in keeping with other appeal time limits.
- Chairman it might also be helpful to highlight other provisions within the Bill which deal with enforcement but more indirectly.
- Changes have been made to the powers to decline to determine planning applications, available to both councils and 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 PAC) within the previous 2 years. Overlapping applications where an application is determined to be the same as one already in the system may also be declined. These powers are contained in clauses 46 – 49.
- These powers are expanded to include the situation where 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. This is done, even though the parallel application is likely to 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 this potential stalling tactic.
- Clause 104 of the Bill 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 required conservation area consent so, in turn, unauthorised partial demolition was no longer a direct offence.
- This has been addressed by establishing at clause 104 (8) that any reference to demolition within the relevant conservation area clause should also include a reference to any structural alteration where that alteration consists of partial demolition. In practice this has the effect of creating a new offence of unauthorised partial demolition of an unlisted building within a conservation area.
- Finally, as a means of discouraging development from taking place without planning permission, the Bill at clause 219 provides for the charging of a greater or multiple of the normal fee for retrospective planning applications.
- This is a fee to deter commencement of development prior to submitting a planning application and as a means of encouraging 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 e.g. where works were urgently needed in the interests of safety or health.
- This completes our presentation aimed at familiarising members with the key aspects of the enforcement provisions within the Planning Bill.
- We welcome any questions you may have.

Departmental Reply re Schedule of Regionally Significant and Major developments

Department of the Environment
www.doeni.gov.uk

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Your reference:
Our reference:

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast BT4 3XX Date: 17 January 2011

Dear Alex,

The Planning Bill provides for the transfer of the majority of development management functions to Councils. Clause 25 describes a hierarchy of development comprising two categories: “local" and “major". It provides for the Department to make regulation describing these classes of development.

Clause 26 then identifies some major developments as being of regional significance; applications for this class of development must be determined by the Department. It also provides for the Department to make regulations in relation to regionally significant development.

The classification of development as “local", “major" and “regionally significant" will be dealt with in the Draft Development Management Regulations (Northern Ireland) (this is referred to on page 24 of the Delegate Powers Memorandum). I attach at Annex A draft Schedules to these regulations which propose how development may be classified as “major" and of “regional significance" respectively.

Officials will make a presentation to the Environment Committee about the development management aspects of the Planning Bill on Tuesday 18 January during which they will refer to the hierarchy. It may be helpful for Members to have the attached draft Schedules to hand during that discussion.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely

Úna Downey

DALO
[By email]

Annex A

Draft Schedule 1 Major Developments

Description of Development	Threshold Major Development
1. Housing: Construction of buildings, structures or erections for use as residential accommodation including flats	a) Cities and Towns: 1) The development comprises 50 units or more; or 2) the area of the site is or exceeds 2 hectares b) Villages, Small settlements and other: 1) development that comprises 10 dwellings or more; or 2)the area of the site is or exceeds 0.5 hectares. c) Social Housing: all social housing schemes that comprises up to 500 units
2. Retailing: Includes comparison shopping and mixed retailing development; convenience shopping development; and commercial leisure development	a) Development that comprises 3,000 sq metres or more gross floorspace outside town centres; or b) The area of the site is or exceeds 1 hectare outside town centres
3. Business, Industry (Light and General), Storage and Distribution (according to Part B of the Planning (Use Classes) Order (Northern Ireland) 2004)	a) Development that comprises 5,000 sq metres or more gross floorspace; or b) The area of the site is or exceeds 1 hectare
4. Energy Generation: Construction of an electricity generation facility including renewable and non-renewable sources	The capacity of the generating facility is or exceeds 5 megawatts
5. Waste Management Facilities: Construction of facilities for use for the purpose of waste management or disposal	The capacity of the facility is or exceeds 25,000 tonnes per annum
6. Transport and Infrastructure projects: Construction of new or replacement railways, airfields, roads, harbours and ports, waterways, transit ways and pipelines	The area of the works is or exceeds 1 kilometre in length or 1 hectare
7. Minerals: Extraction of minerals	The area of the site is or exceeds 2 hectares
8. EIA Development:	Development of a description mentioned in Schedule 1 of The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 where Department refers application to Council
9. All other development: Any development not falling wholly within any single class of development described in sections 1 to 8 above	a) Development that comprises 5,000 sq metres or more gross floorspace; or b)The area of the site is or exceeds 1 hectares

Draft Schedule 2 Developments of Regional Significance

Description of Development	Consultation Threshold for Regionally Significant Development
1. Housing: Construction of buildings, structures or erections for use as residential accommodation including flats	a) Cities and Towns: 1) development that comprises 500 units or more; or 2) the area of the site is or exceeds 15 hectares b) Villages, Small Settlements and other: 1) development that comprises 100 dwellings or more; or 2) the area of the site is or exceeds 4 hectares c) Social Housing: all social housing schemes that comprises more than 500 units
2. Retailing: Includes comparison shopping and mixed retailing development; convenience shopping development; and commercial leisure development	a) Development that comprises 15,000 sq metres or more gross floorspace outside town centres; or b) The area of the site is or exceeds 4 hectares outside town centres
3. Business, Industry (Light and General), Storage and Distribution (according to Part B of the Planning (Use Classes) Order (Northern Ireland) 2004)	a) Development that comprises 15,000 sq metres or more gross floorspace; or b) The area of the site is or exceeds 4 hectares
4. Energy Generation: Construction of an electricity generation facility including renewable and non-renewable sources	The capacity of the generating facility is or exceeds 10 megawatts
5. Waste Management Facilities: Construction of facilities for use for the purpose of waste management or disposal	The capacity of the facility is or exceeds 50,000 tonnes per annum
6. Transport and Infrastructure projects: Construction of new or replacement railways, airfields, roads, harbours and ports, waterways, transit ways and pipelines	The area of the works is or exceeds 2 kilometres in length or 4 hectares
7. Minerals: Extraction of minerals	The area of the site is or exceeds 4 hectares
8. EIA Development:	Development of a description mentioned in Schedule 1 of The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999
9. All other development: Any development not falling wholly within any single class of development described in sections 1 to 8 above	a) Development that comprises 10,000sq metres or more gross floorspace; or b) The area of the site is or exceeds 4 hectares

Departmental reply re Timetable for Subordinate Legislation

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Your reference:
Our reference: CQ/244/10

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX Date: 10 January 2011

Dear Alex

I refer to your request for information about a timetable for the subordinate legislation that would follow implementation of the Planning Bill and also a timetable for local government reform implementation, particularly in connection with the devolution of planning functions.

Background

As the Committee will be aware, although the Executive remain committed to local government reform, it was unfortunate that at their meeting on 18 November 2010, there was no clarity on a revised delivery timetable for local government reform. However, in order to maintain momentum in delivering the vision for the future shape of local government, the Executive agreed that the Minister for the Environment should consult on the proposals for the reorganisation of local government and endorsed his plans for a fundamental overhaul of the planning system.

Subsequently, on 30 November, the Minister made a statement to the Assembly about the reform of local government and the planning system. He also launched a consultation on the policy proposals for local government reform. The proposals provide for efficient, fair and transparent decision making across local government; they will ensure the highest standards of behaviour are maintained; they set out a framework for the new community planning process and they propose a new regime to help improve how councils deliver their services. Full details of these reform and modernisation proposals are set out in the consultation document published on 30 November 2010.

The Committee will also be aware that the Minister introduced the Planning Bill to the Assembly on 6 December 2010 with 2nd Stage Consideration taking place on 14 December 2010. On the same date, Committee Stage commenced. The Planning Bill will provide for the transfer of

development plan and development management powers from his Department to councils within a timetable agreed by the Executive.

The Minister is aware of the Committee's concerns in relation to the transfer of planning functions in the absence of the new governance and ethical standards arrangements being introduced. Therefore, the Minister wishes to assure the Committee that none of the planning bill provisions will be commenced in advance of the new governance and ethical standards arrangements coming into effect.

In his statement of 30 November, the Minister indicated his plans to deliver a pilot programme to test the proposed consultative and practical working arrangements between the new Local Government Operations Directorate and the 11 council groups. The pilot programme will also be used to test the proposed governance arrangements and the provisions for community planning to ensure the new arrangements are robust and also to build capacity in advance of the creation of the new councils.

Current Position

The Minister has still not received clarity on the delivery timetable for local government reform although he is continuing to pursue this vigorously with the Executive.

In the absence of agreement on a revised timetable for local government reform, it is not yet possible to provide the Committee with a timetable for implementation. A draft list of subordinate legislation needed for day one of the transfer of planning functions to councils is attached at Annex A together with an indicative timetable for key subordinate legislation flowing from the Planning Bill (Annex B). As previously stated, the Minister wishes to assure the Committee that none of the planning bill provisions will be commenced in advance of the new governance and ethical standards arrangements coming into effect.

The Minister invites the Committee to note the above position and of his intention to keep the Committee informed of developments.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO
[by email]

Annex A

DRAFT @ 21st December 2010

Summary of requirements for new orders and regulations for day one of transfer of planning functions to councils

1. The Planning (Miscellaneous Amendments) Regulations (NI) (Jumbo SR).

2. The Planning (Environmental Impact Assessment) Regulations (NI).

3. The Planning (Fees) Regulations (NI).

4. The Planning (General Development Procedures) Order (NI).

5. The Planning (Development Management) Regulations (NI).

6. The Planning (General Permitted Development) Order (NI).

7. The Planning (General Regulations) (NI).

8. The Planning (Development Plan) Regulations (NI).

9. The Planning (Control of Advertisements) Regulations (NI).

10. The Planning (Statement of Community Involvement) Regulations (NI).

11. The Planning (Conservation Areas) (Demolition) Regulations (NI).

12. S.R. for Transitional arrangements / provisions for the entire bill.

13. The Planning (Use Classes) Order (NI).

14. The Planning (Fixed Penalties) Regulations.

15. The Planning (Management of Waste by Extractive Industries) Regulations (NI).

16. The Planning (Enforcement) Regulations (NI).

17. Historic Buildings Regulations and/or Direction (Historic Buildings Council).

Requirements by other bodies

1. Planning (National Security Direction and Appointed Representatives) Rules (Lord Chancellor Rules)

2. Planning (Direction and Appointed Representatives Rules) (Department of Justice)

3. Secretary of State Certification Rules

4. Department of Justice Certification Rules

Annex B

Indicative Timetable – Planning Bill – Key Subordinate Legislation

Subordinate Legislation Programme (Indicative Timetable)		
Stage	**Start Date**	**End date**
Policy Development and Drafting		June 2011

Subordinate Legislation Programme (Indicative Timetable)		
Stage	**Start Date**	**End date**
Submission to DSO and DSO Clearance	June 2011	July 2011
Consultation Paper/ RIA drafting/ Ministerial clearance/ Environment Committee clearance	Aug 2011	Sept 2011
Consultation on Draft SRs	Sept 2011	Dec 2011
Consultation Evaluation/ Final drafting/ Final DSO clearance	Dec 2011	Feb 2012
SR Finalisation	June 2012	

Note:

1. Key subordinate legislation covers elements of development planning, development management and planning processes essential for day one transfer of planning powers to councils. Further subordinate legislation will subsequently be taken forward as required.

2. Separate timetables are in place for amendments to the Planning Environmental Impact Assessment Regulations, Planning Fee Regulations and Planning General Permitted Development Order.

Departmental Briefing on Planning Bill

The main provisions of the Planning Bill

The Planning Bill will deliver significant reforms to the Northern Ireland's planning system and how it is delivered.

The reforms are intended to be comprehensive: encompassing the development plan process, development management (formerly known as development control), enforcement, planning appeals and planning policy preparation, together with other support-type functions.

The Planning Bill comprises of 248 Clauses and 7 Schedules.

The main purposes of the Bill are to provide a framework to:-

- Create a streamlined local development plan system, allowing for speedier and more flexible development plans and providing greater clarity and predictability for developers and the community.
- Deliver a more effective development control system. As part of the new development management approach, the Department is creating a 3-tier hierarchy of development (consisting of regionally significant, major and local development). Greater resources will be directed at those applications with economic and social significance, with proportionate decision-making mechanisms tailored according to the scale and complexity of the proposed development. New processing arrangements for each type of

development will be introduced within the 3-tier hierarchy. These will improve the predictability of timescales for processing and ensure effective engagement with the community and other stakeholders as well as giving greater focus to economically and socially important developments.

- Bring about a change in culture within the planning system – seeking to facilitate and manage development applications rather than mainly controlling undesirable forms of development and achieving stronger collaborative working across a range of stakeholders.
- Deliver other development management proposals including:
- a duty for consultees to respond to consultation on planning applications within a prescribed period;
- reinforcing control over the partial demolition of unlisted buildings in conservation areas; and
- placing greater emphasis on the enhancement of conservation areas.
- power to make non-material changes to planning permission.
- improvements to the appeal system, for example, by reducing the time limit for lodging an appeal from six months to four.
- expanding the power to decline to determine subsequent planning applications to include withdrawn appeals and subsequent and overlapping applications deemed to be made on foot of enforcement appeals. Also the introduction of a time period for certificates of lawful use or development appeals.
- a minor amendment to planning agreement provisions to clarify payment may be made to other Departments other than DOE.
- removing the requirement of consent of applicant/land-owner where the Department wishes to correct a minor error in a decision notice.
- strengthened enforcement provisions through new provisions such as fixed penalty notices where enforcement notices or breaches of condition notices are not complied with and a higher, premium fee for retrospective planning applications.
- As part of local government reform, transfer of the majority of planning functions from central government to the proposed 11 district councils (to a timetable to be agreed by the Executive) while retaining appropriate oversight and intervention powers.

Examiner of Statutory Rules Advice on the Planning Bill Delegated Powers

Scrutiny of Delegated Powers Advice to the Committee for the Environment from the Examiner of Statutory Rules on the Planning Bill

Introduction

1. I have considered this Bill, in conjunction with the Delegated Powers Memorandum submitted by the Department of the Environment, in relation to powers to make subordinate legislation.

Most powers to make subordinate legislation seem subject to appropriate level of scrutiny

2. The Bill contains many powers to make subordinate legislation. Most powers are powers to make subordinate legislation in the form of orders (mostly development orders) and regulations

subject to negative resolution, and that seems to be the appropriate level of Assembly scrutiny in those cases.

3. Clauses 152(9) and 153(9) contain powers to set fixed penalty payments in regulations subject to draft affirmative procedure, and that seems to be the appropriate level of scrutiny.

4. Clause 208(1) contains a power (the re-enactment of an existing power) to alter the definition of “Crown estate" by order subject to affirmative resolution and I make no comment on this.

5. Clause 244 contains a power to make further orders (supplementary, incidental and consequential provisions) by order: where that involves modification, amendment or repeal of a statutory provision, it the power is subject to the draft affirmative procedure; otherwise it is subject to negative resolution. That seems to provide an appropriate balance as regards the level of Assembly scrutiny.

6. Clause 247 contains power to make commencement orders: in accordance with standard practice, commencement orders are not subject to Assembly procedure.

Attention is drawn to several provisions

7 I draw the attention of the Committee for the Environment to the following provisions of the Bill.

8. Clause 202(5), re-enacting an existing provision, allows OFMdFM to make rules regulating the procedure in appeals to the Planning Appeals Commission. These rules are subject to no Assembly procedure, but it would seem appropriate to make them subject to negative resolution, the level of scrutiny accorded to most of the subordinate legislation under the Bill (mostly regulations and development orders), particularly relating to procedural matters. (It seems that there are currently no rules in existence: instead, the Planning Appeals Commission publishes guidance about the procedure to be followed.)

9. Clause 226(3) allows the Department to make rules regulating the procedure in respect of local inquiries: these rules are subject to no Assembly procedure, and again it seems appropriate that these rules should be subject to negative resolution: see paragraph 8.

10. Clause 229(1) and (2) give the function of appointing special advocates for the purposes of the clause to the Advocate General for Northern Ireland (whose office is held by the holder of the office of Attorney General for England and Wales). A consequence of that is that rules under clause 229(5) are made by the Lord Chancellor and laid before Parliament at Westminster in accordance with the negative procedure there (clause 229(6)). It seems to me that giving this function to the Advocate General (with its consequential rule-making provisions) is completely out of place in clause 229, which, in contrast to clause 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. (Clause 228, which is about national security and security of certain United Kingdom government and armed forces premises and property, confers functions on the Secretary of State, the Advocate General and the Lord Chancellor, and rules are subject to laying at Westminster in accordance with the negative procedure there.) Clause 229 should, more appropriately it seems, confer functions on the Department of Justice and the Attorney General for Northern Ireland, and all the rules made under clause 229 should be subject to negative resolution.

Attention drawn to no other provisions

11. I do not draw the attention of the Committee for the Environment to any other provisions in this regard.

Gordon Nabney
Examiner of Statutory Rules
26 January 2011

Planning Bill - Departmental Equality Impact Assessment (EQIA) and Human Rights Assessment

Reform of the Northern Ireland Planning System:

Final Equality Impact Assessment (EQIA) at a strategic level in response to Programme for Government proposals

Section 75 and Schedule 9 The Northern Ireland Act 1998

Final Equality Impact Assessment at a Strategic Level
March 2010

If you have any queries about this document, and its availability in alternative formats (including large print) please contact us to discuss your requirements (see p.3)

DOE Planning Service

Reform of the Planning System in Northern Ireland:

Final Equality Impact Assessment (EQIA) at a strategic level in response to Programme for Government proposals

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Executive Summary

Policy proposals

On October 25th 2007, the Northern Ireland Executive published its first Programme for Government (PfG): a detailed set of strategic proposals covering the period 2008 – 2011, which included plans for a major reform of the planning system. The Department of the Environment was tasked with developing proposals, including not only a reform of fundamental elements of the planning system itself but also a transfer of responsibilities from central to local government following the Review of Public Administration (RPA) and the formation of 11 new district councils in 2011. A draft equality impact assessment (EQIA) at a strategic level was published at the same time as the reform consultation paper. The aim of the reform programme is not only to improve the efficiency and effectiveness of the planning system but also to create a planning system that provides transparency in decision-making and gives confidence to its users.

Section 75 Impacts

The draft EQIA at a strategic level acknowledged that there were two elements to potential impacts – procedural impacts resulting from changes to planning processes and substantive impacts resulting from planning decisions taken. The draft EQIA at a strategic level was concerned, at that stage, with potential procedural impacts, but recognised that potential substantive impacts will need to be addressed at implementation stage by the relevant planning authority. The Department will ensure that any potential substantive impacts identified are brought to the attention of the relevant planning authority with advice and guidance on possible mitigating measures.

Consultation

Consultation on the Reform of the Planning System in Northern Ireland commenced on 6 July 2009 with the publication of the proposals paper: 'Reform of the Planning System in Northern Ireland: Your chance to influence change'. The draft EQIA at a strategic level was published at the same time. There was a very encouraging response to the consultation paper, with 264 responses received, with, in general, strong support for the majority of the reform proposals.

During the 12 week consultation period a series of consultation roadshow events were undertaken. The roadshow events formed the central part in a process of encouraging engagement and response to the Reform Proposals before the closing date of 2 October 2009. They were organised and facilitated by a team of event managers and independent planners who, together with key Planning Service personnel, attended a mixture of day and evening events in each of the new 11 council areas to hear the views and opinions of those who came along.

Aside from being publicly advertised, over 1,500 invitations (written and e-invites) were issued to a wide range of sectors, including the business community, environmentalists, councils, community and voluntary groups and other organisations, and 1,000 fliers were issued to libraries, leisure centres, council offices and civic centres. In total almost 500 people took up the invitation and came along to one or more of the events.

This paper is the final EQIA at a strategic level, taking account of the responses to the planning reform consultation and the roadshow events. This paper is being published at the same time as the Government Response to the outcome of the planning reform consultation.

Commitments

1. Existing data on those who do, or do not, engage with the planning system is less than substantial. The Department therefore commits to take action to develop a Monitoring Strategy that will incorporate information on relevant Section 75 categories, in accordance with best practice and the Equality Commission's Guidance on Section 75 Monitoring.

2. Despite this historical absence of data, the Department recognises that, in Northern Ireland as elsewhere, all members of the community may not always have had equality of access to the planning system. Indeed, this was part of the original rationale for the Department's funding of organisations such as Disability Action and Community Places. In bringing forward the key elements of the reform programme, the Department will remain alert to these issues and will aim toensure that the reformed planning system is as user-friendly and inclusive as possible.

3. The Department commits to engage widely during the continuing development and implementation of the reform programme, including with representatives of those groups who may be at risk of adverse impact. Race, age and disability have already been identified as Section 75 categories that may warrant further attention to ensure that the reformed planning system is inclusive and genuinely accommodates those with particular needs.

4. The Department will ensure that all forms of consultation will be made accessible to all sections of the community, including written documents as well as the timing, management and location of consultation events.

5. Where a new issue/policy emerges through the programme of reform, over and above those key elements already identified, that issue/policy will also be subject to appropriate screening and, if necessary, an equality impact assessment (EQIA).

6. As the reform programme is rolled-out, and the new planning system is created, there will be an expectation on both central and local government to ensure that Section 75 obligations continue to be mainstreamed through regional and local planning systems.

Conclusion

This final EQIA at a strategic level has provided the Department with an opportunity to demonstrate that Section 75 statutory obligations are at the heart of the reform programme. While the Department's initial screening exercise indicated that significant effects on each of the Section 75 categories were not anticipated, the draft EQIA at a strategic level was undertaken in order to offer a timely reflection on progress made to date, to consider the potential procedural impacts in greater detail and to begin the process of identifying those occasions during future implementation where it will be important to next apply the checks and balances that Section 75 affords. Through the operation of due diligence in this manner, the Department can make sure that fair treatment and the promotion of equality of opportunity remain a priority for the entire planning system up to and beyond 2011.

The Department is grateful for the contributions of all those who responded to the consultation paper and the draft EQIA at a strategic level, and who participated in the roadshow events that were held during the consultation period. The Department has listened to the comments made during the consultation process and, following careful consideration, has made a number of changes to the proposals.

Monitoring

The Department intends to take action to develop a monitoring strategy to monitor the impact of the reform programme on users of the planning system. The Department will publish the results of this monitoring in due course and include same in the annual progress report to the Equality Commission for Northern Ireland. An outline of the proposed Monitoring Strategy is contained in section 8.

Implementation of many aspects of the reformed planning system post 2011 will be the responsibility of local government, which is also, and will continue to be, responsible for operating in accordance with Section 75 obligations.

Section 1: Introduction

A draft EQIA at a strategic level was made available for formal consultation as part of the Department's response to proposals as outlined in the Executive's Programme for Government (PfG) 2008-11 (http://www.pfgbudgetni.gov.uk/finalpfg.pdf).

In its Programme for Government, the Executive made a commitment to, 'Deliver a fundamental overhaul of the planning system by 2011 to ensure that it supports economic and social development and environmental sustainability'. (p.14) The Department has been tasked with turning this aspiration into a reality through a staged programme that will streamline the planning system while also transferring a number of planning functions from central to local government.

Following on from an initial screening exercise and subsequent engagements (both internal and external), a draft EQIA at a strategic level was prepared as part of the Department's Section 75 statutory duties in response to the PfG proposals, and was published alongside the planning reform consultation paper.

As part of the consultation, views were invited on:

- consultees' views on the draft assessment of the equality impacts of the planning reform proposals;
- any further information which could be useful in assessing those equality impacts; and

- any comments or suggestions on how groups could be best engaged during the consultation process.

A copy of the consultation paper and the draft EQIA at a strategic level is available on our website at http://www.planningni.gov.uk

The Government Response to the Public Consultation is available on our website, along with a copy of this final EQIA at a strategic level at http://www.planningni.gov.uk

If you have any queries about this document, and its availability in alternative formats, please contact us to discuss your requirements:

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Section 75 NI Act 1998

Section 75 of the Northern Ireland Act 1998 requires each designated public authority, when

carrying out its functions in relation to Northern Ireland, to have due regard to the need to promote

equality of opportunity between:-

- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- men and women generally;
- persons with a disability and persons without; and
- persons with dependants and persons without.

Without prejudice to these obligations, the public authority is also required, in carrying out its functions, to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

The Department of the Environment (DOE, including the NI Planning Service), submitted its Equality Scheme to the Equality Commission for Northern Ireland (ECNI) in February 2001. The Scheme outlined how the DOE proposed to fulfil its statutory duties under Section 75.

As set out in its Equality Scheme, the Department carries out equality screening on all new or revised policies to assess impact on the promotion of equality of opportunity and/or good relations using the following criteria:

- Is there any indication or evidence of higher or lower participation or uptake by different groups?
- Is there any indication or evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy issue?
- Is there an opportunity to better promote equality of opportunity or good relations by altering the policy or by working with others in government or in the larger community?
- Have previous consultations with relevant groups, organisations or individuals indicated that policies of that type create problems that are specific to them?

The Northern Ireland Planning Service

Background

The Town and Country Planning Service (which had been established in 1973 following the Macrory Report on the review of local government in Northern Ireland) became an Executive Agency (known as the 'Planning Service') of the Department of the Environment on 1 April 1996.

The Department's statutory planning functions are now mainly provided for by the Planning (Northern Ireland) Order 1991, associated subordinate legislation and relevant regulations implementing European Community Directives in the planning sector.

The aim of the Planning Service is:

'to deliver a modern, effective planning system which meets the needs of the whole community and the economy while protecting the environment'.

Its key objectives are:

- To make good, timely planning decisions within a fit for purpose area plans, policy and legislative framework which supports the key priorities in the Executive's Programme for Government.
- To deliver good quality service to its customers and stakeholders.
- To review, streamline, improve and monitor the Planning Service's key systems and processes.
- To have the necessary financial, human and other resources to deliver the Agency's aims and objectives.

Section 2: The Policy Context

The Programme for Government (PfG) 2008 – 2011

On 25 October 2007, the First and Deputy First Ministers launched the Executive's first Programme for Government[1]. This document was published along with the Budget and Investment Strategy (ISNI2) covering the same 3-year period. These documents highlighted a range of priorities but, in particular, economic growth and the development of a peaceful, prosperous, fair and healthy society. In acknowledging these two priorities it was recognised that, 'economic growth and social progress cannot be taken forward in isolation from action to address poverty and disadvantage to build a fairer and more equitable society'.

The Programme for Government and Investment Strategy were formally endorsed by the Assembly on 28 January 2008. This was followed on 29 January 2008 with the Assembly formally agreeing to the Executive's Budget for 2008-11. Within the Public Service Agreements established as part of the PfG, the Department is committed to reform of the planning system, the focus of this final EQIA at a strategic level.

A major reform programme for the planning system in Northern Ireland, encompassing the structural changes announced under the Review of Public Administration (RPA), was launched in November 2007 and is being taken forward by the Environment Minister and planning officials. A draft EQIA at a strategic level was published at the same time as, and in conjunction with, the planning reform consultation paper containing the Department's proposals for reform.

In summary, the programme of reform incorporates a range of medium to long-term measures designed to address all the key elements of the planning system, including planning policy, development plans and development management (formerly known as development control). A number of process improvements, designed to have an immediate impact on the efficiency and effectiveness of the planning system, continue to be put in place.

In this way the reform programme represents a dynamic process of change over coming years in order to shape a planning system that can, 'play its part in delivering on the Programme for Government priorities and, in particular, by contributing to growing a dynamic, innovative and sustainable economy'.

Draft EQIA at a Strategic Level: Programme for Government, Executive Budget, Investment Strategy (ISNI2)

In January 2008, the Executive published an equality impact assessment (EQIA) on the three cojoined policies, Programme for Government 2008 - 2011, Executive Budget 2008 – 2011 and the Investment Strategy 2008 – 2018 (ISNI2)[2].

In broad terms this EQIA presented a very positive message as to how the PfG and the budget would impact positively across the Section 75 categories. In the words of the EQIA,

'The approach to the development of the Programme for Government, Budget and Investment Strategy is to promote equality and good relations and address the causes and consequences of poverty and exclusion. In this context, the Programme for Government highlighted that, alongside action to address poverty and exclusion, the Executive will seek to address differential outcomes in key areas such as health and education that may be experienced by a number of Section 75 groups and which significantly impact on the lifetime opportunities of those groups. Focusing action to address differentials will have a more positive impact on some Section 75 groups than others. However, there is no evidence to suggest that this is likely to equate to a negative impact on others'.

Included within this assessment were a number of statements with a direct bearing on the reform of the planning system, framed under the priority, 'Protecting and enhancing our environment and natural resources'. The draft EQIA carried out on the PfG found no evidence to suggest that this priority would have significant adverse impacts; rather it was anticipated that delivery of the priority would have a positive effect on a number of Section 75 categories and also isolated communities.

A further PfG priority, 'Delivering modern, high quality and efficient public services', also includes the planning reform programme. The draft EQIA concluded that there was no evidence to suggest that the delivery of this priority would have an adverse impact on any Section 75 group;

rather it would have the potential to deliver positive impacts on those groups that may experience particular difficulties in accessing public services. In addition, the development of more effective and efficient public services, which promote inclusion and accessibility, has the potential to contribute towards the promotion of good relations across all groups.

Reform of the Planning System

In November 2007 the Minister of the Environment at that time (Arlene Foster) announced her intention to bring forward a programme of planning reform, with the key aim of developing proposals that would enable the planning system to play its part in delivering the Executive's priorities and, in particular, by contributing to growing a dynamic, innovative and sustainable economy, while promoting inclusion and equality of opportunity.

The consultation paper, launched at the same time as the draft EQIA at a strategic level, set out the measures the Department proposed to take to reform the planning system in Northern Ireland and to make the changes required to implement the decisions taken under the Review of Public Administration. These proposals will see the majority of planning functions returning to local government and, in combination, represent the most fundamental change to the planning system in Northern Ireland for over 30 years.

The planning reform consultation paper also presented certain related issues on which the Department sought views, including third party appeals, criminalisation of development without planning permission and increased developer contributions towards infrastructure provision.

In order to fully inform the proposals the Department has been involved in a number of different engagement activities, including a major conference in November 2007, attended by approximately 200 delegates and addressed by the Environment Minister. A questionnaire developed for the conference was posted on the Planning Service website for 10 weeks, with over 240 responses submitted and considered.

Officials also engaged in research and liaised with their counterparts in planning throughout the UK and Ireland. A series of meetings were held with internal and external stakeholders in Northern Ireland, including other government departments, the Planning Appeals Commission, representative bodies such as Community Places, Northern Ireland Environmental Link (NIEL), the Construction Employers Federation, the Institute of Directors, the Confederation of British Industry, the Northern Ireland Local Government Association and others. The Department was also assisted in developing its reform proposals by Professor Greg Lloyd who was appointed as an independent expert on planning to advise the Minister on how best to take forward the reform agenda.

In addition, the reform consultation paper drew on the Emerging Proposals paper, which was posted on the Planning Service website in October 2008[3]. In the months following this, there were also a number of seminars and conferences to discuss the emerging proposals, involving groups such as NILGA, the Royal Institution of Chartered Surveyors (RICS), NIEL etc.

The planning system is about ensuring the effective and efficient use of land in the public interest, thereby contributing to achieving sustainable development in cities, towns and rural areas. Land use and development involves a complex interaction and analysis of economic, environmental and socio-economic issues and, with the return of devolved government in Northern Ireland, the Executive has made it clear that the top priority for the next three years is sustainable economic growth.

Driven by imperatives first laid out in the PfG, reform is therefore seen as critical to ensure that Northern Ireland has a modern, efficient and effective planning system that is fit for purpose and can support the Executive in delivering on its key priorities. The planning system needs to provide confidence to investors, developers and the public alike. It also needs to be highly responsive to the many and varied challenges we are facing today, including promotion of economic growth, promotion of equality of opportunity, enabling sustainable development, securing environmental protection, addressing climate change and demands for more social and affordable housing and, of course, ensuring effective use of resources and improved service provision.

The Department carried out an initial screening exercise which found that there was no evidence that the reform proposals would have any significant adverse effects on Section 75 groups. This screening document has been posted on the Department's website and no Section 75 issues have been raised. However, the draft EQIA at a strategic level looked at the Department's strategic response to the PfG commitments and considered further Section 75 work that could be carried out during the development and implementation of the reform programme, by both central and local government.

Hence the draft EQIA at a strategic level formed an integral part of the reform programme and ongoing engagement with the wider community regarding the outcomes of the reform programme.

Those Affected by the Reform Programme

The reform programme is likely to impact on a great many people, including anyone who makes a planning application, lodges an appeal, is a consultee, wishes to object to a planning application, wishes to comment on development plans, carries out a breach of planning control and, more generally, on all users of the planning system. The proposals will also impact on the Planning Service, the new district councils (post 2011), the Planning Appeals Commission (PAC) and a range of other statutory bodies that are involved in the planning system.

Responsibility for Implementing the Reform Programme

The Planning Service is, in general, responsible for delivering the reform programme with the intention that many responsibilities and functions will be devolved to the 11 new district councils from 2011, following implementation of the Review of Public Administration (RPA). The new district councils, when duly designated as public authorities under Section 75, will be obliged to have due regard to the promotion of equality of opportunity in the same way as central government. When responsibility passes to the new district councils it will be important to ensure that mechanisms are in place to consolidate the mainstreaming of due regard for the need to promote equality of opportunity and without prejudice to same, regard for the desirability of good relations in local planning systems, compliant with Section 75.

With regard to the appeals system, some of the policy will continue to be delivered by the Planning Appeals Commission (PAC) which, as a separate appeals body, is independent of the Planning Service. The PAC adheres to the Nolan Principles for maintaining standards in public life and adopts in its business plan the core values of impartiality, integrity, openness, fairness, professionalism, quality, valuing workforce and customer care.

Anticipated Outcomes

The anticipated outcomes from the proposed reform programme are:

- a more responsive planning system delivered at a local level with enhanced local political accountability;
- a streamlined development plan system, with a more meaningful level of community involvement;
- a more effective development management system with a greater focus given to economically and socially important developments;
- a system more capable of discharging the statutory obligations to have due regard for the need to promote equality of opportunity;
- improved efficiency of processing and greater certainty about timescales;
- a change in the culture of the planning system: seeking to 'front load' the development plan consultation process, make plans more strategic in nature, and to facilitate and manage development, rather than mainly controlling undesirable forms of development;
- stronger collaborative working across a range of stakeholders; and
- a better match of resources and processes to priorities and improved value for money for all users of the planning system through more proportionate decision-making mechanisms.

The Planning Reform Programme: Key Elements

The changes proposed for the planning system will see a move from a unitary, centralised system, where central government not only sets policy but also deals with all planning applications, to a two-tier system similar to that in operation in England, Scotland, Wales and the Republic of Ireland.

Fundamental reviews of planning systems across the rest of the UK have served to highlight the inadequacy of existing processes, and the need to improve efficiency and effectiveness in the management of planning. In line with these developments, the reform process in Northern Ireland has already highlighted a number of areas where improvements can be made, and opportunities for streamlining a system that has been criticised for its bureaucratic and burdensome nature in the past.

Following implementation of the RPA, the 11 new district councils will have responsibility for the majority of key planning functions, including:

- local development planning;
- development management (excluding regionally significant applications); and
- enforcement.

Local government will also assume responsibility for associated resources, including finance and funding, accommodation, assets and Planning Service staff who will transfer with the relevant planning functions.

Following the transfer of planning functions, it is intended that central government will have responsibility for regional planning, planning policy, determination of regionally significant applications, legislation, oversight, guidance for councils, audit, governance and performance management.

In order to progress the necessary changes, the consultation paper identified six key elements for change by 2011 within the reform process, namely:

- Planning Policy Statements
- Development Plans
- Development Management
- Permitted Development
- The Appeals System
- Funding/Fees

In addition, the paper indicated three related elements of the planning system that were being afforded due consideration as to whether or not they may form an integral part of the reformed service, although it was recognised that significant further work would be required to develop detailed proposals in these areas. The three areas identified were:

- Third Party Appeals
- Enhanced Enforcement powers and Criminalisation of development without planning permission
- Developer Contributions

A brief description of each element is provided below.

Planning Policy Statements

The Regional Development Strategy and Planning Policy Statements (PPSs) combine as the key planning documents that shape future development outcomes across Northern Ireland. PPSs provide operational policy and guidance on a range of planning issues (e.g. industrial development, enforcement and the built heritage) and set out the main planning considerations that are taken into account in assessing proposals for various forms of development. In turn, they inform the preparation of development plans. Given the current system of central delivery of all planning functions in Northern Ireland (at both the strategic and operational levels), these statements can be overly detailed. Elsewhere in the UK and the Republic of Ireland, PPSs (or their equivalents) do not incorporate detailed operational policy.

One of the proposals in the reform programme was that PPSs should move from providing operational guidance and advice to providing strategic direction and regional policy advice, which would then be interpreted locally in development plans. It was also proposed that the content and process associated with PPS production would reflect the desire to produce shorter, more focused documents, in a shorter timescale.

The intention was that PPSs would set out the policy framework to achieve high level strategic objectives at a regional level, but retain sufficient flexibility to permit decisions to be taken based on local circumstances. As such, PPSs would, in future, only contain context, direction and such policy detail that the Department deemed necessary, with increased use of complementary documentation, such as separately produced supplementary or best practice guidance.

The Department's initial draft screening found that, as these proposals were not concerned with actual policies contained within individual PPSs, there was no evidence to suggest that the proposals would have a differential impact on any of the Section 75 groups but, instead, they had the potential to help ensure that there was comprehensive policy on certain land use topics that could be applied equally to the different circumstances arising throughout Northern Ireland. The individual planning policies contained in PPSs will continue to be subject to equality screening by the Department and, where appropriate and in line with statutory duty, full EQIA.

However, as part of the consultation exercise, the Department sought feedback on this conclusion.

Development Plans

Development Plans allocate appropriate land for differing types of land use. They establish the main planning requirements which developers are expected to meet in respect of particular zoned sites while also showing designations such as conservation areas, areas of outstanding natural beauty, sites of local nature conservation importance etc. Development Plans apply regional policies at the appropriate local level and inform the general public, statutory authorities, developers and other interested parties of the policy framework and land use proposals that will guide development decisions.

In accordance with the RPA decisions, the new district councils will become responsible for drawing up their own local development plans, while central government will retain responsibility for regional planning. DRD and DOE are working together to develop proposals as to how central government will exercise its regional planning role, which in broad terms will be to set the regional strategy and vision for Northern Ireland and provide an appropriate regional planning framework within which the new district councils will develop their own local development plans.

Fundamental to reform is the provision of an effective, up-to-date development plan system. The Department proposed to introduce a new local development plan system which would operate within the two-tier planning system envisaged under the RPA, whereby planning functions will be administered by both district councils and the Department. The proposals were intended to:

- speed up the plan preparation process;
- ensure more effective participation from the community and other key stakeholders early in plan preparation; and
- ensure a more flexible approach that is responsive to change and capable of faster review.

The new local development plan system will provide more clarity and predictability for developers, the public and other stakeholders. It will also assist the new 11 district councils to target action to tackle social need and social exclusion. It was proposed that legislation should be put in place to require district councils to submit draft local development plans to central government for scrutiny to ensure they are aligned with central government plans, policy and guidance.

Development plans, as drawn up by the Planning Service, are currently subject to equality screening and assessment, as applicable. This will continue to be a requirement after 2011 but will rest with the new district councils when responsibility for local development plans moves to local government.

Development Management

At present the Planning Service is responsible for processing all applications for planning permission (approx 20,500 applications were received in 2008-09). Many of these applications (75%) relate to local residential developments, a responsibility that it is proposed will pass to the new district councils.

In line with other reforms, it is inevitable that the planning application system must change, not only to provide a more modern, responsive, fair, predictable and efficient system, but also one

that coordinates local decision-making with regional strategies. Development management (as opposed to its predecessor, development control) is likely to make a significant contribution to the modernisation of the planning system as part of the transfer of functions to district councils, highlighting distinctions between types of application and providing proportionate processes for dealing with applications that have either a regional, major or local significance.

It is widely acknowledged that a reformed application system must become more proportionate, more efficient and more responsive to the needs of all users. This will enable the new district councils and their elected members to deliver on the ambitions and priorities for the communities they serve. In addition, it is proposed that district councils will have greater scope to focus resources on those development proposals which are of the greatest economic and social benefit in their areas. The proposals will also encourage increased community engagement at an earlier stage in the process and, as such, facilitate the inclusion and consideration of the views of communities with the greatest social need who might otherwise be excluded.

Permitted Development

Through the reform programme, the Department has been examining the scope for extending permitted development rights with regard to certain householder, minor and non-householder developments, including those associated with small scale renewable energy technologies.

The Department has explored the scope for widening existing householder, minor and nonhouseholder permitted development rights, together with a consideration of the scope for introducing additional categories of permitted development, with the intention of reducing the number of minor applications in the system, while mindful of the need to protect the interests of neighbours, the wider community and the environment. This work included relevant screening under Section 75.

The Department also proposes to extend permitted development for small scale renewable energy generation to non-residential land uses, including commercial, industrial, agricultural and public sector development and has carried out a public consultation on this issue. This work also included relevant screening under Section 75.

Appeals System

The planning appeals system in Northern Ireland is delivered by the Planning Appeals Commission (PAC), an independent body established to decide a wide range of appeals and to report on various matters under planning and related legislation.

The number of appeals received by the PAC has in recent years risen from 762 in 2004/05 before peaking at 2765 in 2006/07. It has since dropped to 1493 in 2007/08 and, more recently, to 515 in 2008/09[4]. In keeping with the aims of the reform agenda the appeal proposals sought to improve the planning appeals system by tackling delaying factors and by providing an appeals system which is more proportionate to the type and complexity of each appeal. The proposals were informed by similar proposed changes to the appeals systems in the rest of the UK.

It is widely acknowledged that some of the existing appeals processes are disproportionately complex, while some administrative processes could also be streamlined. Building on best practice, the reformed system is likely to incorporate a number of significant changes to the existing system while retaining the core principle that an applicant has the right to appeal a planning decision. This must remain central to a democratic and accountable planning system.

Funding

The implementation of the RPA, in conjunction with the reform programme, will potentially have implications for the funding of the planning system, and for the fee structure. The Department needs to assess how these proposed reforms will impact on funding and what revisions may be required as a result. This work will be carried out by the Department during 2010 and will undertake all relevant equality screening and EQIA as appropriate.

Third Party Appeals

To date, in common with other parts of the UK, there is no mechanism for third party appeals in the Northern Ireland planning system but it is an issue that has been debated in the past. As responsibility for planning is transferred to district councils it is the intention that the planning system will be increasingly 'front loaded' with opportunities for third party engagement, thereby extending the openness and transparency of the system. A third party appeals system was not one of the Department's reform proposals. However, the Department used the consultation process to find out the views on and level of support for the introduction of third party appeals to the Northern Ireland planning system.

Enforcement/Criminalisation of development without planning permission

As part of the reform programme the Department reviewed existing enforcement provisions to ensure that they were sufficiently robust, and also considered whether any new proposals should be developed in line with those brought in elsewhere (e.g. Scotland). The Department also sought views from the consultation process on whether or not there was a wide support for criminalisation of development without permission within the reformed planning system.

Developer Contributions

Through the consultation paper, the Department sought views on the contribution that the development industry might make to the provision of infrastructure (such as roads, water and sewerage) necessary for Northern Ireland's economic and social improvement.

The Reform Programme and Section 75

In summary, it can be seen that the reform programme is multifaceted and combines a number of elements that will combine together up to and beyond 2011 to define a reformed planning system. The draft strategic EQIA at a strategic level aimed to help establish the strategic direction of the programme, and ensure that Section 75 statutory obligations are woven into the reform proposals.

The Department is keen to see Section 75 principles applied at each stage of the reform programme. The diagram at appendix 1 summarises this process.

Policy Aim

The reforms are set in the context of the overall objective of improving the Northern Ireland economy, while promoting social inclusion, sustainable communities and personal health and wellbeing, as well as promoting viable and vital towns and city centres and helping to create shared spaces that are accessible to all and where people can live, work and socialise. This

principal objective must also balance with the need to protect the environment and heritage, and will contribute to sustainable development.

Taken together, it is envisaged that the reforms will not only improve the efficiency and effectiveness of the planning system but will also create a planning system that provides transparency in decision-making, and gives confidence to its users.

In summary, the reform programme aims to bring about improvements in the planning system to ensure that it:

- supports the future economic and social development needs of Northern Ireland and manages development in a sustainable way, particularly with regard to large, complex or strategic developments;
- is delivered at the right level with the appropriate managed processes for regionally significant, major, local and minor applications;
- has streamlined processes that are effective, efficient and improve the predictability and quality of service delivery; and
- allows full and open consultation and actively engages communities.

Section 3: Consideration of Available Data and Research

In keeping with the Equality Commission for Northern Ireland Guide to the Statutory Duties and EQIA Guidelines, data has been drawn from a wide range of sources, both quantitative and qualitative, to help inform the impact assessment process. Given that the scope of the reform programme is so broad, it is likely that the policy has the potential to impact across the entire population of Northern Ireland, a breakdown of which is provided below:

TABLE 1: NORTHERN IRELAND POPULATION PROFILE BY SECTION 75 GROUNDS

Section 75 Ground	**Northern Ireland Population**	
Gender	Male Female	49.1% 50.9%
Age	0 to 9 10 to 19 20 to 29 30 to 39 40 to 49 50 to 59 60 to 69 70 to 79 80 and Over	13.11% 14.07% 14.36% 13.48% 14.31% 11.50% 9.31% 6.26% 3.59%
Religion (Community Background)	Catholic Protestant Other Religion No Religion or None Stated	43.8% 53.1% 0.4% 2.7%
Political Opinion (Based on seats in the NI Assembly October 2008)	DUP UUP Alliance	36 seats 18 seats 7 seats

	SDLP Sinn Fein PUP Green Independent Ind Health Coalition	16 seats 27 seats 1 seat 1 seat 1 seat 1 seat
Marital Status (based on over 16s)	Single (never married)	33.1%
	Married	48.45%
	Re-married	2.67%
	Separated	3.84%
	Divorced	4.12%
	Widowed	7.81%
Dependent Status (based on households with children between 0 and 15 or a person between 16 and 18 in full-time education)	Dependent Children No Dependent Children	36.47% 63.53%
Disability (based on households with one or more person with a limiting long-term illness)	Disabled Not Disabled	41.21% 58.69%
Ethnic Group	White Irish Traveller Mixed Indian Pakistani Bangladeshi Other Asian Black Caribbean Black African Other Black Chinese Other Ethnic Group	99.15% 0.10% 0.20% 0.09% 0.04% 0.01% 0.01% 0.02% 0.03% 0.02% 0.25% 0.08%
Sexual Orientation	Research indicates that 10% of a population is LGB (Source: Rainbow Project July 2008)	

Source: Northern Ireland Census 2001 Key statistics ((except Age & Gender, NISRA 2008 Mid-Year Population Estimates)

In-House Data Sources

In order to fully inform the proposals, the Planning Service has been involved in a number of different engagement activities, including a major conference in November 2007. This was attended by approximately 200 delegates and addressed by the Environment Minister.

A questionnaire developed for the conference was posted on the Planning Service website for 10 weeks, with 243 responses. Key findings are summarised below:

- Agents/architects represented the largest proportion of respondents (39%), followed closely by members of the public (36%) and then developers (9%).

- The responses indicated that current levels of satisfaction with the planning system were low, with three quarters of respondents rating their satisfaction with the development plan and development control processes as either ‘poor’ or ‘very poor’.
- Development control (now development management) was clearly ranked by respondents as the number one priority area in need of reform (42%), well ahead of development plan (28%), administration (15%) and enforcement (14%).
- Key areas of priority for development control related to arrangements and response time with consultees, improving the speed of the decision-making process and managing applications in a proportionate manner.
- In terms of development plan, the areas that respondents felt needed addressed as a highest priority related primarily to the need to improve the speed and responsiveness of plan preparation. The need for improved engagement and consultation with other bodies was also highlighted as an area of key priority.
- The priority area identified by respondents in relation to enforcement was the need for increased deterrents e.g. higher fines and prosecutions.
- Respondents were also given the opportunity to provide general comments and suggestions in relation to the reform programme. A total of 320 additional comments were provided. These comments varied greatly in nature - from broad observations to specific ideas and from strong criticisms to constructive suggestions.
- Two of these responses referred to Section 75 groups: one commented that planners should be required to assume responsibility for increased dangers to users (especially children) of small rural roads and one asked what Planning Service was doing to allay public concerns and perceptions that some area plans are drawn up on a politically motivated basis to prevent development and an increase in the population of a certain side of the community.

Officials have also been engaged in research and have been liaising with their counterparts in planning throughout the UK and Ireland.

In addition, a series of face-to-face meetings have been held with internal and external stakeholders in Northern Ireland, including other government departments, the Planning Appeals Commission, representative bodies such as Community Places, Northern Ireland Environmental Link, the Construction Employers Federation, the Institute of Directors, the Confederation of British Industry, the Northern Ireland Local Government Association and others.

The Department was also assisted in developing its reform proposals by Professor Greg Lloyd who was appointed as an independent expert on planning to advise the Minister on how best to take forward the reform agenda.

The Planning Reform consultation paper, published in July 2009, was informed by these various engagements and was developed from the earlier Emerging Proposals paper, which was posted on the Planning Service website in October 2008. Since then the Minister and planning officials have been involved in a number of conferences, dinners and meetings with interested parties and key stakeholders. Feedback on the emerging proposals was positive and this continued with the more comprehensive reform proposals, which have been broadly welcomed.

Commissioned Research

In June 2009 the Department commissioned experts led by the Social Research Centre[5] to support them in developing the draft EQIA at a strategic level and to provide a commentary on potential impacts that may be associated with the reform programme, either at the present time

or at some time during its future implementation. The commentary, which was included in the draft EQIA at a strategic level and is repeated in this final document, highlights various equality issues and equity considerations across the planning system.

In the context of the reform programme, due regard for the need to promote equality of opportunity in line with Section 75 should help to highlight all possible examples of differential participation by Section 75 grounds, and evidence of any disproportionate impact of the proposals on such grounds. In practice, these effects can relate to either the substantive outcomes of planning decisions or the procedural process of how decisions are made. Further, in reflecting on these considerations it is important to bear in mind that those affected by planning decisions may extend far beyond those who directly access the services delivered by the Planning Service (i.e. 'clients'), including those who currently do not access the planning system and, as a consequence, may have unmet needs and rights. Comprehensive monitoring data, supported by a coherent monitoring strategy, is seen as an important step in providing a considered reflection on the accessibility, use and uptake of the wide range of services delivered by any planning system operating at both a regional and local level.

In equality proofing any planning reform proposal it is important to understand how planning decisions could potentially impact on groups associated with any of the nine Section 75 categories. It may be useful to understand how each of the categories could be affected by both the substantive outcomes (i.e. expressed as specific physical, land use development) of the planning process and the different procedural processes used in making planning decisions but it is recognised that the focus of the current planning reform programme is on the latter.

In terms of substantive impacts, some groups may have been directly affected by past land use planning decisions and their identity and lifestyle may be differentiated from mainstream society in the way they relate to land use and the spatial features of the built environment. Consideration of substantive impacts will be much more significant as the reform programme moves into the implementation stage (2011 onwards) but examples might include:

(Details of the Reference shown in brackets are included in Appendix 2)

- There is an established literature that shows how different cultural practices or economic activities associated with different ethnic groups may be reflected in the built environment and which may, under some circumstances, clash with the values of mainstream society, as projected through the regulatory planning system. Travellers in particular suffer multifaceted deprivation as a direct consequence of planning decisions that result in many families living on unauthorised sites, with poor access to services and with negative consequences for health and access to other services such as education. (Ref. 4)
- Gender: It has become recognised that the built environment may have differential impacts by gender due to how gendered lifestyles and relations are played out and reproduced in urban space. (Ref 5b).
- Age: The way in which both children and older people are able to access services and facilities has been shown to potentially result in negative consequences for health and wellbeing. (Ref 8 and 9)
- Disability: The physical barriers faced by those with disabilities are better known. (Ref 13)

In terms of procedural impacts, other literature (Ref 2) highlights the following critical points:

- Planning decisions are made in a variety of 'policy processes', which may include those decided through the judgement of experts (e.g. setting housing projections), the semijudicial context of public inquiries, or by politicians in the context of representative democracy.
- Each of these processes will be more or less accessible depending on the attributes of a person. For example, those who are able to engage in 'expert' planning discourse (or who can afford an advocate) will have an advantage in expert-led or technocratic policy processes. Those who have poor literacy or fluency in English may therefore find some processes more difficult to influence than others. This may impact on, for example, those with a disability or those whose first language is not English.
- The different Section 75 categories are likely to be characterised by a mix of attributes that may result in collective advantage or disadvantage according to policy process. It is important that the screening documents recognise that shifting the way planning decisions are made from one process to another could impact on the ability of different groups to influence that decision.

In order to ensure that future policies are sufficiently evidence-based, it is recognised that appropriate data gathering systems should be put in place in the future to consider not only those who use but also those who do not use various planning services. While this data gap may have traditionally characterised the planning system in Northern Ireland, as elsewhere, there are indications of a growing realisation of the value of such data for effective system control and management. For example, the Scottish Government (Ref 18) has completed a study that has attempted to examine whether those involved in the planning system are representative of the broader population. In summary, this report found that:

- In the case studies examined (N=3), those who volunteered views to the planning authority came from a particular cross section of the community, dominated by the middle aged and the elderly.
- People under 35 were largely absent from the process.
- Retired people dominated the responses.
- White Caucasians dominated responses in the three case studies.
- Evidence was unclear but it appears that those people in full time employment were also under-represented among respondents.
- Women were slightly more likely than men to become involved in the planning process, but significantly more likely to oppose an application.

The broad picture shown in this research seems to be also reflected in the work of the private Saint Consulting Group, who undertake an annual opinion survey[6] of objections to development. There are also isolated examples of studies (Ref 19) that have looked at the 'client' group of specific areas of planning activity, such as conservation areas, and again insights gained from such research can help inform the emerging reform programme.

There are two further issues that have a key bearing on understanding who may be affected by the planning reforms:

- Although the Scottish data outlined above may suggest that certain groups are overrepresented in some areas of planning activity, the fact that some groups are apparently absent should not necessarily be taken as an indication that they will not be affected by any proposal. It should be borne in mind that a group may be absent from such processes because the existing procedures may serve to exclude them (e.g. hidden 'chill factors'), and some thought must be given as to how the planning reforms are likely

to ameliorate or extenuate such processes. It is likely that an insight into this issue can only be gained through direct contact with under-represented groups, i.e. those that do not use the planning system.

- It may be inappropriate to consider the 'clients' of the planning system as being just those who access planning services such as appeals and applications – the outcome of the planning system affects all of society in terms of its land use outcomes, with obvious implications for differential impact on one or more of the nine Section 75 categories.

Strategic Sources

All government policies and reform proposals, including planning reform, are informed by a

number of key strategic documents, notably the following cross-departmental strategies:

- Race Equality Strategy;
- Gender Equality Strategy;
- Sexual Orientation Strategy and Action Plan 2006-2009; and,
- Ageing in an Inclusive Society – strategy for older people.

(This list is not exhaustive.)

Sources External to Planning Service

There follows a synopsis of other data sources which have been referenced and will continue to be drawn upon during the reform programme, of which this final EQIA at a strategic level forms a part.

Northern Ireland Census Data

A census of the population is normally taken every ten years and is carried out by the Census Office for Northern Ireland. The census provides essential statistical information about the population and households for all parts of the country. The most recent results available are from the 2001 census returns.

Indicators of Equality and Diversity in Northern Ireland

Published on 12 January 2007, this is the fifth in a series of reports from a research project commissioned by the Office of the First Minister and Deputy First Ministers to study the development of indicators of diversity and equality in Northern Ireland. Through reviewing and extensively analysing existing NI statistics and research, the report aims to develop an 'equality and diversity picture' of the region; to identify key indicators of change over time; and to consider the potential of existing data to provide useful indicators of equality and diversity.

Statement on Key Inequalities in Northern Ireland

Published by the Equality Commission for Northern Ireland in October 2007, the statement seeks to highlight the range and breadth of the equality agenda in Northern Ireland and to set out some of the inequalities that remain to be addressed.

Northern Ireland Multiple Deprivation Measure 2005

Published by NISRA, May 2005, the report identifies small area concentrations of multiple deprivation across Northern Ireland. The report includes a series of maps which set out each domain of deprivation and the overall Multiple Deprivation Measure.

Social Trends

Social Trends is an annual publication produced by the National Statistics Office. An established reference source, it draws together social and economic data from a wide range of government departments and other organisations to paint a broad picture of society today, and how it has been changing.

Continuous Household Survey

The Continuous Household Survey provides a regular source of information on a wide range of social and economic issues in Northern Ireland, and has been running since 1983. The survey is based on a random sample of 4,500 domestic addresses. Interviews are sought of all adults aged 16 and over in the selected households.

Northern Ireland Life and Times Survey

The Northern Ireland Life and Times Survey, launched in the autumn of 1998, monitors the attitudes and behaviour of people in Northern Ireland annually to provide a time-series and a public record of how attitudes and behaviour develop on a wide range of social policy issues.

Households Below Average Income

The DSD's Annual Households Below Average Income Report uses household disposable incomes, adjusted for household size and composition, as a proxy for material living standards or, more precisely, for the level of consumption of goods and services that people could attain given the disposable income of the household in which they live.

Family Resources Survey

The Family Resources Survey collects detailed data on income levels, resources and financial circumstances of individuals and households for the period from April 2002 to the end of March 2003.

Northern Ireland Crime Survey

The Northern Ireland Crime Survey is carried out by Central Survey Unit on behalf of the Northern Ireland Office. It is a household survey which has been running as a continuous survey since January 2005. It was first carried out as a one-off survey in 1994/5 and was repeated in 1998, 2001 and 2003/4. The main purpose of the survey is to collect information about levels of crime and public attitudes to crime. The information is collected by interviewing people to find out about crimes they may have experienced, including those that were not reported to the police. Respondents are also asked their views about the level of crime and how much they worry about crime.

Regional Trends

Regional Trends is a comprehensive regular source of official statistics for the Statistical Regions of the United Kingdom (Scotland, Wales, Northern Ireland and the Government Office Regions within England) produced by the National Statistics Office. It includes a wide range of demographic, social, industrial and economic statistics, covering aspects of life in the regions.

Labour Force Survey

The Labour Force Survey (LFS) is a quarterly sample survey carried out by interviewing people about their personal circumstances and work. It is the biggest regular household survey in Northern Ireland and provides a rich and vital source of information about the labour force using internationally agreed concepts and definitions. The LFS provides information on labour market structure, employment, ILO (International Labour Organisation) unemployment, economic activity, groups within the labour market.

2005 Labour Force Survey Religion Report

The 2005 Labour Force Survey Religion Report presents information from the 2005 Labour Force Survey on the labour market characteristics of Protestants and Roman Catholics in Northern Ireland.

Women in Northern Ireland

Women in Northern Ireland is a quarterly publication produced by the Department of Enterprise, Trade and Investment. This publication contains key facts and figures about women in Northern Ireland. It covers the areas of employment, unemployment, economic inactivity, education, childcare provision and representation in public life.

Child and Family Poverty in Northern Ireland

Published in April 2006, the report was commissioned by the OFMDFM (Office of the First Minister and Deputy First Minister) and provides an analysis of the levels and composition of child and family poverty and social exclusion.

Equality Mainstreaming - Policy and Practice for Lesbian, Gay and Bisexual (LGB) People

This research report was commissioned by the Equality Directorate of OFMDFM prior to devolution, with the aim of providing a 'broad evidence base to assist statutory bodies in effectively considering LGB issues in the development of policy and practice'.

Section 4: Assessment of Impacts

In bringing forward proposals under the reform programme, the Department is aware that in each of the key elements there may exist the potential for impacts (whether positive or negative) on one or more of the Section 75 grounds. It must be acknowledged that not all impacts will be adverse, and even within one Section category there may be both adverse and positive effects. For example, greater use of web-based systems may positively impact on certain people with a disability (e.g. those with restricted physical mobility) while having an adverse impact on those who have difficulties interacting with computer systems (e.g. those with sensory or learning difficulties).

The focus of the reform programme is primarily on procedural impacts and not substantive impacts. Operating within the broad terms of reference of the planning system reform programme, as laid out in the Programme for Government, and taking into account existing research, the following section highlights the potential procedural impacts.

Between men and women generally

Procedural Impact (i.e. planning system)

There is some evidence from other parts of the UK that women may be somewhat more likely to become involved in the planning process and also significantly more likely to oppose an application (hence a positive impact). These findings may reflect on related evidence which suggests that those who are more active in the labour market may be less likely (or able) to engage with the planning process, given that, in general terms, women are more likely than men to be either economically inactive or to be working part-time. It is also possible that women feel a greater sense of stewardship over the environment, and respond to development proposals accordingly.

Persons of different age

Procedural Impact (i.e. planning system)

Existing research would indicate that those who are aged 50 years and above are over-represented in the planning system (a positive impact) while those under 35 are largely absent (an adverse impact). Once more, it is likely that engagement with planning systems is likely to be influenced by availability and ease of access which in turn may be determined by employment status. For example, those in full-time work are least likely to engage with planning services while those who have retired from work are most likely.

Older people living in rural areas or on disadvantaged housing estates have difficulty accessing the sorts of opportunities that most people in society can often take for granted, perhaps including access to planning systems. This is a particular issue for pensioners in rural areas who are more likely to be in poverty than those in urban areas. For older women, in particular, participation can be further constrained by pensioner poverty. There is also evidence to suggest that exclusive reliance on e-technology and computer-based application systems can inadvertently serve to further marginalise such populations.

Persons with a disability and persons without

Procedural Impact (i.e. planning system)

Given typical application procedures that apply to any form of engagement with the public sector, it is likely that those with a disability will find it more difficult to access a planning system, whether in Northern Ireland or elsewhere. While, in common with many public authorities, the Planning Service has already introduced a number of positive action measures to help overcome obstacles to engagement it has been shown that those with a disability still perceive that they face obstacles when trying to access public and social services - such as transport, housing and financial services. Once more, while reliance on computer-based systems may increase accessibility for some (including those with a disability), for others it may create obstacles, also including those with a disability.

Persons of different marital status

Procedural Impact (i.e. planning system)

Available evidence would suggest that the existing planning services may be less accessible and available to those with competing family commitments.

Persons of different religious belief

Procedural Impact (i.e. planning system)

It has been estimated that there could be up to 150 separate religious groupings in Northern Ireland at the present time. Access to public services in general must accommodate this rich diversity of personal beliefs.

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 decision-making at district council level, whether in relation to planning issues or other council functions.

Persons of different political opinion

Procedural Impact (i.e. planning system)

The strong correlation between political opinion and community background / religious belief in Northern Ireland would suggest that the comments applied to religious belief can be read across to this ground as well.

Between persons with dependants and persons without

Procedural Impact (i.e. planning system)

Dependency status may differentially impact on access and availability of planning services, given its recognised effect on employment status.

Persons of different racial group

Procedural Impact (i.e. planning system)

There may be barriers associated with the planning system for those whose first language is not English, and in particular where documents are of a technical nature. Lack of availability of translation services for those not fluent in English may also create an impediment. It has also been found that the planning system can be used as an outlet for discriminatory behaviour against some racial groups, particularly Travellers, through objections to planning applications, not made on the basis of the land use characteristics of the proposed development, but the ethnicity of the proposed occupants.

Persons of different sexual orientation

Procedural Impact (i.e. planning system)

There is no indication or evidence that an individual's sexuality will adversely affect his or her's access to the planning system.

TABLE 2: SUMMARY OF POTENTIAL SUBSTANTIVE AND PROCEDURAL IMPACTS

BY SECTION 75 GROUNDS (Details of the References shown in brackets are included in Appendix 2)[7]

S.75 groups	Procedural impacts of planning	
		Comment
Gender	**	There is evidence that shows women can be better represented in participative processes (Ref 6) and how policies can be gender proofed (Ref 7). The Scottish Executive (Ref 18) found that women were slightly more likely than men to become involved in the planning process, but significantly more likely to oppose an application.
Age	**	Children have been largely neglected in decision-making in planning and to properly include them requires alternative, more creative participative processes (Ref 10) Older people appear to be over-represented amongst those responding to planning consultation (Ref 11) and there is evidence that older people respond differently to different methods of participation (Ref 12). The Scottish Executive found that those who volunteered views to the planning authority came from a particular cross section of the community i.e. the responses were dominated by white Caucasians, the middle aged (>35 years of age) and the elderly. (Ref 18).
Persons with a disability	**	There is evidence that those with disabilities could be excluded from decision-making processes (Ref 14) and that developers' attitudes towards disability can be highly varied (Ref 15), although recent work may suggest that these adverse effects may have been ameliorated following recent amendments to the legislation. Available research (Ref 24) indicates that adults with a disability and children with a disability have the highest risk of poverty before social transfers, at 77% and 70% respectively in 2004-05. After social transfers the risk of poverty for adults with a disability was 26% and children with a disability was 37%.
Martial status	*	It is assumed that marital status is a characteristic of the wider society and as such married people will not experience any disproportionate effects of different methods of decision-making. However, available evidence (Ref 25) suggests that those who are separated will tend to have the highest rate of poverty, followed by those who are divorced and then single people.
Religious	**	While there may be no strong indication that religious belief will impact on the
beliefs/ Political		regional dimensions to the reformed planning system, given the correlation
opinion7		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.

S.75 groups	Procedural impacts of planning	
		Comment
		There is evidence that certain sections of some religious groups (e.g. young Protestant men) may have attributes such as low literacy rates that may act as a barrier to full participation in some planning processes. It has been estimated that there could be up to 150 separate religious groupings in Northern Ireland at the present time. Access to the planning system must accommodate this rich diversity of personal beliefs.
Persons with dependents	**	Whilst no evidence could be found that could confirm that those with dependents are differentially impacted by different planning processes, greater domestic commitments could discourage involvement in the planning system. It is conceivable that dependency status may differentially impact on access and availability of planning services, given its recognised effect on employment status.
Racial group	**	There is evidence that suggests that different racial groups are differentially affected by the range of ways decisions are made in planning (Ref 2). There is also guidance on how participation can be improved for ethnic minorities (Ref 3) and specifically how Travellers can be better involved in the Northern Ireland planning system (Ref 4). There may be barriers associated with the planning system for those whose first language is not English, and in particular where documents are of a technical nature. Lack of availability of translation services for those not fluent in English may also create an impediment.
Sexual orientations	*	There is no indication that an individual's sexuality will adversely affect their access the planning system. It is assumed that people with different sexual orientations are characteristic of the wider society and as such will not experience any disproportionate affects of different methods of decision-making. There is some specific research undertaken on gay citizenship in Belfast, providing some evidence (Ref 17), although extrapolation on planning procedures is difficult to make.

Note:

**** = established and significant negative impact

*** = potential significant negative impact

** = potential impact, evidence not established

* = insignificant or no impact

TABLE 3: NEW TSN CONSIDERATIONS

New TSN Dimension	Comment
Health and Mortality	There is a clear relationship between deprivation and health outcomes with those in deprived areas tending to experience worse health outcomes, while also suffering from increased morbidity and mortality (Ref 21).

Section 5: Consideration of Measures to Mitigate Potential Adverse Impact / Alternative Policies to Promote Equality

The Department deliberately cast the net wide in describing and analysing data that may relate to the reforms of the planning system. It is also worth noting that the Department has a track record of responding positively to the needs of particular groups through previous revisions to its existing systems. For example, the Disability Discrimination Act 1995 (and successive amendments) have been responded to by the introduction of a number of positive action measures designed to make the service and the built environment more accessible to those with a wide range of disabilities. The reform programme will continue to aspire towards best practice in this regard and welcomes the fresh impetus it has provided.

This final EQIA at a strategic level also shows the complex nature of the planning system, and the potential for impacts both positive and negative on so many groups linked to Section 75 grounds. While it is anticipated that the majority of changes that will accompany the reform programme will, by their very nature, have a positive impact on Section 75 groups, on those occasions where there is the potential for the promotion of equality of opportunity and/or adverse impact then the Planning Service is keen to explore any possible mitigating measures or alternative approaches.

The Department is content that the planning reform proposals will continue to help meet the aspirations as laid out by the Executive, to encourage economic growth along with the development of a peaceful, prosperous, fair and healthy society.

At indicated in the draft EQIA at a strategic level, the Department is committed to taking action as set out below to further enhance the mainstream of Section 75 statutory obligations within the reform programme.

1. Existing data on those who do, or do not, engage with the planning system is less than substantial. The Department therefore commits to take action to develop a Monitoring Strategy that will incorporate information on relevant Section 75 categories, in accordance with best practice and the Equality Commission's Guidance on Section 75 Monitoring. This Monitoring Strategy will be developed for implementation in the context of the reformed planning system from 2011-12 onwards.

2. Despite this historical absence of data, the Department recognises that, in Northern Ireland as elsewhere, all members of the community may not always have had equality of access to the planning system. Indeed, this was part of the original rationale for the Department's funding of organisations such as Disability Action and Community Places. In bringing forward proposals under the key elements of the reform programme, the Department will remain alert to these issues and will aim to ensure that the reformed planning system is as user-friendly and inclusive as possible.

3. The Department will commit to engage widely during the continued development and implementation of the reform programme, including with representatives of those groups who may be at risk of adverse impact. Race, age and disability have already been identified as Section 75 categories that may warrant further attention to ensure that the reformed planning system is inclusive and genuinely accommodates those with particular needs.

4. The Department will ensure that all forms of consultation will be made accessible to all sections of the community, including written documents as well as the timing, management and location of consultation events.

5. Where a new issue/policy emerges through the programme of reform, over and above those key elements already identified, that issue/policy will also be subject to appropriate screening and, if necessary, an equality impact assessment (EQIA).

6. As the reform programme is rolled-out, and the new planning system is created, there will be an expectation on both central and local government to ensure that Section 75 obligations continue to be mainstreamed through regional and local planning systems.

Conclusion

This process has provided the Department with an opportunity to demonstrate that Section 75 statutory obligations are at the heart of the reform programme. While the Department's initial screening exercise indicated that significant effects on each of the Section 75 categories were not anticipated, the draft EQIA at a strategic level was undertaken in order to offer a timely reflection on progress made to date, to consider the potential procedural impacts in greater detail and to begin the process of identifying those occasions during future implementation where it will be important to next apply the checks and balances that Section 75 affords. Some very useful feedback was obtained through the consultation on the draft EQIA at a strategic level, which will help the Department develop its Monitoring Strategy as it moves forward. Through the operation of due diligence in this manner, the Department can make sure that fair treatment and the promotion of equality of opportunity remain a priority for the entire planning system up to and beyond 2011.

Section 6: Consultation on Proposed Policies and Draft EQIA at a Strategic Level

Consultation

Consultation on the Reform of the Planning System in Northern Ireland commenced on 6 July 2009 with the publication of the proposals paper: 'Reform of the Planning System in Northern Ireland: Your chance to influence change'. The draft EQIA at a strategic level was published at the same time. There was a very encouraging response to the consultation paper, with 264 responses received. In general, strong support was expressed for the majority of the reform proposals. Fourteen direct responses were received to the draft EQIA at a strategic level, which included feedback on both equality issues and also on the reform proposals. Similarly, equality related issues were made throughout many of the general responses to the overall Reform consultation paper.

During the 12 week consultation period a series of consultation roadshow events were undertaken. The roadshow events formed the central part in a process of encouraging engagement and response to the Reform Proposals before the closing date of 2 October 2009. They were organised and facilitated by a team of event managers and independent planners who, together with key Planning Service personnel, attended a mixture of day and evening events in each of the new eleven council areas to hear the views and opinions of those who came along.

Aside from being publicly advertised, over 1,500 invitations (written and e-invites) were issued to a wide range of sectors, including the business community, environmentalists, councils,

community and voluntary groups and other organisations, and 1,000 fliers were issued to libraries, leisure centres, council offices and civic centres. In total, almost 500 people took up the invitation and came along to one or more of the events.

Equality Profile of Attendees

Of the 480 participants, 191 completed and returned an equality feedback form. This represents a response rate of just under 40%. Upon further analysis (shown in Appendix 3) the following points can be made:

- of the 191 respondents, 57% were male and just over 30% were female (with the rest not responding or declining to comment);
- looking at the age profile, no-one was under 18 years old; 4.7% were aged 19-25 years; the two highest age groups were 26-35 years and 56-65 years with 18.8% each; 15.7% were 36- 45 years; 16.2% were 46-55 years and just over 10% were aged 65 years and over;
- 60% were married and just under 20% were single with the rest declining to comment or not responding;
- 46% had dependants, 35% did not and the rest did not respond;
- 33% of participants stated that their community background was Protestant; 31% Catholic; 10% neither; 2% 'other'; and the remainder declined to respond;
- 79% of respondents said they were white and the rest declined to respond or left the question unanswered;
- 75% stated they were not disabled, 7% stated they were, and the rest did not respond.

This paper is the final EQIA at a strategic level, taking account of the responses to the planning reform consultation and the roadshow events. This paper is being published at the same time as the government response to the outcome of the planning reform consultation.

Section 7: Department Response to Consultation

There were 14 responses to the draft EQIA at a strategic level, although a number of comments on equality were made by respondents in their consultation responses. The comments to the draft EQIA are contained in a table at Appendix 4, including the Department's response to them. Below we highlight some of the general comments and those which relate to specific reform proposals.

General Comments

A number of respondents welcomed the Department's reform programme and the opportunity it offers to address barriers and shortcomings in the current planning system and to further promote equality of opportunity and good relations at all levels of the planning system and its delivery of services across Northern Ireland. They also welcomed the fact that the draft EQIA was published at the same time as, and in conjunction with, the consultation paper and relevant screening documents. The Department's commitment to the development of a future monitoring strategy was also welcomed.

Respondents welcomed and endorsed the stated outcomes of the programme in terms of ensuring a system more capable of discharging the statutory obligations to have due regard to

the need to promote equality of opportunity and stronger collaborative work across a range of stakeholders.

The accommodation needs of members of the Traveller community were raised by a number of respondents as a priority issue, as was the need for greater understanding and recognition of the needs of Section 75 groups in rural areas. A number of respondents suggested that the groups most likely to be affected by the reforms were the elderly, young couples and low income families. In a number of responses, this was raised in the context of concerns about second homes and buying for investment in coastal communities.

There was support for the commitment that local authorities would be expected to mainstream due regard for the need to promote equality of opportunity and without prejudice to same, regard for the desirability of good relations in local planning systems, compliant with Section 75. However, some concern was also expressed in relation to the resource implications that might arise. Reference was also made to the revised Section 75 guidance, which is anticipated from the Equality Commission this year.

There was recognition by some that the assessment in equality terms of the full implications of some of the proposed changes would not be fully realised until later stages in the process, particularly at the implementation stage. However, this was also a cause for concern in relation to the potential implications for local authorities in implementing the new planning system.

The transfer of responsibility from central to local government was a recognised as a key element of the reforms and it was suggested that the EQIA should have more fully explored the area of religion / political opinion as there may be a requirement for mitigating measures arising from the need for councillors to make decisions that are not based on community background or political allegiances.

Third party appeals and the rights of objectors were raised by a number of respondents as an equality issue.

In terms of mitigation, it was suggested that there was a need for education of the public on how to access the planning system more effectively, and the provision of technical and legal advice to assist applicants and objectors. It was suggested that community groups and charitable groups working with the various disadvantaged groups in society must be given the opportunity to access simplified documentation and to attend training sessions designed to show how the various stages of the new system will work. It was also suggested that information should be provided and disseminated in a clear, comprehensible form and made available electronically, but also in a paper and in oral form to those less able to deal with large, formal documentation. The scope to use other forms of media, such as radio and television, for communicating the changes was also identified.

The following sections look at individual policy areas and the government's response.

Planning Policy

The Department's commitment outlined in the draft EQIA at a strategic level to continue to subject individual planning policies contained within Planning Policy Statements (PPSs) to equality assessment in line with statutory duties was welcomed. It was recognised that while there is no evidence to suggest that a PPS in itself will result in differential impact on any of the Section 75 groups, the development of policy directions set out in PPSs should be evidence-based.

One respondent suggested that the presumption in favour of development is in itself an inequality and to be truly impartial there should be no presumption either for or against development.

A number of respondents highlighted the need for the Department to establish strong oversight mechanisms and use the powers of direction to ensure that equality of opportunity is promoted at council level across all equality categories and for vulnerable groups within these. In particular, issues in relation to housing needs and Travellers and national minorities were identified in some consultation responses. In addition, a number of recommendations were made in relation to PPSs and any supplementary guidance, relating to issues such as Travellers needs; carrying out analysis of existing inequalities; ensuring equality screening; ensuring councils have regard to S75 and Section 67 (Race Relations), and so on.

Department's Response

By March 2011, the Department intends to have in place an up-to-date suite of PPSs in their current format, as well as a new PPS1 (which will set out the general principles to be observed under the reformed planning system for formulating planning policy, making development plans and exercising development management powers). This suite of PPSs, together with the revised Regional Development Strategy (RDS), will provide a robust and consistent planning policy framework within which the new councils will be able both to prepare the first round of local development plans and to manage development. This planning framework will give some scope for development plans to provide local policies which complement or amplify regional policy. The Department will provide transitional advice and guidance for district councils on how this will be implemented.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12. Following the transfer of planning functions, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance. Development plan proposals will continue to take full account of the accommodation needs of the travelling community through the Housing Needs Assessment prepared by the Housing Executive either by zoning land suitable for Travellers' sites or setting out site selection criteria. This will enable local solutions (including the provision of advice on site selection and management) to be developed for particular local circumstances in consultation with the local travelling community and their representative organisations as well as the local settled community. This provides the opportunity for all sections of the community (settled and nomadic) to have their needs considered as part of mainstream district council planning and housing decision making processes.

The Department recognises the importance of equal treatment of Travellers and the settled community in the planning system. In preparing a new Planning Policy Statement 1 on the general principles that will underpin the operation of the modernised planning system, the Department will give consideration to the best way of promoting equality of opportunity for all sections of the community. As at present, all Planning Policy Statements will continue to be subject to equality screening and assessment as appropriate. The policy content will be a matter for consideration when each PPS is being prepared / revised.

Development Plan

A wide range of equality-related and more general comments were received from respondents to the draft EQIA at a strategic level in relation to the development plan proposals. The key equality issues raised included:

- significant opposition, for equality and other reasons, to the proposal that the Department should give independent examiner(s) the power to determine the most appropriate procedures to be used when dealing with representations to the local development plan;
- local development plans should explicitly seek to redress key inequalities in housing and promote social inclusion;
- councils should be required to zone land for Traveller sites in their development plan where the Housing Needs Assessment (HNA) shows need rather than leaving it to be determined through individual applications;
- councils should be required to consult the travelling community/traveller groups in order to identify suitable locations for sites to meet the needs identified in the HNA;
- the need for development plans to address social and affordable housing, particularly in coastal communities where second homes and buying for investment is an issue;
- the Department using its oversight, guidance, audit, governance and performance management processes to ensure that the reformed planning system and future council policy and procedures are inclusive and genuinely accommodate those with particular needs;
- local development plans and community plans should be closely linked in order to achieve a coherent approach to identifying and addressing social need, social inclusion and equality of opportunity;
- the need to establish additional baseline data and improve monitoring systems to ensure regular monitoring and review of local development plans;
- through the test of robustness (to be known as Soundness), as well as plan monitoring and review, particular attention should be paid to issues such as the high level of segregation in housing on grounds of community background, the lack of suitable housing for disabled people, homelessness and the lack of adequate housing and accommodation for Travellers;
- local development plans should be subject to EQIAs and there would be benefit requiring a statement of good relations in local development plans which would set out how the plan will address separation and promote sharing; and
- the 'social' dimension of the proposed Sustainability Appraisal provides an important mechanism to address rural proofing and Section 75 priorities.

Department's Response

The key aspect of the local development plan proposals which has changed following further detailed consideration, and in response to the feedback received, is in relation to the proposal to give the PAC or other independent examiner the power to determine the most appropriate method to deal with representations at plan independent examinations. The aim was not to stifle debate at the independent examination or to stop certain stakeholders from contributing: it was simply to enable the independent examiners to better manage the examination process. However, the Department has taken into consideration the strength of opposition, in particular the potential for detrimental effects on some Section 75 groups, and has decided not to proceed with this proposal. Therefore, the current provision for oral hearings will remain. As such, any person who makes a representation seeking a change to the Plan Strategy or Site Specific Policies and Proposals document (to be known as the Local Policies Plan) will be given the opportunity, if so requested, to appear at the independent examination and be heard by the PAC or other independent examiner.

In relation to the other local development plan issues raised, the Department would respond as follows:

- local development plan legislation and the test of 'soundness' will require district councils to ensure they have met the preparation requirements of a local development plan, which includes taking account of central government plans, policy and guidance and that there is a robust evidence base for the decisions made on policies contained within the plan;
- district councils will be required to have their Statement of Community Involvement (SCI) in place before any public consultation on the local development plan can begin. The SCI will set out the councils approach to community consultation for the plan and will include any measures required to meet Section 75 obligations, including consultation with Travellers and others, as appropriate. The Department considers that the SCI will enable district councils to carry out more inclusive and effective community consultation on their local development plans. It will also help better promote equality of opportunity and community relations through increased awareness of community participation and involvement;
- on the specific issue of social and affordable housing, land zoning and Travellers, the Department notes the comments made. The adequate provision of social and affordable housing is a matter for planning policy and is currently set out in the RDS and PPS12. The current planning policy context for Travellers is set out in the RDS and in PPS12 it allows for plans to identify specific sites to meet needs such as traveller sites. Following the transfer of planning functions, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance;
- there will also be a statutory requirement for district councils to monitor the implementation of their local development plans which will include any policy for the provision of land for Traveller accommodation, social and affordable housing and so on; and
- sustainability appraisals will include a 'social dimension' and detailed guidance on SAs will be prepared in due course. Furthermore, following the transfer of planning functions, the requirement for rural proofing and for local development plans to be subject to equality screening and EQIA, as appropriate, will apply to district councils in the same way as it currently applies to central government.

In summary, following the transfer of planning functions, when responsibility for local development plans moves to local government, Section 75 statutory obligations will continue to apply to district councils. It is envisaged that the 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. This will help address issues such as housing and accommodation for Travellers. While the test of 'soundness' will not include detailed policy considerations, it will include the requirement for local development plans to take account of central government plans, policies and guidance such as PPS 12.

Development Management

There was a broad welcome for proposals to create a more responsive, fair, predictable and efficient planning application system which focuses on shaping and facilitating appropriate development opportunities. Some concern was expressed in relation to the proposed thresholds and the potential that they might mean that some significant developments in rural areas would be excluded from being subject to pre application community consultation.

There was support for the introduction of statutory pre-application community consultation for regionally significant and major developments. A number of comments were made in relation to how such engagement should be conducted to ensure it is inclusive and effective, and that targeted action is taken if required so that, for example, older people, disabled people, Travellers, migrant worker families, social groups with low educational attainment, literacy rates and so on are properly engaged.

Some respondents recommended that pre-application community consultation should also be considered for applications for Traveller sites and it was suggested that due to their contentious nature it may be advantageous to adopt a different approach to pre-application community consultation which involves mediation skills. It was also suggested that although Traveller transit sites may not meet the threshold criteria for regionally significant developments, they should be treated as regionally significant and handled by identified officers in Planning Service because of their regional significance to the Traveller community across Northern Ireland.

One respondent also suggested that consideration should be given to expanding the list of statutory consultees to include the local rural and urban community infrastructure, learning from the Community Council model developed in Scotland.

Department's Response

The proposed development hierarchy (consisting of regionally significant, major and local developments) is intended to ensure that application procedures are proportionate and responsive to each of the three different types of development category. The Department will revise the details and proposals for the hierarchy, taking into account some of the views expressed through the consultation process, particularly in relation to amending and aligning some of the thresholds (including housing).

In addition, in light of responses to the consultation paper the Department will give district councils some discretion to issue a request to the Department that an application for local development be dealt with as a major development. This would provide flexibility to respond to exceptional and specific local circumstances where, in the opinion of the district council, pre-application community consultation might be considered appropriate. The Department intends to provide guidance to district councils in relation to the circumstances where this may be appropriate.

Applications for regionally significant development will form the top tier of development proposals which are considered essential to increasing the sustainable economic growth of Northern Ireland. These applications will be critical to the delivery of the Executive's regional investment priorities. By their very nature they will involve a relatively small number of large scale applications with strategic implications for the whole of Northern Ireland, for example, regional infrastructure and certain types of commercial development.

In light of the travelling community's distinctive local needs, particularly in relation to decisions on sites for accommodation, the Department considers that these are best addressed in their relevant local context as applications for local development rather than at the regional level.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12. Following the transfer of functions, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance. Development plan proposals will continue to take full account of the accommodation needs of the travelling community through the Housing Needs Assessment prepared by the Housing Executive either by zoning land suitable for

Travellers' sites or setting out site selection criteria. This will enable local solutions (including the provision of advice on site selection and management) to be developed for particular local circumstances in consultation with the local travelling community and their representative organisations as well as the local settled community.

The Department notes the comments in relation to ensuring effective engagement and consultation. The issues raised will be taken in account by the Department as it moves forward with the primary and subordinate legislation programme and also with the preparation of guidance on issues such as pre-application community consultation and so on. Similarly, the feedback in relation to consultees has been noted. Although the list of consultees has not yet been finalised, it is intended that the relevant bodies (statutory consultees) which must be consulted by the planning authority will be identified in subordinate legislation.

Appeals

In relation to appeals, the key proposals that resulted in equality issues being raised included the proposal to reduce the time limit for making an appeal and the proposal to give the PAC power to decide the most appropriate appeal method. There was support for reducing the time limit within which appeals must be made from the current 6 months, though with mixed views on the appropriate time period. There was some agreement that 6 months is unnecessarily long and it was highlighted that, in the context of Article 6 of the European Convention on Human Rights (ECHR), decisions affecting the civil rights of all parties, including the applicant and objectors, require to be determined within a reasonable time.

The proposal to provide the PAC with the statutory powers to enable it to decide the appropriate appeal method provoked a high response. One respondent recognised that the fair hearing provisions of the ECHR do not necessarily require an oral hearing, and others felt that a written appeal may place all participants on a more equal level that the semi-judicial nature of oral appeals. However, the majority of respondents opposed the proposals and a number expressed concern that the written representation method had the potential to disadvantage marginalised groups, including potentially some 24% of adults in Northern Ireland who have the lowest levels of literacy competence. People with disabilities were also said to be potentially disadvantaged by the removal of such a right.

Department's Response

The Department intends to reduce the time limit for submitting an appeal to 4 months with legislative powers to be provided to change this time period through subordinate legislation at a later date, if appropriate.

The aim of the proposal to give the PAC the power to determine the more appropriate appeal mechanism was not to stifle debate at appeals or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission to better manage the appeals process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department will not proceed with this proposal.

Third Party Appeals

The issue of third party appeals attracted a high number of responses to the overall consultation paper and also in relation to the draft EQIA at a strategic level.

A number of respondents supported the introduction of third party appeals, with many indicating that it should be a limited or restricted right to avoid vexatious challenges. Some suggested it

was necessary, from an equality perspective, to protect against inadequate community consultation.

One respondent suggested that third party rights to challenge the determination are severely limited and this raises the scope of Article 6 of European Convention on Human Rights.

Those in favour of introducing third party rights see it as a fundamental component of a reformed planning system which is fair and accessible to all and a system which is founded on principles of equality and genuine engagement. By contrast, those against the introduction of such rights believe that the planning system has enough opportunities for engagement. They said that this fact, together with the reforms proposing a much more front-loaded system of community involvement, will negate the need for any such system. In fact, some feared that their introduction could cause further delays in what they see as an already slow and inefficient system.

Some respondents suggested that the emphasis on a formal 'paper' approach to all aspects and phases of the planning process disadvantages the less literate sections of the population and not introducing third party appeals would throw this balance further out of kilter. Careful consideration must also be given as to how the less literate are to be kept abreast of these matters and thus informed and empowered to play a proper role in the system.

Other respondents recommended that third party rights of appeal should be introduced with a legalaid fund available to individual objectors and small community and residents' groups with insufficient funds, to enable them to contest appeals effectively.

Department's Response Whilst no formal proposal for third party rights of appeal was included in the planning reform consultation paper, it is evident from the responses received that there is a clear division of opinion with strong views for and against their introduction.

The reformed planning system has been designed to front-load arrangements for community consultation, engagement and involvement in the planning process in order to shape and influence better outcomes. The Department has decided that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and implementation of RPA have settled down and are working effectively. The Department does not therefore intend to make provision for third party appeals in the current round of planning reform proposals.

On the specific issue of whether the absence of third party rights of appeal raises the scope of Article 6 ECHR, it has been the opinion of the courts in Great Britain that a combination of the opportunities for input by third parties of their views relating to planning applications and the ability to have recourse to Judicial Review is sufficient to satisfy the requirements of Article 6 of the European Convention on Human Rights. The judgment in the Foster Judicial Review case delivered in the High Court of Justice in Northern Ireland in January 2004 reached a similar conclusion.

Enforcement and Criminalisation

The key equality related issues raised in relation to the enforcement proposals was that the needs of Travellers who have no alternative culturally sensitive accommodation should be taken into consideration before enforcement action is served.

Other responses also suggested that enforcement penalties need to be more realistic to ensure compliance.

Department's Response

The Department intends to proceed to introduce legislation so that retrospective planning applications should attract a multiple of the normal planning fee. The level will be determined at a later stage and included in subordinate legislation. Fixed Penalty Notice powers in respect of a breach of an Enforcement Notice or Breach of Condition Notice will also be introduced. In addition, the Department intends to give consideration to measures which would help ensure that levels of fines are commensurate with the breach of planning control

In relation to potential enforcement action, the Department notes the comments made in relation to Travellers and can confirm that, as PPS 9 indicates, the Department has a general discretion to take enforcement action against a breach of planning control when it regards it as expedient to do so having regard to the provisions of the development plan and any other material considerations. This policy will continue to apply to district councils following the transfer of responsibility for planning functions.

Developer Contributions

A number of comments were received in the context of equality issues and developer contributions, with the suggestion that the contributions sought from developers could be used to promote greater equality and good relations through the needs identified in community and local development plans.

Department's Response

The Planning Reform consultation document was used as a suitable vehicle through which to initiate debate on the issue of seeking contributions from developers for the provision of general infrastructure, beyond that already required to mitigate the site specific impact of a development proposal and make it acceptable in planning terms. The comments made by respondents have been noted. The issue of developer contributions will require further consideration at Executive level, particularly in relation to those Departments with responsibility for the funding and provision of infrastructure, in order to determine the way forward.

Culture Change, Capacity and Performance Management

In relation to capacity building, the key equality issues raised related to the need to keep community and voluntary groups informed of the changes to the planning system as they are brought forward. One respondent reiterated the Department's view that there needs to be appropriate data gathering systems to establish who does not use or engage with the planning system. It was also suggested that, when drafting and planning the new service, specific action should be taken to ensure that the 'chill' factors associated with the current system are fully identified and addressed at all levels to ensure any barriers to participation and engagement are removed as far as possible.

In respect of Travellers, it was suggested that there should be a fair and sensitive approach to consultation and that this may require a degree of capacity building or community development before meaningful participation can take place. It was suggested that professional planning staff (at Department and council level) will need to be given the skills to enable them to be more proactive and creative in their approach to consulting Travellers. It was also recommended that an outreach programme of public education, informed media debates, independent planning advice as well as public awareness should be developed to ensure that all those involved in the planning process have the necessary knowledge, skills and competencies to effectively use and engage with the reformed planning system.

Department's Response

The Department notes the comments on these issues, particularly in relation to data gathering systems and better understanding of who does / does not engage with the planning system. These issues will be taken into account by the Department as it develops its future Monitoring Strategy. Similarly, the comments on engagement and participation have been noted. Officials will also continue to work with other sectors to explore how best to raise awareness and enhance capacity and understanding within the system to ensure readiness for the changes that will arise through the implementation of the RPA and planning reform.

Section 8: Development of Future Monitoring Strategy

As indicated in the draft EQIA at a strategic level, the Department recognises that there is a need to gather more relevant information, both quantitative and qualitative, on the equality-related issues linked to planning reform.

The Department has committed to developing a future monitoring strategy to monitor the impact of the reform programme on users of the planning system. In order to do this effectively, the Department will also work with others to ensure that appropriate action is taken (by the Department and others as appropriate) to increase the available information and knowledge in this area.

The focus of the Department's Monitoring Strategy will be to assess the impacts that the reforms to the planning system are having on section 75 groups in Northern Ireland. It is not intended to manage or monitor the role of the individual councils in implementing the equality obligations that will be their responsibility under S75 of the Northern Ireland Act 1998.

The Monitoring Strategy will be prepared over the coming year so that it can be implemented from 2011-12 onwards. The Department will take account of the responses to the Planning Reform consultation paper and the draft EQIA at a strategic level when developing the Monitoring Strategy.

The Monitoring Strategy is likely to incorporate the following elements, though this may be subject to some revision over the coming months as the more detailed work is taken forward and as the legislation for the reforms to the planning system progresses through the Assembly process.

Purpose of the Monitoring Strategy

- to set out how the Dept intends to monitor the impact of the reforms to the planning system on users of the planning system

Time Period Covered

- likely to be at least 4 years

Key Activities / Commitments

- this will be set out on a year by year basis

e.g. Year One might include -

- Develop methods for gathering relevant baseline information – potentially through planning application process, customer surveys etc.
- Engage with ICT providers and local government to identify opportunities for any relevant information gathering related to S75 to contribute to baseline
- Identify relevant categories and data collection mechanisms to ascertain impact of key planning reforms on S75 groups, e.g. carry out research to assess impact of pre application community consultation on S75 groups

e.g. Year Two might include -

- Identify relevant categories and data collection mechanisms to ascertain impact of other key planning reforms on S75 groups, e.g. carry out research to assess whether requirements to demonstrate 'robustness' has any negative or other impact on S75 groups
- Identify and commission appropriate research to contribute to enhanced baseline information on, e.g. specified S75 groups

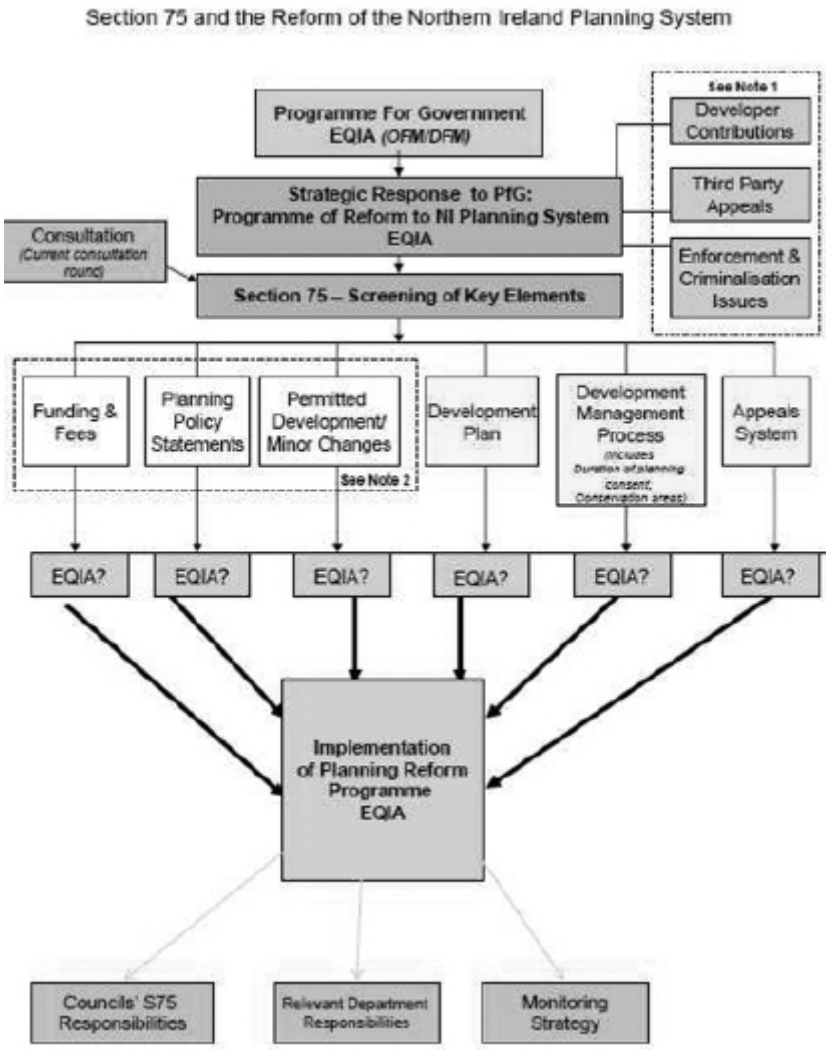
Progress Reporting

- Annual Report to ECNI as part of Department's report on its Equality Scheme

Publication

- The Monitoring Strategy will be produced and posted on the Department's website from 2011-12.

Appendix 1:



Notes to Accompany Appendix 1

Note 1: Developer Contributions, Third Party Appeals, Enforcement and Criminalisation Issues

At the time of the draft EQIA at a strategic level, proposals in these areas were not definitive. Instead, the Department wanted to find out from the consultation process whether or not there was a wide support for the introduction of third party appeals, and also for various revisions to the enforcement regime, including the possible introduction of criminalisation of development without planning permission. Depending on the outcome of the consultation, it was indicated that further consideration may be given to the issues, and if required, more detailed proposals will be prepared and screening documents developed. This remains the position.

In addition, the consultation paper was used to initiate debate on the issue of wider developer contributions beyond site specific mitigation. Consultation responses will be considered in light of the funding and infrastructure responsibilities of a range of central government departments. Any possible resulting work may be subject to separate equality considerations.

Note 2:

Funding and Fees

At the time of the draft EQIA at a strategic level, the Department identified the need to undertake appropriate equality screening in relation to any new funding arrangements which result from the reform process. This will be taken forward as required during 2010.

Permitted Development

Proposals for extending permitted development rights together with associated EQIA screening assessments were published as part of a separate public consultation exercise launched in October 2009. The consultation period ended in January 2010 and any comments received will be carefully considered in the analysis of responses which is currently underway.

Planning Policy Statements

The Department's initial draft screening found that, as these proposals are not concerned with actual policies contained within individual PPSs, there is no evidence to suggest that the proposals will have a differential impact on any of the Section 75 groups but, instead, they have the potential to help ensure that there is comprehensive policy on certain land use topics that can be applied equally to the different circumstances arising throughout Northern Ireland. The individual planning policies contained in PPSs will continue to be subject to equality screening by the Department and, where appropriate and in line with statutory duty, full EQIA. Following the consultation exercise, this remains the Department's position.

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Appendix 3 - Planning Reform Stakeholder Engagement Events Analysis of Equality Returns

	Derry	Enniskillen	Cookstown	Lisburn	Bangor	Belfast	Coleraine	Downpatrick	Ballymena	Armagh	Antrim	TOTAL	% OF TOTAL
Evaluation forms returned:	21	11	16	27	20	30	13	15	9	20	9	191	
Are you:													
Male	13	8	10	16	11	14	9	8	7	8	5	109	57.1 %
Female	8	0	4	5	7	10	4	5	2	9	4	58	30.4 %
No response	0	3	2	6	2	6	0	2	0	3	0	24	12.6 %
What age group are you in?													
<18	0	0	0	0	0	0	0	0	0	0	0	0	0.0 %
19-25	1	1	1	0	1	4	0	0	0	1	0	9	4.7 %
26-35	6	2	3	5	1	6	1	2	1	5	4	36	18.8 %
36-45	4	3	2	4	3	6	1	2	0	5	0	30	15.7 %
46-55	5	1	3	6	6	1	3	4	0	2	0	31	16.2 %
56-65	3	1	3	4	3	5	3	3	3	3	5	36	18.8 %
>65	2	0	1	1	3	2	5	2	4	0	0	20	10.5 %
Decline to comment	0	0	1	1	1	0	0	1	1	1	0	6	3.1 %
No response	0	3	2	6	2	6	0	1	0	3	0	23	12.0 %
Are you:													
Single	5	3	1	4	3	9	3	3	0	4	2	37	19.4 %

	Derry	Enniskillen	Cookstown	Lisburn	Bangor	Belfast	Coleraine	Downpatrick	Ballymena	Armagh	Antrim	TOTAL	% OF TOTAL
Married	13	5	12	16	13	15	9	9	8	11	5	116	60.7 %
Other	1	0	0	0	1	0	1	0	0	2	1	6	3.1 %
Decline to comment	2	0	0	1	1	0	0	1	1	0	1	7	3.7 %
No response	0	3	3	6	2	6	0	2	0	3	0	25	13.1 %
Do you have dependants?													
Yes	10	5	11	11	13	9	7	6	4	9	3	88	46.1 %
No	9	3	1	9	4	15	5	4	4	8	5	67	35.1 %
Decline to comment	2	0	0	1	1	0	1	2	1	0	1	9	4.7 %
No response	0	3	4	6	2	6	0	3	0	3	0	27	14.1 %
Do you consider your community background to be:													
Catholic	11	4	6	5	3	9	6	6	0	8	2	60	31.4 %
Protestant	4	2	4	12	9	8	3	2	6	6	7	63	33.0 %
Neither	3	2	1	1	2	4	1	4	2	0	0	20	10.5 %
Other	1	0	0	0	1	1	1	0	0	0	0	4	2.1 %
Decline to comment	2	0	1	3	2	2	1	1	1	3	0	16	8.4 %
No response	0	3	4	6	3	6	1	2	0	3	0	28	14.7 %
Is your ethnic background:													

	Derry	Enniskillen	Cookstown	Lisburn	Bangor	Belfast	Coleraine	Downpatrick	Ballymena	Armagh	Antrim	TOTAL	% OF TOTAL
White	19	8	12	20	15	24	11	10	8	15	9	151	79.1 %
Chinese	0	0	0	0	0	0	0	0	0	0	0	0	0.0 %
Indian	0	0	0	0	0	0	0	0	0	0	0	0	0.0 %
Pakastani	0	0	0	0	0	0	0	0	0	0	0	0	0.0 %
Traveller	0	0	0	0	0	0	0	0	0	0	0	0	0.0 %
Black African	0	0	0	0	0	0	0	0	0	0	0	0	0.0 %
Black Caribbean	0	0	0	0	0	0	0	0	0	0	0	0	0.0 %
Black Other	0	0	0	0	0	0	0	0	0	0	0	0	0.0 %
Other	0	0	0	0	0	0	0	1	0	0	0	1	0.5 %
Decline to comment	2	0	0	0	2	0	1	2	1	2	0	10	5.2 %
No response	0	3	4	7	3	6	1	2	0	3	0	29	15.2 %
Do you consider yourself to have a disability?													
Yes	1	8	0	1	0	1	0	1	2	0	0	14	7.3 %
No	18	0	12	19	17	23	13	10	6	17	9	144	75.4 %
Decline to comment	2	0	0	0	1	0	0	2	1	0	0	6	3.1 %
No response	0	3	4	7	2	6	0	2	0	3	0	27	14.1 %

Appendix 4 - Table of Responses to draft EQIA at a strategic level and Departmental Response

1. Equality Commission for Northern Ireland

General Comments

The Commission welcomes the opportunity to comment on the Planning Service's Consultation Paper and Draft Equality Impact Assessment (EQIA). The Commission will comment on policy issues where these have identifiable equality implications, in accordance with our priorities.

We generally welcome the Department's reform programme with its aim to ensure that Northern Ireland has a modern, efficient and effective planning system which will support the Executive in delivering on its key priorities.

In 2007 the Equality Commission published a Statement on Key Inequalities in Northern Ireland. This sets out our view that housing is a basic human need and provides a foundation for family and community life. Good quality, affordable housing in safe, sustainable communities is essential to ensuring health, wellbeing and a prosperous society. Yet there are pockets of deprivation where sections of our society experience severe housing need, homelessness and poor housing. Geography (urban / rural) should also not create a barrier to adequate housing.

The Commission's Statement on Key Inequalities highlights inequalities such as the high level of segregation in housing on grounds of community background, the lack of suitable housing for disabled people, homelessness and the lack of adequate housing and accommodation for black and minority ethnic people and Travellers.

For Travellers in particular it has been demonstrated that there are serious barriers associated with the current planning system and that the current policy approach (across the UK) is failing to meet Travellers' needs.

The planning system has a key role to play in facilitating the meeting of these needs by the appropriate public authority and reducing exclusion, both at a strategic and service delivery level. The current reform process offers a unique opportunity to address the barriers and shortcomings inherent in the current planning system and build a system which responds to the needs of Northern Ireland's diverse population. The reform process also represents a real opportunity to further promote equality of opportunity and good relations at all levels of the planning system and its delivery of services across Northern Ireland.

The Commission welcomes the Department's commitment to ensuring that Section 75 principles and best practice are mainstreamed into the reform programme. We particularly endorse the stated outcomes of a 'system more capable of discharging the statutory obligations to have due regard to the need to promote equality of opportunity' and 'stronger collaborative work across a range of stakeholders'.

Equality Impact Assessment

The Commission acknowledges that the EQIA is conducted at a strategic level and that in general substantive impacts will need to be addressed at implementation stage by the relevant planning authority. We welcome the Department's commitment to continue to subject individual planning policies contained within Planning Policy Statements (PPS) to equality assessment in line with their statutory duties.

The Commission recognises the effort the Department has made in compiling this EQIA at strategic level. We commend the Department for this comprehensive and accessible document, which in terms of structure and content complies with Commission guidance.

We also welcome the fact that the draft EQIA at a strategic level is published at the same time as, and in conjunction with, the planning reform consultation paper and relevant screening documents.

Specific comments on the policy proposals

Aim of the policy

The Commission generally agrees with the aims and objectives of the reform proposals and welcomes the Department's efforts to reform the planning system in order to improve the efficiency and effectiveness of the planning system and to create a planning system that provides transparency in decision-making and gives confidence to its users.

Recommendation

We recognise that the Department is committed to ensuring that Section 75 is mainstreamed into the reform programme. However, in light of the inequalities which exist in terms of housing and the potential which the reform has to address these, we would recommend that the following are explicitly included as additional aims of the reform initiative:

- to ensure that the planning system is accessible to all sections of society and adequately addresses the needs of Northern Ireland's diverse population; and
- to further promote equality of opportunity and good relations at all levels of the planning system.

Planning Policy Statements

We recognise that the Department's intention is that PPSs would set out the policy framework to achieve high level strategic objectives at a regional level, but retain sufficient flexibility to permit decisions to be taken based on local circumstances.

While there is no evidence to suggest that a PPS in itself will result in differential impact on any of the Section 75 groups it is crucial that the development of its policy direction is evidence-based.

Leadership will be central to ensuring that equality of opportunity is integral to the reformed planning system. It is crucial that the Department develops strong oversight mechanisms and uses its powers of direction to ensure that equality of opportunity is promoted at council level across all equality categories and for vulnerable groups within these. In particular, in respect of assuring Traveller needs, strong central guidance is required in Northern Ireland.

Travellers are recognised as a distinct racial group protected from unlawful racial discrimination by the Race Relations (Northern Ireland) Order 1997. They are also acknowledged as being one of the most marginalised and excluded groups in our society. Multiple disadvantages which characterise Travellers' lives include poor living conditions and negative attitudes and behaviours from many within the settled community. This contributes to a cycle of deprivation which impacts on the Traveller community's ability to be involved in many decision-making processes, including those relating to land use planning. This can lead to planning decisions that poorly reflect Travellers' needs and are based on racial stereotypes of Travellers.

If the Northern Ireland planning system is to establish parity between the settled and Traveller communities, in line with the guarantees contained in Article 5 of the Council of Europe Framework Convention for the Protection of National Minorities, it is vital that the housing needs of both are adequately reflected at every level of the policy hierarchy and that it contains unequivocal statements of the legitimacy and special needs of the Traveller community, including those related to nomadism.

Localised needs assessments prepared at council level may prove insufficient to address the needs of those that retain nomadism as a key cultural practice.

The 3-tier hierarchy of regionally significant, major and local developments proposed by the Department mainly reflects the needs and lifestyles of the settled community.

In light of the nomadic lifestyle which many among the Traveller community wish to pursue, Traveller transit sites for example are of regional significance to the Traveller community across Northern Ireland and their existence or absence have implications that extend beyond individual council areas. Yet such sites may not meet the threshold criteria for regionally significant developments as currently proposed.

Unless an integrated, centralised and pro-active approach is adopted to meeting the accommodation needs of the Traveller community, there is a great risk that the current fragmented approach to the provision of accommodation for Travellers across a range of departments and agencies continues and that the needs of this community will continue to be inadequately addressed.

Regarding planning applications from the Traveller Community it would be the Commission's preferred option if these were to be treated as regionally significant and decided by the Department.

Recommendation

That consideration should be given to planning for Traveller accommodation to be deemed a regionally significant matter and therefore retained as a centralised function of the Department.

To ensure that the specialist knowledge is available which is required to deal effectively with applications from the Traveller community (e.g. knowledge of planning policies in relation to travellers, liaison with Travellers organisations and councils who may have responsibility for management of transit sites, knowledge about different types of sites, different layout requirements etc) the DoE Planning Service should identify appropriate senior members of staff as specialist contacts for Traveller issues.

Should the department consider this recommendation impracticable and decisions of planning applications from Travellers be devolved to local government, the Commission recommends the following:

- that Travellers' accommodation needs as identified by the Housing Executive's needs assessments are specifically included as strategic objectives within future PPSs;
- that future Planning Policy Statements should explicitly establish a regional minimum provision of all types of culturally sensitive accommodation for Travellers; and contain a statement on 'Planning and Travellers', detailing how Travellers' needs should be reflected in Development Plans, indicating minimum levels of site provision and noting policies on enforcement and development control, to ensure that councils, when drawing up local development plans, adequately address the needs of the Traveller community.

Any complementary documentation, such as separately produced supplementary or best practice guidance, should take account of and be worded in line with the Equality Commission's good practice guidance outlined in the Traveller Guide.

Going forward, the Commission would recommend that the Department, prior to drafting strategic Planning Policy Statements, undertakes a comprehensive analysis of existing inequalities and needs to inform the strategic objectives.

Strategic planning policy statements as well as the individual planning policies contained in PPS should be subjected to equality screening.

Any supplementary guidance by the Department should be written to ensure that local interpretation by councils takes into account the duty on public authorities to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. (S 75 (2) Northern Ireland Act 1998) and the specific race relations duty on councils to have due regard to the need to promote equality of opportunity, and good relations, between persons of different racial groups (S 67 Race Relations (Northern Ireland) Order 1997.

Development Plans

The Commission welcomes the objectives which the proposals for a new local development plan system seek to meet.

We particularly welcome more effective participation from the public and other key stakeholders early in the plan preparation process when proposals are at a formative stage, a stronger link between the evidence base and plan policies and proposals as well as a strong link between community plans and local development plans. We also welcome the introduction of the power to decline determination of applications where the consultation has not been carried out as required.

We would wish to emphasise however that, to ensure these objectives are met, it is crucial that council practice and procedure adopted post – Review of

Public Administration (RPA) are designed to ensure stakeholder engagement during pre-application and other consultation processes is open, timely and fully inclusive.

We would ask that the Department use its responsibility for oversight, guidance for councils, audit, governance and performance management to ensure that the reformed planning system in general and future council policy and procedure in particular are inclusive and genuinely accommodate those with particular needs. This applies in particular to age, disability, race and persons with dependants which the Department's identifies as Section 75 groups warranting further attention.

We welcome the proposal that a district council's statement of community involvement must be in place before any public consultation on the local development plan. We also support the proposal that a programme management scheme must be submitted to, and agreed by, central government before the plan preparation process begins.

It is crucial in our view that local development plans and the forthcoming community plans as part of RPA are closely linked in order to achieve a coherent approach to identifying and addressing social need, social inclusion and equality of opportunity.

In terms of plan monitoring and review we welcome the Department's proposal to establish additional baseline data and improve monitoring systems to ensure regular monitoring and review of local development plans.

Recommendation

Local development plans should explicitly seek to redress key inequalities in housing and promote social inclusion.

In light of the key inequalities in housing and communities identified in the Commission's Statement on Key Inequalities in Northern Ireland we would urge the Department to ensure that as part of the test of robustness as well as plan monitoring and review particular attention is paid to issues such as the high level of segregation in housing on grounds of community background, the lack of suitable housing for disabled people, homelessness and the lack of adequate housing and accommodation for Travellers.

Development Management

The Commission welcomes the Department's aim to create a more responsive, fair, predictable and efficient planning application system which focuses on shaping and facilitating appropriate development opportunities.

We would support the introduction of statutory pre-application community consultation for regionally significant and major developments.

In relation to form, method and techniques for consultation we would like to draw the Department's attention to the Commission's guidance for public authorities on consulting and involving children and young people, the Good Practice Guide to Promote Racial Equality in Planning for Travellers as well as Commission guidance on equality impact assessments which contain best practice for consultation. The Department may also wish to consult the guide on community engagement recently published by the Equality and Human Rights Commission in Britain which complements our own guidance.

Recommendation

Given the good relations issues that exist between the Traveller community and the settled community the Commission would recommend that some form of pre-application community consultation (i.e. the requirement in some circumstances for consultation before a planning application is submitted) should also be considered for applications for Traveller sites. This could be a mediation type process, particular in cases of planning disputes involving Travellers and the settled community, based on the training resources prepared by Belfast Traveller Support Group to facilitate contact, cooperation and the exchange of information between the two communities at an early stage.

Appeals

The Commission is concerned that the removal of the automatic right to be heard in person may have a negative impact on some disabled people and people who are disadvantaged through low levels of literacy. A study estimated that some 24 per cent of adults in Northern Ireland (over 250,000 people based on current estimates of working age population) performed at the lowest levels of literacy competence.

Recommendation

We would urge the Department to ensure that the Planning Appeals Commission's criteria for determining the most appropriate appeal method promote equality of opportunity, for example as regards people with a learning disability, people whose first language is not English or people who have low levels of literacy competence.

Capacity Building

As the new planning system is introduced there will be a need to keep community and voluntary groups informed of the changes. As the Department recognises in its draft EQIA, it is important to put in place appropriate data gathering systems to establish who does not use or engage with the planning system. When drafting and planning the new service specific action should be taken to ensure that the chill factors and barriers associated with the current system as outlined in the draft EQIA are fully identified and addressed at all levels by the reformed system to ensure any barriers to participation and engagement are removed as far as possible.

In particular in respect of Travellers it is important to recognise and establish a fair and sensitive approach to consultation. It may require a degree of capacity building or community development before meaningful participation can take place. Planning Service professional staff (at Department and Council level) will need to be given the skills to enable them to be more proactive and creative in their approach to consulting Travellers.

Recommendation

An outreach programme of public education, informed media debates, independent planning advice as well as public awareness should be developed to ensure that all those involved in the planning process have the necessary knowledge, skills and competencies to effectively use and engage with the reformed planning system.

Government response

The Department notes the comments made by the Equality Commission with regards to the aims of the reform initiative. As the consultation paper recognises, one of the key outcomes of the reforms should be a system more capable of discharging the statutory obligations to have due regard for the need to promote equality of opportunity.

Applications for regionally significant development (RSD) will form the top tier of development proposals which are considered essential to increasing the sustainable economic growth of Northern Ireland. These applications will be critical to the delivery of the Executive's regional investment priorities. By their very nature they will involve a relatively small number of large scale applications with strategic implications for the whole of Northern Ireland, for example, regional infrastructure and certain types of commercial development.

In light of the travelling community's distinctive local needs, particularly in relation to decisions on sites for accommodation, the Department considers that these are best addressed in their relevant local context as applications for local development rather than at the regional level.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12. Post Reform / RPA, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance. Following the transfer of planning functions, local development plan proposals will continue to take full account of the accommodation needs of the travelling community through the Housing Needs Assessment prepared by the Housing Executive either by zoning land suitable for Travellers' sites or setting out site selection criteria. This will enable local solutions (including the provision of advice on site selection and management) to be developed

for particular local circumstances in consultation with the local travelling community and their representative organisations as well as the local settled community. This provides the opportunity for all sections of the community (settled and nomadic) to have their needs considered as part of mainstream district council planning and housing decision-making processes.

The Department recognises the importance of equal treatment of Travellers and the settled community in the planning system. In preparing a new Planning Policy Statement 1 on the general principles that will underpin the operation of the modernised planning system, the Department will give consideration to the best way of promoting equality of opportunity for all sections of the community. As at present, all Planning Policy Statements will continue to be subject to equality screening and assessment as appropriate. The policy content will be a matter for consideration when each PPS is being prepared / revised. However, at this stage, the comments put forward have been noted.

Following the transfer of planning functions, when responsibility for local development plans moves to local government, Section 75 statutory obligations will continue to apply to district councils. It is envisaged that the 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. This will help address issues such as housing and accommodation for Travellers. While the test of 'soundness' will not include detailed policy considerations, it will include the requirement for local development plans to take account of central government plans, policies and guidance such as PPS12.

Proposed changes to Development Management set out new requirements for statutory pre-application consultation with the community for regionally significant and major development proposals. The aim is to better inform the relevant community and provide an opportunity for it to contribute its views before a formal planning application is submitted to the planning authority. This is an additional measure and does not take away the right of individuals and communities to express formal views during the application process itself.

In light of responses to the consultation paper the Department will give district councils some discretion to request to the Department that an application for local development be dealt with as a major development. This would provide flexibility to respond to exceptional and specific local circumstances where, in the opinion of the district council, pre-application community consultation might be considered appropriate. The Department intends to provide guidance to district councils in relation to the circumstances where this may be appropriate.

The aim of the proposal to give the PAC the power to determine the most appropriate appeal mechanism was not to stifle debate at appeals / independent examinations or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission or independent examiners (where appointed) to better manage the appeals / examination process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC or independent examiners (where appointed) to determine the most appropriate appeal method or the most appropriate procedures to be used in dealing with representations to the local development plan. The detailed rationale for this decision is reflected in the Government Response to the Public Consultation.

The Department notes the comments made in relation to consultation, participation and engagement. It is committed to working with others to ensure that the planning system is open and accessible, as well as contributing to initiatives to enhance capacity for all participants and stakeholders.

2. Northern Ireland Human Rights Commission

Planning reform and travellers

The Commission has identified the accommodation needs of members of the Traveller community as a priority issue in relation to human rights compliance. The accommodation situation for Travellers in Northern Ireland has been highlighted by United Nations and Council of Europe experts in the monitoring of compliance by the United Kingdom with its international treaty obligations.

The Commission participated in April 2009 in the UK's examination by the UN body overseeing its compliance with obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Among the key issues raised by the UN in its subsequent Concluding Observations were the shortage of adequate sites for Travellers and the discriminatory effect of the Unauthorised Encampments (Northern Ireland) Order 2005. The UN recommended that the UK ensure the provision of sufficient, adequate and secure sites, that it review the Order and that it provide for suitable accommodation arrangements for Travellers.

At the regional level the Council of Europe, in relation to compliance with the UK's obligations under the Framework Convention for the Protection of National Minorities (FCNM), has also singled out the accommodation situation of Irish Travellers. In response to observations on the subject by the FCNM treaty monitoring body the UK stated that in Northern Ireland there was adequate funding for accommodation for Travellers but conceded that there were 'constraints' in obtaining the suitable sites needed, indicating this was a problem being actively addressed by the Department for Social Development (DSD) and the Housing Executive. Subsequently the Council of Europe's Committee of Ministers adopted a resolution in relation to the UK's compliance with the FCNM which included among its issues of concern:
'Hostility among some people within the local population and the resistance of certain local authorities to improving the availability of authorised sites have contributed to the fact that a number of Gypsies and Travellers continue to live on unauthorised sites and may face eviction orders.'

UN and Council of Europe treaty bodies have therefore placed emphasis on the need to ensure adequate accommodation arrangements for Travellers, a matter in which planning policy can play a significant role. The Commission concurs with the research evidence provided by the Department's draft Equality Impact Assessment on the policy which acknowledges the causal relationship between planning decisions and unsuitable accommodation as follows: 'Travellers in particular suffer multifaceted deprivation as a direct consequence of planning decisions that result in many families living on unauthorised sites, with poor access to services and with negative consequences for health and access to other services such as education.'

Whilst, unlike most provisions of the European Convention on Human Rights (ECHR), the Covenant and FCNM are not directly justifiable in the domestic courts, they are nevertheless binding in international law on the UK, including its devolved bodies. The Department therefore has to ensure that its policies are in compliance with the standards which the UK has ratified in human rights instruments. The policy development process should ensure there is a high priority given to progressing the recommendations of treaty bodies, and that reforms do not risk 'regressive steps' (i.e. the situation deteriorating rather than improving) in relation to the human rights issue in question.

Another core concept in human rights is that when an entitlement or obligation is created, there must be legal certainty ('prescribed by law') as to how to access or comply with it. This concept applies to planning legislation in relation to provision for Travellers sites, so that once legitimate

clear criteria have been established, there must be a clear and certain process for obtaining the entitlement.

Planning Policy Statements

Present Departmental policy in relation to Traveller accommodation is contained in policy number HC3 in Planning Policy Statement (PPS) 12. This sets out the criteria for provision in relation to grouped housing schemes, serviced sites and transit sites.

The Commission recently corresponded with the Department in relation to Traveller accommodation and draft PPS21, a Planning Policy Statement that relates to development in the countryside. Policy Planning Statements set out high-level planning rules and are therefore of key importance in setting out and providing legal clarity in relation to entitlements to provision. The Commission had queried potential ambiguities in the wording and meaning of a number of parts of the draft document. The Commission was grateful for the response of the Department which indicated that wording would be changed in order to remove any potential ambiguity in the policy provision in question (CTY1 of PPS21). The Department confirmed that this policy referred to the full range of Traveller accommodation set out in PPS12, and that policy in relation to social and affordable housing outside of settlements (CTY 5 of PPS21) did include group schemes for Travellers.

The Department's draft Equality Impact Assessment concludes that there is a potential differential impact between persons of different racial groups by the range of ways decisions are made in planning. Within the assessment of procedural impacts the following conclusion is listed: 'It has also been found that the planning system can be used as an outlet for discriminatory behaviour against some racial groups, particularly Travellers, through objections to planning applications, not made on the basis of the land use characteristics of the proposed development, but the ethnicity of the proposed occupants.'

The Commission concurs that there is risk of objections being made on the basis of racism rather than legitimate criteria. Objections motivated by racism but which are disguised as legitimate objections may be difficult to identify, meaning that a robust evidence-based process needs to be established to weed out illegitimate objections and not permit them to hold up applications. In addition to individual objections thwarting an application from Travellers, the same effect can occur on the basis of planning criteria which inadequately provide for Traveller sites; criteria which are unduly difficult to meet, or are ambiguous; or processes whereby there is no clarity in entitlements. The importance of legal certainty throughout the process again needs to be stressed.

One of the key proposals in the reforms is for the status of PPSs to be downgraded from the present position of providing operational guidance and advice to a position of providing strategic direction and regional policy advice which would then be interpreted by local councils into development plans. The Department notes that, unlike Northern Ireland at present, elsewhere in the UK and Ireland overarching policy guidance is strategic and is then translated into local development plans where detailed operational policy is often found. The Department identifies a number of problems with the present system in Northern Ireland prescribing universal policy on land use topics which differ in circumstance across the jurisdiction, and in that the present system can result in local policy issues not being adequately addressed.

The Commission has no view on the administrative arrangements for planning policy development nor do we in principle have any objection to areas of general planning policy being devolved to a local level. However in matters that engage national compliance with human rights obligations the Commission is concerned that the state, in this case at sub-national (Northern Ireland) level, must maintain a binding framework. This is particularly relevant to Traveller sites

where any reform which makes the provision of Traveller sites discretionary could facilitate discriminatory practices.

The Commission would therefore urge that explicit safeguards be provided within the new policy framework to ensure legal certainty over the provision of Traveller sites. The Commission notes the Department's assurance that the reform of PPSs would be subject to 'appropriate checks and balances' and 'subject to the proviso that any detailed local policies should be aligned with central government plans, policy and guidance, and would draw particular attention to this area of provision being included in such arrangements.

Other areas or initiatives that engage compliance with human rights obligations in relation to the fulfilment of the right to adequate housing could also be protected. For example measures such as obligations on developers to include provision for social housing or infrastructure (roads, sewerage etc) in developments are one way duties relating to the provision of affordable housing can be progressed.

Appeals and third party appeals

The Commission notes the proposals in chapter five of the consultation document in relation to appeals. The Commission has not scrutinised every aspect of these proposals but would like to make the following observations on particular aspects of the reforms.

Time limits for appeals

The Commission concurs with the Department in that the six-month time limit on applicant appeals to the Planning Appeals Commission (PAC) is unnecessarily long for all the reasons set out in the consultation document, and because, in the context of Article 6 ECHR, decisions affecting the civil rights of all parties, including the applicant and objectors, require to be determined within a reasonable time.

Determining the appeal method

The fair hearing provisions of the ECHR do not necessarily require an oral hearing nor is there an automatic human right to cross-examination in proceedings of this nature. The cost of oral hearings in all cases as a matter simply of choice must be balanced against the desirability of efficiency and cost effectiveness. Each case must be examined on its own merits, however, and the Commission supports the proposal that the PAC be given the power to decide, applying published criteria and taking into consideration the applicant's preferred method, the most appropriate method for processing the appeal.

Third-party planning appeals

The planning legislation and the principles derived from it give third parties rights to make representations before a planning application is determined, and the planning authority is legally obliged to take into account all relevant representations received. In the pre-determination stage, it is hard to see that, in theory, there is an inequality of arms between third parties and the applicant.

However, third party rights to challenge the determination are severely limited and this raises the scope of Article 6 ECHR. Within the planning system, there is an unbalanced playing field in favour of the applicant. Objectors have no right of appeal and the cost of legal proceedings, especially for judicial review cases, is prohibitively expensive especially with the threat of having to pay another party's legal costs if the objector loses. Even success in judicial review

proceedings will only address the procedural unfairness and not the substantive issues in the case or merits of a decision. The Commission encourages the Department to consider providing for third party appeals. Although it is important that people have the right to object to decisions, we must avoid a situation whereby vexatious third party appeals interfere with the efficiency of the system and the Commission recommends therefore the appeal should not be an unlimited right. Criteria for appeal ought to be developed which include the need for the appeal to be grounded on issues of primary fact; for example it would not be appropriate if the objector wishes to appeal on grounds relating to matters of policy. The Commission is mindful of the need for the planning process to be efficient and time delays can amount to a breach of the rights of all parties concerned. The Commission notes the Department's concerns in respect of the implications of third party appeals but considers that, properly drafted criteria and efficient processing together with consideration of the nature and form of appeal, leaves the balance of advantage on the side of a third party appeal system.

Government Response

The Department notes the response from the Human Rights Commission.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12. Post RPA, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance. Post Review of Public Administration (RPA), development plan proposals will continue to take full account of the accommodation needs of the travelling community through the Housing Needs Assessment prepared by the Housing Executive either by zoning land suitable for Travellers' sites or setting out site selection criteria. This will enable local solutions (including the provision of advice on site selection and management) to be developed for particular local circumstances in consultation with the local travelling community and their representative organisations as well as the local settled community. This provides the opportunity for all sections of the community (settled and nomadic) to have their needs considered as part of mainstream district council planning and housing decision-making processes.

The Department recognises the importance of equal treatment of Travellers and the settled community in the planning system. In preparing a new Planning Policy Statement 1 on the general principles that will underpin the operation of the modernised planning system, the Department will give consideration to the best way of promoting equality of opportunity for all sections of the community. As at present, all Planning Policy Statements will continue to be subject to equality screening and assessment as appropriate. The policy content will be a matter for consideration when each PPS is being prepared / revised.

Following the transfer of planning functions, when responsibility for local development plans moves to local government, Section 75 statutory obligations will continue to apply to district councils. It is envisaged that the 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. This will help address issues such as housing and accommodation for Travellers. In addition, as part of the plan scrutiny process, the Department will appoint the Planning Appeals Commission or independent external examiners to examine the local development plan on the basis of 'soundness' criteria and provide an advisory report to the Department. While the test of 'soundness' will not include detailed policy considerations, it will include the requirement for local development plans to take account of central government plans, policies and guidance such as PPS12. The Department will then consider the advisory report and issue a binding report to the district council. The district council will adopt the plan on the basis of the binding report.

The Department notes the comments made in relation to the appeals issues identified above. Following full consideration of all of the responses to the consultation paper and the draft EQIA at a strategic level, the Department can confirm that it will be taking a power to reduce the appeal period to 4 months but it will not be providing the PAC with the power to determine the most appropriate appeal mechanism. The rationale for these decisions is reflected in the Government Response to the Public Consultation.

In relation to third party appeals, it has been concluded that the Department will not make provision for third party appeals in the current round of planning reform proposals. Again, the detailed rationale for this conclusion is reflected in the Government Response to the Public Consultation.

3. Community Places

There are a number of equality considerations with the planning reform proposals. We have concerns that the proposals to remove the right to be heard in person will have a disproportionate effect on equality groupings particularly, young protestant males and rural dwellers.

The Traveller community is the only Section 75 group for which there is a specific planning policy (PPS12) and we feel that these proposals will have a significant impact on the Traveller Community.

Applications for Traveller accommodation should be processed as regionally significant. Specialist knowledge is required to deal effectively which these applications, i.e. knowledge of planning policies in relation to travellers, liaison with Travellers organisations, councils (who may have responsibility for management of transit sites), knowledge about different types of sites, different layout requirements, and mediation skills for consultation on this type of application. The numbers of applications for traveller sites are likely to be small in number; these skills would therefore be better located in a central team in the Department. In this way skills can be developed and applied to all applications for traveller accommodation, rather than planning officers in the new council areas dealing with them occasionally and therefore not having the necessary skills to process the applications effectively.

Applications for Traveller accommodation raise issues which are of strategic importance, are of more than local significance and impact on more than 1 single district council area. This is particularly the case for Transit sites which provide temporary accommodation where Travellers can legally stop in the course of Travelling. These sites will therefore affect a number of council areas. For example, it has been estimated that there is a need for 5 transit sites to meet need across NI. It is essential that an integrated approach is adopted for these applications, they should not be looked at in isolation across each council area.

Pre-application community consultation should be carried out for Traveller sites. Due to the contentious nature of Traveller sites it may be advantageous to adopt a different approach to pre-application community consultation which involves mediation skills.

The needs of Travellers who have no alternative culturally sensitive accommodation should be taken into consideration before enforcement action is served.

Councils should be required to zone land for Traveller sites in their development plan where the Housing Needs Assessment (HNA) shows need rather than leaving it to be determined through individual applications. Councils should be required to consult the travelling community / traveller groups in order to identify suitable locations for sites to meet the needs identified in the HNA.

As part of the tests of robustness for development plans the Department should ensure that land has been zoned for Travellers accommodation, where need has been identified through the HNA. As plans are monitored, they will therefore be required to show how they are implementing this and can be called to account if they do not provide land for Traveller accommodation.

It will be important to carry out a full EQIA for the issues e.g. Third Party Right of Appeal which are not presented as proposals in the consultation but identified as an opportunity to gather further views and comments on. It may have been more beneficial to consider the EQIA aspects of these issues from the outset

Government response

The aim of the proposal to give the PAC the power to determine the more appropriate appeal mechanism was not to stifle debate at appeals / independent examinations or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission or independent examiners (where appointed) to better manage the appeals / examination process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC or independent examiners (where appointed) todetermine the most appropriate appeal method or the most appropriate procedures to be used in dealing with representations to the local development plan. The detailed rationale for this decision is reflected in the Government Response to the Public Consultation. Therefore, the current provision for oral hearings will remain. As such, any person who makes a representation seeking a change to the Plan Strategy or Site Specific Policies and Proposals will be given the

opportunity, if so requested, to appear at the independent examination and be heard by the PAC or other independent examiner.

Applications for regionally significant development (RSD) will form the top tier of development proposals which are considered essential to increasing the sustainable economic growth of Northern Ireland. These applications will be critical to the delivery of the Executive's regional investment priorities. By their very nature they will involve a relatively small number of large scale applications with strategic implications for the whole of Northern Ireland, for example, for regional infrastructure and certain types of commercial development.

In light of the travelling community's distinctive local needs, particularly in relation to decisions on sites for accommodation, the Department considers that these are best addressed in their relevant local context as applications for local development rather than at the regional level.

Proposed changes to Development Management set out new requirements for statutory pre-application consultation with the community for regionally significant and major development proposals. The aim is to better inform the relevant community and provide an opportunity for it to contribute its views before a formal planning application is submitted to the planning authority. This is an additional measure and does not take away the right of individuals and communities to express formal views during the application process itself.

In light of responses to the consultation paper the Department will give district councils some discretion to request to the Department that an application for local development be dealt with as a major development. This would provide flexibility to respond to exceptional and specific local circumstances where, in the opinion of the district council, pre-application community consultation might be considered appropriate. The Department intends to provide guidance to district councils in relation to the circumstances where this may be appropriate.

The current planning policy context for Travellers is set out in the RDS and particularly in PPS12 and it allows for plans to identify specific sites to meet needs such as traveller sites. Post Reform / RPA, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance.

Following the transfer of planning functions, district councils will be required to have their Statement of Community Involvement in place before any public consultation on the local development plan can begin. The SCI will set out the councils approach to community consultation for the plan and will include any measures required to meet Section 75 obligations including consultation with travellers, if appropriate. The Department considers that the SCI will enable district councils to carry out more inclusive and effective community consultation on their local development plans. It will also help better promote equality of opportunity and community relations through increased awareness of community participation and involvement.

Legislation and the test of 'soundness' will require district councils to ensure they have met the preparation requirements of a local development plan, which includes taking account of central government plans, policy and guidance and that there is a robust evidence base for the decisions made on policies contained within the plan. There will also be a statutory requirement for district councils to monitor the implementation of their local development plans, which will include any policy for the provision of land for Traveller accommodation.

In relation to enforcement, as PPS 9 indicates "The Department has a general discretion to take enforcement action against a breach of planning control when it regards it as expedient to do so having regard to the provisions of the development plan and any other material considerations". This policy will continue to apply to the district councils when they assume responsibility for planning, including enforcement.

4. Rural Community Network

Rural Community Network (RCN) is a regional voluntary organisation established by community groups from rural areas in 1991 to articulate the voice of rural communities on issues relating to poverty, disadvantage and equality. We have a membership of over 400 groups. We would like to include the following points as a precursor to our response that is attached.

RCN is committed to a rural community and networking approach to the planning and development of sustainable rural communities in order to address poverty, social exclusion and equality and to support work towards a shared future.

RCN welcomes the opportunity to comment on the Planning Service's consultation on Planning Reform. These are major proposals to put planning back at the heart of local democracy and the task of building confidence and trust in the new system cannot be underestimated. From RCN's perspective, reform is needed to ensure that we have a modern, efficient and effective planning system that supports "An attractive and prosperous rural area, based on a balanced and integrated approach to the development of town, village and countryside, in order to sustain a strong and vibrant rural community contributing to the overall wellbeing of the region as a whole" [Regional Development Strategy]. Some rural communities are changing with a shifting demography, inward migration and the transformation of the rural economy and local services. These changes require a re-imagining of relationships, services and how we use our increasingly limited resources within a wider political commitment to invest in and sustain rural communities. The current ongoing development of the Executive Rural White Paper is an expression of this commitment and the Planning Reform proposals need to take cognizance of the vision and objectives of this White Paper. Planning in Northern Ireland should also fundamentally aim to deliver the content and direction of the Programme for Government.

We would welcome clarity with regards to how 'rural community' is defined by the planning system as at one stage the Department for Regional Development defined 'rural' to include regional towns which in an indirect way promoted concentration of development.

We welcome the consultation events organised by the Planning Service across Northern Ireland and would strongly urge the Department to repeat these events, perhaps in partnership with the new local councils, once the Northern Ireland Executive has made its decision on planning reform. This would allow people to hear what changes have been implemented, what hasn't been taken on board and why. These post-consultation events would be critical in building trust between citizens and local communities and the new planning system and in showing respect for people's time and contributions. There is immense cynicism with regards whether participation in consultation processes makes any impact on the final decisions taken. This is particularly true for many rural citizens and communities in light of the deep mistrust generated by the PPS14 debacle. The Department needs to model a new approach to consultation if they are serious with regards these reform proposals. Citizens and local communities need to be able to trace back to their contributions from the final decisions taken.

This was a lengthy consultation document and in many places quite technical focusing on using the expertise of those with in-depth knowledge of the planning system as opposed to the knowledge of citizens and communities. This is reflected, for example, in the fact that the consultation document does not ask views on Chapter 1 – the purpose of planning –, which might have encouraged wider engagement. We would hope that the final document is more userfriendly and more accessible as a symbol of a reformed planning system which wishes to build greater public understanding, trust and confidence. A compendium guide to the new planning system should eventually be published and linked with training workshops on its operation.

Chapter 1 – Purpose of Planning

We would welcome a stronger and clearer vision with regards the purpose of planning which focuses on creating communities that offer better choices for where and how people work and live. We would also welcome greater clarity in this chapter on the role of planning in promoting equality, building more diversity communities, and growing good community relations.

It might be helpful if this chapter also named some core ethical principles in planning, applicable to all who participate in the planning process: citizens, elected representatives, planners, business and developers. These might include, for example, that planning process participants should:

- Ensure that the planning process exists to serve the public interest.
- Recognize the rights of citizens to participate in planning decisions.
- Strive to give citizens (including those who lack formal organization and influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programmes;
- Strive to expand choice and opportunity for all persons in such a manner which facilitates their involvement in the development of plans that might impact on their quality of life choices, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
- Assist in the clarification of community goals, objectives and policies in plan-making;

- Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
- Strive to protect the integrity of the natural environment and the heritage of the built environment;
- Pay special attention to the interrelatedness of decisions and the long-term consequences of present actions.

Rural Proofing & Equality Impact Assessment

We have identified particular rural, equality and good relations impact issues in our consultation response. In general we would welcome a more integrated process by the Department by which their consultation proposals would integrate Section 75 and rural proofing considerations throughout the document. Outlined below are some key points raised in our response.

The purpose of an EQIA is two-fold; namely to identify adverse impact and to identify ways in which equality of opportunity and good relations might be better promoted. The identification of ways in which a policy can better promote equality of opportunity and good relations is not contingent on their first being an identifiable adverse impact. We would welcome greater understanding in these proposals with regards the specific issues facing Section 75 groups in rural areas where disadvantage is increased through increased distance from job opportunities, access to services and transport. The failure to name that Northern Ireland is still very much a divided society and that planning has a significant role in either maintaining segregation or creating greater choices and opportunities for sharing and integration is a derogation of duty on the part of the Department.

The purpose of rural proofing is to assess how policies will work for rural people and places and to ensure that policies are implemented fairly and effectively. The benefits of rural proofing include better decision making, improved communication, strengthening relationships and capacity building. Whilst we welcome the Department's rural proofing checklist in Annex 10 of the Consultation Report it falls far short of the Rural Proofing Guidance

developed by the Commission for Rural Communities [2009] including the absence of any evidence collated informing the judgements made.

We would strongly recommend a structured engagement between DARD, the Rural White Paper Stakeholders Forum and the Planning Reform Team to further examine the implications of planning reform for the sustainability of rural communities.

Specific Rural Proofing and EQIA Points

The Statement of Community Involvement should be developed by all organisations and bodies in the Planning System and include specific reference as to how marginalised groups will be engaged with including those marginalised by geography. These standards would also apply to pre-application consultation processes for major and regional applications. They should also apply to the monitoring and review of local development plans and any other review and monitoring processes.

RCN strongly disagrees with the proposal to remove right to a public hearing as this removes a fundamental right to be heard in person and will adversely impact on many individuals within different Section 75 groups. Trust will not be built between the citizen and the new planning system by removing this right and fundamental safeguard.

The definition of countryside in the local development plan needs to go beyond analysis of landscape character and development pressure to include community infrastructure in the countryside and dispersed rural communities.

If the Sustainability Appraisal is serious with regards the 'social' dimension then it provides an important mechanism to address rural proofing and Section 75 priorities.

The threshold minimums for major developments are too high for all categories, particularly as these are linked to the requirement for a Pre-Application Consultation. Under the current proposals, there would be no Pre-Application Consultation required for 99 houses (Greenfield), or 49 houses (brownfield) or 19 houses (village) despite this size of developments clearly having a major impact on local communities. This is of particular relevance to rural communities.

We welcome the recognition of different settlement patterns between rural and urban in setting the proposed housing thresholds for major developments and would recommend that a similar analysis be applied to the other 7 categories outlined in Table 2 – Major Developments as well as Regional and Local Developments.

Consideration should be given to expanding the list of statutory consultees to include the local rural and urban community infrastructure learning from the Community Council model developed in Scotland.

The contributions sought from developers could be used to promote greater equality and good relations through the needs identified through the Community and Development Plans. They could also be used to ensure balanced regional development. Contributions should also be sought from residential developments as a development of 19 houses in a village will have significant infrastructure implications.

Final Comments

As a matter of good practice, we would also urge Planning Service to be much clearer about their system of analysis with regards how they are going to analyse the consultation responses, what criteria they are using and whether different weighting has been allocated to different criteria. For example will calls for greater transparency, democracy and sustainable development be given lower weighting to calls for economic development? Will sustainable development include community vitality or will it continue to refer solely to landscape and environment.

This response is informed by the work of Community Places and the Northern Environment Link and a pre-consultation session organised by Community Places and RCN. It has also been informed by the views of Mark Conway and Dr. Michael Murray from Queens University Belfast. We also conducted an extensive piece of research with Queen's University Belfast funded under INTERREG IIIB to develop new participatory approaches to strategic planning and multi-level governance in a rural setting (the SPAN project 2004- 2008).

Government Response

The Department notes the wide ranging response from the Rural Community Network (RCN), which addressed issues relating to the draft EQIA at a strategic level, rural proofing and many of the consultation proposals. A number of the substantive issues raised by RCN and others are addressed in the Government's Response to the Consultation, including for example, the decision, in light of the responses received, not to proceed with the proposals to give the PAC the power to determine the most appropriate appeal mechanism or the most appropriate procedures to be used in dealing with representations to the local development plan.

The aim of the proposal to give the PAC the power to determine the more appropriate appeal mechanism was not to stifle debate at appeals / independent examinations or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission or independent examiners (where appointed) to better manage the appeals / examination process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC or independent examiners (where appointed) to determine the most appropriate appeal method or the most appropriate procedures to be used in dealing with representations to the local development plan. The detailed rationale for this decision is reflected in the Government Response to the Public Consultation. Therefore, the current provision for oral hearings will remain. As such, any person who makes a representation seeking a change to the Plan Strategy or Site Specific Policies and Proposals will be given the opportunity, if so requested, to appear at the independent examination and be heard by the PAC or other independent examiner.

In relation to RCN's comments on the purpose of planning, it should be noted that this issue will be addressed in more detail in PPS1 and will be subject to debate and consultation as part of this policy preparation process.

Following the transfer of planning functions, there will be requirement for district councils to have their Statement of Community Involvement in place before any public consultation on the local development plan can begin. The Department considers that the SCI will enable district councils to carry out more inclusive and effective community consultation on their local development plans. It will also help better promote equality of opportunity and community relations through increased awareness of community participation and involvement.

The definition of the countryside for planning purposes is a matter for planning policy and not the planning reform proposals. However, post RPA, local development plans will be required to take account of central government plans, policy and guidance and therefore, unless there is a change of policy, will continue to have regard to issues such as community infrastructure in the countryside and dispersed rural communities. Furthermore, there will be a requirement for local development plans to take account of community plans which themselves deal with issues such as community infrastructure provision and delivery. Indeed, one of the functions of the local development plans will be to deliver the spatial aspects of the community plan.

Sustainability appraisals will include a 'social dimension' and detailed guidance on SA will be prepared in due course. Furthermore, post Reform / RPA, the requirement for rural proofing and Section 75 priorities will continue to apply to district councils.

The proposed development hierarchy (consisting of regionally significant, major and local developments) is intended to ensure that application procedures are proportionate and responsive to each of the three different types of development category. Appropriate resources and decision-making arrangements will be tailored according to the scale and complexity of the proposed development type. In light of the responses to the consultation paper the Department will revise details of some of the thresholds for both regionally significant and major developments.

It is our intention to set out the relevant bodies (statutory consultees) that must be consulted by the planning authority in subordinate legislation. The list of consultees has not yet been finalised

The consultation document was used as a suitable vehicle through which to initiate debate on the issue of seeking contributions from developers for the provision of general infrastructure, beyond that already required to mitigate the site specific impact of a development proposal and make it acceptable in planning terms. The issue is not intrinsic to planning reform and the Department has no plans for the introduction of such a system. This issue will require further

consideration at Executive level, particularly in relation to those Departments with responsibility for the funding and provision of infrastructure, in order to determine the way forward.

Additional comments will be taken in account by the Department as it moves forward with the primary and subordinate legislation programme and also with the preparation of guidance on issues such as pre-application consultation, thresholds for major applications, the development plan preparation process etc.

The Department will also be undertaking further work in this area as it develops its EQIA Monitoring Strategy.

5. Sinn Féin

Introduction

In keeping with the approach of the Department of Environment's (DOE) consultation process, Sinn Féin's response incorporates comments on both the planning reform proposals and Equality Impact Assessment (EQIA).

Sinn Féin believes that planning policy must promote equality and promote prosperity in the interests of all citizens across the North, and on an all-island basis – not least along the border corridor.

Sinn Féin believes that all planning decisions must ensure adequate consultation, transparency, accountability and consistency.

In particular, the planning system must increasingly deliver its services with greater efficiency, effectiveness, economy and equality.

Sinn Féin has publicly and privately engaged with stakeholders, interested parties, individual citizens, wider groups, and those in the public and private sectors on a consistent basis in relation to reforming the planning system in these ways.

Sinn Féin has held discussions with the DOE and it is aware of our party's position on the detail of planning reform and related issues. We will continue this engagement as the various consultation proposals move to the next stage.

A summary of Sinn Féin's position on some of the key elements of the planning reform proposals is outlined below. However this is not an exhaustive submission and, given the complex and interlinked nature of the proposals, Sinn Féin intends to keep all the relevant issues under continuing consideration as they develop.

Equality Impact Assessment

Sinn Féin welcomes the DOE's decision to incorporate a full draft Equality Impact Assessment (EQIA) at a strategic level as an integral element of this consultation process on planning reform.

Sinn Féin welcomes the DOE's consistent recognition that the preliminary recommendations of the draft EQIA must be implemented in a way which both promotes equality of opportunity and / or mitigates any potential adverse impacts, in part furtherance of the Department's overall obligations under Section 75 of the NI Act 1998. Too often in the past, public authorities have opted for a minimalist approach that merely considered the mitigation of potential adverse impacts.

Sinn Féin welcomes the Department's commitment to the ongoing development of a structured Monitoring Strategy regarding the continuous impact of planning reform in the context of Section 75, as well as 'subsequent Section 75 activities that will continue to ensure that due regard for the need to promote equality of opportunity and regard for the desirability of good relations are mainstreamed within each stage of development and implementation of the reform programme up to and beyond 2011'. Sinn Féin believes that a full programme of these 'subsequent Section 75 activities' should be included in the final EQIA.

Sinn Féin notes the Department's recognition that planning reform proposals may particularly impact upon equality of opportunity for race, age and disability sectors. Sinn Fein advocates that the Department's EQIA Monitoring Strategy must, in particular, address any such potential impacts. Sinn Fein also believes that the EQIA Monitoring Strategy must now be constructed in a way that continuously considers and reviews equality impacts for all Section 75 groups. For instance, the draft EQIA logically drew a correlation between low literacy rates (e.g. among young Protestant men) and the ability to fully participate in the planning process. This is an example of the type of ongoing equality impact assessment that must be continued and developed to include potential practical options for better promoting equality of opportunity.

Sinn Féin notes that the anticipated outcomes of the planning reform process include 'a system more capable of discharging the statutory obligations to have due regard for the need to promote equality of opportunity'. Sinn Féin further notes the Department's insistence on the importance of mechanisms being in place at local authority level 'to ensure the mainstreaming of due regard for the need to promote equality of opportunity and without prejudice to same, regard for the desirability of good relations in local planning systems, compliant with Section 75'. Sinn Féin believes that the final EQIA should outline some of the mechanisms that should be applicable to local authorities in this regard.

Planning Policy Statements - Agree in principle. Planning Policy Statements must be in general conformity with Regional Development Strategies.

Development Management - Agree the principle of Performance Agreements (PAs), but these PAs need to be both measureable and meaningful. We would propose that periodic reviews are conducted into the workings of these PAs in respect of both public confidence and successful outworking of such PAs.

Pre-Application Discussions (PADs) – Sinn Féin supports the concept of PADs, but believes clear direction and indications to the outcome of the proposals should be given following these discussions.

Permitted Development – Sinn Féin believes that there is a requirement for a form of management within permitted development. This would ensure that minor developments are in keeping with permissible scale and design.

Notification - Sinn Féin believes the introduction of 'Neighbour' notification and 'Site' notices as a statutory function, would ensure a more inclusive planning process.

Appeals system – Sinn Féin believes that the time limit for lodging an appeal should be a minimum of 3 months. We do not agree that PAC should have the power to choose the method of appeal. This decision should rest with the appellant. We also believe that the appellant should be allowed to introduce any material (either new material or original material) that they have available to them at the time of the appeal.

Third Party Appeals - Sinn Féin believes in the provision for Third Party Right of Appeals. A Third Party Appeals process would ensure wider public confidence in the planning process. There should be a requirement to facilitate an independent challenge to a planning decision.

Developer Contributions - Sinn Féin does not object to the general concept of developer contributions. However there is a requirement for very clear guidelines relating to any developer contributions to ensure equity, consistency, accountability and transparency.

Enabling Reform - There needs to be performance improvement based on measureable targets to ensure that there is sufficient capacity within the planning system. Performance indicators should be introduced to assist in the implementation of the Reform.

Notification - Sinn Fein believes the introduction of neighbour notification and site notices as a statutory function would ensure a more inclusive planning process.

Government response

The Department notes the wide-ranging response from Sinn Fein, which addresses issues relating to the consultation proposals and the draft EQIA at a strategic level.

A number of the substantive issues raised are addressed in the Government's Response to the Consultation, including for example, the decisions to reduce the time limit for lodging an appeal to 4 months and the decision, in light of the responses received, not to proceed with the proposals to give the PAC the power to determine the most appropriate appeal mechanism or to restrict the introduction of new material at appeal, nor to proceed with the proposal to give the PAC and other independent examiners the power to determine the most appropriate method to deal with representations at local development plan independent examinations.

In relation to third party appeals, it has been concluded that the Department will not make provision for third party appeals in the current round of planning reform proposals. Again, the detailed rationale for this conclusion is reflected in the Government Response to the Public Consultation

In relation to developer contributions, the consultation document was used as a suitable vehicle through which to initiate debate on the issue of seeking contributions from developers for the provision of general infrastructure, beyond that already required to mitigate the site specific impact of a development proposal and make it acceptable in planning terms. As the issue is not intrinsic to planning reform, the feedback received has been noted and this issue will require further consideration at Executive level, particularly in relation to those Departments with responsibility for the funding and provision of infrastructure, in order to determine the way forward.

The Department will proceed with the development of its Monitoring Strategy, referred to in section 8 of the final EQIA at a strategic level, with a view to it being in place for implementation from 2011-12 onwards. It will address a number of the issues raised in Sinn Fein's commentary on the draft EQIA at a strategic level.

6. Lisburn City Council

Introduction

All designated public authorities are required under Section 75 of the 1998 NI Act to have due regard to the need to promote equality of opportunity across the nine designated groups. They

also are required to have regard to the desirability to promote good relations across three groups (which are also included within the nine designated groups).

Government Departments and Councils are designated bodies. The Equality Commission has provided guidance as to how the above statutory duties may be implemented by public bodies.

What constitutes a policy

It is worth making explicit what “policy" is taken as including. The Equality Commission guidance states, “policies covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland", and, “It is the likely impact (on the promotion of equality of opportunity) of any of the authorities policies that has to be assessed".

It is with some concern, therefore, that the following points are noted in respect of this EQIA and the implications in relation to the statutory duties that arise from its contents. This EQIA is concerned with potential procedural impacts while recognising that potential substantive impacts will have to be dealt with by the relevant planning authority (potentially local councils) when implementation occurs.

It may be argued that when the above definition of policy is taken into account and that it is the impact of any policies that is central to the promotion of equality of opportunity that it is inappropriate to omit the potential substantive impacts of such changes from the EQIA.

Indeed it may be argued that by explicitly stating that the substantive impacts will have to be dealt with by the new planning authority (and by implication this may indeed be local councils) the Department is not fully taking into account the potential impact of this change both on the designated Section 75 groups and indeed on those public bodies who, in future, will be charged with implementation.

The Department does state that it will provide advice and guidance regarding mitigating measures (for the substantive impacts) to the planning authority post 2011. By emphasising the 2011 date (as it impacts upon RPA for local government) this too may be an indication that by emphasising the procedural process to 2011, and that the substantive implementation period begins with the new council structures in 2011 that both these aspects should have been included within this EQIA. It may indeed be asked why advice or guidance could not be provided relating to mitigating measures for substantive impacts at this time. This would no doubt prove useful to those charged with implementation in the future.

Possible Impacts on the Designated Groups

There appears to be some ambiguity in the EQIA as to the potential impacts changes to the planning system could have on the designated groups. A number of groups (race, age, disability) are highlighted as in potential need of further work whereas overall the approach of this EQIA, following the Programme of Government EQIA, is that there is no adverse impact on the groups (taking the view that potentially all groups could benefit).

Indeed the following is stated on page 14, “The Departments initial draft screening found that, as these proposals are not concerned with actual policies contained within PPSs, there is no evidence to suggest that the proposals will have a differential impact on any of the Section 75 groups..." (and continues), “but, instead, they have the potential to help ensure that there is a comprehensive policy on certain land use topics that can be applied equally to the different circumstances arising throughout Northern Ireland". To state that these proposals are not concerned with actual policies when all the activities of a public authority relating to carrying out

its NI functions would be viewed as policy (within the ECNI “definition") would appear disingenuous.

This statement again merely serves to emphasise that the Department appears to have taken the approach that “strategy" is not policy and if it is not policy it cannot have any adverse impact upon any group. It would seem contradictory therefore that implementation (and consequently possible adverse impact on the designated groups) occurs through policy but this will be the responsibility of the planning authority and/or local councils with some “advice and guidance" from the Department in relation to mitigating measures, post 2011.

At page 22 of the EQIA it is noted that “other literature" highlights that planning decisions are made in a variety of “policy processes". This again underlines that “strategy" cannot be divorced from policy (as defined above) and the impacts (positive or negative) those policies may have on communities, groups or individuals.

The omission of substantive impacts and policies and their impact indicates that the potential changes to the planning system as presently impact assessed

have not produced a robust and effective document on which future “equality proofed" implementation by local councils may proceed.

Addressing Inequalities

The EQIA notes the importance of changes to the system with regard to “tackling social need and social exclusion", identifying “unmet needs" and “unmet rights" as well as developing “active community engagement" as a mechanism to tackle such issues.

The emphasis on the generation of local development plans (and systems) by councils will it appears have to be designed along an evidence based approach which would obviously include all the “key elements" and “planning functions" that will return to local government and be “cross-referenced" to available data, IT hardware systems, information handling as well as taking account of the difficulties involved in obtaining “monitoring type" data for a number of the designated groups (eg. political opinion, sexual orientation etc.).

Two further points need to be made at this time. First, the revised Section 75 guidance from the Equality Commission is now due to be published in February 2010 and this we are led to believe will include reference to “equality action plans" (within the revised Equality Schemes of all public authorities) as well as the auditing of “key local inequalities". This revised guidance will have implications for all public authorities, including Government Departments and local Councils. It would seem inappropriate therefore when data issues and inequalities are noted within the EQIA that no reference at all is made to the forthcoming ECNI guidance nor how Government Departments which are anticipated to be taking the lead as regards the identification of such “key inequalities" will progress this important matter. Secondly, to produce local key inequalities also will have implications for all public authorities, including councils.

The view appears to be that “regional data" alone will not be wholly appropriate to form the basis of a local audit of key inequalities and that local “research" will also be required. The implications of transferring planning functions to councils in the light of such related activity across all other functions of council would seem to indicate that a very specific view has been taken to this matter.

This in turn would appear to be supported by what is noted in the EQIA, namely that commissioned research was apparently undertaken by “experts" in June 2009 to assist with this “strategic" EQIA document. It would seem surprising, therefore, that on page 26 of the EQIA it is

stated, “Until such time as the proposals have been consulted on, and agreed, it is not possible to be precise as to how and where these impacts may apply, and whether they will be positive or adverse in relation to groups attached to each Section 75 ground".

It would appear that all the various concerns noted above are indications that this EQIA has not adequately taken on board the promotion of the statutory duties.

Implications for Council

Process – with implementation beginning post RPA in 2011 the entire “process" of implementing and administering the changes to the planning system in effect appear to fall to local councils (with only advice and guidance coming from the relevant Government Department). The “inclusion" of planning functions (and any other functions that are decentralised to local government) will have to be accounted for within revised Equality Schemes, revised guidance, action and development plans and so on – again all this process falls to local councils.

Workload – across a range of areas there will be increased workloads for councils. Such areas include establishing and maintaining data systems, the auditing of inequalities, the monitoring of local usage of all services (including planning) and the redirecting of all such activity toward “social need" and “social exclusion" etc.

Resources – the EQIA while noting the importance of mainstreaming within each stage of development and implementation (of the reform programme) goes up to and beyond 2011. However, the EQIA because it is focussed on the procedural ends at 2011. The question of resources includes not just what resources will transfer with the transferring functions to councils but also all the potential resources implications associated with the promotion of the statutory duties which within this EQIA have not been addressed largely because of its focus on the procedural. There are, for example, resource implications in respect of – consultation/engagement, having (all) appropriate systems in place, developing the links to ECNI and other guidance/legislation, developing action plans within revised Equality Schemes as well as local (planning) development plans and systems, monitoring, dissemination as well as the prioritisation of future actions and plans across all activities and functions of (the new structure) council.

Conclusion

The EQIA with its emphasis on the procedural has by its own admission deliberately omitted the substantive implementation of the proposed reforms. By so doing the potential impact on the Section 75 groups has been minimised but at the same time the onus on local councils to implement the reforms and identify adverse impact and mitigating measures within a totally new structure has been reinforced.

By not indicating possible impacts (adverse or otherwise) and possible mitigating actions at this time this too would indicate that, by default, it will be left to local councils to undertake all such activity.

There is an indication within the EQIA that there will be a need for “evidence based" systems to be in place to effectively implement the reforms but with no indication of how this issue (or indeed the others noted) should be addressed either by the Government Department or the local council.

Overall the EQIA provides little in the way of impacts on any of the designated groups (although as noted above some groups are identified as in need of further work) as the focus of the EQIA

in itself prevents the identification of impacts and consequently how any adverse impact may be mitigated by the implementing body post 2011.

The promotion of the statutory duties would have been more appropriately addressed if the EQIA had focussed on the (substantive) impacts for the nine designated groups and how potential adverse impacts could be dealt with. It is the impact of the policy with which Section 75 is concerned and its impact on any group will indicate if it has promoted equality of opportunity or not.

Government response

The Department notes the comments made by Lisburn City Council. As the Council recognises, the current statutory duties in relation to S75 apply to Departments and also to Councils.

Many of the planning functions that the Department currently undertakes, such as preparing development plans, and for which it is responsible for fulfilling its S75 duties, are transferring to local government in 2011. Therefore, the responsibility for delivering those requirement and fulfilling the associated S75 and related duties will also pass to councils at this time.

The comments provided by the Council will be taken into account by the Department as it moves forward with the primary and subordinate legislation programme and also with the preparation of guidance on issues such the development plan preparation process and so on. The Department will also be undertaking further work in this area as it develops its Equality Monitoring Strategy.

7. Northern Ireland Housing Executive

The EQIA is based on how the Planning Service views its equality obligations

The EQIA is incomplete and has offered further EQIAs (e.g. funding the Planning system, Appeals system) of the reform programme if issues emerge.

All generally recognised accessibility issues e.g. language, literacy or sensory disability barriers, are addressed in the document.

The movement of powers from Department level to Council level is the main element of the reform. The basic issue relating to religion/political opinion is identified in the EQIA but is not fully explored in terms of mitigating measures. Councillors will be expected to make decisions that are not based on community background or political allegiances. This is important as all public bodies will be shaping new cohesion policies over the next few years based on reducing the importance of religion and community background.

It is important that controls are fully investigated. These could include EQIAs of Area plans (proposed in the reform), Housing Executive control over housing market inputs to plans and the Housing Executive becoming a statutory consultee on all major or regional planning applications. The role and function of 'community involvement' will also need some degree of quality control or standards to ensure effectiveness.

The proposals for pre-application consultation are significant and will need clear standards and controls. Housing community groups and tenants will need the capacity to become involved and Planning could become a Housing Community Network standard item. Consultation should have a standardised approach covering style, time periods, difficult to reach groups (including all equality groupings and marginalised groups who would never have become involved in planning

decisions) and reporting. The report itself should be subject to further consultation as people may need to see the extent of support for or opposition to a particular proposal. Controls should be put in place to avoid 'hyped up' proposals being put forward in order to create illusions of effective consultation i.e. where the application is for much more than is really intended.

All aspects of the system need to take into account the equality dimension. Housing Executive tenants and customers tend to correlate with equality groups that require more diverse approaches to ensure equality and good relations are being considered. For example, older people, disabled people, Travellers, Migrant Worker families, Social groups with low educational attainment, literacy rates etc, will all require targeted actions to ensure they are properly engaged. Any removal of 'right to be heard in person' for example will differentially impact negatively on many of these groups.

The issue of third party right of appeal links with community engagement, pre-consultation reports and community planning. Given the territorial nature of Northern Ireland any system will need clear controls to avoid vexatious or malicious objections. Alternatively the third party system will provide protection against inadequate community consultation in the first place.

In conclusion the equality analysis presented in this report is incomplete but mainly because it cannot be completed until further issues are considered. These issues are openly discussed in the report and there is recognition that the issues are areas where improvements can be made. The Housing Executive considers that it is also important to point out that there is an opportunity with this reform to make significant change to how equality and good relations are considered in public policy. This report hints at this opportunity and could set high standards for others to follow e.g.

- EQIAs of strategic planning decisions
- How major planning decisions affect the relationships between groups.
- How can communities be included?
- Communities mean much more than just those who previously decided to get involved i.e. it also includes children, families, public stakeholders, foreign nationals, disabled people etc.

There would be benefit also in requiring a statement of good relations in Area plans which would set out how the Plan will address separation and promote sharing.

Government response

The Department notes the comments from the NI Housing Executive. The comments provided will be taken in account by the Department as it moves forward with the primary and subordinate legislation programme and also with the preparation of guidance on issues such as pre application community consultation, the development plan preparation process etc. The Department will also be undertaking further work in this area as it develops its Equality Monitoring Strategy.

Following the transfer of planning functions, when responsibility for local development plans moves to local government, Section 75 statutory obligations will continue to apply to district councils. It is envisaged that the new local development plans will be effective tools in assisting district councils to fulfil their duties under Section 75. There will be requirement for district councils to have their Statement of Community Involvement in place before any public consultation on the local development plan can begin. The Department considers that the SCI will enable district councils to carry out more inclusive and effective community consultation on

their local development plans. It will also help better promote equality of opportunity and community relations through increased awareness of community participation and involvement.

The proposals for Development Management set out new requirements for statutory pre-application consultation with the community for regionally significant and major development proposals. The aim is to better inform the relevant community and provide an opportunity for it to contribute its views before a formal planning application is submitted to the planning authority. This is an additional measure and does not take away the right of individuals and communities to express formal views during the application process itself.

The aim of the proposal to give the PAC the power to determine the most appropriate appeal mechanism was not to stifle debate at appeals / independent examinations or to stop certain stakeholders from contributing; it was simply to enable the Planning Appeals Commission or independent examiners (where appointed) to better manage the appeals / examination process. However, having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC or independent examiners (where appointed) to determine the most appropriate appeal method or the most appropriate procedures to be used in dealing with representations to the local development plan. The detailed rationale for this decision is reflected in the Government Response to the Public Consultation.

In relation to third party appeals, it has been concluded that the Department will not make provision for third party appeals in the current round of planning reform proposals. The detailed rationale for this conclusion is reflected in the Government Response to the Public Consultation

8. Causeway Coast Communities Consortium

9. Portballintrae Residents Association

The groups most likely to be affected by the changes in the planning system are: (a) the elderly (b) young couples and (c) low-income families. In recent years the development of second homes and buying for investment have resulted in the “ghost-town" effect, where large numbers of dwellings in coastal communities are unoccupied during the winter months. This leaves the remaining residents, many of whom are elderly, isolated and vulnerable, without neighbourhood support. The demand for second homes has also resulted in inflated house prices, so that young couples setting up home are unable to afford to buy houses in their home towns and villages and are forced to move elsewhere. Low-income families are disadvantaged by the shortage of social or affordable housing. Not an “inclusive society".

Whilst the Planning Appeals Commission is independent in its decisions, experience has shown that objectors do not have equality in the appeals process. Not only is there no third-party right of appeal, but also, when they do take part in an appeal, they lack the financial resources to match the developers and their agents, who can afford to employ leading barristers well-versed in planning law.

This issue has not been addressed, so the inequality remains.

The presumption in favour of development is in itself an inequality. To be truly impartial there should be no presumption either for or against development.

- Third-party right of appeal should be introduced.

- There should be a legal-aid fund available to individual objectors and small community and residents' groups with insufficient funds, to enable them to contest appeals effectively.

The planning system should include measures to ensure that the inequalities do not continue in future, that there are balanced communities, and that there is adequate provision of social and affordable housing.

Perhaps a separate use class for second homes would help to control the ratio of part-time to permanent residents.

Article 40 agreements could be used to set aside a percentage of the houses in each new development to be made available as affordable housing.

There is a need for education for the public on how to access the planning system more effectively, and technical and legal advice should be offered to assist applicants and objectors.

Government response

The Department notes the Causeway Coast Communities Consortium and Portballintrae Residents Association comments. The equality issues raised will be considered by the Department as it develops its Monitoring Strategy, to be developed for implementation from 2011 onwards. The response to the individual reform proposals, such as third party appeals, is reflected the Government Response to the Consultation.

The adequate provision of social and affordable housing is a matter for planning policy and is currently set out in the RDS and PPS12. Post Reform / RPA, this will continue to apply to district councils in the preparation of local development plans due to the requirement for plans to take account of central government plans, policies and guidance.

10. Individual

Importance of coastal zone not acknowledged. Importance of tourism to economy etc. World heritage site, AONB etc.

Housing for young local families etc. Provision for OAPs. Not speculative developments.

Government response

The Department notes this response. The equality issues raised will be considered by the Department as it develops its Monitoring Strategy, to be developed for implementation from 2011 onwards.

11. Portstewart Vision – The Community Forum

The most glaring omission in an equality context is the absence of 'Coastal Regions'. Only one reference in the entire document. Coastal communities have very different characteristics and needs from both Rural and Urban both of which are covered in specific planning policy statements. As so much of our area is coastal and seen as an important economic driver in the Tourism Industry, its unique needs and characteristics need to be acknowledged.

Other groups which need to be considered within a sustainable community are the elderly, low-income families and 1st home buyers. The local character and ambience of a location must be

maintained so that we are not left with too many unsuitable builds resulting in non-affordability, isolation in streets of empty holiday houses. More houses do not mean more homes!

A responsibility of a reformed planning system should be to check validity / financial credibility of applicants, easily done by liaison with Companies Registry and should be incorporated.

The role of the Planning Appeals Commission leaves the 'objectors' at a disadvantage. They are seen as negative and do not have equality. There is no thirdparty right of appeal and they are at a severe financial disadvantage to resource the process. Please find another term which is more positive. Objectors do not object to planning and development, only to inappropriate and unsuitable applications.

Allow sufficient time and funding to training Councillors, Council staff.

Ensure adequate Capacity building in Community.

Clear agreed criteria on any new processes to be introduced

Introduce Third-party right of appeal

Establish a legal-aid fund to enable concerned residents or community groups to contest appeals effectively

Research needs to be done to verify and quantify the degree of the perceived isolation of the elderly in the coastal regions so that mitigating action can be undertaken. This might mean revised targets for both policing and health provision in these areas. Meanwhile a drive should be made to provide a proper supply of social/affordable housing, ring fenced, if possible, to prevent them becoming yet more second/investment opportunities. This would allow young families to buy in the town, redress the age imbalance and provide support for the elderly in their homes.

Clear definition of a Balanced Community should be established with adequate provision for social & affordable housing, support for commerce and economic drivers, care for the aging and quality open space.

Government response

The Department notes the response from Portstewart Vision – The Community Forum, which relates to equality issues and also a number of the specific planning reform proposals. The equality issues raised will be considered by the Department as it develops its EQIA Monitoring Strategy, to be developed for implementation from 2011 onwards. The response to the individual reform proposals, such as third party appeals, capacity building and so on, is reflected the Government Response to the Consultation.

The adequate provision for social and affordable housing, support for commerce and economic drivers, open space etc. are all matters for planning policy. Following the transfer of planning functions, planning policy will continue to apply to council plans because local development plans will be required to take account of central government plans, policy and guidance.

The Department is committed to working with others to ensure that the planning system is open and accessible, as well as contributing to initiatives to enhance capacity for all participants and stakeholders. The Department will give the points raised further consideration as it makes its detailed preparations for the implementation of the reforms, including the transfer of responsibility for the new planning system to local government.

12. Castlerock Community Association

The emphasis on a formal ‘paper’ approach to all aspects and phases of the planning process disadvantages the less literate sections of the populace. The refusal to introduce third party appeals as a right would throw this balance further out of kilter, thus it must be retained. Careful consideration must also be given as to how the less literate are to be kept abreast of these matters and thus informed and empowered to play a proper role in the system.

There are clear gaps as regards the actual practical application of this almost exclusively theoretical document.

a. Little is said about the trialling of the various aspects of the new system.

b. No exemplars are provided to indicate what the new breed of submissions, applications, reports, and judgements might look like in practice. This work needs to be done to bring the system to life and for training purposes.

c. No provision is made for the large resources and the sophisticated level of infrastructure planning which will be required to prepare all sections of society – the planners, the developers, the councillors, the community representatives and the public – adequately for their future roles.

d. Careful preparation and extensive trialling and training are required to ensure that the whole system does not descend into chaos by cementing bad practice in particular during the transition period from the old to the new systems.

e. Working parties of experts should be set up to draft a programme of trialling and blueprinting of documentation to be set in train as quickly as possible.

f. A series of public meetings and specialised training seminars for the various interested parties should be evolved and put into practice as soon as possible, as time is already short.

g. Community groups and charitable groups working with the various disadvantaged groups in society must be given the opportunity to access simplified documentation and to attend training and trialling sessions designed to show how the various stages of the new system will work.

h. The information must be got out in a clearly comprehensible form and disseminated effectively not only in an electronic but also in a paper and in oral form to those less able to deal with large, formal documentation. Radio and TV programmes, information films are need here.

i. Coastal dwellers must be shown the same special concern as townscapes and village dwellers and their interests thus be better protected and safeguarded in future. (see ICZM proposals)

j. The document has much that shows promise to recommend it.

k. The present system gives rise to the ‘objector culture’ while what is required is a positive aim to make the quality of planning and thus the quality of the overall environment paramount is, for this reason, very much to be welcomed.

l. The declared aim to involve all sections of society must provide the necessary thrust towards a much more open and democratic system.

Government response

The Department notes the comments from Castlerock Community Association. The comments raise a number of issues relating to access to and capacity within the new planning system.

The Department is committed to working with others to ensure that the planning system is open and accessible, as well as contributing to initiatives to enhance capacity for all participants and stakeholders. The Department will give the points raised further consideration as it makes its detailed preparations for the implementation of the reforms, including the transfer of responsibility for the new planning system to local government.

13. Derryhale Residents Association

Introduction

In our response, we have chosen to present our views as a short comment rather than use the response format provided. Our principle concern in relation to EQIA is cited on pg. 11 as “Those Affected by the Reform Programme". We are much less concerned by Section 75 legislation in which, it appears to us, there will be no groups who suffer significant disadvantage. In contrast we see the group who are most disadvantaged to be members of the General Public.

Anticipated outcomes (pg 12.) are worthy aspirations and undoubtedly when implemented, will be an improvement on the current perceptions of performance, as indicated in Appendix I. The Development Plan Process and Development Control System were rated poorly. The need (pg 20) to “improve engagement and consultation --was highlighted in an area of key priority".

“Front loading", defined as early consultation on “Preferred options for growth and development of an area with interested parties" is a welcome proposal. This proposal, to replace the limited opportunity to make representation at the “Issues stage" of planning, should reduce the chances of local dispute, but cannot be guaranteed to do so. Planning decisions may still be made which are perceived to disadvantage members of the public in general or as a smaller group of the community.

Third Party Appeals.

It is the view of Residents that there is much merit in providing a system of Third Party Appeals. At pg 16/17, the section on Third Party Appeals suggests that “Front loading" with “increased openness and transparency" will reduce or obviate the need for such appeals. This may well be so! If the department has confidence in this view, it should have no objection to providing a Limited Third Party Appeal system as outlined below. If no appeals are lodged the Departmental view will have been vindicated and any Third Parties similarly will be content. By contrast, if there is no appeal system, the Public may perceive yet again that their wishes have been disregarded. The former situation is “Win Win" whereas disallowing appeal legislation will lead to loss of confidence and support of Planning Reform.

The Residents’ Association has outlined a scheme for a limited Third Party Appeal system elsewhere. In summary, we recognise that Third Party Appeals, as any appeal, should have substance and be based on fact. Vexatious appeals have no place in a Planning system. We advocate a screening test for any appeal. The appellant should prepare the appeal and present it in writing to a Screening Group which could, for example be a local statutory body or other as appointed by the Department. If this body finds that there is substance in the appeal, it would then recommend that the appeal should be heard by the Planning Commissioners or other appointed arbiter. The appeal, when heard, would be based on the original submission, unless there had been material alteration to the facts of the case.

The argument that Third Parties have recourse to justice in the High Court is not only unacceptable but is contrary to the expressed direction of European legislation in which the words “---not prohibitively expensive" appear. This advice is contained in the section Access to Justice (Article 15a) EC Directive 2003135: The Public Participation Directive.

The absence of any decision to implement Third Party Appeals is, in our opinion, the greatest deficiency in the consultation paper. The apparent intention to defer any decision is prevarication, in the hope that the need for a decision will become lost with the passage of time. The Minister deferred a decision at previous consultation. A second deferment is now proposed; how many times will this abdication of responsibility have to occur before action is taken?

The other two matters of concern listed for further consideration are:

- Enhancement of Enforcement powers and Criminalisation of Development without planning permission.
- Developer Contribution to national or local infrastructure.

Enforcement

We have expressed the widely held view on previous occasions, that Developers appear to believe that “might is right". They have the resources, they have a business proposition and (in their view) the end justifies the means. Existing buildings or sites for preservation are on occasions destroyed by rogue developers prior to obtaining final planning permission approval. Such individuals appear to take the view that the derisory penalty which may be incurred is no deterrent to such action and at worst any fine may be incorporated into legitimate development costs. Given that supervision is limited at present, though hopefully may be enhanced by the reforms, and enforcement can only occur after a breach of planning law has occurred, it follows that a safeguard to ensure compliance would be enhanced if penalties were more realistic and the ultimate sanction of Criminal Prosecution was available.

Developer Contribution

Previously we have expressed the view that the Developer has a responsibility to pay for costs, which would otherwise come from the public purse, that arise from work which he has undertaken in the course of his business activity. These can be regarded as part of the cost of conducting his business and can reasonably be recovered in the sale price of the product.

If the plea is made that the cost exceeds that which is recoverable in the sale price, then the Developer must decide if the project is viable. An exception to this may arise if the development benefits the national wealth and heritage. In such circumstances it may be that the Department, District Council or other appointed agent may agree to contribute to some of the infrastructure cost. Any such decision must be reasonable, realistic with a clear line of accountability for the decision.

Any development which benefits society and the general economic well being of the country, usually to be expected in regional or major developments, could reasonably be included in the cost of the project and supported by the taxpayer. Recovery of the taxpayers’ contribution could be either through local council tax or a central tax component of rates. Examples of such projects would be water and sewerage charges. Once again the proportion of such costs must be realistic, transparent and have a clear line of accountability.

Summary

The Residents' Association encourages the introduction of a Limited Third Party Appeal System. We support the principle that a breach of planning legislation e.g. commencing development prior to gaining full planning approval should be penalised in a realistic fashion and conclude that criminalisation of such acts may be the most effective means of ensuring compliance.

In the matter of the allied costs of providing necessary infrastructure for a development project, we take the view that costs which do not contribute directly to social and economic improvement of Northern Ireland should be the responsibility of the Developer and recovered by him/her in the sale price of the development.

In all three aspects of Planning Legislation, transparency and public accountability are paramount.

Government response

The Department notes the response from Derryhale Residents Association, which relates to primarily to a number of the specific planning reform proposals. The response to the individual reform proposals, such as the decision not to proceed with third party appeals in the current reforms; the decisions in relation to enforcement and increased fees for retrospective applications; and the decision not to proceed with proposals in relation to criminalisation are reflected in the Government Response to the Consultation.

Similarly, although the consultation document was used as a suitable vehicle through which to initiate debate on the issue of seeking contributions from developers for the provision of general infrastructure, beyond that already required to mitigate the site specific impact of a development proposal and make it acceptable in planning terms, the issue is not intrinsic to planning reform. The feedback received has been noted. This issue will require further consideration at Executive level, particularly in relation to those Departments with responsibility for the funding and provision of infrastructure, in order to determine the way forward.

14. RTPI

The right to be heard needs to be preserved.

Local member review bodies are not conducive to openness and democracy. Potential violation of human rights. Because the reforms do not address wider issues like climate change, the impact of these necessary policy changes are not tested under EQIA.

Government response

The Department notes the response from the RTPI. The response to the individual reform proposals, such as Local Member Review Bodies, and the proposals to give the PAC the power to determine the most appropriate appeal mechanism or the most appropriate procedures to be used in dealing with representations to the local development plan at independent examination, are addressed in the Government Response to the Consultation.

[1] Available at http://www.pfgbudgetni.gov.uk/finalpfg.pdf.

[2] Available at http://www.pfgbudgetni.gov.uk/drafrequi.pdf)

[3] Between March and June 2009, the Emerging Proposals paper has been downloaded over 600 times. To date no Section 75 groups have raised issues with regards to the paper. Figures for the period October 2008 to February 2009 are not available.

[4] 4 PAC Chief Commissioner's Annual Report April 2008 to March 2009.

[5] Consultancy support was provided by the Social Research Centre, led by Eileen Beamish, in association with John Kremer (Kremer Consultancy Services), Dr. Geraint Ellis (School of Planning, Architecture and Civil Engineering QUB), and Fiona Cassidy (Jones, Cassidy & Jones Solicitors).

[6] 2009 Saint Index- Headline results (Saint Consulting).

[7] Religious belief and political opinion have been merged for the purpose of this analysis on the basis that in Northern Ireland there is a strong correlation between voting behaviour and religious background.

Planning Bill Human Rights Assessment

Human Rights

Before completing the Human Rights screening exercise, it is necessary for you to have read the OFMDFM guidance on human rights entitled "Get in on the Act; a practical guide to the Human Rights Act for public authorities in Northern Ireland".

Go through each of the rights detailed in the table below. For each one consider whether the policy/proposal engages the right, i.e. how the policy/proposal you are working on could involve the right. Explain how the right is engaged.

Please note that the rights have been abbreviated so you should see the relevant Article in the Guide referred to above for the full title and explanation of the right.

Human Right	Does the Policy Engage the Right?	
Yes/No	Explanation	
Article 2 Right to life	No	
Article 3 Prohibition of torture, inhuman and degrading treatment	No	
Article 4 Prohibition of slavery and forced labour	No	
Article 5 Right to liberty	No	
Article 6 Right to a fair trial	No	Third Party Appeals The issue of Third Party Appeals has been raised in the past and will be included in the planning reform consultation paper. However, the Courts have held that, outside of the circumstances of a particularly badly affected "victim" of a planning decision, a third party right of appeal in planning is not required by existing human rights legislation. It has been the opinion of the Courts in Great Britain that a combination of the opportunities for input by third parties of their views relating to planning

Human Right	Does the Policy Engage the Right?	
Yes/No	Explanation	
		applications (which in GB mirror those in Northern Ireland) and the ability to have recourse to judicial review, is sufficient to satisfy the requirements of Article 6 of the ECHR3. The judgement in the Foster Judicial Review case delivered in the High Court of Justice in Northern Ireland on 9th January 2004 reached a similar conclusion. Criminalisation The Department will be seeking views on whether it should give further consideration to making it an offence to commence development without planning permission. If further consideration is taken forward any human rights considerations will be assessed at that stage.
Article 7 No punishment without law	No	
Article 8 Right to respect for private and family life	No	
Article 9 Freedom of thought conscience and religion	No	
Article 10 Freedom of expression	No	
Article 11 Freedom of assembly and association	No	
Article 12 Right to marry and found a family	No	
Article 14 Prohibition of discrimination	No	
Protocol 1, Article 1 Right to property	No	
Protocol 1, Article 2 Right to education	No	
Protocol 1, Article 3 Right to free elections	No	

When Is a Human Rights Impact Assessment Required?

If you have answered yes to any of these questions you must complete the Human Rights Impact Assessment.

If you have answered no to all of the questions, a Human Rights Impact Assessment is not required. However, in this case you should complete part 8 of the human rights assessment

proforma only which must be signed off by a Senior Responsible Officer (Grade 7, equivalent or above).

Department Reply to Research Papers

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Your reference: CQ263/11

25 January 2011

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

Planning Bill: Research and Library Service Bill Papers

The Environment Committee requested information from my Department following the meeting to discuss the Planning Bill on Tuesday 18 January 2011.

I enclose answers to the questions asked in the QUB Planning Bill Research Papers, Paper 2 Development Management, Planning Control and Enforcement and Paper 3 Community Involvement.

I am also enclosing, as requested a copy of the Final Equality Impact Assessment at a Strategic Level, March 2010 for the Reform of the Planning System in Northern Ireland. This assessment was based on the policy proposals agreed by the Executive in March 2010. The Planning Bill gives legislative effect to those proposals. The Human Rights assessment that was completed on the Planning Reform Programme is also attached.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO
[by e-mail]

Part 8: Proforma

You should now have a clearer view about the policy/proposal and the possibility of it engaging or interfering with Convention rights and freedoms.

Please ensure the proforma is also signed by your Senior Responsible Officer and if there is any possible interference or limitation refer to your legal advisor for further action and advice.

Please tick the statement that applies, and sign below.

[x] a) The policy/proposal does not engage any Convention rights.

[ ] b) The policy/proposal does engage one or more of the Convention rights, but does not interfere with or limit it/them.

[ ] c) The policy/proposal interferes with or limits one or more Convention rights and legal advice is being sought.[1]

Countersign, hold copy with policy papers and refer to your legal advisor

Signed by _____ (Official)

Date _____ Grade 7

Signed by C Smith (Senior Responsible Officer)

Date _____ Grade 3

[1] **Notes:**
If you find that it does interfere with or limit one or more of the Convention rights, and your Senior Responsible Officer agrees, you must seek legal advice, even if it is considered that the interference or limitation is justified. The proforma at Part 9 should be used in this regard.

Departmental reply to Research Papers - Planning Bill (2) - Development Management, Planning Control and Enforcement

Department's response to QUB report on Planning Bill (2): Development Management, Planning Control and Enforcement

Note on Subordinate Legislation and Guidance

The Committee has the Memorandum of Delegated Powers which sets out all the subordinate legislation flowing from the Planning Bill as drafted and a timetable for production of that legislation.

The detailed policy to be expressed through the Regulations is being drafted in tandem with the progress of the Bill through the Assembly. It will not be finally settled until it has been subject to public consultation and appropriate scrutiny in the Assembly. References in this paper therefore refer to draft regulations.

Similarly, while we can anticipate the contents of guidance, final decisions will be made later in the process.

Plan-Led System

Question 1:

As the Department provided for a plan-led system in the Planning Reform (Northern Ireland) Order 2006 (4(1)) but did not commence the legislation it is critical to establish a view on when this is likely to occur?

Answer:

The plan-led system will be commenced in time for the transfer of planning powers to councils.

Report Following Public Local Inquiry on Regionally Significant Development – Report is not Binding

Question 2:

Does this require further exploration and can the process be truly independent if this is the case? Furthermore, if there is an option to hold a public local inquiry what criteria will be used to determine whether or not an inquiry should be held? If there are no such criteria should guidance be provided?

Answer:

The Bill provides under Clause 26 that the Department may hold a public inquiry in relation to a regionally significant development, or where this is not held, may serve a Notice of Opinion on the applicant who may request a hearing with the Planning Appeals Commission. The Department must take into account the recommendations arising from the report in making its final decision.

The provisions in the Bill are the same procedures which currently apply to the determination of applications under Article 31 of the Planning (Northern Ireland) Order 1991.

It is considered appropriate that the accountability of the decision must rest with the Department in fulfilling its function to secure the orderly and consistent development of land.

The Bill outlines the additional power for the Department to appoint independent examiners, where it is not considered expedient to appoint the PAC in order to ensure timeliness in the delivery of decisions regarding these significant applications.

Regarding the process of appointing Independent Examiners, the objective of the Department will be to introduce appropriate appointment procedures in line with Government policy that will ensure that they are appropriately qualified and independent from the Department.

The method whereby either public inquiry or notice of opinion route is taken will be based on current practice which allows a level of discretion for the Department to choose which route is appropriate. The Department currently may refer Article 31 applications to public inquiry where representations have been received and it is considered that the inquiry process will provide additional information to inform the Department/Minister in making a final decision. The volume of representations received to a planning application will not in itself be a determining factor as to whether a public inquiry is held. Rather, the important issue in respect of applications is the content or nature of objection, rather than the volume. These considerations will apply to the Department in determining the route for regionally significant developments.

The Department will produce guidance on public inquiries and hearings to further explain the process for regionally significant development applications.

Calling in of Applications by Department

Question 3:

Is there a need to ask for clarity on what circumstances a public local inquiry may be held? Is there a need to produce guidance on this matter?

Answer:

Applications that are called-in by the Department will follow the same route as regionally significant applications submitted directly to it, i.e. by public inquiry of through notice of opinion. The method whereby either public inquiry or notice of opinion route is taken is referred to in the paragraph above for regionally significant developments.

The Department will produce guidance on public inquiries and hearings to further explain the process for applications that are called in.

Procedures for Hearings and who can be heard are left to the Discretion of the District Councils (Clause 30)

Question 4:

Does it need to be explored how consistency across the jurisdiction can be assured? How will hearings be conducted when applications cut across more than one district council area? Perhaps there is scope to develop a framework which provides guidance and fosters a rigorous and coherent approach?

Answer:

To enhance scrutiny of applications which may raise issues with particular sensitivity for a local area, the Bill makes provision for a pre-determination hearing prior to the determination of certain types of planning application.

The Draft Development Management Regulations will set criteria for mandatory hearings. A pre-determination hearing would be mandatory when an application for a major development has been subject to notification (i.e. referred to the Department for call-in consideration) but which has been returned to the Councils, i.e. not called in. These circumstances which will be set out in a Draft Call-in direction, are for applications which are:-

- subject to a significant objection from a government department or statutory consultee; or
- consist of a significant departure from the local development plan.

In addition to this, and in order to address local circumstances, District Councils will have the latitude to identify other types of development application for which they would hold pre-determination hearings (for example those applications with a large number of objections). This allows flexibility for councils and recognises the variety of circumstances relevant to different areas.

To further promote a common approach, the Department will produce guidance for councils explaining their statutory function in relation to pre-determination hearings and when it would be considered appropriate to hold such a hearing. This guidance will deal with instances where development crosses council boundaries.

Officer Delegation (Clause 31)

Question 5:

In pursuit of consistency, again, is there a need to provide guidance for councils on when this should occur?

Answer:

The Planning Bill (clause 31) requires each council to prepare a scheme of delegation in relation to applications relating to development in the 'local' category of the development hierarchy. It states that applications determined under the scheme will be determined by an "appointed person" (i.e. by council officials) rather than by the council.

Draft Regulations will require that councils will not be able to delegate determination of an application through their Scheme of Delegation where:

- the application is made by a district council or an elected member of a district council; or
- the application relates to land owned by the district council or where the district council has a financial or ownership interest in the land.

Apart from these circumstances, it will be for each council to decide what other, if any, restrictions are to apply to its Scheme. This is to ensure flexibility to enable each council to develop clear schemes of delegation that are appropriate to local circumstances.

An important further safeguard will be provided in the draft Regulations which will require the council to send a copy of the Scheme to the Department and are not to adopt the scheme until it has been approved by the Department.

The Department will produce guidance for councils on Schemes of Delegation.

Power to Decline to Determine Planning Applications (Clauses 46-49)

Question 6:

Is there a need to ask whether two years is long enough or could this perhaps be a discretionary process where the decision to refuse to determine is based upon the fact that there have been no significant changes in planning circumstances since the previous application?

Answer:

The powers to decline to determine applications are discretionary. The two-year timeframe has been in place since 2003 and provides clarity for applicants as to whether a subsequent or repeat application is likely to be considered. The Department did not consider any change was necessary and has not consulted on a potential change.

Completion Notices (Clause 63)

Question 7:

Is there a danger that this could lead to injustice if the recipient of a notice cannot reasonably complete a development –which might be the case, particularly in a time of economic uncertainty?

Answer:

The power to issue a completion notice is a discretionary one and a council will be in a position to decide if a completion notice should issue taking into consideration all relevant matters. The recipient of the notice may also seek a hearing before the Planning Appeals Commission before the Department considers whether the notice should be confirmed.

Part 10: Assessment of Councils' Performance on Decision Making

Question 8:

Should there not be consideration for the assessment of the Department's performance in the Bill?

Answer:

The Minister is accountable for the performance of the Department under the Bill to the Assembly and to the electorate. The Department's performance is also closely scrutinised by the Environment Committee.

Award Of Costs

Question 9:

Perhaps the Department could explain why this has not been brought forward in the Bill and how it intends to proceed?

Answer:

The Department will introduce award of costs provisions as an amendment to the Bill.

Decision Making: Higher Degree of Autonomy in Decision Making for Local Government in the Planning Systems of GB, but the Powers of the Department are more Intrusive.

Question 10:

Is this likely to change? Are any provisions in place to move towards a reduced role for the Department? If so what are these? If not, should a strategy be put in place to facilitate progress towards a more devolved system?

Answer:

The Department of the Environment is currently the planning authority for Northern Ireland and so is responsible for all development plans and the determination of all planning applications. The purpose of this Bill is to provide for the transfer of the majority of planning powers from the Department of the Environment to district councils. This transfer will happen in circumstances and a timeframe to be determined by the Executive Committee and after the new governance arrangements and ethical standards regime (which are currently being consulted upon) are in place.

When powers transfer, the councils will become planning authorities. They will be responsible for the development plans for their areas. Councils will be responsible for the determination of the majority of planning applications, that fall under the categories of the development hierarchy relating to major (other than regionally significant) and local developments.

The Department of the Environment will retain powers of oversight and the Bill provides for the Department to intervene should a council be unable to fulfil its responsibilities under the legislation. Such powers must be included in the Bill as a safeguard in the interests of good governance. It is anticipated that these powers will only be used as a matter of last resort.

The Department will also determine applications which are of regional significance and will have the power to call in applications in certain circumstances. It is estimated that the number of applications which will be dealt with by the Department as regionally significant would form less than 1% of total planning applications.

The Department's powers of intervention throughout the Bill are broadly comparable with those in the other jurisdictions.

Performance Agreements

Question 11:

Is there a need to include provision for both PAs and the Department?

Answer:

Performance Agreements: The concept of performance agreements builds on proposals which currently exist in Planning Service. However, they offer more benefits to a prospective applicant in terms of working to an agreed timescale and incorporating milestones at both pre-application and application stage resulting in an end-to-end approach. The intention is to provide applicants with certainty and clarity in terms of what the planning authority requires of them with identification of key stages.

Whilst performance agreements are proposed on a voluntary basis, the Department will set out in guidance the process of performance agreements, the elements they should contain, key milestones and examples of timeframes to be reached. This should help encourage all councils to take a pro-active role in ensuring the uptake of performance agreements and ensure that performance agreements are reached wherever it is practical to do so.

Monitoring of performance agreements, their take-up and success will need to be collated across all councils and the Department as part of ongoing improvements to performance management.

Department performance: The Department will maintain its current internal planning audit function for assessment of decision making on planning applications. The publication of the Department's statistics on its planning applications will continue to be produced (as operates currently).

Appointment of Independent Examiners

Question 12:

Is this an issue which needs to be unpacked in greater detail – the Department's response is likely to be that if anyone is unhappy they can challenge the process via judicial review (an unreasonable expectation due to the excessive cost, except for the wealthy and those entitled to legal aid)

Answer:

The Department sees it as critical that there is flexibility to appoint external examiners regardless of the level of resources which the PAC may have. The PAC will remain the first point of contact for conducting independent examinations or inquiries. However, there will be circumstances where the PAC resources available to conduct inquiries or independent examinations will come under particular pressure and where there is a serious risk of delay - for example where a number of Local Development Plans are submitted for IE at the same time or several Regionally Significant Applications are progressing to inquiry. This proposal would allow independent examinations to take place expediently, thus reducing lengthy delays to the planning system. The Department will produce clear guidance on the use of other independent examiners.

Both the PAC and other independent examiners will be required to follow the same procedures for conducting independent examinations or inquiries. It is the responsibility of the Department to secure the orderly and consistent development of land, therefore, the planning processes must provide an appropriate oversight role.

- In relation to local development plans, the process of independent examination and Departmental direction before adoption will ensure that the Department responsible for planning retains an appropriate oversight role, and at the same time the examination of the development plan document is independent of the council.
- In relation to Regionally Significant Applications, after the inquiry the independent examiner submits its report to the Department for it to finally determine the application.

Both these processes are in parallel with other UK jurisdictions.

Regarding the process of appointing Independent Examiners, the Department will introduce appropriate transparent and fair recruitment and selection procedures which will be specifically

designed to ensure that successful candidates are appropriately qualified and fully independent. These will include public advertisement and a rigorous selection process.

Criminalisation: Practice in ROI of Reverse Onus (Section 156 (6)) of the Planning and Development Act 2000), whereby the Recipient of the Enforcement Notice, not the Planning Authority, must Prove Beyond all Reasonable doubt that an Offence has not Occurred.

In order to address the issue raised, we need to consider criminal prosecutions generally and more specifically the prosecution of an offence under section 151 of the ROI's Planning and Development Act 2000 ("the 2000 Act"); we also alert the Committee to human rights implications of reverse onus.

The common law position in relation to the burden of proof in criminal matters is what is known as "beyond all reasonable doubt". In other words, in order to obtain a conviction in relation to a particular offence, the prosecuting authority must prove to the court beyond all reasonable doubt that the offence in question has been committed. Offences are often made up of a number of components or elements, all of which at common law are required to be proved by the prosecution beyond all reasonable doubt.

Under section 151 of the 2000 Act it is an offence to carry out unauthorised development. Section 151 does not however apply to "exempted development" which is defined in section 4 of the 2000 Act and has perhaps some read across with permitted development in Northern Ireland.

Section 156(6) of the 2000 Act (to which the question refers) provides:

"156(6) In a prosecution for an offence under sections 151 . . . it shall not be necessary for the prosecution to show, and it shall be assumed until the contrary is shown by the defendant, that the subject matter of the prosecution was development and was not exempted development".

The effect of this provision is that - unless the defendant proves otherwise - the development in question will be taken by the court to be development which is not exempted development. In other words, the prosecutor is not in the first instance required to prove beyond all reasonable doubt that the activity or operation is development which is not exempted development. The prosecutor will still however be required to prove the remaining two elements of the offence beyond reasonable doubt - namely that the development is unauthorised AND that the defendant carried out that development. Furthermore, if the defendant proves that the development is not development or is exempted development, then the onus will revert to the prosecution to prove beyond all reasonable doubt that it is development which is not exempted development.

To summarise, there are 3 elements to an offence under section 151 namely:

(a) the activity or operation is development which is not exempted development

(b) the activity or operation is unauthorised

(c) the activity or operation was carried out by the defendant.

In the absence of section 156(6), the prosecutor would be required to prove all three elements of the offence beyond reasonable doubt before a conviction would lie. It is of crucial importance to note however that section 156(6) relieves the prosecution of that obligation solely in relation to one element of the offence (i.e., that described in (a) above) and even then that relief is

limited as it does not apply if the defendant is able to prove that the development is not development or is exempted development. Where the defendant is able to prove that the development is not development or is exempted development , then it falls once again to the prosecutor to prove all three elements of the offence beyond all reasonable doubt. In other words the limited relief afforded by section 156(6) is lost and the position reverts to the normal common law position. At best then, section 156(6) operates to remove the burden of proof on the prosecution in relation to one out of three elements of the offence under section 151, at worst it does not remove that burden at all.

It can be seen therefore that the position is not quite as indicated in the question. It is not the case that section 156(6) has the effect of requiring the defendant to prove beyond all reasonable doubt that no offence under section 151 has been committed. While section 156(6) may go some way towards easing the matters required to be proved by the prosecution, it certainly does not remove them completely and in fact - in the limited circumstances referred to in the preceding paragraph - will not remove them at all.

In any event " reverse burdens" such as those in section 156(6) of the 2000 Act raise human rights issues in terms of the presumption of innocence and need therefore to be considered extremely carefully before adoption.

Departmental reply to Research Papers - Planning Bill (3) - Community Develoment

Annex C

Department's response to QUB report on Planning Bill (3):
Community Involvement

Question 1:

The Department noted that it intended to make a statutory link between community plans and local development plans. This is not included in the Bill.

Answer:

The Department will to include a statutory link in the legislation between community plans and local development plans. Legal opinion is that the appropriate way to deal with this matter is to bring forward amendments to the Planning Bill through the Local Government Bill, since this will include the requirement on councils to prepare a community strategy.

Question 2:

The Department noted that it intended to change the first stage of a development plans, from an "issues paper" to a "preferred options" paper. This is not included in the Bill.

Answer:

Clause 22(e) of the Planning Bill allows the Department to make regulations regarding the nature and extent of consultation in the preparation of local development plans. Therefore, the Department will to make sub-ordinate legislation under this clause which will require councils to

prepare a preferred options paper. This will be used as the basis for consulting with the public and stakeholders.

Question 3:

The Department noted that it intended to change the basis of examining development plans from an objection based one to one which tests the soundness and sustainability of the plans and that only those representations that contribute to this test will be heard. This is not included in the Bill.

Answer:

The change from an objection based examination to one which tests soundness is set out at Clause 10(5) of the Bill. This states that the purpose of the independent examination is to determine whether the development plan document has met the relevant preparation requirements and whether the document is sound.

The development plan document being examined is presumed ‘sound’ unless it is shown to be otherwise as a result of evidence considered through the independent examination. Therefore, the Bill includes provision at Clause 10(6) that, where a person makes a representation seeking a change to the development plan document (i.e. that they consider the document is not sound) then they must be given the opportunity to appear and be heard at the independent examination. Further clarification on representations will be provided in subordinate legislation and guidance.

Question 4:

The Department noted that it intended to specify that “any consultation engages as much of the affected community as possible". This has not been substantially detailed compared to the Localism Bill recently introduced in England.

Answer:

Please see answer to question 7.

Question 5:

The Department noted that it intended to introduce a power that would allow the PAC to award costs where a party has been put to unnecessary expense and where the PAC has established that a party has acted unreasonably. This is not included in the Bill (Paper 2 deals with this in more detail).

Answer:

The Department will introduce award of costs provisions as an amendment to the Bill.

Question 6:

The issue of third party planning appeals was commonly raised during the consultation with a majority of respondents supporting their introduction. The Department has noted that it does not wish to proceed with this at this time.

Answer:

Please see answer on third party appeals at question 13.

Opportunities for Securing Further Community Involvement

Question 7:

What provisions in the Bill specifically facilitate the “active engagement" of local communities? What research of good practice was undertaken in drafting the Bill and what other initiatives did the Department consider in addressing this aim of planning reform?

Answer:

The provisions in the Bill that facilitate community engagement are set out in the speaking note on Community Involvement dated 18 January 2011.

The Planning Reform team has undertaken extensive research on the approaches taken in the other jurisdictions of England, Scotland, Wales and the Republic of Ireland to modernise their planning systems. This has included study visits and meetings with key representatives from the other jurisdictions. Lessons have been drawn from their experiences. However, it is also acknowledged that reform in Northern Ireland has taken account of our own particular circumstances and the problems with the current system. It should also be noted that these reforms build on ongoing improvements that have been introduced as a result of the Modernising Planning Processes programme.

Statutory Requirements for Statement of Community Involvement

Question 8:

Should the requirement to prepare a SCI be accompanied by a duty to monitor and review its effectiveness?

Answer:

The Planning Bill requires that a SCI prepared by the council must be agreed with the Department. The Department will issue guidance in respect of the preparation of a SCI well before the transfer of planning functions to councils. This guidance will include information on best practice for councils to involve all of the community in its planning functions and will also emphasise the importance of keeping their SCI up to date.

The Department has not introduced a statutory duty to monitor and review the effectiveness of the SCI, but councils will be expected to incorporate any new requirements issued through Departmental guidance into their SCI. If the Department considers that a council is not carrying out its duty it can intervene by issuing a direction, if necessary.

Question 9:

Is there a case that SCIs should relate to all planning functions and thus cover all parts of Bill?

Answer:

Under existing legislation the SCI relates to the Department's development plan functions and to development control functions. These are the key aspects of planning that involve and have the most significant impact on the public. Upon the transfer of the majority of planning powers to councils, it is proposed that the SCI will continue to apply to development plan and development management. The Bill will require the Department's SCI to cover its remaining development management function of processing Regionally Significant applications. The Department and councils will have the flexibility to include additional information in their SCI as to how the community can become involved in their other planning functions if they so wish.

Question 10:

Should SCIs highlight the requirement to engage with the groups specified under s75 of the Northern Ireland Act 1998?

Answer:

One of the aims of planning reform is to ensure that it allows for full and open consultation and actively engages communities.

It is expected that the duty on the Department and councils to prepare a SCI will assist them in carrying out their functions in relation to Section 75 groups, as set out in the Northern Ireland Act 1998. Guidance will provide more information to assist councils in carrying out their duties in this regard, and it will include information on best practice to ensure all of the community have the opportunity to engage in the planning process.

Strengthening Pre-Application Consultation Procedure

Question 11:

How effective have pre-application procedures been in other jurisdictions where they have already been introduced? Are there any reasons why the Bill should not reflect the more detailed specification for why these are proposed in the English Localism Bill?

Answer:

Pre-application consultation in Scotland, has been introduced through The Planning etc. (Scotland) Act 2006 and The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432). This provides the statutory requirements for pre-application consultation between the developer and communities, for all applications (including planning permission in principle) for major and national developments.

Scotland made provision for a proposal of application notice (to be submitted to the relevant community council), a public event to be held by the prospective applicant and a pre-application community report which must set out what has been done to accommodate the outcomes from pre-application consultation.

Discussion with professional colleagues at Scottish Government and Local Authority level in Scotland would indicate a positive outcome and response to these measures. However it is a relatively new area which continues to evolve.

The requirements of pre-application consultation provided in the Planning Bill, will also be expanded on in subordinate legislation. Detail will include information required to accompany the

proposal of application notice; requirements regarding the public event and publicity arrangements; and content of the pre-application report which must show how the applicant has responded to the comments made, including whether and the extent to which the proposals have changed as a result of pre-application consultation.

These are significant changes to the current application process which involve introducing a new statutory pre-application stage consisting of community consultation. These proposals are sufficiently detailed and show a commitment to meaningful public engagement, directed at major planning applications which will impact on the wider community.

Pre-Determination Hearings

Question 12:

In the interests of openness and transparency, is it appropriate to allow district councils to exclude the public or other interests from attending or addressing pre-determination hearings?

Answer:

In circumstances where a pre-determination hearing takes place, the Bill and Regulations allow the applicant and those who have made representations to a planning application to attend. Councils will have discretion as to whether to invite other interested persons or parties depending on the circumstances of the individual case.

The Department will produce guidance on the process of pre-determination hearings and will include principles of how hearings are to be conducted, including who can attend, with flexibility to allow for local circumstances.

Third Party Appeals

Question 13:

What are the variations of third party appeals considered by the Department and what are the potential impacts on each of these on public confidence, community involvement, quality of decisions and delay?

Answer:

The Department's Planning Reform consultation paper agreed by the Executive and published in July 2009 took the view that given the Department's assessment of the likely impacts of the introduction of third party appeals on the planning system and its objectives for planning reform, which include more proportionate processes, a "front loaded" planning system and greater speed and efficiency in decision making the Department was not, at that stage, proposing to make provision for third party appeals in the current package of reforms to be brought forward by 2011. However it undertook to obtain the views of all stakeholders on the issue and to fully consider those views before a final decision was reached.

Following consideration, the Executive agreed not to proceed with introducing Third Party Appeals to the planning system at this stage and the published Government response to the consultation advised 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. 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. No further policy work was required or undertaken to identify variations of models of Third Party Appeal systems.

Securing Broader Community Benefits from Development

Question 14:

What assessment has been undertaken on the impact of the Community Infrastructure Levy in Northern Ireland?

Answer:

The Community Infrastructure Levy (CIL) is one form of a developer contributions scheme. Legislative provision for CIL covers England and Wales and does not extend to Northern Ireland or Scotland.

Provision already exists in Northern Ireland to secure contributions from developers in order to overcome barriers to the grant of planning permission e.g. road improvements, transport schemes, provision of open space or community facilities. Where these cannot be addressed by the preferred route of conditions placed upon a planning permission they can be set out in planning agreement. This is a voluntary legal agreement entered into by the planning authority and applicant as well as other interested parties as may be required.

Section 75 of the Planning Bill will make explicit provision for a planning authority to transfer financial contributions received from an applicant under a planning agreement to a third party. This mechanism will be an important element in taking forward work associated with developer contributions to social housing.

Neighbourhood Development Plans and Neighbourhood Development Orders (See Localism Bill)

Question 15:

Would similar provisions in the Planning Bill help the Department achieve “active engagement" of communities?

Answer:

The transfer of planning powers to the councils will in itself assist in actively engaging communities as there will be enhanced local political accountability. In addition, the Department considers that the reforms being introduced by the Planning Bill will engage communities through the following measures:

- preparation of Statements of Community Involvement,
- the preferred options approach to community involvement in the local development plan preparation process,
- pre-application consultation for regionally significant applications and major applications, and
- pre-determination hearings.

Councils will have the flexibility to take their own approach to community consultation to reflect local circumstances. Guidance will assist councils in this regard.

The draft Localism Bill is only at consultation stage and it is therefore much too early to draw any conclusions on any measures it may introduce.

Good Neighbour Agreements (See Planning (Scotland) Act 2008 S24)

Question 16:

Would a provision for Good Neighbour Agreements improve the local acceptability of some developments?

Answer:

Good Neighbourhood Agreements (GNAs) as recently introduced in Scotland (through the 2006 Act), are designed to allow developers to enter into agreements with community bodies to govern operations and activities relating to the development or use of land. The legislation does not stipulate which types of development should be considered eligible for GNAs however it is envisaged that it would apply to larger developments that may include Environmental Impact Assessment.

The Planning Bill introduces new measures for enhanced participation and involvement in the development management process - in particular development proposals which would fall within the top two tiers of the proposed hierarchy. It is considered that the introduction of a legally binding form of agreement, in addition to pre-application consultation requirements and pre-determination hearings, may be excessive and unduly burden the system. Such an approach could frustrate the overall aim of planning reform to introduce a streamlined, effective and more predictable planning regime.

The Planning Bill, through its proposals on pre-application consultation (for major developments and regionally significant developments) will enable the community to have a greater role in contributing to how development will be taken forward.

Likewise in moving to a plan-led system, the Local development plan process will provide opportunity for more effective public engagement in developing local policies and proposals.

In summary while GNAs may potentially give comfort to communities who have to live with certain types of large-scale development (particularly during the construction phase), the extent to which they would add value to the reformed planning system is unclear at this early stage in their use. As a result the Department does not intend to take forward this proposal through the Bill.

Public Availability of Information as to how Planning Applications have been dealt with

Question 17:

Is there any reason why the public should not be provided with the information as specified in the Scottish Planning Act?

Answer:

Clause 237 requires councils to keep a planning register including details of the manner in which applications have been dealt with. The Department currently operates an open file policy which provides the information specified in the Scottish Planning Act to be made available for inspection. The Department anticipates councils will wish to continue with this open and transparent open file policy. Nevertheless, it will consider whether further details of the Planning Register should be included within subordinate legislation.

Equality Provisions

Question 18:

There may be a case for considering the extent to which the equality duties rely on such external organisations and if so, should such links be recognised in the legislation?

Answer:

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, the Human Rights Act and anti-discrimination legislation. The councils will wish to engage with external organisations to assist them in meeting their duties. The Department proposes a flexible approach and does not consider that it is necessary or appropriate to place a requirement in the Planning Bill.

Although the Bill makes Provision for Pre-Application Consultation, it does not appear to Specify how this is Related to those with Greatest Social Need.

Question 19:

How can the Planning Bill further provide for integrating equality provisions into the functions of the Department and district councils?

Answer:

Development Management:

As part of the requirements of statutory pre-application consultation, the Planning authority (either the Department or district Councils) has 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, and arrangements for community consultation. A range of consultation methods may be considered more appropriate for some developments 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.

We would expect Councils to develop lists of local bodies and interest groups with whom applicants should consult in particular cases, and that these would be made available to prospective applicants, for example environmental groups in relation to built or natural environment issues, or community organisations including for example representatives from Section 75 groups, which represent a particular area or grouping.

Pre-determination hearings will also offer opportunities for community involvement on applications where individuals or groupings have objected to a particular development proposal. It is intended to make these mandatory for some types of Major development.

Northern Ireland Federation of Housing Associations (NIFHA) e mail re developer contributions

From: Christopher Williamson
Sent: 27 January 2011 13:56
To: 'SEAN.MCCANN@NIASSEMBLY.GOV.UK'
Cc: Maire Kerr

Subject: FW: Planning Bill Stakeholder Letter

Importance: High

Dear Sean

Unfortunately your event clashes with a previously arranged meeting that Maire and I must attend.

Please note that our Federation continues to believe that the necessary action must be taken quickly to implement a system of developer contributions for housing developments BEFORE land starts to change hands again after the downturn.

We also believe community infrastructure levy and developer contributions are not alternatives – both are needed but developer contributions should normally be used for housing applications.

Best wishes

Chris Williamson
Chief Executive

NIFHA – Working Together for Better Housing

A: 6c Citylink Business Park, Albert Street, Belfast, BT12 4HB

T: 028 9023 0446 F: 028 9023 8057 E: cwilliamson@nifha.org W: www.nifha.org

Northern Ireland Federation of Housing Associations (NIFHA) views on Planning Reform and Developer Contributions

Consultation Response

Planning Reform and Developer Contributions in Northern Ireland

Date: 1 October 2009

Summary of Paper

This paper focuses on the Developer Contributions chapter of the DoE's consultation document "Reform of the Planning System in Northern Ireland".

It is positive that the consultation paper clearly accepts the principle of developer contributions but deeply disappointing that its description and analysis of A40 and CIL are inadequate and unbalanced. The Federation believes the chapter is flawed because:

- Article 40 (A40) and Community Infrastructure Levy (CIL) are incorrectly presented as alternatives
- The pros and cons of the two systems are not fairly presented
- No consideration is given to the desirability of achieving mixed tenure housing development.

The Federation believes Article 40 should be the normal means of securing affordable housing (including social housing) through Developer Contributions and CIL should be used when it would be impractical to achieve the housing objective through Article 40.

Introduction

The Northern Ireland Federation of Housing Associations (NIFHA) represents registered and non-registered housing associations in Northern Ireland. Collectively, our members provide 30,000 good quality, affordable homes for renting or equity sharing. Further information is available at www.nifha.org

Background

Article 40 is N Ireland's equivalent to Section 106 (S106) of the planning legislation for England and Wales. Scotland has a similar clause. This legislation allows the planning authority to enter into legally binding agreements which have the effect of rendering acceptable planning applications that otherwise would be unacceptable in planning terms. The planning consent and the agreement are inter-dependent and are binding on all subsequent owners of the land. This approach can be more flexible than relying on planning conditions.

A local example is the Forestside Shopping Centre on the south Belfast ring road. Sainsbury's proposed to redevelop the old Supermac shopping centre and greatly intensify its use. The road system could not have coped with the extra traffic generated so planning consent could have been refused. But Sainsburys were prepared to enter into an A40 agreement to improve the road junctions at its own expense. This rendered the planning application acceptable and consent was granted.

Many English and Welsh planning authorities adopted Local Plans that included policies for the provision of a variety of housing types and tenures. Over the last decade they have increasingly used S106 as a key method of implementing those policies through housing contributions made by private developers.

A40 has not yet been used for the provision of affordable homes in N Ireland but the Semple report on affordable housing reflected a strong political consensus that it should be. We also note that the consultation document says an average of ten A40 agreements are concluded each year in Northern Ireland so useful experience must have been gained in the non-housing sphere.

At a meeting on 13 August 2009 we were glad to hear the Minister for Environment confirm that he has instructed his officials to liaise with their counterparts in the Department and Social Development to progress the use of A40 in relation to affordable housing. Chapter 7 of the DoE consultation document is part of that process.

The Community Infrastructure Levy was written into English and Welsh law in 2008 and consultation is currently taking place on how it should operate.

The purpose of the CIL is quite different from S106. The CIL aims to recover from developers the “excess" cost of providing the new public infrastructure (e.g. water, sewers, roads, waste treatment facilities, public open space) necessary for local and sub-regional development. The “excess" cost is the estimated total cost of new infrastructure less planned public expenditure on it. The CIL consultation document outlines how the “excess cost" should be calculated, fairly apportioned between developers and collected by the authorities. Affordable housing could be included in the definition of “infrastructure".

Paragraph 8 of the Summary of the CIL consultation document unambiguously states “However, affordable housing provision should continue to be provided through the existing system of planning obligations, not through CIL". The two key reasons for this policy are given in paragraph 23 of the same Summary:

- “The Government’s policy is that, in order to secure mixed communities, affordable housing should where possible be provided in kind and on the development site.
- Planning obligations provide the facility to tailor affordable housing contributions to the particular circumstances of the site."

The CIL consultation document explains that nearly all development should be subject to S106 or CIL but exceptional circumstances may arise when one of them should be “topped up" by the other so that society achieves a contribution that is fair and reasonable.

In NIFHA’s opinion, the above-mentioned arguments are just as valid in Northern Ireland as they are to England and Wales.

The Federation is encouraged that the Minister and the NI consultation paper on planning reform clearly accept the principle of developer contributions but we are concerned that the consultation paper’s description and analysis of A40 and CIL are inadequate and unbalanced. We have five main criticisms:

1. The paper fails to mention that collecting CIL for housing developments would probably continue (and possibly increase) tenure segregation rather than reducing it.

2. The paper should not present CIL and A40 as alternatives.

3. The consultation paper should point out that implementation of CIL in N Ireland would take far longer than A40. Legislation and most of the policies necessary for implementation of A40 are already in place; nothing is currently available for CIL in N Ireland.

4. There is no assurance that all CIL money raised on housing development would find its way back into the housing budget.

5. The paper glosses over the immense difficulty of calculating the CIL in a fair and objective manner, especially when it would be collected from developments happening at very different times.

6. CIL depends on full coverage of up-to-date Development Plans but N Ireland is still sadly lacking in this regard. It will take many years to make up the shortfall.

Conclusion

The Federation and its members believe A40 and CIL are intended for different purposes and their roles should be complementary. We also recognise that a pragmatic approach must be taken to their implementation so that private development can still be undertaken profitably.

NIFHA and the housing associations it represents are more than willing to contribute to inter-agency discussions on this important and urgent matter.

Christopher Williamson
Chief Executive

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Ministerial Advisory Group Paper on Simplified Planning Zones and Business Improvement Districts

Simplified Planning Zones

http://www.publications.parliament.uk/pa/cm200102/cmselect/cmtlgr/476/47602.ht

During an examination at the Transport, Local Government and the Regions Committee, Session 2001-02, the Committee recommended against Business Planning Zones which were noted as being similar to Simplified Planning Zones (See sections highlighted in yellow below).

“Business Planning Zones

92. The Green Paper proposes to create ‘Business Planning Zones’ where a proposed development would not require planning permission if it conformed with a set of tightly defined parameters.

93. The Government says there would be at least one zone in each region which would be planned by the local authority in collaboration with universities, RDAs and ‘leading edge’ companies. They would provide sites “to meet the needs of fast moving businesses such as our leading-edge technology companies."[68] It is envisaged that the kind of industry attracted to the zones would have no significant impact on the infrastructure. Attractive locations rather than those in need of renewal are likely to be targeted.

94. The proposal was welcomed by the CBI which argued that the zones would positively encourage business development.[69] However, it was strongly opposed by a large number of the submissions to the Committee which suggested that:

- the zones were not needed: Simplified Planning Zones, a similar initiative, dating back to 1987 resulted in very few zones being created and little allowable development in them; and
- the zones could lead to unsustainable car-based development.

95. There is little evidence that planning controls are restricting technology-based development. A study for the DETR in 2000 by the consultancy ECOTEC into the planning system and the creation of clusters suggested that few councils had developed effective planning policies to promote clusters “however there were few examples where planning controls had constrained development."[70] The report also highlighted examples of how councils have used the current planning system to encourage the growth of clusters. There are many examples of new developments for high technology companies on brownfield sites, which have been promoted without the need to relax planning controls.

96. Many submissions suggested that almost all development places some demands on the surrounding area. The National Housing Federation pointed to the need for housing for the employees in the development in the zones. The submission by the Institution of Highways and Transportation highlighted major problems with controlling the impact. “Many of the impacts of the zones would be outside the zone and possibly in a different administrative area".[71] It also raised concerns that the zones would be detrimental to wider sustainable development objectives if there were no controls on parking, leading to car-based development and additional demand on already congested roads. The Surrey Local Government Association commented: “Business Planning Zones appear simply to recreate the unsuccessful Simplified Planning Zones."[72]

97. The proposal for Business Planning Zones appears to be based on the misconceived idea that the planning system is stopping desirable development rather than helping to enable it. There is no evidence of this. The zones are unlikely to encourage significant amounts of development, but there is a serious danger that the development which they will attract, will be car-based and of a lower standard than if they had been subject to normal planning controls. The best means of promoting sites for high technology development is using the existing planning system."

Business Improvement Districts (BIDs)

I understand that legislation for Business Improvement Districts is being considered by DSD. These may happen more quickly (which appears from discussions with local managers in town and city centres to be highly desirable) if BIDs could be included in the Planning Bill which is currently live rather than waiting for DSD legislation. There are GB precedents for including BIDs in Planning Legislation. Further detailed information as requested is available on the National Bids Advisory Service website; some of that information is reproduced below:

National Bids Advisory Service

http://www.ukbids.org/timetable.php

Fast Facts for BIDs Partners

“What is a Business Improvement District?

A Business Improvement District is a partnership between a local authority and the local business community to develop projects and services that will benefit the trading environment within the boundary of a clearly defined commercial area. By the begining of 2008 over 60 Business Improvement Districts had been established across England, Wales and Scotland (see Established BIDs for current numbers). Legislation has also been passed in the Republic of Ireland. Although most UKBIDs are currently in town centres, the principle works just as well in other places, and there are already BIDs established in industrial estates with considerable further interest. In future we expect to see many more of these non-town centre BIDs: this is recognised in the support and services offered to prospective BIDs - see Join Us.

This section is aimed specifically at Business and Public Sector partners to BIDs who want to find out more about what is happening, and how to get involved.

1. BIDs in brief

- BIDs allow businesses in a defined area and business sector(s) to vote on which additional services they want to invest in, to improve their trading environment
- The vote is open to tenants - if a majority, both by number and by rateable value, approve the proposal, all ratepayers will contribute through their business rates
- BIDs give local businesses the power to effect changes that will benefit them in their local community. Improvements may include extra safety/security, cleansing and environmental measures, improved promotion of the area, improved events, and greater advocacy on key issues, but the legislation does not put a limit on what products or services are provided
- Businesses have the opportunity to agree on the projects for which they are contributing and to vote in a ballot on the amount of money they are prepared to raise, enabling them to become involved in the administration of the schemes themselves
- BIDs are operated by not-for-profit partnership organisations
- The interests of large and small businesses are protected through a system which requires a successful vote to have a simple majority in both votes cast and rateable value of votes cast
- Businesses must be able to sustain the additional cost - if they are not viable the BID levy raise enough income to make it a worthwhile venture
- Once voted for, the levy becomes mandatory on all defined ratepayers and is treated as a statutory debt
- The plan voted for has a lifespan of 5 years and further proposals will have to be reaffirmed through a vote
- Local Authorities play an important facilitating role and in particular are charged with legal responsibilities, including the provision of the ratings data to calculate the BID levy, the collection and enforcement of the BID levy via a ring-fenced BID Revenue Account that is then passed straight to the BID company, the organisation of the formal BID ballot, and the preparation and commitment to the baseline service agreements.

2. What are the Achievable Benefits of BIDS? Who can gain, and how?

Everyone / The Community

- Produces economic well being and economic growth in area

- Attracts inward investment
- Gives competitive regional advantage
- Produces social well being / improves quality of life
- Develops partnership between private & public sector
- Encourages corporate social responsibility
- Provides sustainable investment for ongoing capital projects/services
- Creates a positive sense of place and enhanced feeling of safety and well-being - provides community pride

Businesses / The Occupier

- Increases footfall
- Increases consumer spend and sales - can lead to increase in profits
- Reduces costs (crime reduction, joint activities, e.g. promotions/marketing)
- Is flexible to address the issues of individual sectors
- Gives businesses a local voice
- Creates more appealing environment for employees
- Fair to smaller businesses
- Fair system, those that invest, benefit - no freeloading
- Can decide and vote for action before making the investment

Local Authorities

- Harnesses private sector management/organisational drive and skills
- Promotes greater understanding of the role of LAs
- Provides new, sustainable investment and doesn't detract from other resources
- Has commercial support

The Landlord

- Assists capital value growth
- Increases rental values of property and area
- Increases an area's desirability and attracts occupiers
- Increase in trade which affects turnover based rents (some retail)
- Could help properties away from main footfall areas
- Good PR for company locally and regionally
- Forges positive links with council

A BID may already be planned in your area or your help may be needed to start it. If you would like to register your interest in BIDs, contact UKBIDs at info@ukbids.org"

Royal Society for the Protection of Birds (RSPB) Supplementary Information on Third Party Rights of Appeal

a million voices for nature

A briefing from RSPB Northern Ireland

RSPB views on Third Party Rights of Appeal in Planning

Introduction

The RSPB supports the reform of the planning system in Northern Ireland. Our vision is a planning system with sustainable development at its heart, focusing on the creation and delivery of better places for people and for wildlife, ensuring protection of the environment and embracing effective community participation. We see positive planning as the means to achieve this, and believe a third party rights of appeal should be an integral part of the system.

In 2002 the RSPB and a group of NGOs in England published the report of a research project, Third Party Rights of Appeal in Planning, by a group of planning and legal experts[1]. Although written in an English context, the principles are relevant to all countries of the UK. The report examined the benefits and drawbacks of third party rights of appeal in a number of countries, from Ireland to Australia. It concluded that there is a strong case for limited third party rights of appeal in planning. Whilst it acknowledges some drawbacks, it considers that these will be outweighed by the benefits of third party rights of appeal.

The case for Third Party Rights of Appeal

The report summarises the case for third party rights of appeal as follows:

- There is a perceived unfairness in participation procedures in that prospective developers may appeal against refusal whereas third parties cannot appeal against approval.
- There should be an opportunity for those disadvantaged and aggrieved by planning approval to seek redress from an independent body.
- Third party rights of appeal would raise standards in planning authorities by making them as accountable for their approvals as they are for their refusals.
- Some other countries with advanced democratic planning systems have third party rights of appeal which are reported as having led to better decisions.
- The Regulatory Impact Assessment (RIA) published by the Planning Service in 2004 also summarises the case for third party rights of appeal.

Why limited Third Party Rights?

We do not support an unlimited right of appeal. This could have the effect of undermining the role of local planning authorities, introducing significant delays to development without good cause, and overwhelming the Planning Appeals Commission with a flood of case work.

We propose that, in the first place, only those parties who lodged an objection to the original planning application should be allowed to register an appeal. This is the normal practice in most other countries with third party rights of appeal and ensures that the issues are placed before the planning committee at the initial consideration of the application. It is similar to the approach favoured by the RIA, if third party rights of appeal were to be introduced.

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[1] An electronic version is available on request

Limiting the cases on which a third party right of appeal is available is the single most significant means of constraining the overall volume of appeals. There are various ways of achieving this. The NGO report suggests five categories of cases, operating separately or together:

- Where the planning application is contrary to an adopted development plan;
- When the planning application is one in which the local authority has an interest;
- Major applications;
- When the application is accompanied by an Environmental Impact Statement; and
- When the planning officer has recommended refusal of planning permission.

The most significant flaw in the 2004 RIA is that limiting the number of cases in this way is summarily dismissed, although it does quote a recommendation by the Royal Commission on Environmental Pollution that appeals should be limited in this way.

Planning reform: dismissal of Third Party Rights of Appeal to date

Third party rights of appeal have so far been dismissed. We believe this is based on flawed analysis and an inadequate understanding of the objectives of a modern planning system. In particular:

- The objectives of the reform programme say nothing about the importance of fairness in planning processes, which must be central to a modern planning system.
- Third party appeals are not at odds with the 'front-loading' principle, but would provide a vital safeguard and help to ensure front-loaded participation is carried out effectively.
- The 2004 RIA did not adequately consider a truly limited third party right of appeal, which would be likely to result in much lower costs than those estimated.
- Value for money is not the only objective of the planning system, but we believe there has not been a proper assessment of both costs and benefits of all third party appeal options.
- We agree with the importance of a local democratic input into planning processes, but experience elsewhere in the UK suggests that local councils may from time to time make questionable decisions which may only be challenged via expensive litigation in the courts (and even then only on procedural, not substantive, grounds).

Conclusion

Ultimately, the issue is not about the costs of the process but of access to environmental justice. The fundamental overhaul of the planning system gives a unique opportunity to integrate limited third party rights of appeal into the system, and this is supported by RBGNF recommendations. The potential threat of appeal, alongside a clear plan-led system and pre-application consultations, should result in better quality applications that involve the public and move more quickly through the planning system. Measures can be taken to avoid frivolous or vexatious appeals, such as the award of costs by the Planning Appeals Commission.

We ask the Committee to push for an efficient planning system, which is fair and respects the interests of all parties involved in the planning process.

For further details, please contact Claire Ferry, RSPB Northern Ireland, Belvoir Park Forest, Belfast BT8 7QT, email: claire.ferry@rspb.org.uk, tel: 028 9049 1547.

[2] Review of Environmental Governance in Northern Ireland – Foundations for the Future (May 2007)

Planning Bill - Royal Society for the Protection of Birds (RSPB) Supplementary Information

A further submission from

RSPB Northern Ireland

The Planning Bill

28 January 2011

Following our presentation with the Planning Task Force to the Environment Committee on 27 January, and our attendance at the Committee's stakeholder event on the same day, the RSPB wishes to submit some supplementary information to the Committee. We have provided suggestions for amendments the Committee may wish to table, or to seek further advice on from the Bill drafting team. These are suggestions only and have not been checked by a legal professional.

Sustainable Development

We believe the Departmental function should be to secure community wellbeing and sustainable development through proper planning. As a minimum, we recommend two amendments:

- Amend 1(1) to "…securing the orderly and consistent development of land and the planning of that development within environmental limits"; and
- Amend 1(2)(b) to "...with the objective of securing sustainable development".

To extend the sustainable development duty to development management functions, an amendment to clause 5(1) is possible: " Any person who exercise any function under this Part or Part III must exercise that function with the objective of securing sustainable development".

Climate change

Climate change must be recognised as a key part of sustainable development and the planning system. This may be done through an amendment to clause 8(2) by adding a new subclause:

"(c) policies designed to secure that the development and use of land in the council's area contribute to the mitigation of, and adaptation to, climate change"; and

(d) such other matters as may be prescribed.

Local development plans

The promised statutory link between local development plans and community planning has not been made. We believe the development plans should spatially express community planning outcomes, where these are sustainable and fit with national/regional planning and environment policy. This will save money on duplicated consultations, and mean that community views are incorporated.

One suggestion is to amend clause 8(5) by adding a new subclause:

"(c) the community plan"; and

(d) such other matters....

It may be necessary to also amend clause 9(6) in a similar way.

Community infrastructure levy (CIL)

This is not a tax on development. We believe CIL is separate from what are commonly called 'development contributions', sought under clause 75. Clause 75 replaces Article 40 agreements, and we understand this to be in relation to infrastructure required specifically as a result of a particular development proposal by one or more developers. CIL is also separate from planning fees (currently being consulted on) which are solely to cover the costs of processing applications.

We understand CIL to be a levy made in recognition of the rise in land value that accrues from the granting of planning permission. It would be on a sliding scale, with small scale developments exempt. It would lessen the burden on individual applicants by removing the need for each developer to show a community contribution, often ad hoc and with inherent costs. Instead it has the advantage of benefits of scale, by allowing many smaller contributions to be pooled to deliver strategically identified infrastructural needs. Additional infrastructure is not always relevant on or near the development site, but is nevertheless required by the community. We believe this should extend to green infrastructure, such as open space and wildlife habitats with public benefits for amenity, flood protection and prevention, biodiversity etc.

Given the time constraints on this Bill, we propose the Committee considers an enabling amendment now that would allow further work on this in due course e.g. a new clause, perhaps at 77A.

Community (or public) infrastructure levy

77A. (1)The Department may make regulations providing for the imposition of a charge to be known as Community Infrastructure Levy (CIL).

(2) In making the regulations the Department shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land.

In the regulations, the Department would need to:

- Outline how and when (pre- or post- development) the levy would be taken;
- Describe which small developments were exempt;
- Explain how the local authority would ring-fence this money;
- Show how the monies would be spent to deliver strategically identified infrastructure from the community plan or identified at a regional level;
- Include provision for contribution of commuted sums so that monies could be used for ongoing management (e.g. of open spaces, playgrounds); and
- Include provision for charity exemption.

This suggested is based on a similar approach in England in the Planning Act 2008 (as amended).

Limited Third Party Rights of appeal

To bring equity to environmental justice, and to ensure consequences if the (laudable) 'front-loading' approach to planning does not work, we recommend an amendment to clause 58 (or a new clause) to introduce a limited third party right of appeal. For example:

(1A) Where an application is made to a council-

(a) for planning permission to develop land; or

(b) for any consent, agreement or approval of the council required by a condition imposed on a grant of planning permission or

(c) for any approval of the council required under a development order;

then if that permission, consent, agreement or approval is granted, subject to certain circumstances, third parties as may by notice in writing appeal to the planning appeals commission.

(1B) 'certain circumstances' in paragraph (1A) are limited to, operating alone or in conjunction,-

(a) Major or regionally significant applications;

(b) Where the planning application is contrary to the provisions of the adopted local development plan;

(c) When the planning application is one in which the local authority has an interest;

(d) When the application is accompanied by an Environmental Impact Statement; or

(e) When the planning officer has recommended refusal of planning permission.

(1C) 'third parties' in paragraph (1A) are limited to only those parties who lodged an objection to the original application.

In addition, there could be a clause to ensure that vexatious or frivolous appeals are declined, or costs awarded against the appellant. This could be either as a further amendment to clause 58, or an additional clause 58A, or included in Part 9 regarding the Planning Appeals Commission e.g.

(X) (1) The PAC shall have an absolute discretion to dismiss an appeal–

(a) where, having considered the grounds of appeal, the PAC is of the opinion that the appeal—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person, or

(b) where, the PAC is satisfied that, in the particular circumstances, the appeal should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the PAC's opinion is raised by the appeal), or

(ii) any previous permission which in its opinion is relevant.

(2) A decision made under this section shall state the main reasons and considerations on which the decision is based.

(3) The PAC may award costs against the appellant where (a)(i-ii) apply.[NB further detail would be required on how costs would be awarded, how much etc]

This proposal is based on section 138 of the Planning and Development Act 2000 in Ireland.

Nature Conservation

We recommend specifying that internationally designated sites may not be included in simplified planning zones by amending clause 38 to add (b)(iv) “declared as a special protection area or special area for conservation under the Conservation (Natural habitats etc) Regulations (NI) 1995 (as amended) or a wetland of international importance under the Ramsar Convention".

We recommend the inclusion of ‘nature conservation’ as a use for closed mineral works by adding it as point (iv) to 53(1)(b).

Summary

Our previous submission stands – we hope this supplementary information is useful to aid the Committee’s deliberations.

Contact: Claire Ferry, Senior Conservation Officer, RSPB Northern Ireland, Belvoir Park Forest, Belfast BT8 7QT, email: claire.ferry@rspb.org.uk, tel: 028 9049 1547

Royal Society for the Protection of Birds (RSPB) - Supplementary Information on the Localism Bill

RSPB Parliamentary Briefing
January 2011

Localism Bill (Part 5)
Planning reform in England

Briefing for 2nd Reading

The RSPB and its one million plus members is part of a coalition of environmental and planning bodies which has come together to ensure that the natural environment is at the heart of planning reform. Our members and thousands of volunteers make it possible for us to do the work that we do and demonstrate people’s passion for a healthy natural environment.

Summary

Part 5 of the Localism Bill is a significant landmark in the Coalition Government’s planning reform agenda. In order to be the ‘greenest government ever’, the Bill should:

- Ensure that sustainable development, delivered within environmental limits, remains the purpose of planning, including neighbourhood planning
- Provide a statutory basis for the national planning policy framework
- Introduce new and effective arrangements for strategic planning across local authority boundaries, which deliver for the environment

- Ensure that neighbourhood plans provide a fair and transparent approach to community participation and local decision-making, and protect and enhance local environments, whether protected by statutory designations or not
- Provide a limited community (third party) right of appeal as a safeguard against development not in accordance with the development plan
- Ensure that decisions on nationally significant infrastructure projects in Wales are consistent with the planning policy of the Welsh Assembly Government

The Coalition Government has initiated fundamental reforms to the English planning system. At the same time it has set a tough agenda to revive the economy and cut public debt. Nevertheless, the planning challenge remains the same. The system must continue to protect and enhance the natural environment whilst ensuring its resilience and adaptation to climate change.

Sustainable development

The purpose of planning must be to achieve sustainable development (as it is currently under s.39 of the Planning and Compulsory Purchase Act 2004, as amended). This means bringing about genuine improvements in environmental and social wellbeing. Across the UK we share the principle that we must live within environmental limits locally and globally. Planning is an essential tool for managing the use of our natural resources and for minimising the impacts of development on the environment.

The sustainable development purpose and climate change requirements introduced by previous planning acts do not appear to apply to neighbourhood plans. Sustainable development should be defined on the face of the Bill, and in more detail in the forthcoming National Planning Policy Framework (below). However, the Localism Bill should ensure that sustainable development, delivered within environmental limits, remains the purpose of planning, including neighbourhood planning.

National planning policy framework

The Coalition Government has proposed a national planning policy framework (NPPF) for England. This does not form part of the Localism Bill, but is an essential part of the package of planning reform. A strong national vision is essential to guard against the danger that localism becomes merely parochialism.

However, the Localism Bill does not provide a statutory basis for the national planning policy framework; the Government is relying instead on a general provision in the 2004 Act which refers to 'national policies and advice contained in guidance by the Secretary of State' (s.19(2)). This is inadequate for a document of this importance which will be subject to widespread public consultation and Parliamentary scrutiny, and does not clarify how the NPF will relate to other Government policy, or to development plans. The Localism Bill must provide a statutory basis for the national planning policy framework.

Strategic planning

The natural environment cuts across administrative boundaries. In recent years, planning beyond the local level allowed for joint local authority policy development and greater involvement of partners in the delivery of positive outcomes. For example, the Thames Basin Heaths Delivery Plan involves 13 local authorities working together to deliver strategic mitigation for housing development in a sensitive environmental area. With the abolition of regional

strategies, new models for local authority cooperation are needed to enable strategic planning across local authority boundaries.

Provisions already exist for local authorities to prepare joint strategies together. In clause 90, the Bill proposes a duty to cooperate between local planning authorities and other prescribed bodies (as yet undefined), but this seems little more than a duty to exchange information and views when preparing plans. Voluntary strategic planning risks strategic failure where contentious issues must be resolved across local authority boundaries. Local Enterprise Partnerships are unlikely to deliver the environmental planning that is needed.The Localism Bill must introduce new and effective arrangements for strategic planning across local authority boundaries, which deliver for the environment.

Neighbourhood plans

We welcome proposals to engage local people in planning, but there must be adequate checks to ensure that localism does not become parochialism and that powerful local interests do not hold sway over decisions which benefit wider societal and environmental interests. Planning gains its legitimacy as a decision-making process by being trusted. Local communities and voluntary groups should be involved at all stages in a process which must be as transparent, accountable and accessible as it is speedy and efficient.

The provisions in the Bill for neighbourhood planning are complex, and this may make it difficult for some community groups to get involved. We are also concerned about the representative nature of local forums; the cost, and resources available, for neighbourhood planning, especially the skills available for proper assessment (Strategic Environmental Assessment will be required, and in some cases, Habitats Regulations Assessment as well), and the status of independent assessors. Taken together, the proposals risk a 'two tier' outcome where only well-resourced communities can take part.

The Localism Bill must ensure that neighbourhood plans provide a fair and transparent approach to community participation and local decision-making, and protect and enhance local environments, whether protected by statutory designations or not.

Rights of appeal

Developers often have the advantage of a seat at the table and the resources to buy-in the right expertise. When a planning application is refused, a developer has the right to appeal against the decision, but this right is currently denied to third party objectors when planning permission is granted, even if the decision flies in the face of the local authority's own development plan. Involving people at the early stage of planning is important and welcome, but a community right of appeal against decisions not in line with the local or neighbourhood plan is vital to give the Big Society and local planning real teeth.

The Localism Bill does not make any changes to the appeal system. We call on the Government to provide a limited community (third party) right of appeal.

Nationally Significant Infrastructure Projects in Wales

The Bill presents an opportunity to amend the Planning Act 2008, to ensure that national planning policy in the devolved administrations is followed in decisions on Nationally Significant Infrastructure Projects, where relevant policy exists. This would address a conflict highlighted by planning policy for onshore windfarms in Wales. The Welsh Assembly Government's Planning Policy Wales 2010 and Technical Advice Note 8 (2005) establish a spatial planning approach to

the deployment of onshore wind, with seven ‘strategic search areas’ identified as the most appropriate areas for such development. The draft National Policy Statement for Renewable Energy is not spatial, and could have the perverse effect of encouraging developments considered to be of national significance (>50 MW) outside the areas identified by the Welsh Assembly Government. The Localism Bill should amend the Planning Act 2008 to ensure that decisions on nationally significant infrastructure projects in Wales are consistent with the planning policy of the Welsh Assembly Government.

For further information please contact Tom Fewins, Senior Parliamentary Officer, or Simon Marsh, Head of Planning and Regional Policy, on 0207 8081251 or tom.fewins@rspb.org.uk

Royal Society for the Protection of Birds (RSPB)

A briefing from
RSPB Northern Ireland

The Planning Bill

January 2011

The RSPB wants to ensure that the natural environment is at the heart of planning reform. Our million plus members (over 11,000 in Northern Ireland) and thousands of volunteers make it possible for us to do the work that we do and demonstrate people's passion for a healthy natural environment. We have considerable expertise as a user of planning systems across the UK, both as applicant and consultee.

We welcome the publication of the Planning Bill for Northern Ireland. We are pleased that the Bill introduces the new structures for a more effective planning system with sustainable development at its heart, but we are concerned that so much still relies on the production of secondary legislation and guidance. This has serious resource implications for the Department to deliver this on time.

Sustainable Development

The purpose of planning must be to achieve sustainable development. To be effective, this means integrating environmental, economic and social objectives to bring genuine improvements in wellbeing.

The Departmental function should be to deliver public wellbeing and sustainable development. At the least, we recommend amending 1(1) to "...securing the orderly and consistent development of land and the planning of that development *within environmental limits*" and extending the sustainable development duty to development management functions.

Climate change

Climate change must be recognised as a key part of sustainable development and the planning system. We ask that development plan documents 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*".

Local development plans

The Department has said it would make a statutory link between local development plans and community planning. We believe the development plans should spatially express community planning outcomes, where these are sustainable and fit with national/regional planning and environment policy.

Rights of appeal

When a planning application is refused, a developer has the right to appeal against the decision, but this right is currently denied to third party objectors when planning permission is granted, even if the decision flies in the face of the local authority's own development plan. Involving people at the early stage of planning is important and welcome, but a limited third party right of appeal against decisions is vital to give local planning real teeth.

Nature Conservation

Simplified Planning Zones should not include international wildlife sites and any SPZs which may affect an international wildlife site should be carefully scrutinised for compliance with the European Habitats and Birds Directives. We strongly urge the inclusion of 'nature conservation' as a use for closed mineral works (53(1)(b)). The RSPB and the quarry industry amongst others have shown how important after use for nature conservation can be in achieving biodiversity targets and this should be facilitated wherever possible.

Summary

We have made a detailed response to the Environment Committee and this can be requested from us.

We strongly welcome:

- The sustainable development duty for authorities preparing development plans, but this must include delivery *"within environmental limits"*;
- Stronger enforcement powers; and
- Increased opportunities for, and clarity on, public engagement with the planning system including a right to be heard at inquiries and hearings.

We urge the Committee to recommend:

- A stronger definition for the function of the Department, to include reference to sustainable development and wellbeing;
- The application of the sustainable development duty to development management;
- A definition of sustainable development in an urgently-needed PPS1;
- The inclusion of a climate change objective for planning;
- A statutory link between the local development plan and community planning;
- Additions to the detail of pre-application community consultation;
- That international wildlife sites be excluded from Simplified Planning Zones;
- The inclusion of nature conservation as an after use for mineral workings; and
- The inclusion of limited third party rights of appeal alongside the ability of the Planning Appeals Commission to award costs to prevent vexatious appeals.

We ask the Committee to seek more information on:

- The timescales and opportunity for public consultation on the development of secondary legislation and guidance;
- The status the guidance will have – as good practice guidance, supplementary planning guidance, or simply advice to the new local authorities;
- What steps will be taken if local authorities do not meet the plan timetable;
- How sustainability appraisals will include environmental assessment;
- A definition of, and more information on, 'soundness' of plans;
- Whether non-binding examination reports could lead to delays in plan adoption;
- Why performance agreements have not been included;
- What progress has been made by the Executive on progressing developer contributions; and
- The resource needed within Planning Service and/or the local authorities to deliver the additional legislation and guidance in a timely manner.

Contact: Claire Ferry, Senior Conservation Officer, RSPB Northern Ireland, Belvoir Park Forest, Belfast BT8 7QT, email: claire.ferry@rspb.org.uk, tel: 028 9049 1547

Community Places Supplementary Response to Planning Bill

Community Places Supplementary Response to Consultation on the Draft Planning Bill

1.0 Introduction

We were invited by the Assembly Environment Committee to present evidence on 27 January 2011. Following this we have prepared this supplementary submission to provide further comments on the following issues:

1. Independent examinations of development plans;

2. Community infrastructure levy;

3. Limited third party right of appeal.

2.0 Independent examinations of development plans

We have some doubt about the proposal in the Bill in section 10 (4) which would enable the Department to appoint a person other than the Planning Appeals Commission (PAC) to carry out an independent examination of a Council's Development Plan. The independence of the PAC derives in part from its appointment by OFMDFM rather than the Planning Service or Department. In order to maintain confidence in the PAC's independence within the new arrangements it will be important to retain this role for OFMDFM.

2.1 Recommendation:

We recommend to the Environment Committee that section 10 (4) (b) be amended with the substitution of OFMDFM for the Department and thus to read as follows:

"(b) A person appointed by the Office of the First and Deputy First Minister"

3.0 Community Infrastructure Levy

Currently the Planning Bill does not provide enabling powers for a Community Infrastructure Levy (CIL). The Department's 2010 report of the Planning Reform public consultation process records that: 71% of respondents agreed that developers should make a greater contribution towards the provision of infrastructure; 21 of the local councils and NILGA welcomed the principle of increased developer contributions and 43% of developers agreed there is a case for increased contributions while one third did not. In order to provide greater certainty and clarity on this issue for both developers and the public and to ensure that developments contribute equitably to wider the infrastructure costs a Community Infrastructure Levy was introduced in England and Wales by the 2008 Planning Act.

The main features of an Infrastructure Levy are:

- All major developments make an equitable contribution to the wider infrastructure improvements required in a Council area;
- Levy income from a number of developments can be accumulated to contribute to infrastructure improvements identified as priorities in the Community Plan;
- It is a standard charge levied on all major developments which developers build into their financial plans;
- Planning authorities are required to report on how income from the Levy is being used to support infrastructure development;
- The Levy makes it easier for planning authorities to address the cumulative impact of neighbouring developments and to ensure that each development makes a fair contribution towards infrastructure projects.

Under the new Localism Bill in England the Levy will in future be available for the maintenance and upkeep of infrastructure and also for community facilities in localities near to new developments. Staged payments of the Levy are also being introduced.

Planning agreements (also called developer contributions) have been retained in England and Wales alongside the Levy but are restricted to works which:

- are essential in order that a major development will meet planning policy;
- are directly related to the individual development; and
- are fair and reasonable in scale and kind to each development.

3.1 Recommendation:

We recommend to the Environment Committee that a new section is inserted in the Planning Bill to enable the Department to introduce a Levy at a future date with the agreement of the Executive and following consultation. The new section should read:

"The Department may make regulations providing for the imposition of a charge to be known as Community Infrastructure Levy (CIL). In making such regulations the Department should aim to ensure that the overall purpose of a Levy is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land following the granting of planning approval "

4.0 Limited third party right of appeal

We support a limited third party right of appeal for the following reasons:

- It will provide an incentive for developers to undertake genuine participation and meaningful pre-application consultation;
- the public and communities will feel that their comments will be given proper consideration in pre-application consultations;
- Planning authorities will be more inclined to get their decisions right the first time;
- Evidence from An Bord Pleanála is that 99.3% of third party appeals in 2008 were wholly or partially successful. This refutes claims that third party appeals are 'frivolous' and supports the view that, over time, they improve decision making by planners;
- Developers have a right of appeal through which they influence how policy is interpreted by establishing precedents. The public do not have this opportunity. This creates a sense of unfairness which can only be removed by either abolishing appeals or allowing third parties a limited right of appeal;
- It will make planning authorities as accountable for their approvals as they currently are for their refusals.

4.1 Recommendation:

Third Party Right of Appeal (TPRA) should only apply to:

1. Major developments (as defined under the Bill);

2. Developments where the local council has an interest or has approved an application contrary to the recommendation of its professional planners;

3. Developments which are subject to an Environmental Impact Assessment;

Anyone seeking to exercise the right to a third party appeal should demonstrate the soundness of their case. This soundness test would include showing fit with planning policies including the development plan and that the appeal was not being taken for financial or commercial gain. It should be introduced for a trial period of five years when planning functions are transferred. It would thus act as a confidence building measure and an incentive for quality in decision making.

We recommend to the Environment Committee that a new section is inserted in the Planning Bill to enable the Department to introduce a Third Party Right of Appeal as follows:

“An applicant for permission and any person who made submission or observations in writing in relation to the planning application to the planning authority in accordance with regulations and on payment of the appropriate fee, may at any time before the expiration of the appropriate period, appeal to the Planning Appeals Commission against a decision of a planning authority.

(1) The Commission shall have an absolute discretion to dismiss an appeal:

(a) Where, having considered the grounds of appeal, the Commission is of the opinion that the appeal—

(i) Is vexatious, frivolous or without substance or foundation; or

(ii) Is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person; or

(iii) Is not based on sound planning grounds including planning policies and the relevant development plan; or

(b) Where the Commission is satisfied that, in the particular circumstances, the appeal should not be further considered by it having regard to—

(i) The nature of the appeal (including any question which in the PAC’s opinion is raised by the appeal), or

(ii) Any previous permission which in its opinion is relevant.

(2) A decision made under this section shall state the main reasons and considerations on which the decision is based."

Community Places
31 January 2011

Letter to Chair from Minister re the Commencement of the Planning Bill

From the office of the
Minister of the Environment

Department of the
Environment
www.doeni.gov.uk

DoE Private Office
Room 717
Clarence Court
10-18 Adelaide Street
BELFAST
BT2 8GB

Telephone: 028 9054 1166

Email: private.office@doeni.gov.uk

Your reference:
Our reference: SUB/85/2011

Cathal Boylan MLA
Chairperson of the Environment Committee
Northern Ireland Assembly
Environment Committee
Parliament Buildings
Stormont
BELFAST
BT4 3SW

7 February 2011

Dear Mr Boylan

I wish to record my appreciation of the Committee's thorough and expeditious manner in which it has completed the informal clause by clause scrutiny of the Planning Bill. I also thought it would be helpful to clarify how the Department will approach 2 key issues relating to the commencement of the Bill.

Firstly, I wish to reiterate 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. This is the agreed position of the Executive Committee and with the agreement of the Executive I am consulting on both the governance arrangements and ethical standards regime now in anticipation of legislation in the next Assembly.

Secondly, I would like to assure the Committee 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.

My officials will be happy to provide any further information that the Committee may require.

Yours sincerely

EDWIN POOTS MLA
Minister of the Environment

Islington's Statement of Community involvement

Islington's

Planning - Statement of Community Involvement

July 2006

ISLINGTON

Foreword

The Statement of Community Involvement will make an important contribution to the council's commitment to making Islington a listening organisation as part of its One Islington vision. Planning contributes to this vision by creating more sustainable communities with a better quality of life for everyone, now and for future generations.

Good planning has a positive affect on development. It can help to deliver affordable homes, secure employment opportunities and improve the quality of our buildings and public spaces. To do this, it is essential that our communities, developers and the council understand each other's needs and aspirations.

The Statement of Community Involvement sets out how the council will consult when developing new planning policy and when it is deciding planning applications. It provides links to other sources of information including independent advice. I recommend it to you as a means of working together to ensure that we achieve a better quality of life for everyone in Islington.

Lucy Watt
Executive Member for Environment

About Islington's Statement of Community Involvement

Each year, Islington Council handles over 3,000 planning applications. Some of these decisions could affect you, where you live, work, study, run a business, or spend your leisure time in Islington. These applications can affect buildings, traffic, open space, trees (and more) in the borough. The council prepares development plans and it uses these to guide its decisions on these planning applications. New plans will be brought together in the Local Development Framework. The Statement of Community Involvement sets out how you can become involved in creating these plans and in the process of deciding planning applications. This document is available on demand in large copy prints, audiocassette, Braille or languages other than English. If you require the document in one of these formats please contact the Planning Policy Team, P.O Box 3333, 222 Upper Street, London N1 1YA. Tel: 020 7527 2000 or e-mail alan.mace@islington.gov.uk

Arabic

بيان إزلنجتون عن مشاركة المجتمع

About Islington's Statement of Community Involvement

يعالج مجلس إزلنجتون كل سنة 3000 طلب تخطيط. قد تؤثر بعض هذه القرارات عليك او على المكان الذي تعيش فيه او مكان عملك او دراستك او حيث تدير عملك او حيث تمضي وقت فراغك في إزلنجتون. بإمكان هذه الطلبات التأثير على المباني والأماكن العامة، والأشجار في المنطقة (وأشياء أخرى). يُحضر المجلس خطة تنمية لتوجيه قراراته المتعلقة بطلبات التخطيط هذه. وسيتم تحضير المزيد من الخطط في إطار التنمية المحلية. يعرض بيان مشاركة المجتمع كيف تستطيع المشاركة في خلق هذه الخطط وفي إتخاذ القرارات بشأن طلبات التخطيط. تتوفر هذه الوثيقة عند الطلب بنسخ كبيرة مطبوعة او على شرائط تسجيل او بلغة برايل او لغات أخرى غير الانكليزية. إذا أردت الحصول على هذه الوثيقة بأي شكل من الأشكال المذكورة الرجاء الاتصال بفريق سياسة التخطيط على هاتف 020 7527 2000 أو على البريد P.O.Box 333, 222 Upper Street, London N1 1YA الالكتروني: alan.mace@islington.gov.uk

Chinese

有關依士靈頓的社區參與的聲明

About Islington's Statement of Community Involvement

依士靈頓區政府每年處理超過 3,000 宗規劃的申請。其中一些決定可能會對影響到你，及你在依士靈頓區居住、工作、學習、經營業務、或消閒的地方。這些申請可能會影響到區內的建築物、交通、戶外地方和林木（及其他）。區政府擬定發展計劃，並利用這些計劃作為怎樣決定規劃申請的指引。所有新的發展計劃將會匯集於地方發展架構 (Local Development Framework) 內。社區參與聲明 (Statement of Community Involvement) 說明你怎樣可以參與這些計劃的制定工作及規劃申請的決定程序。在有需求時，我們可以提供這份文件的大字體，盒裝錄音帶，凸字或英文以外的其他語文譯本。如果你想索取以上任何一種格式或譯本，請聯絡規劃政策組，地址 Planning Policy Team，P O Box 3333, 222 Upper Street, London N1 1YA，電話：020 7527 2000，或寄電子郵件到 alan.mace@islington.gov.uk

French

À propos de la déclaration sur la participation de la communauté d'Islington
About Islington's Statement of Community Involvement

Chaque année, la municipalité d'Islington considère plus de 3000 demandes de permis de construire. Certaines de ces décisions pourraient vous toucher ou avoir des conséquences sur l'endroit où vous habitez, où vous travaillez, où vous étudiez, où vous gérez une affaire ou où vous passez vos loisirs à Islington. Ces permis peuvent avoir des conséquences sur les bâtiments, la circulation, les espaces libres, les arbres (et plus) dans l'arrondissement. La municipalité prépare des plans de développement et les utilisent pour guider ses décisions sur ces demandes de permis de construire. Les nouveaux plans seront assemblés dans le cadre du Developpement Local. La déclaration de la participation de la communauté expose comment vous pouvez participer à la création des ces plans et dans le procéssus de décision sur les demandes de permis de construire. Ce document est disponible sur demande en gros caractères, sur cassette audio, en braille et dans d'autres langues que l'anglais. Si vous désirez ce document dans un de ces formats, veuillez contacter: Planning Policy Team, P.O Box 3333, 222 Upper Street, London N1 1YA. Tél: 020 7527 2000 ou e-mail alan.mace@islington.gov.uk

Greek

Σχετικά με την Δήλωση Κοινοτικής Συμμετοχής του Ίσλινγκτον
About Islington's Statement of Community Involvement

Κάθε χρόνο, ο Δήμος του Ίσλινγκτον χειρίζεται πάνω από 3000 αιτήσεις ανάπτυξης. Μερικές από αυτές τις αποφάσεις μπορούν να επηρεάσουν και εσάς, όπου μένετε, σπουδάζετε, εργάζεστε, έχετε μία επιχείρηση ή περνάτε τον ελεύθερό σας χρόνο. Αυτές οι αιτήσεις μπορούν να επηρεάσουν κτήρια, κυκλοφορία, ανοιχτούς χώρους, δέντρα (και άλλα) στον δήμο. Ο δήμος ετοιμάζει σχέδια ανάπτυξης και τα χρησιμοποιεί ως οδηγό στις αποφάσεις που λαμβάνει για τις αιτήσεις. Νέα σχέδια θα συγχωνευθούν στο Τοπικό Αναπτυξιακό Σχέδιο – Λόκαλ Ντιβέλοπμεντ Φρέιμουερκ. Η Δήλωση Κοινοτικής Συμμετοχής καθορίζει πως μπορείτε να συμμετάσχετε στην δημιουργία σχεδίων και στην λήψη αποφάσεων αιτήσεων ανάπτυξης. Το κείμενο αυτό είναι διαθέσιμο εάν θέλετε σε μεγάλα αντίτυπα, κασσέτα, μπαίλιγ ή άλλες γλώσσες εκτός της αγγλικής. Εάν χρειάζεστε το κείμενο σε τέτοια φόρμα παρακαλούμε επικοινωνήστε με την Ομάδα Αναπτυξιακής Πολιτικής – Πλάνιν Πόλικι Τήμ, P.O Box 3333, 222 Upper Street, London N1 1YA. Τηλ.: 020 7527 2000 ή e-mail alan.mace@islington.gov.uk

Somali

War-bixin ku Saabsan ka Qayb-galka Bulshadda
About Islington's Statement of Community Involvement

Sannad walba, Kownsalka Islington wuxuu wax ka qabtaa in ka badan 3,000 oo ah dalbashooyin qorsheeyn ah. Waxoogeey go'aanadan ahi way ku saameeyn kari doonaan adiga, meesha aad ku nooshahay, halka aad ka shaqeeyso, halka aad wax ka barato, halka aad ganacsiga ku haysato ama aad ku qaadato waqtiga nasashadaada ee ku taal Islington. Dalbashooyinku waxay saameeyn karaan dhismayaasha, socodka gaadiidka, meelaha banaan, dhirta (iyo gaar kale oo badan) oo ku yaal degmadda. Kownsalku wuxuu diyaariyaa qorsheyaal horumarineed oo waxay u isticmaalaan kuwan si ay u hagaan go'aanadeeda ku saabsan dalbashooyinka qorsheemahan. Qorsheyaal cusub ayaa si wadajir ah loo keeni doonaa Qaab-dhismeedka Horumarinta Degaanka. War-bixinta ka qayb-galka bulshaddu waxay sheegtaa sida aad uga qayb qaadan karto sameynta qorshayaashan iyo nidaamka lagu go'aansado dalbashooyinka qorsheeynta. Dukumentigan waxaa lagu helaa dalbasho isaga oo nuqulo qoraalo balaaran ah,

cajlado la dhegeeysto, Farta waaweyn ama luqado aan af-Ingiriisi ahayn. Haddii aad dukumentigan u baahan tahay isaga oo ah qaababka sare mid ka mid ah, Fadlan kala xidhiidh Kooxda Siyaasadda Qorsheeynta (the Planning Policy Team), P.O Box 3333, 222 Upper Street, London N1 1YA. Tel: 020 7527 2000 ama I-mayl u dir alan.mace@islington.gov.uk

Spanish
Acerca de la Declaración de Participación Comunitaria de Islington
About Islington's Statement of Community Involvement
Todos los años la Municipalidad de Islington tramita más de 3.000 solicitudes de permisos de obra. Algunas de estas decisiones podrían afectarle a usted o al lugar donde vive, trabaja, estudia, tiene su negocio o pasa su tiempo libre en Islington. Estas solicitudes pueden afectar a edificios, el tránsito, las áreas verdes o los árboles (entre otros) del distrito. La Municipalidad elabora planes de desarrollo y los usa para que sirvan de guía en las decisiones que toma con relación a las solicitudes de permisos de obra. En el Marco de Desarrollo Local (*Local Development Framework*) se compilarán nuevos planes. La Declaración de Participación Comunitaria (*Statement of Community Involvement*) establece cómo puede usted participar en la elaboración de estos planes y en el proceso de decisión con respecto a las solicitudes de permisos de obra. Este documento está disponible a petición en letras grandes, casete de audio, Braille o en otros idiomas aparte del inglés. Si lo necesita en uno de estos formatos, puede contactar al Equipo de Políticas de Urbanismo (*Planning Policy Team*), P.O Box 3333, 222 Upper Street, London N1 1YA. Tel.: 020 7527 2000 o correo electrónico alan.mace@islington.gov.uk

Turkish
İslington Belediyesi'nin Toplum Katılımı Beyannâmesi
About Islington's Statement of Community Involvement

İslington Belediyesi, her yıl sayısı 3,000'i aşan yapı ve imar ruhsatı başvurusunu inceleyip karara bağlamaktadır. İslington'da oturduğunuz, çalıştığınız, öğrenim gördüğünüz, işyeri sahibi olduğunuz veya serbest zamanınızı geçirdiğiniz için, bu kararlar sizi yakından ilgilendirmektedir. Yapı ve imar izinlerinin, ilçedeki binalar, trafiğin akışı, açık mekânlar, yeşil alanlar ve daha birçok konu üzerinde olumlu ya da olumsuz çeşitli sonuçları olabilir. İslington Belediyesi imar planları hazırlamakta ve bu planları imar başvurularıyla ilgili kararlara yol göstermesi amacıyla kullanmaktadır. Yeni yapı ruhsatı ve imar izinleri, daha sonra Yerel İmar Planı Çerçevesi içinde ele alınıp uyumlu hale getirilecektir. Toplum Katılımı Beyannâmesi'nde, imar planlarının oluşturulmasına ve planlama başvurularının karara bağlanması sürecine nasıl aktif olarak katılabileceğiniz anlatılmaktadır. İsterseniz bu belgenin Türkçe çevirisini size gönderebileceğimiz gibi, iri harfli baskısını, ses kasetini ya da görmeyenler için kabartma Braille alfabesi formatını da iletebiliriz. İsteklerinizi lütfen şu adrese bildirin: Planning Policy Team, P.O Box 3333, 222 Upper Street, London N1 1YA. Tel: 020 7527 2000. Elektronik mesaj: alan.mace@islington.gov.uk

Contents

To keep things simple, we have put some background information in this column.

For more detail about the Local Development Framework see appendix one.

To have your name and address added to the council's planning database, call the Planning Policy Team on 020 7527 2618. You will then receive information whenever we are developing or consulting on plans.

Summary – being involved

The council is developing a Local Development Framework. In general terms, this will influence changes to land and buildings in Islington. The purpose of the Local Development Framework is to help improve the environment and the quality of life for residents, workers and businesses in the borough. It will replace the existing Unitary Development Plan.

There are a number of opportunities to become involved. The Local Development Framework will be made up of a series of Local Development Documents and Supplementary Planning Documents. You can contribute to each one of these.

The first stage of developing a Local Development Document is to gather information and opinions. We will let you know when we are doing this by writing to people on our database, placing an advertisement in the local press and through our website. During these first few months you can give your views. After this we will write a draft document. Later on there will be at least one formal fixed period of consultation when you can give further views on these drafts.

You can find out when the documents are being prepared by looking at the Local Development Scheme. This includes a timetable and is available on the council's website at www.islington.gov.uk or by ringing Contact Islington on 020 7527 2000 and asking for the planning policy team.

As the different parts of the Local Development Framework are completed and agreed by the council, they will guide decisions on planning applications.

You can also be involved in the process of deciding planning applications. The council will normally notify neighbours of planning applications. If you want to know about applications that are not nearby you can check lists of applications:

- on our website
- at the municipal offices in Upper Street
- in local libraries
- from site notices (usually on nearby lampposts)
- adverts in local newspapers, e.g. The Islington Gazette (these are used for some special applications)

People usually have to apply for planning permission to

- develop land (e.g. constructing a building)
- make changes to buildings
- changing how a building is used (e.g. turning a shop into an office)

The council's website is available in Arabic, Chinese, French, Greek and Spanish. The Council can provide interpreters at meetings and translations of documents as well as documents in alternative formats; these are available on demand. Sign language interpretation services are also available through the council.

You can write and make comments on any application. If you have raised a problem that cannot be sorted out you will usually be invited to a planning committee to give your views. There is more detail about involvement in planning applications in the council's booklet Consultations on Planning Applications (reproduced at appendix five).

Your contribution.
We welcome your involvement in planning. When you become involved it is important to realise that other groups and organisations, including the development industry, will have a significant influence too. The council will take into account a wide range of views about development in the borough. The council has to work within the law, it also has to take into account other plans such as the London Plan, produced by the Mayor. Finally, the council can only deal with objections that relate to planning matters. For example, the council can take into account complaints about the design of a building. It cannot take into account possible loss of property values.

You may not always end up with exactly the plan or planning decision that you want but the council will explain how and why decisions were made. One aim of involvement is to improve understanding of the demands on land and buildings in the borough and to come to an agreement on how to manage these.

To find out more about being involved you can:

- read the rest of this document and our booklet Consultations on Planning Applications (reproduced at appendix five).
- look on our website – click on planning and then on 'involvement in planning'
- phone us on 020 7527 2000 and ask for the planning policy team

If you're looking for information about planning and don't want to read this Statement of Community Involvement, try the **quick links** section on the next page, this will guide you to information on:

- making planning applications
- sources of independent help and advice on planning
- Islington's current local plan (Unitary Development Plan)
- London and national planning policy
- the planning system in general

Quick Links

Find out more about planning applications

Find out what applications have been made

- go to the Islington website [www.islington.gov.uk] and click on the link planning (under popular pages at the bottom of the screen). Next click on planning applications and then on weekly planning list
- visit Contact Islington at 222 Upper Street, London N1 1XR (8am to 6pm Monday to Friday)
- check the notices in local newspapers, e.g. The Islington Gazette (for some special applications)

Comment on a planning application

- write to Contact Islington, 222 Upper Street, London N1 1XR
- go to the Islington website [www.islington.gov.uk] and click on the link comment on a planning application to the right of the screen
- visit Contact Islington on Upper Street (8am to 6pm Monday to Friday)
- you can phone Contact Islington (020 7517 2000) but any comments on planning applications must eventually be made in writing(this includes email)

Need to make a planning application, or not sure?

- Go to the Islington website [www.islington.gov.uk] and click on the link planning (under popular pages at the bottom of the screen). Next click on planning applications then click on do I need planning permission?
- Phone or meet with the duty planner between 10am and 4pm (Monday to Friday) 020 7527 2813. Contact Islington 222 Upper Street, London N1 1XR

Find out more about Islington's local plan (the existing Unitary Development Plan and the forthcoming Local Development Framework

Name:	Planning Policy Team
Address:	PO Box 3333 222 Upper Street London N1 1YA
Phone:	020 7527 2000
Email:	sakiba.gurda@islington.gov.uk
Website:	www.islington.gov.uk

Seek independent help and advice on the planning system

Name:	Planning Aid for London
Address:	Unit 2 , 11-29 Fashion Street London E1 6PX
Phone:	020-7247 4900
Email:	info@planningaidforlondon.org.uk
Website:	www.pafl.org.uk

Find out more about the London Plan

Name:	Greater London Authority
Phone:	020 7983 4000
Email:	mayor@london.gov.uk
Website:	www.london.gov.uk

Find out more about national planning and government policy

Name:	Department of Communities and Local Government
Phone:	020 7944 4400
Email:	Contactus@communities.gsi.gov.uk
Website:	www.communities.gov.uk

Name:	Government Office for London
Phone	020 7217 3126
Email	enquiries@gol.gsi.gov.uk
Website:	www.gos.gov.uk/gol

Find out more about the planning system in general

Name:	Planning Portal
Website:	www.planningportal.gov.uk

Name:	Royal Town Planning Institute
Phone	020 7929 9494
Email	online@rtpi.org.uk
Website:	www.rtpi.org.uk

Name:	Town and Country Planning Association
Phone	020 7930 8903
Email	tcpa@tcpa.org.uk
Website:	www.tcpa.org.uk

Census and other information about Islington's residents is available at www.islington.gov.uk and at www.statistics.gov.uk

Census information does not tell us much about people who come to the borough to work or to visit.

1.0 A bit about Islington

For some residents, Islington is part of an internationally connected global city. Some residents work in an international environment. For some it is intensely local: an estate, community centre, neighbourhood shops. This contrast is one of the defining features of the Borough.

Census information from 2001 provides the council with some detail about the residents they serve. These residents:

- are living in a densely populated area – Islington has the second highest number of people per hectare in England and Wales
- include a high ratio of young adults – the proportion of 20-34 year olds is well above the average for England and Wales
- contain a high proportion of single people – the fourth highest in any London Borough
- represent a rich mix of cultural backgrounds – the largest minority ethnic groups are Black African (6%), Black Caribbean (5%), and Bangladeshi (2.4%)
- include people experiencing serious disadvantage – residents report the highest rate of 'not good' health in London and experience high levels of unemployment and economic inactivity (the sixth worse of any London borough), but
- contain a high proportion of people with university degrees – nearly double the average for England and Wales

Islington's communities are diverse but they have a number of common interests, for example they rely on public transport. The number of people travelling to work by public transport is over three times the average for England and Wales. Access to good quality public transport is a common need as is the need for a cleaner and safer environment.

A planning inspector has tested the Statement of Community Involvement for soundness. Details are given in appendix four.

Effective consultation supports the One Islington vision which seeks to further regeneration, sustainability, and the quality of services in the borough.

2.0 About this Statement

Islington Council is committed to effective community involvement. As well as residents, Islington's communities include businesses and people who travel in for work, study, leisure, and social reasons.

This wide range of communities has a variety of views about Islington; what they want to stay the same and what they would like to change. To give an example, Islington contains a huge range of businesses from small start-ups to multinational companies. The demands and needs of these companies are often quite different. Similarly, service providers such as the police, social housing landlords and universities play an important part in the borough and must be involved in its development.

Together, all of these groups and individuals are sometimes referred to as stakeholders. A stakeholder is simply an individual or organisation that has an interest in the borough. This Statement of Community Involvement applies to all stakeholders.

Community involvement can:

- provide evidence from stakeholders – local opinion and experience gives the council more information
- reduce conflict – no plan or planning decision will meet everyone's wishes entirely, but when all communities have a part in the process, this can increase understanding of the final plan and its implementation
- make links – by working with communities and stakeholders the council can increase awareness between different groups. This can help to improve the delivery of better services. It can also improve the links between the council and the people it serves

The Statement of Community Involvement has the following purpose:

- to inform communities in Islington how and when they can become involved in the planning system within the borough
- to make clear to communities the extent to which they can influence plans and planning decisions in Islington
- to explain how the council will seek to include communities including hard-to-reach groups in the planning process

- to outline a range of methods for involving communities in planning
- to state how the council will make the results of involvement available to communities in a timely way
- to explain how the council will monitor the levels of involvement in the planning process

There are two aspects of local planning in Islington where the involvement of local communities is particularly important:

1. producing plans that influence development in Islington including how land is used and changes to buildings. These plans are then used when;
2. deciding whether planning permission should be given or refused (most changes to buildings and changes in the use of buildings and land require planning permission)

By seeking involvement at the early stages of plan making, the intention is to achieve understanding and agreement and so speed up decisions on planning applications.

3.0 Opportunities to be involved

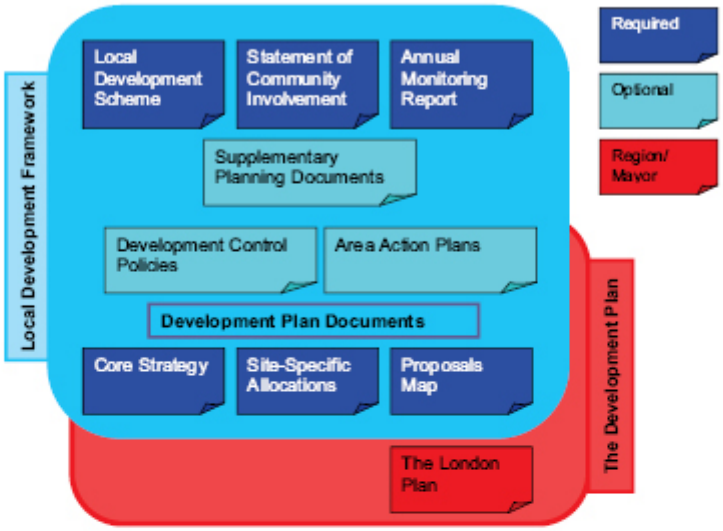
This section sets out how the council will involve local communities in preparing its local plans and deciding on planning applications.

3.1 being involved in plan making

Between 2005 and 2008 the council will produce a set of documents that together will make up the Local Development Framework. These are important as they affect planning decisions and because they will seek to support the Local Strategic Partnership and the One Islington strategy which together seek to achieve regeneration in Islington and the development of a more sustainable borough.

There is more information about the Local Strategic Partnership at 4.2

Figure one: the Local Development Framework in context



The Local Development Scheme is available at www.islington.gov.uk (click on planning then on planning policy, then on local development framework). Or phone the planning policy team on 020 7527 2000.

If you want more detail about all of these documents look at appendix one. For now it is important to realise that the council is seeking involvement in almost all of the documents that make up the Local Development Framework. The Local Development Scheme and the Annual Monitoring Report are administrative documents that the council also produces, they are part of the Local Development Framework but we do not consult on these.

The Local Development Scheme has already been produced. It sets out a programme for preparing all of the other parts of the Local Development Framework. It's a good idea to look at this if you want to be sure that you have your say on all of these documents.

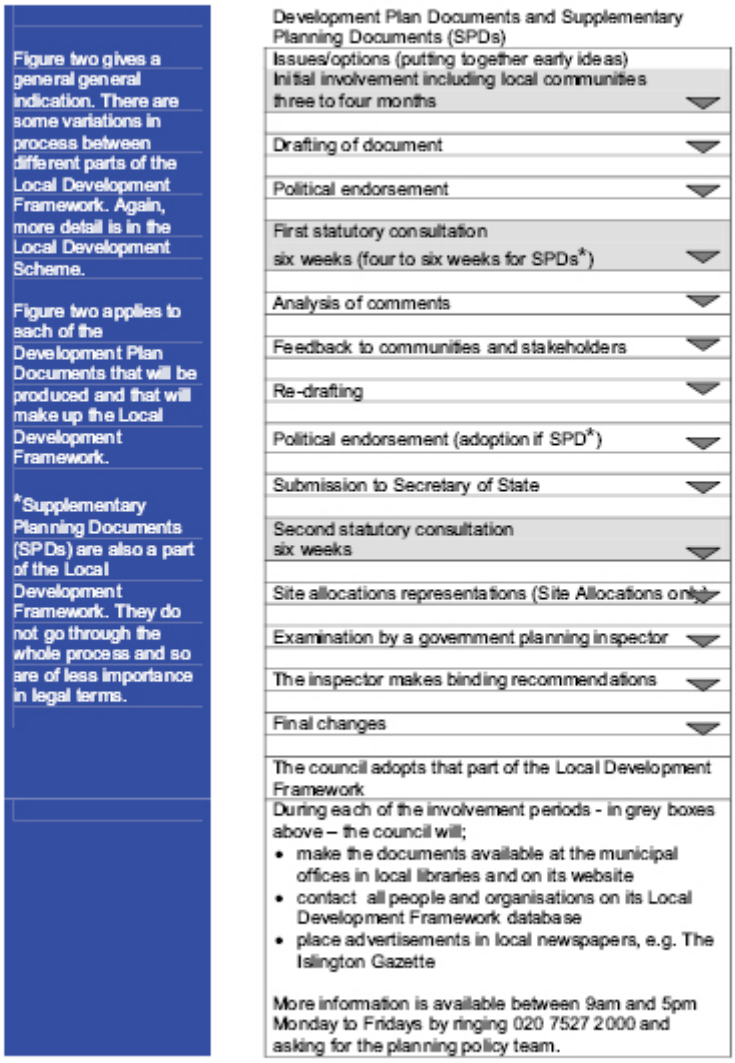
Figure two (over the page) sets out – in general terms – when you can be involved in the development of each of these documents.

Figure two: When to be involved in the Local Development Framework

Figure two gives a general general indication. There are some variations in process between different parts of the Local Development Framework. Again, more detail is in the Local Development Scheme.

Figure two applies to each of the Development Plan Documents that will be produced and that will make up the Local Development Framework.

*Supplementary Planning Documents (SPDs) are also a part of the Local Development Framework. They do not go through the whole process and so are of less importance in legal terms.



Our booklet Consultations on Planning Applications gives more details of how the council consults on planning applications.

The Development Control Planning Charter sets out the standards that the council seeks to achieve when dealing with planning applications.

Both are available by ringing 020 7527 2000 and asking for planning enquiries.

3.2 being involved in planning applications

The council has already produced a booklet, Consultations on Planning Applications. This is available as a leaflet and is reproduced at appendix five. It is also available on the council's website. The key commitments are listed below.

When planning applications are received the council will:

- publish details of applications received on the planning pages of the council's website
- publicise all planning applications either by writing to the occupiers of properties directly affected by proposals within five working days of receipt of a valid application (neighbour notification) and/or placing a public notice on or close to the site
- in a conservation area - or because otherwise required - publish a list of applications received in a local newspaper, e.g. The Islington Gazette

The council will give the following support to those making comments on an application:

- give guidance in the consultation letter of what are relevant comments to make and on the process
- give 21 days for people to submit written comments on an application
- acknowledge receipt of any written comments within five working days of their receipt
- if substantial amendments are made to an application, neighbours will be re-notified and allowed at least a further 14 days for comment

The council will handle all comments as follows:

- all relevant planning comments received will be considered as part of the assessment of the planning application, and will be recorded in the delegated or committee report
- if the application is to be determined by committee, anybody who commented will be notified of the committee date at least five working days in advance of the meeting
- anybody who submitted written comments will be notified of the decision on the application

Legal agreements. In some cases developers agree to carry out (or fund) works that solve possible problems with a development e.g. they may pay for environmental improvements.

More information on pre-application meeting for major developments is available in a Planning Advice Note available from the council.

A council officer will deal with most applications. About 1 in 10 of all planning applications to the council are dealt with by one of four area planning committees. Applications normally go to these committees if they;

- are above a certain size, or
- are not clear cut in policy terms
- attract a lot of objections
- require a legal agreement between the developer and the council

It is usually possible to give your views on the proposed development at these meetings. The chance to speak is usually limited to three minutes, so it is a good idea to make more lengthy and detailed observations in writing.

Our booklet Consultations on Planning Applications states that the council will make available the following information at the Municipal Offices (Contact Islington):

- lists of applications received (also available on the website, at libraries, and at the Town Hall)
- copies of current applications including plans. Many libraries also keep copies of applications for their locality (Archway, Central, Finsbury, Mildmay and West)
- planning advice notes, guidelines, maps, lists of historic buildings, conservation areas, tree preservation orders

With two days notice the council will also make available at the Municipal Offices (Contact Islington):

- copies of all decisions (decision notices), including enforcement notices, and copies of planning applications are available with two days notice (request via Contact Islington)
- case files on specific properties (two days notice required, request via Contact Islington)

3.3 seeking advice on planning applications

If you are thinking of making an application for planning permission you can seek informal advice before submitting any paperwork. The council encourages these pre-application meetings. This does not guarantee that you will be given permission when you apply. But it can help to ensure that your application is broadly in line with the council's policies and so avoid unnecessary delay.

There are other types of major development but these are unlikely to arise in Islington. Major Development is defined in the Town and Country Planning (General Development Procedure) Order 1995

The council now charges for pre-application meeting on major development. This includes the;

- provision of 10 or more flats or houses, and
- provision of over 1,000 square meters of floorspace

In addition to the above, the following developments will be subject charges for pre-application meetings:

- proposals for development requiring an Environmental Impact Assessment (generally larger development or those in sensitive areas and likely to impact on the environment);
- proposals involving complex listed building or conservation issues
- telecommunications proposals for composite proposals for 10 or more sites

3.4 knowing you've been listened to

If you comment on a plan or on a planning application the council will let you know what has happened as a result. Anyone who makes a comment on a draft plan will receive more information as the plan is being developed. You will be told about further chances to make comments and we hope that you will be happy with the results. If you are not, you can make comments to the planning inspector when our final version of the plan is sent for an examination if it is a Development Plan Document – see Figure One. You will be informed about how and when to do this at the time.

The council will also publish on its website a summary of all of the comments received on a plan and a statement of how the council has responded to the comments.

If you have made comments on a planning application the council will write to you and let you to give you more information. In some cases you may be able to speak at a planning committee. More details are in our booklet Consultations on Planning Applications (reproduced at appendix five).

4.0 Some detail about involvement

This section gives more detail about how the council will seek to involve all communities. It sets out a number of principles that the council is committed to. It states how the council intends to increase the involvement of hard-to-reach groups and will set out methods for the involvement of these and other communities. This section ends by explaining how the Statement of Community Involvement fits in with other community involvement initiatives.

4.1 general principles

Section 4.1 is adapted from the council's consultation strategy.

Community involvement will be inclusive and representative. Traditionally, some communities have been less involved in the planning process. It is important to seek the participation of these groups so that plans and planning decisions contribute towards a society where everyone is included. Hard-to-reach groups are covered in more detail below at 4.3 – widening involvement.

By involving people from the earliest stages of plan preparation, the aim is to achieve greater consensus over the future development in the borough.

Community involvement will be timely. Being meaningfully involved in plan making and deciding applications requires access to sufficient information at an appropriate time. If communities are being consulted or asked to enter a partnership, decisions must still remain to be made. Groups and individuals must also be given reasonable time to respond. This is especially important as community groups often operate with limited resources. Involvement must take place when it is:

- convenient for communities to participate
- possible to influence the decisions that need to be made

Sufficient time will be allowed for:

- communities to be informed about the issue
- communities to feed back their views to the council

The London Plan is available online at www.london.gov.uk/mayor/strategies/sds/index.jsp

The Local Development Framework will seek to support other plans including the Islington Community and Neighbourhood Renewal Strategy and One Islington.

Community involvement will be open and professional. The council will make clear to communities the extent to which they can influence plans and planning decisions in Islington. Local planning happens within a legal framework. It is important to ensure that communities are aware that all involvement happens in this context. The European Union, national government and regional authorities (The Mayor of London) all set out plans and regulations that the council has to comply with. Islington's plans and planning decisions cannot ignore this. Other groups, such as the development industry, will express their views and will also expect to influence the plans. Therefore the council will:

- be clear about the limits on the choices consultees can make, so as not to raise false expectations
- giving honest feedback about the findings of consultation (including on our website)
- identify changes made as a result of consultation and feed this back directly to those involved (and via the council's website) and explain the reasoning behind the decisions

Community involvement will be informative and understandable. Information must be easy to understand; it should only include technical and legal terms where they are essential. Traditionally some groups are less involved in planning than others. Information will be provided in a number of ways. Information can on request be provided in a number of formats, including Braille, audiocassette and languages other than English. LDF documents will be made accessible to all members of society so as to meet the requirements of the Race Relations Act 2000 and the Disability Discrimination Act 1995.

Community involvement will be joined up and co-ordinated. We will make links across the council and partner organisations on crosscutting issues. We will seek to:

- avoid unnecessary duplication in projects
- save on resources where costs can be shared
- help services to make links between the consultation findings of different departments and partners
- consult from a customers and people perspective, rather than by individual departments
- prevent consultation fatigue

4.2 links to other policies - One Islington

'One Islington' is a vision, focusing on our four corporate priorities of;

- 'Customer focus' – meeting our customers' needs by involving communities and individuals, and helping them to help themselves
- 'Regeneration' – working with Islington's diverse communities and local providers to improve people's quality of life
- 'Sustainability' – making the borough a more environmentally-friendly place to live and work
- 'Performance improvement' – delivering value for money and high quality services

The aim is to make Islington;

- a greener place to live and work
- a place where people of all backgrounds are able to achieve their full potential; and
- a borough of safe, thriving and active communities, where people are involved in the decisions that affect their lives

This Statement of Community Involvement and the wider work of the planning division seek to further the One Islington vision.

You can find out more about the Islington Strategic Partnership by looking on the council's website or by phoning Contact Islington 020 7527 2000 and asking for the Islington Strategic Partnership support team

The Islington Local Strategic Partnership also supports One Islington. This partnership includes a wide range of organisations, whose role is to oversee the development and implementation of regeneration strategies. It is responsible for spending government regeneration funding known as the Neighbourhood Renewal Fund. The Local Strategic Partnership has produced the Community and Neighbourhood Renewal Strategy. The priorities that relate most directly to planning are gaining and maintaining a cleaner, safer and better managed environment through:

- the better co-ordination of local service provision
- the better use of planning and design
- increasing affordable housing supply by every means including land use and planning regulations

4.3 widening involvement, the hard-to-reach

A number of groups are commonly referred to as hard-to-reach. These groups tend to be underrepresented when involvement is sought from local communities. There are many reasons why this may be the case and not all of them are in the control of the local authority.

Clearly a list of hard-to-reach groups is for guidance only. Not all women or older people are hard-to-reach for example. Other groups could be specified such as gypsies/travellers.

The council arranges a consultation forum which meets about four times a year. This gives officers the opportunity to share best practice across council departments.

Islington's Corporate Consultation Strategy lists hard-to-reach groups as including:

- young people
- older people
- women
- people with all disabilities including mobility, learning and hearing disabilities
- homeless people
- black and ethnic minority communities
- refugees and asylum seekers
- lesbian, gay, bisexual and transsexual communities
- faith communities

Council officers can increase the participation of these groups through a combination of long term and immediate measures. For example, maintaining a database of hard-to-reach groups is relatively low impact in terms of cost and time could be important over the longer term.

We will take the following steps to involve hard-to-reach groups:

- maintain a database of groups that represent those listed as hard-to-reach
- target correspondence to these groups
- offer a translation service with all mail-outs and provide translations when requested.
- provide large print, Braille and audiotape versions of documents when requested to do so
- include a standard translation that gives contacts for the council's planning services and for external advice including Planning Aid for London (PAL)
- send notices of consultation and partnership events to places of worship, community meeting places and in other local centres where communities meet
- The council will investigate the practicality of setting up a focus group for representatives from the hard-to-reach communities to act as a focus for consultation on new plans and to disseminate information to their respective communities

At public meetings and other consultation events the council will:

- ensure full accessibility (although where multiple events are happening for a single plan, some of the venues may not be fully accessible)
- offer signing facilities where requested and when practicable
- offer interpretation facilities where requested and when practicable and
- offer crèche facilities where requested and when practicable

4.4 proposed methods

This Statement of Community Involvement suggests methods for involvement rather than providing a set formula. Too fixed an approach can result in methods being used without sufficient consideration. Examples of possible methods are given in figure three below and in appendix two. Other methods may be used where appropriate.

Figure three: suggested methods for community involvement in plan making

More details of the new planning documents are given in appendix one		local communities, individuals and local organisations	local hard-to-reach communities	businesses	other stakeholders
Core Strategy	Local Development Framework	surveys displays open meetings website surveys written consultation planning aid	as for general communities plus focus groups Citizens' Panel presentations to specific groups	written consultation postal surveys website surveys	meetings displays written consultation
Site Specific Proposals					
Proposals Map					
Area Action Plans					
Other Development Plan Documents					
Supplementary Planning Documents					
Development control policies					

Local organisations include; youth groups, civic societies and residents groups
Other stakeholders include; higher education institutions, the emergency services and infrastructure providers (water, gas etc.)

Adapted from Lambeth Listening Consultation Framework Toolkit.

Consultation is one important part of involving communities. The council has a Corporate Consultation Strategy

Also see appendix two for the range of consultation methods.

Before choosing a particular method the council will consider the following:

- will the method used achieve the intended result?
- are sufficient resources available?
- is the consultation timely - have decisions been made already?
- how will the community/stakeholder views be taken into account?
- what other services have a bearing on what planning is seeking to achieve?
- can planning effect the changes that are being consulted on? If not, how are those involved to be made aware of this?

When there are very limited - or no choices the council will be open about this and will only seek to give information. Where consultation or other levels of involvement are used there will be genuine decisions to be made.

Officers will be encouraged to consider the different forms of involvement:

- informing (no decision making)
- consultation (offering some options)
- partnership (offering greater opportunity for joint decision making)
- facilitation (communities self-organising and making more independent decisions)

In addition to the commitments already made in the Statement of Community Involvement the council will:

- maintain a web page that includes an explanation of the right to be involved in plan preparation and applications showing time-scales for involvement
- make written resources available to staff in the planning division that set out different types of consultation and community involvement techniques
- give copies of the Statement of Community Involvement to all officers joining the planning division as part of their induction process
- make available training in community involvement from time to time
- ensure that an officer in the planning section is identified who has overall responsibility for community involvement and who will liaise with other divisions

In appendix four we have included the examination of soundness that a planning inspector will use to check this Statement of Community Involvement

5.0 Monitoring and review

Monitoring here refers to the regular and systematic collection and analysis of information to measure policy implementation. The council will undertake monitoring of involvement in the plan writing process. This will include;

- recording and seeking to increase numbers involved
- recording and seeking to increase the participation of hard-to-reach communities as identified in this document
- recording levels of satisfaction from all participants with the involvement methods used

The council will endeavour to amend the techniques used according to the findings of the monitoring. The Annual Monitoring Report, prepared by the Council to monitor progress in preparing the LDF, will reflect on and evaluate the community involvement process.

6.0 Resource implications

The commitments set out in the Statement of Community Involvement seek to deliver increased involvement in the planning process within the resources that may reasonably be expected to be available. Planning Delivery Grant is available to the council and a part of this can be directed to the funding of community involvement. Planning is also supported by wider corporate services that advise on publicity and consultation.

Any commitment to community involvement has to recognise the practicalities such as cost and legal requirements. For example, the council has time limits to decide planning applications. The need to balance community expectation with these external demands is reflected in this Statement of Community Involvement.

Appendix one – the new planning system

Quoted from for Communities and Local Government http://www.communities.gov.uk/index.asp?id=1143134

The Government introduced a new planning system in 2004. It wants to, "make plan preparation and adoption more understandable and accessible to the community and enable plans to be put in place in a more flexible and timely way." As part of these changes, existing local planning documents are to be replaced by a Local Development Framework. This is made up of a series of documents, some of them are compulsory and others are optional. An example of a Local Development Framework is given on the following page. In addition the council will also be involved in producing a joint waste plan along with six other councils. This will be subject to separate consultation arrangements.

Producing the Local Development Framework

		Community Involvement				
Documents within the Local Development Framework	Brief description These are simple outlines and do not attempt to cover all of the legal requirements for each document.	Compulsory	Development Plan Documents	Statement of Community Involvement Applies	Community Involvement in production	Independent Examination
Core Strategy	The long term vision for the spatial planning of Islington	Yes	Yes	Yes	Yes	Yes
Site Specific Allocations	The allocation of uses to particular sites in Islington	Yes	Yes	Yes	Yes	Yes
Adopted Proposals Map	A map showing allocations of land and other policies	Yes	Yes	Yes	Yes	Yes
Generic Development Control Policies	General planning policies to be used to determine planning applications through the borough	No	Yes	Yes	Yes	Yes
Area Action Plans	Special plans for parts of the borough	No	Yes	Yes	Yes	Yes
Supplementary Planning Documents	Further detail than in the other Development Plan Documents and which carry less legal weight	No	No	Yes	Yes	No
Statement of Community Involvement	States how communities will be included	Yes	No		Yes	Yes
Local Development Scheme	The timetable for producing the Local Development Framework	Yes	No	No	No	No
Annual Monitoring Report	Tracks the production of the Local Development Framework	Yes	No	No	No	No

Appendix two – methods for involvement

Type	Possible advantage	Possible disadvantage	Level/ Most suited to	Costs (approx. @Jan.2005)
Council magazine	Can reach a wide range of residents. Economical.	Does not reach many non-residents. Delivery not 100% Extent of readership not known	Information	Negligible additional cost of articles
Local press adverts	Potentially wide coverage of residents and some non-residents.	Can only give limited information. Generally get poor response.	Information + Guiding to other events	Moderate
Local press briefing	Can give information in some detail. Economical.	May not get story in press. May be reported inaccurately.	Information + Guiding to other events	Negligible
Surveys – postal	Can cover a range of users and topics. Can target hard-to-reach groups	Difficult to use for complex subjects.	Information Consultation Finding out general opinion on broad issues.	£7,000 for a typical survey
Surveys – door to door	One of the most effective ways of contacting people whom would not normally take part in consultation. Can be geographically focussed.	Limited range of detail can be introduced on the doorstep. Costly.	Information Consultation	£3,000 per thousand with design and analysis

Appendix two – methods for involvement

Type	Advantage	Disadvantage	Level/ Most suited to	Costs (approx. @Jan.2005)
Surveys – street	Useful to capture views of people who use an area but who are not resident there.	Limited range of detail can be introduced.	Information Consultation	£5, 000 per thousand with design and analysis
Posting items on the council's website	Economic. Easy to refer people to information over a period of time.	Extent of access to internet. Need to make people aware that an item is on the site. Need to search for information.	Information + Guiding to other events	Negligible
'Piggy-backing' on other consultation and events	Ready made audience, likely to reach wider numbers	May dilute original event, lead to confusion if other event is seeking to gather views and information	Information Consultation	Modest
Service-user's surveys	Targets service users while using the service, and can give an informed opinion.	Omits people who do not use the service.	Consultation Useful for assessing reactions to changes in services.	Moderate
Tele-consultation	Rapid way of getting views and responses to specific questions.	If using the internet, limited numbers of households have a connection.	Consultation Can be used to get a quick response to a general satisfaction questionnaire.	Moderate

Appendix two – methods for involvement

Public meeting	Size only limited by venue. People can learn from each other. Can generate understanding and consensus	May only attract those with negative views unless an obvious benefit is on offer. Many don't feel able to contribute. Need an effective chair.	Consultation Partnership Initial stages of something that affects a large sector of the population.	Moderate
Focus group consultation	Relatively easy to organise. Can focus on hard-to-reach groups.	The results are not necessarily representative	Consultation Partnership Good for examining complex issues.	£1,200 -£12,000 (more costly if data analysed by consultant).
Citizens Panel (via the ISP[1]) can organise focus groups and surveys	Can be used to tackle more technically complex issues.	Unsuitable for consulting on services used by a small number of people.	Consultation Partnership Applicable to many subjects, from complex, single issues to broad satisfaction with overall services.	See Focus Groups and Surveys (Postal)
Open days and exhibitions	Can use a variety of media to inform and educate.	May only reach audience with interest in topic. Need to ensure that they are staffed for maximum input and that information given verbally is recorded.	Consultation Partnership - possibly leading to… Facilitation Proposals for new development.	Moderate

[1] The ISP (Islington Strategic Partnership) has established Islington's Citizens Panel which can be accessed by the Planning Division

Appendix two – methods for involvement

Planning For Real [2] Fun events and activities	Available as a tailored package hence easy to initiate and entertaining for participants.	The structured approach may limit its usefulness for some issues.	Consultation partnership possibly leading to facilitation Useful for planning and capital spending issues.	Resource intensive £1,000 + per day
Tailored events for interest groups including hard-to-reach groups	Delivery be tailored to particular needs/interests e.g. vox pops, photo projects (young people) attending faith meetings (BME). Makes the provision of (e.g.) interpretation or crèche more realistic.	Resource intensive and may still only reach a particular section of a hard-to-reach group.	Consultation Partnership - possibly leading to… Facilitation	Resource intensive

Facilitation

For exceptional developments, such as the King's Cross Central site and Arsenal, the council will consider servicing community run development forums that are independently organised. LBI has supported the servicing of the King's Cross Development Forum (primarily serviced by the London Borough of Camden).

[2] Planning for Real is a registered trademark of the Neighbourhood Initiatives Foundation.

Appendix three - statutory and non-statutory consultees

Statutory consultees for the Local Development Framework (complete)

The Mayor of London
Adjoining Boroughs; Haringey, Camden, Hackney and the City of London
The Countryside Agency
The Environment Agency
Highways Agency
The Historic Buildings and Monuments Commission of England (English Heritage)
English Nature
The Strategic Rail Authority
The Regional Development Agency i.e. the London Development Agency
Any person to whom the electronic communications code applies by virtue of the direction given under Section 106 (3)(a) of the Communications Act 2003
Any person who owns or controls electronic communications apparatus situated in any part of the area of the local planning authority
Any of the bodies from the following list who are exercising functions in any part of the local planning authority:

i. strategic health authority
ii. person to whom a licence has been granted under Section 7(2) of the Gas Act 1986
iii. sewerage undertaker, and
iv. water undertaker (i.e. Thames Water)

Appendix three - statutory and non-statutory consultees

Non-statutory for the Local Development Framework (indicative)

The council has a database of over one thousand individuals and groups that it consults on planning matters. This database is not definitive and may be added to and updated as appropriate. ;

- voluntary bodies some or all of whose activities benefit any part of the authority's area
  - for example, the fire service, police service, Transport for London, social housing providers (e.g. Guinness Trust, Peabody), and education institutions (e.g. the London Metropolitan University)
- bodies which represent the interests of different racial, ethnic or national groups in the authority's area
  - for example, Islington Voluntary Action Council
- bodies which represent the interests of different religious groups in the authority's area
  - for example, the Islington Bangladeshi Association
- bodies which represent the interests of disabled persons in the authority's area
  - for example, DAll
- bodies which represent the interests of persons carrying on business in the authority's area
  - for example, the local Chamber of Commerce, development industry, retail providers

- Other infrastructure providers
  including train and bus operating companies
- Other organisations with an interest in the borough
  including charities and other organisations with an interest in the borough – for example The Theatres Trust

Please note, this list is not exhaustive and also relates to successor bodies where re-organisations occur.

Details of consultees for planning applications are listed in the council's booklet Consultations on Planning Applications, which is reproduced at appendix five.

Appendix four – examination of soundness for the Statement of Community Involvement

Planning Policy Statement 12 (PPS12) is produced by the Government and guides local authorities in the development of the documents that make up the Local Development Framework (including the Statement of Community Involvement). This guidance sets out the checks that the planning inspector will apply to the Statement of Community Involvement; these are quoted below. The planning Inspectorate wrote to the council on 30 May 2006 to confirm that the council's SCI is sound subject to amendments that have been included in this adopted version.

Examination of the soundness of the statement of community involvement
3.10 The purpose of the examination is to consider the soundness of the statement of community involvement. The presumption will be that the statement of community involvement is sound unless it is shown to be otherwise as a result of evidence considered at the examination. A hearing will only be necessary where one or more of those making representations wish to be heard. In assessing whether the statement of community involvement is sound, the inspector will determine whether the:

i. local planning authority has complied with the minimum requirements for consultation as set out in Regulations;
ii. local planning authority's strategy for community involvement links with other community involvement initiatives e.g. the community strategy;
iii. statement identifies in general terms which local community groups and other bodies will be consulted;
iv. statement identifies how the community and other bodies can be involved in a timely and accessible manner;
v. methods of consultation to be employed are suitable for the intended audience and for the different stages in the preparation of local development documents;
vi. resources are available to manage community involvement effectively;
vii. statement shows how the results of community involvement will be fed into the preparation of development plan documents and supplementary planning documents;
viii. authority has mechanisms for reviewing the statement of community involvement; and
ix. statement clearly describes the planning authority's policy for consultation on planning applications.

Quoted from PPS 12 available online at http://www.communities.gov.uk/index.asp?id=1143853

Appendix five – 'Consultations on Planning Applications'

The following information is also available from the council in a booklet and on our website www.islington.gov.uk, click on planning then on involvement in planning.

Planning Applications and the People of Islington

This guidance note specifically details how consultations on planning applications are carried out, and what happens to written comments made. The Statement of Community Involvement, a separate document, specifies on a broad level how the council will involve people in setting the planning policies for the area and how people can get involved in all aspects of the planning process.

Consultation on planning applications is carried out to make sure that people who may be affected are made aware of the application, and that they have an opportunity to comment. How widely the council consults depends on the nature of the planning application; whether, for instance, it is of major public interest such as a large residential development or simply concerns immediate neighbours.

The law says the council should base decisions on an overall plan for the Borough called the Unitary Development Plan (soon to be replaced by a Local Development Framework) which details the policies relating to the environment, housing, transport and conservation etc.

You can look at current planning applications at the Municipal Offices, 222 Upper Street and at a library close to the application site. Our 'Planning Applications Online Service' is due to be launched by December 2005. It will then be possible to search the planning applications database for applications received since 1982 to the present day.

Code of Practice for Notifying the Public about Planning Applications

The council will publicise every valid planning application received. It usually does this by sending individual letters to neighbours and allowing 21 days for a reply, but if more appropriate will use a site notice, displayed outside of the application site. Some applications are also advertised in a list in the local press. The council will often combine individual letters and site notices.

1. Large scale developments likely to be of widespread interest

As a minimum, direct notification of all properties within 30 metres of the boundary of the application site. Further direct notification of properties in surrounding streets may be undertaken where there is a likely wider impact. A number of site notices will displayed around the site. When a development is of great interest to the public, the council may hold a public meeting. Such meetings are usually held in the evening, at a convenient place for local people.

2. Major developments involving the erection or change of use of buildings of more than 1,000 square metres or more than ten residential units

Direct notification of all properties within 30 metres of the boundary of the application site. An assessment will be

made of the possible wider impact of the proposal and further direct notification may be undertaken. At least one Site Notice will also be displayed at the site.

3. Developments involving less than 1,000 square metres of new floorspace or less than ten residential units

All properties directly either side, opposite and to the rear of the site. An assessment will be made of the possible wider impact of the proposal and further direct notification may be undertaken.

4. Extensions to buildings

Properties either side of the site and, if appropriate, above and/or below. If a rear extension is proposed we will consulting people in properties to the rear; for front extensions we will consulting people in properties opposite. For side extensions, we will consult to the relevant side, and front and rear as appropriate.

5. Conversion of houses

Immediately adjoining properties where the conversion involves no material external alterations. Where extensions are proposed additional consultation will be undertaken as in (4) above.

6. Changes of use of land or buildings

Properties either side of the site and, if appropriate, above and/or below. An assessment will also be made of the likely wider impact of the proposed use and further consultation undertaken as appropriate. For instance, uses such as social clubs, cafes, restaurants and day nurseries will involve wider consultation.

7. New shopfronts

Properties either side, immediately above and opposite will be consulted or a site notice will be displayed.

For categories 1-7 the existing occupiers of the application site will be notified where they are not the applicant.

8. Advertisements

No notification for fascia and projecting signs (other than properties above or opposite if they could be directly affected). For other advertisements, including hoardings, the closest properties as appropriate. Where an illuminated advertisement is proposed in a Conservation Area a site notice will be displayed and the application advertised in a local newspaper.

9. Approval of details

No notification unless details relate to matters specifically raised in consultation exercise on substantive application, or unless specified by Committee.

10. Works to trees in Conservation areas and the subject of preservation orders

No notification unless it is proposed to fell a tree. In this case neighbours whose gardens adjoin, or who live opposite in the case of trees in front gardens, will be consulted. Note that where it is proposed to fell a tree in a Conservation Area the council is required to determine the application within six weeks. In these instances 14 days will be given for consultees to respond and such applications will be decided by planning officers rather than be referred to the Area Planning Sub-Committee should objections be received.

11. Listed Building and Conservation Area consent applications

These applications (except those involving only minor internal alterations) are publicised via a site notice and advertising in a local newspaper. Many applications are

accompanied by separate applications for planning permission that will result in neighbour notification.

13. Applications for Certificates of Lawfulness
No notification except occasionally when consultation would be of benefit.

14. Applications for prior approval
Prior approval applications mainly concern proposals for new telecom equipment. Direct notification to properties immediately adjoining the site and beyond if appropriate. As prior approval applications have to be dealt with within 56 days they are determined under delegated powers even if objections have been received. Consultations will not be done on the '28 day notification letters' from code operators

15. Consultation by adjoining council
Councils are required to consult neighbouring authorities where residents may be affected by a proposal. The adjoining council will consult residents in Islington in accordance with their own procedures. We will notify the Members of the adjoining ward in Islington.

16. Council's own development
These applications are dealt with in exactly the same way as others and the level of consultation will be decided in accordance with the above guidelines.

Site Notes and Press Adverts
For some applications site notices are displayed and the applications advertised in the Islington Gazette. These applications mostly commonly are:

- proposals affecting listed buildings (excluding those involving only minor internal alterations);
- proposals within or affecting Conservation Areas;
- developments involving the erection of ten or more houses or buildings with 1,000 square metres or more of floorspace and the change of use of buildings or land of more than 1,000 square metres;
- proposals that are a 'departure' application;
- 'bad neighbour' developments involving proposals likely to cause *significant* activity and noise during unsociable hours.

Comments From the Public on Planning Applications
Further details on the consultation process are given on the back of the letter sent seeking views on the proposal. If you are interested in finding out more details of an application, you can see the plans and any other information submitted at the Municipal Offices or at the appropriate library. You can also talk to the case officer, whose name is in the consultation letter. If you wish to make comments, this should be done in writing to the Development Control Service, within 21 days of the consultation letter or site notice or press advert. Comments can also be submitted via the planning pages of the council's website. To do this simply find the application you wish to comment on, select 'comment on this application' and then provide your details with the comments you wish to submit

Comments must be based on valid planning reasons, for example the size, scale or design of the proposed building, the loss of a particular use, traffic or loss of light to a habitable room. The types of comments that are not valid planning considerations include competition, viability, loss of a view, impact on the value of a property or land ownership issues. Concerns about hours of work or potential structural damage are not planning matters but may be dealt with by other council services.

When you submit your comments they will be passed to the Case Officer to consider and you will receive a letter or

email to confirm that your comments have been received. Any written comments received about current applications (whether online or in writing) are public information available for inspection at Contact Islington. All comments will also be 'published' on the 'Planning Applications Online Service' however personal details (such as telephone number and email address) will be removed in order to comply with the Data Protection Act.

Reconsultations
Most applications are determined in the form in which they were submitted. Some applications are resubmitted as a new application in a revised form and the consultation exercise will be carried out again. If an existing application is significantly amended anyone whose comments are relevant to the amendment will be informed in writing.

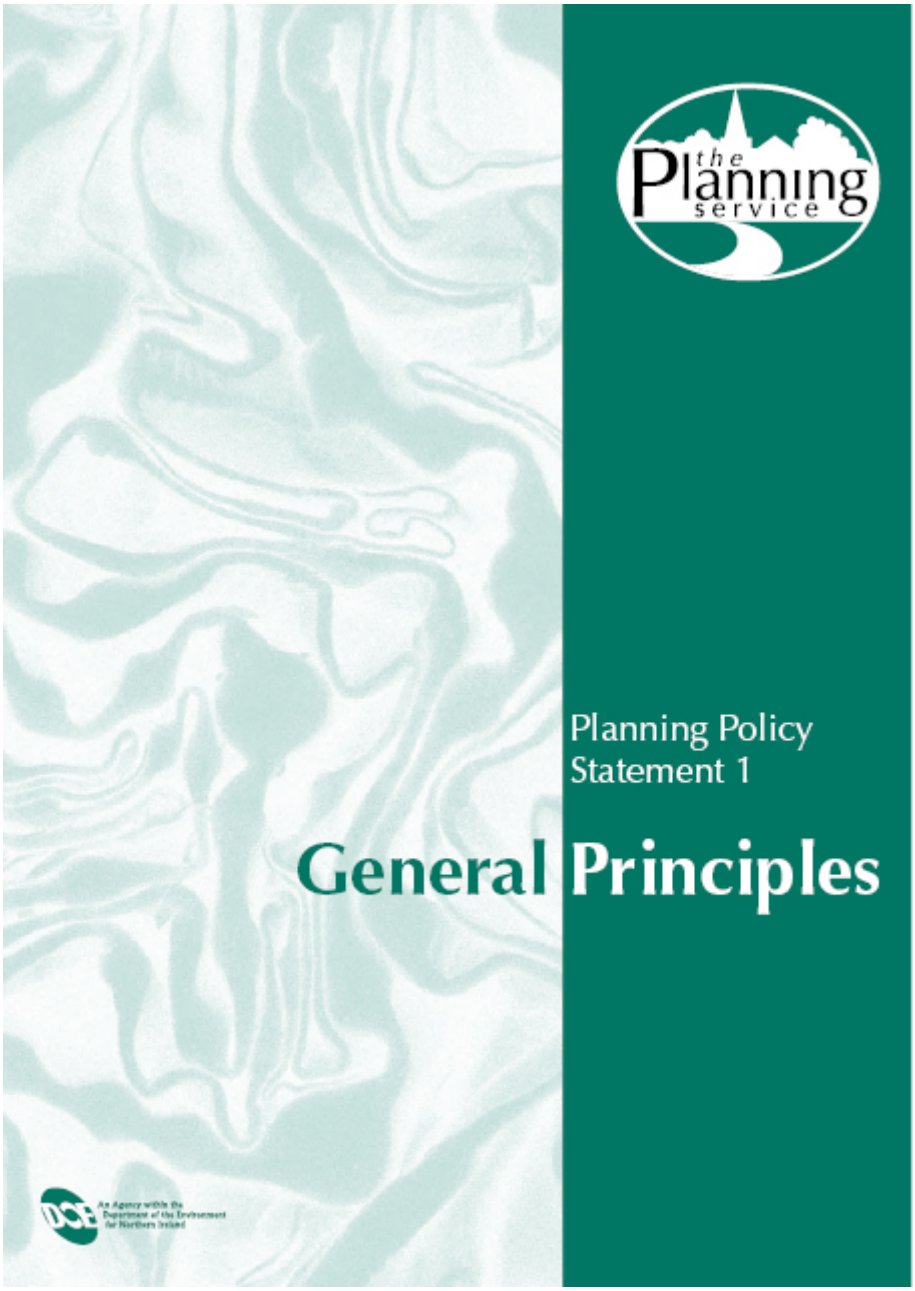
Decision Making
If objections are received which relate to genuine planning matters which have not been overcome by amendments or conditions and which do not raise policy conflicts, and the application is being recommended for approval, then the application will be determined at the relevant Area Planning Sub-Committee. In this case everyone who has commented in writing will be invited to attend the meeting and advised about the opportunities for speaking to the Committee. Further information on how the Committee process works and how to see agendas etc. is available on the council's website, and from the Committee Services section. All other applications are determined under 'delegated authority' by a senior planning officer. Everyone who has made written representations will be informed of the decision that is made.

Speaking at Committee
Members of the public are usually allowed to speak, for up to three minutes, at these Committee meetings. When the application is considered the Chair of the meeting will ask people who wish to speak, including the applicants, to identify themselves. If several people wish to oppose/support the recommendations they will be expected to appoint a single person to speak on their behalf. These arrangements may be varied at the Chair's discretion.

Further Information about Planning Applications
If you require further information on the planning process please contact with the Planning Enquiries Service or the Duty Planning Officer via Contact Islington on 020 7527 2000.

October 2005

Planning Service PPS1 - General Principals


the Planning service
Planning Policy Statement 1
General Principles
An Agency within the Department of the Environment for Northern Ireland

The Planning Service
An Agency within the Department of the Environment (NI)

PLANNING POLICY STATEMENT 1

GENERAL PRINCIPLES

This Statement sets out the general principles that the Department observes in formulating planning policies, making development plans and exercising control of development. The Statement also sets out the key themes that underlie the Department's overall approach to planning across the whole range of land-use topics.

Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

March 1998

Contents

Introduction

1. This Statement sets out the general principles that the Department of the Environment for Northern Ireland, (the Department), observes in carrying out its planning functions, namely formulating planning policies, making development plans and exercising control of development. These principles are founded on the Department's understanding of the law relevant to planning, as contained in statute and interpreted in decisions by the courts. The Statement also sets out the key themes that underlie the Department's overall approach to planning across the whole range of land-use topics. More detailed policy on individual subjects is to be found in other publications in the Planning Policy Statement series.

2. The Statement applies to Northern Ireland as a whole. It supersedes the following provisions of the Department's September 1993 publication "A Planning Strategy for Rural Northern Ireland":

   Policy SP 1 - Development Plans
   Policy PSU 15 - Infrastructure Costs

Purpose of the Planning System

3. The town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance. It is important to distinguish those matters which planning can influence from those which are outside its control. The central concerns of the planning system are to determine what kind of development is appropriate, how much is desirable, where it should best be located and what it looks like.

Accountability

4. The Department's functions as the planning authority for Northern Ireland are set out in the Planning (Northern Ireland) Order 1991. The Planning Service, an agency within the Department, administers most of these functions. The agency is subject to the direction and control of the Secretary of State for Northern Ireland and the Minister

to whom oversight of the Department is delegated. The Secretary of State is answerable to Parliament for the discharge of all planning functions.

5. The Minister determines the policy framework within which the agency operates and the scope of its activities. The Minister does not normally become involved in the day to day operation of the agency but expects to be consulted by the Chief Executive on the handling of operational matters that could give rise to significant public or parliamentary concern.

Propriety

6. The Department is committed to discharging its responsibilities in an honest, impartial and open manner. It adopts a fully documented and corporate decision-making process. It has published a Charter Standards Statement, setting out a summary of its main services and the standards which members of the public can expect. When proposing planning legislation, formulating planning policy and making development plans, the Department will, in accordance with guidelines entitled "Policy Appraisal and Fair Treatment", take into account any potential differential impacts on particular groups in society.

7. Any decision of the Department may be subject to judicial review if it is considered that the Department may have acted unreasonably. Cases of alleged maladministration may be scrutinised by the Parliamentary Ombudsman. The Department's decisions on planning applications may be appealed by the applicant. These are heard by the independent body, the Planning Appeals Commission. The Commission also holds inquiries and hearings as requested by the Department in respect of such matters as major planning applications and objections to development plans.

The Role of the District Councils

8. The Department has a statutory duty to consult the relevant Council about every planning application it receives and to consult the Council during the preparation of a development plan. This consultation forms an important part of the Department's decision making process. As a matter of policy, the Department regularly consults councils on a wider range of matters than those required by statute. It has established consultation mechanisms designed to ensure that elected representatives have an input to the decision-making process. The Planning Service will continue to seek, in consultation with district councils, means by which, within the scope permitted by legislation, these arrangements could be further improved.

Public Participation

9. The Department recognises that individuals and groups have important contributions to make at key stages in the planning process. The Planning Service will continue to publish a variety of documents aimed at improving public awareness of the system and will consult widely before introducing new planning policies. The Planning Service will facilitate the involvement of local communities in the preparation of development plans for their areas by ensuring adequate publicity at each stage, by organising public meetings at convenient locations and by making officials available for discussions. Those who have objections to draft plan proposals may be afforded the opportunity to present their views at a public inquiry. In addition to advertising applications as required by law, the Planning Service will continue to implement a neighbour notification scheme. The Planning Service will continue to examine ways of improving public consultation and participation.

The Department's Approach to Planning

10. The Department has the important and positive task of guiding appropriate developments to the right places, while preventing developments that are not acceptable. In exercising its planning role, it must make provision for necessary developments, such

as workplaces, houses, schools and roads, and at the same time protect the natural and built environment. It must secure economy and efficiency as well as amenity in the use of land. In exercising its planning functions, therefore, the Department must integrate a variety of complex economic, social, environmental and other factors, many of which have implications beyond the confines of the land-use planning system. The key themes that underlie the Department's approach to planning are sustainable development, mixed use, quality development and design . These themes are set out here and more detailed policies are contained in the other Planning Policy Statements listed in Annex 1.

Sustainable Development

11. Sustainable development seeks to deliver the objective of achieving, now and in the future, economic development to secure higher living standards while protecting and enhancing the environment. The most commonly used definition of sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (World Commission on Environment and Development, 1987). The Department is committed to the principles set out in the 1994 Government publication "Sustainable Development: The UK Strategy."

12. In working towards sustainable development, the Department will aim to:

- plan for the region's needs for commercial and industrial development, food production, minerals extraction, new homes and other buildings, while respecting environmental objectives;

- conserve both the archaeological and built heritage and natural resources (including wildlife, landscape, water, soil and air quality), taking particular care to safeguard designations of national and international importance;

- shape new development patterns in ways which minimise the need to travel;

- give preference, in the zoning of land, to the development of brownfield sites within built-up areas,before considering the development of greenfield sites, provided that this creates or maintains a good living environment.

- encourage the use of already developed areas in the most efficient way, while making them more attractive places in which to live and work; and

- concentrate developments that generate a large number of trips in places well served by public transport.

13. In formulating policies and plans and in determining planning applications the Department will be guided by the precautionary principle that, where there
are significant risks of damage to the environment , its protection will generally be paramount, unless there are imperative reasons of overriding public interest.

Quality Development

14. In January 1996 the Government introduced the Quality Initiative in Northern Ireland with the aim of promoting the importance of good design and quality in the built environment. The initiative requires the Department to secure a higher quality of design, layout and landscaping than that provided in the recent past, particularly in relation to new housing developments. This will require a more sensitive and responsive approach by developers, one that identifies and makes positive use of the assets of a site and the characteristics of its surroundings to determine the ultimate form of development.

Design Considerations

15. New buildings and their curtilages have a significant effect on the character and quality of an area. They define public spaces, streets and vistas and inevitably create the context for future development. These effects will often be to the benefit of an area but they can be detrimental. They are matters of proper public interest. The appearance of proposed development and its relationship to its

surroundings are therefore material considerations in determining planning applications and appeals. Such considerations relate to the design of buildings and to urban design. These are distinct, albeit closely interrelated subjects. Both are important. Both require an understanding of the context in which development takes place whether in urban or rural areas.

16. For the purposes of this Statement, urban design is be taken to mean the relationship between different buildings; the relationship between buildings and the streets, squares, parks, waterways and other spaces which make up the public domain; the nature and quality of the public domain itself; the relationship of one part of a village, town or city with other parts; and the patterns of movement and activity that are thereby established: in short, the complex relationships between all the elements of built and unbuilt space. As the appearance and treatment of the spaces between and around buildings is often of comparable importance to the design of the buildings themselves, landscape design will be considered as an integral part of urban design.

17. Good design should be the aim of all those involved in the development process and will be encouraged everywhere. Good design can help promote sustainable development; improve the quality of the existing environment; attract business and investment; and reinforce civic pride and a sense of place. It can help to secure continued public acceptance of necessary new development.

18. Applicants for planning permission will have to be able to demonstrate how they have taken account of the need for good design in their development proposals and that they have had regard to relevant development plan policies and supplementary design guidance. This should be done in a manner appropriate to the nature and the scale of the proposals.

19. The Department will reject poor designs, particularly where there are clear planning policies or supplementary design guidance to support such decisions. Poor designs may include those inappropriate to their context, for example those clearly out of scale or incompatible with their surroundings.

20. The Department will not attempt to impose a particular architectural taste or style arbitrarily. It is, however, proper to seek to promote or reinforce local distinctiveness particularly where this is supported by clear development plan policies or supplementary design guidance. The details of particular schemes will not normally be assessed except where such matters have a significant effect on the character or quality of the area, including neighbouring buildings. Particular weight will be given to the impact of development on existing buildings and on the character of areas recognised for their landscape or townscape value, such as areas of outstanding natural beauty and conservation areas.

21. Where the design of proposed development is consistent with relevant design policies and supplementary design guidance, planning permission will not be refused on design grounds unless there are exceptional circumstances. Design policies and guidance will focus on encouraging good design and avoid stifling responsible innovation, originality or initiative. Such policies and guidance will recognise that the qualities of an outstanding scheme may exceptionally justify departing from them.

22. Further guidance on the expression of design policies in development plans and supplementary design guidance, and on the information relating to design to be submitted with planning applications, is contained in Annex 3.

Mixed Uses

23. The Department will seek to promote and retain mixed uses, particularly in town centres, in other areas highly accessible by means of transport other than the private car and in areas of major new development. What will be appropriate on a particular site will, among other things, be determined by the characteristics of the area - schemes will need to fit in with, and be complementary to, their surroundings - and the likely impact on sustainability, overall travel patterns and car use. The character of existing residential areas should not be undermined by inappropriate new uses.

24. Major mixed use developments that would attract a significant number of trips should be in locations that are well served by public transport, have adequate infrastructure and are properly integrated, in terms of land use and design, with surrounding areas.

25. Development plans will, where appropriate, identify sites or areas where development should incorporate a mixture of uses and will identify the suitable uses. The plan may indicate if conditions or planning agreements are likely to be used to secure an appropriate mixture of uses.

26. When identifying potential sites for mixed uses, in development plans, the Department may adopt a flexible approach to planning standards such as parking requirements and density, while having regard to the availability of alternative modes of transport, residential amenity and the needs of local business.

27. There may be scope, in parts of Northern Ireland, for development plans to identify sites for high quality, mixed use developments known as "urban villages". Built on large sites, within existing urban areas, they are characterised by:

- compactness;
- a mixture of uses and dwelling types;
- a range of employment, leisure and community facilities;
- appropriate infrastructure and services;
- high standards of urban design;
- access to public open space and green spaces;
- ready access to public transport; and
- facilitation of walking and cycling.

Policy Publications

28. The Department has the general function, described in Article 3 of the 1991 Planning Order, "to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development". In fulfilment of this responsibility, the Department publishes a variety of policy documents, including Planning Policy Statements and regional locational strategies.

Regional Strategic Framework

29. In November 1997 the Department published a discussion paper, 'Shaping our Future - Towards a Strategy for the Development of the Region'. This paper is a consultative document to seek public views on the Regional Strategic Framework.

30. It is anticipated that the Regional Strategic Framework will be published in December 1998, following a period of public consultation and an Examination in Public. When complete it will have four main elements:

- a long-term strategic vision for the development of the Region;
- a set of guiding principles, strategic goals, policies and targets;
- a strategy for the location of physical development within the Region; and
- a long-term action plan for the implementation of the strategic vision.

The Regional Strategic Framework will provide the strategic context for the formulation of subsequent development plans.

A Planning Strategy for Rural Northern Ireland

31. The Planning Strategy for Rural Northern Ireland 1993, while

containing a short section on overall strategy, is essentially a compendium of planning policies setting out on a topic basis the factors that the Department takes into account when considering development proposals. It currently applies to that part of Northern Ireland which lies outside the Belfast Urban Area, Bangor, Carrickfergus and Londonderry.

32. The Department has begun progressively to replace the Strategy. The topic sections will be replaced by a series of Planning Policy Statements that will apply to the whole of Northern Ireland. It is envisaged that this process will be completed by 2002. In the meantime, the Strategy will remain in force in respect of those topics not covered by Planning Policy Statements.

Planning Policy Statements

33. Planning Policy Statements set out the policies of the Department on particular aspects of land-use planning and apply to the whole of Northern Ireland. Their contents will be taken into account in preparing development plans and are also material to decisions on individual planning applications and appeals. Planning Policy Statements may, from time to time, be revised to take account of changing circumstances, including experience gained through the development planning and development control processes. Good practice guides may also be issued to illustrate how concepts contained in Planning Policy Statements can best be implemented.

34. The Department has a rolling programme for the preparation of Planning Policy Statements. Annex 1 sets out the Planning Policy Statements that have been issued, to date.

Development Plans

35. Development plans may be in the form of area plans, local plans or subject plans. They apply the regional policies of the Department at the appropriate local level. Development plans inform the general public, statutory authorities, developers and other interested bodies

of the policy framework and land use proposals that will be used to guide development decisions within their local area. Development plans provide a basis for rational and consistent decisions on planning applications and provide a measure of certainty about which types of development will and will not be permitted. Development plans are the primary means of evaluating and reconciling any potential conflict between the need for development and the need to protect the environment within particular areas.

36. The Department will monitor existing plans and assess the need for new or altered plans. The programme of plan preparation is kept under review. The Government has given a commitment to introduce, in due course, legislation providing that development plans will have prime importance in the determination of planning applications.

Content

37. Development plans consist of a written statement and maps and such diagrams, illustrations and descriptive matter as the Department thinks appropriate. The plans will normally focus on the following:-

- committed public sector proposals affecting specific sites (examples: housing redevelopment areas, comprehensive development schemes, road schemes and environmental improvements);

- zonings of land for particular forms of development (examples: housing, industry, town centre retailing and development opportunity sites) and the need, where appropriate, for comprehensive design schemes;

- designation of areas to which regional policies will apply (examples: Green Belts and primary retail cores); and

- designation of other site-specific policy areas (example, Local Landscape Policy Areas).

38. Plans will set out, for information purposes, the relevant designations made under non-planning legislation, such as areas of outstanding natural beauty or sites of nature conservation importance. They will also refer to areas already designated using planning powers, for example conservation areas. While such designations will not in themselves be open for further public debate, any local policies and proposals set out in the plan in respect of designated areas will be open to representation and objection

Requirements affecting Zoned Sites

39. Development plans will set out the main planning requirements which developers will be expected to meet in respect of particular zoned sites. Access points, servicing arrangements and portions of land to be kept free from built development may be specified. Where it is clear that a site can be developed for the purposes for which it is zoned only if physical and environmental constraints are overcome or significant new infrastructure is provided, development plans will draw attention to these requirements. Requirements which plans may specify include:

- identification of locally important vistas, landmarks, landscape elements and spaces for retention and, where possible, enhancement;
- setting out requirements for the arrangement and appearance of new housing in particular urban areas whose distinctive character would benefit from being reinforced;
- laying down guidelines for the size, positioning and external appearance of new buildings in particular streets, so as to maintain the rhythm and integrity of frontages;
- stipulating maximum or minimum building heights in particular locations;
- setting out landscape scheme requirements.

Phasing

40. Where circumstances warrant, plans may specify a phased release of development land. Phasing may be necessitated by considerations relating to infrastructure or the adequacy of other services, which may indicate that a particular area cannot be released for development until a particular stage in the plan period. Phasing may also be introduced in areas that are under severe pressure for development, where there is evidence that market demand would exhaust total planned provision in the early years of the lifetime of the plan. Where phasing provisions are included in a plan, they will normally take the form of a broad indication of the timescale envisaged for the release of the main areas or identified sites. Phasing proposals will be explained and justified in the plan's written statement. Allowance will be made for a reasonable degree of choice and flexibility, in order to ensure that the market can work effectively and efficiently.

Strategic Environmental Appraisal

41. The Department will carry out a strategic environmental appraisal in respect of all its development plans. This appraisal will identify the main environmental concerns of direct relevance to the plan area. It will assess the probable environmental impacts of the plan's policies or proposals. The appraisal process will help to pinpoint those options most likely to be environmentally beneficial. Where consequences adverse to the environment are anticipated possible mitigation measures may be considered. The appraisal will be published with the development plan.

Countryside Assessment

42. Countryside Assessments are an integral part of the development plan-making process. They will normally include the following four inter-related strands:

- An Environmental Assets Appraisal that seeks to establish and evaluate the environmental assets and resources of a plan area, for example, important landscapes, wildlife habitats and archaeological and historic features. It will also assist in defining development plan designations such as Areas of Townscape Character.

- A Landscape Assessment to define the main landscape character areas of the plan area and the variations between them. Where appropriate, it will identify landscapes that are vulnerable because of their limited capacity to absorb further development.

- A Development Pressure Analysis that seeks to identify areas where significant development pressure has occurred and/or where local rural character is under threat of significant change. Combined with the landscape assessment this information will inform the designation of Green Belts and Countryside Policy Areas.

- A Settlement Appraisal which in conjunction with an assessment of development needs of a plan area will provide the basis for identification of limits of development and where appropriate land use zonings.

Supplementry Planning Guidance

43. The Department also prepares non-statutory planning guidance to supplement, elucidate and exemplify its policy documents and development plans. Supplementary guidance produced by the Department includes a set of Development Control Advice Notes that explain the criteria and technical standards that the Department considers when dealing with specific categories or particular aspects of development. Those currently published are listed in Annex 2 . The Department also produces design guides for specific areas. Such guidance, for example conservation area guides and planning briefs for individual sites, will be consistent with the development plan and cross-referenced, as appropriate, to relevant policies and proposals in the plan.

Development Control

44. Article 25 of the 1991 Planning Order states that "where an application is made to the Department for planning permission, the Department, in dealing with the application, shall have regard to the development plan, so far as material to the application, and to any other material considerations".

Development Plans as Material Considerations

45. The relevance of the development plan varies from application to application. A plan may not provide a clear guide to the determination of a particular application because, although it contains material policies, they pull in opposite directions. Moreover, plans cannot anticipate every possible development proposal that may be put forward during their lifespan and are often silent on issues raised by planning applications. The number of years that has elapsed since a plan was adopted is not in itself important. Even after their stated end dates, plans continue to be a material consideration to the extent that their policies and proposals remain applicable to current circumstances. Regional strategies or policies published by the Department may take precedence over existing development plans, while developments that have taken place since the plan became operative may nullify some of its provisions.

Prematurity

46. Where a plan is under preparation or review it may be justifiable, in some circumstances, to refuse planning permission on the grounds of prematurity. This may be appropriate in respect of development proposals which are individually so substantial, or whose cumulative effect would be so significant, that to grant permission would prejudice the outcome of the plan process by predetermining decisions about the scale, location or phasing of new development which ought properly to be taken in the development plan context. A proposal for development that has an impact on only a small area would rarely come into this category; but a refusal might be

justifiable where a proposal would have a significant impact on an important settlement, or a substantial area, with an identifiable character. Where there is a phasing policy in the development plan, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect.

47. Other than in the circumstances described in paragraph 46, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications will continue to be considered in the light of current policies. However, account will also be taken of policies in emerging development plans that are going through the statutory procedures towards adoption. The weight to be attached to such policies depends upon the stage of plan preparation or review, increasing as successive stages are reached. For example:

- where a plan is at the preliminary proposals stage, with no early prospect of reaching draft plan stage, then refusal on prematurity grounds would seldom be justified because of the lengthy delay which this would impose in determining the future use of the land in question;

- where a plan is at the draft stage but no objections have been lodged to relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted and replace those in the existing plan. The converse may apply if there have been objections to relevant policies. However, much will depend on the nature of those objections and also whether there are representations in support of particular policies;

48. Where planning permission is refused on grounds of prematurity the Department will give clear reasons as to how the grant of permission for the development concerned would prejudice the outcome of the development plan process.

Other Material Considerations

49. Material planning considerations must be genuine planning considerations, i.e. they must be related to the purpose of planning legislation, which is to regulate the development and use of land in the public interest. The considerations must also fairly and reasonably relate to the application concerned. Much will depend on the nature of the application under consideration, the relevant planning policies and the surrounding circumstances. All the fundamental factors involved in land-use planning constitute a material consideration. This includes such things as the number, size, layout, siting, design and external appearance of buildings and the proposed means of access, together with landscaping, impact on the neighbourhood and the availability of infrastructure. Relevant considerations will vary from circumstance to circumstance and from application to application.

50. The Department's planning policy publications are material considerations and due regard will be paid to them. Emerging policies, in the form of draft statements and strategies that are in the public domain, may also be regarded as material considerations, although less weight will be ascribed to them than to final publications. Supplementary planning guidance may be taken into account as a material consideration in determining a planning application and the weight accorded to such guidance will increase if it has been prepared in consultation with the District Council and the public.

51. The Department will base its decisions on planning applications on planning grounds alone. It will not use its planning powers to secure objectives achievable under non-planning legislation, such as the Building Regulations or the Water Act. The grant of planning permission does not remove the need for any other consents, nor does it imply that such consents will necessarily be forthcoming. However, provided a consideration is material in planning terms, it will be taken into account, notwithstanding the fact that other regulatory machinery may exist.

52. The planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. It can be difficult to distinguish between public and private interests, but this may be necessary on occasion. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest. Good neighbourliness and fairness are among the yardsticks against which development proposals can be measured.

Environmental Assessment

53. Certain developments fall within the scope of the Planning (Assessment of Environmental Effects) Regulations (Northern Ireland) 1989 (as amended), and in considering planning applications for such developments the Department may require the submission of an environmental statement. The purpose of environmental statements is to provide fuller and better information on the likely effects of proposals. Environmental assessment is mandatory for projects listed in Schedule 1 to the Regulations, while projects listed in Schedule 2 will require assessment if the Department considers they are likely to have significant environmental effects by virtue of factors such as their nature, size or location. The indicative criteria and thresholds that are taken into account when making such judgements are set out in the Department's Development Control Advice Note 10 "Environmental Impact Assessment". In deciding whether to ask for an environmental statement, the Department will draw on experience of similar developments that have taken place elsewhere and may, on occasion, seek specialist advice. An environmental statement is a publicly available document prepared by the developer.

Major Planning Applications

54. Article 31 of the 1991 Planning Order lays down a special procedure that enables the Department to reserve to itself the final decision on proposals that raise issues of national or regional importance or on cases of a particularly contentious and sensitive nature. The Department may deem an application to be a major planning application if it considers that the proposed development would, if permitted:

- involve a substantial departure from the development plan; or
- be of significance to the whole or a substantial part of Northern Ireland; or
- affect the whole of a neighbourhood; or
- involve the construction or alteration of an access to, or development near, a motorway or trunk road.

55. The Department may decide to hold a Public Inquiry into a major planning application to consider representations and where material planning factors are the subject of dispute. If a Public Inquiry is not held the Department will issue a notice of opinion to approve or refuse the application. Following the issue of a notice of opinion the applicant can request a hearing before the Planning Appeals Commission. In determining a major application the Department shall, where an inquiry or hearing is held, take into account the report of the Planning Appeals Commission. The decision of the Department on a major application shall be final.

Planning Conditions

56. The Department has the power to attach conditions to a grant of planning permission. This ability can enable it to approve development proposals where it would otherwise be necessary to refuse planning permission. However, the Department will only impose conditions that, in its opinion, are necessary, relevant to

planning, relevant to the development being permitted, precise, enforceable and reasonable in all other respects. One key test of whether a particular condition is necessary is if planning permission would have been refused if the condition were not imposed. Otherwise, such a condition would need special and precise justification.

57. Unless otherwise specified, a planning permission relates to land rather than those persons who own or occupy it. The Department considers that it is seldom desirable to provide for any other arrangement. However, the personal or domestic circumstances of an applicant, or the difficulties encountered by a business that is of value to the local community, may, exceptionally be material to the consideration of a planning application. While such arguments will seldom outweigh general planning policy considerations, in exceptional circumstances, the Department may grant planning permission subject to a condition that it is personal to the applicant.

58. The Department may attach a negative condition to a planning permission requiring that development shall not take place until works to facilitate it, such as road widening or other infrastructural improvements, have been carried out. Negative conditions will be imposed only where there is a reasonable prospect of the required works being carried out within the period during which the planning permission will remain live. It is the policy of the Department to refuse planning permission where it considers that such a reasonable prospect does not exist.

Refusal of Planning Permission

59. The Department's guiding principle in determining planning applications is that development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In such cases the Department has power to refuse planning permission. Grounds for refusal will be clear, precise and give a full explanation of why the proposal is unacceptable to the Department.

Appeals

60. Applicants who are refused planning permission, or who are granted permission subject to conditions that they find unacceptable, or who do not have their applications determined within two months, may appeal to the Planning Appeals Commission

Developers' Contributions

61. The Department will normally require developers to bear the costs of works required to facilitate their development proposals. Contributions may be required in a variety of circumstances including:

- where a proposed development requires the provision or improvement of infrastructural works over and above those programmed in development plans;
- where earlier than planned implementation of a programmed scheme is required;
- where a proposed development is dependent upon the carrying out of works outside the site.

Planning Agreements

62. Article 40 of the 1991 Planning Order empowers the Department to enter into an agreement with any person who has an estate in land, for the purpose of facilitating, regulating or restricting the development or use of the land. Such agreements, which are normally tied to a planning permission, are binding on future owners or occupiers of the land. They may include provisions of a financial character. If there is a choice between imposing planning conditions and entering into a planning agreement, the Department will normally opt for conditions since they are simpler to administer and are subject to appeal. The Department will not make a practice of re-stating, in planning agreements, conditions attached to planning permissions because to do so would entail duplication and frustrate the right of applicants to appeal.

63. Before entering into a planning agreement, the Department will wish to be satisfied that it provides an acceptable means of overcoming the particular obstacles to development. An agreement does not, in itself, confer planning permission nor does it determine the outcome of a related application. An agreement must be signed before planning permission is granted.

64. The Department will seek planning agreements only where the benefit sought is related to the development and necessary to the grant of permission.Unacceptable development will not be permitted because of unrelated benefits offered by the applicant nor will acceptable development be refused permission simply because the applicant is unable or unwilling to offer such unrelated benefits. Planning agreements can apply to land, roads or buildings other than those covered by the planning permission provided there is a direct relationship between the two. Agreements will not be sought where this connection does not exist or is too remote to be considered reasonable.

65. The Department regards it as reasonable to seek planning agreements where what is required:

- is needed to enable the development to go ahead; or
- will contribute to meeting the cost of providing necessary facilities in the near future; or
- is otherwise so directly related to the proposed development and to the use of the land after its completion, that the development ought not to be permitted without it; or
- is designed to secure an acceptable balance of uses; or
- is designed to secure the implementation of development plan policies in respect of a particular area or type of development; or
- is intended to offset the loss of or impact on any amenity or resource present on the site prior to development.

66. A developer will be expected to pay for, or contribute to the cost of, infrastructure that would not have been necessary but for the development. However, the size of any such payment will be fairly and directly related to, and will not exceed, the benefit that the proposed development will derive from the facilities to be provided. Developers will not normally be required by means of planning agreements to pay commuted maintenance sums for facilities that will become assets vested in the Department.

Enforcement

67. The purpose of the planning enforcement provisions in the 1991 Planning Order is to protect the integrity of the planning system and development control process by enabling the Department to remedy any harm to amenity or other interest of acknowledged importance that may result from unauthorised development. Whether to take enforcement action and, if so, what action is best suited to the particular circumstances, are matters for the Department's discretion.

68. The Department's main enforcement powers are:

- to issue an enforcement notice stating the required steps to remedy the breach within a time period (there is a right of appeal against an enforcement notice);
- to serve a stop notice which can prohibit, almost immediately, any activity to which the accompanying enforcement notice relates (there is no right of appeal against a stop notice);
- to enter on to privately owned land for enforcement purposes;
- following the landowner's default, to enter land and carry out the remedial work required by an enforcement notice and to recover from the owner any expenses reasonably incurred by it in that behalf; and
- to require the submission of a planning application.

69. After an enforcement notice has become effective, or at any time after a stop notice has been served, it is a criminal offence not to comply with an enforcement notice's requirements or contravene the prohibition in a stop notice.

70. The Department intends to issue a draft Planning Policy Statement on Enforcement in the near future.

Annex 1: Planning Policy Statements

PPS 1 General Principles

PPS 2 Planning and Nature Conservation

PPS 3 Development Control and Roads Considerations

PPS 4 Industrial Development

PPS 5 Retailing and Town Centres

Annex 2: Development Control Advice Notes

1. Amusement Centres
2. Multiple Occupancy
3. Bookmaking Offices
4. Hot Food Bars
5. Taxi Offices
6. Restaurants and Cafes
7. Public Houses
8. Small Unit Housing in Existing Residential Areas
9. Residential and Nursing Homes
10. Environmental Impact Assessment
11. Access for People with Disabilities
11a. Nature Conservation and Planning
12. Hazardous Substances
13. Creches, Day Nurseries and Pre-School Playgroups

Annex 3 : Design

(i) Development plans will set out design policies against which development proposals are to be considered. Policies will be based on a proper assessment of the character of the surrounding built and natural environment, and will take account of the defining characteristics of each local area, for example local or regional building traditions and materials. The fact that a design or layout is appropriate for one area does not mean it is appropriate everywhere. Plan policies will avoid unnecessary prescription or detail and concentrate on guiding the overall scale, density, massing, height, landscape, layout and access of new development in relation to neighbouring buildings and the local area more generally.

(ii) Development plans may refer to supplementary design guidance, including local design guides and site specific development briefs, which can usefully elucidate and exemplify plan policies, thereby giving greater certainty to all those involved in the design and development process. Where appropriate, such guidance will also explain how relevant general advice, including that relating to the design of roads and footways, is to be interpreted and applied at a local level in order to take account of the character of each area. Supplementary design guidance may usefully include advice about matters such as lighting and materials, where these are likely to have a significant impact on the character or quality of the existing environment.

(iii) Applicants for planning permission will be required, as a minimum, provide a short written statement setting out the design principles adopted as well as illustrative material in plan and elevation. This material will show the wider context and not just the development site and its immediately adjacent buildings. Inclusion of relevant perspective views can also be of value. Such material will be particularly important in relation to complex or large-scale development proposals, and those involving sensitive sites. For straightforward or smallscale proposals, this level of detail is unlikely to be necessary. Instead, illustrative material might simply comprise photographs of the development site and its surroundings, drawings of the proposed design itself and, where appropriate, plans of the proposed layout in relation to neighbouring development and uses.

(iv) Applicants are encouraged to consult at an early stage with those, including local planning offices, who may be expected to have a relevant and legitimate interest in the design aspects of their development proposals. Where applicants do so, local planning offices will respond constructively by giving clear indications of their design expectations. Careful and early consideration of design issues can speed up the planning process by helping to make proposals for development acceptable thereby helping to avoid costly delay later.

(v) The use of conditions or planning agreements can be helpful in securing a high quality of design. Where design aspects of an approved development proposal are subject to conditions or are subject to planning agreements, development that results from the grant of planning permission must comply with the approved design, unless subsequent changes to the design are justified, and are authorised by the Department.

Annex 4 : Statutory Framework

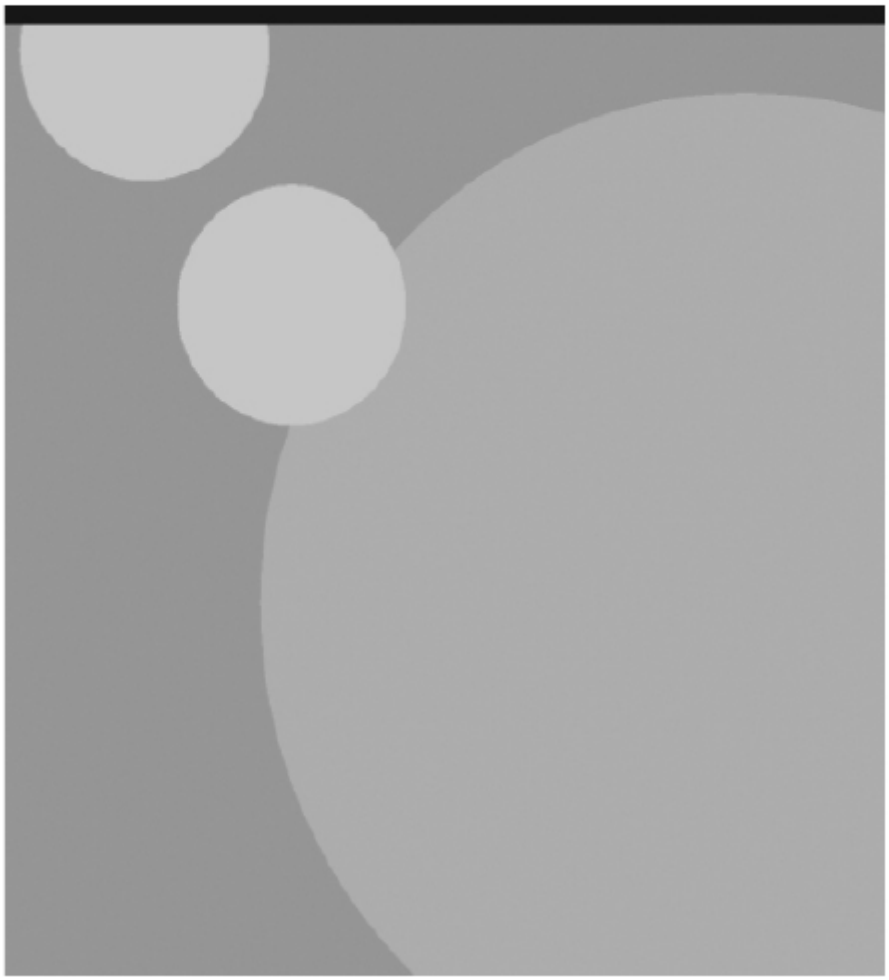
Primary Legislation

Date	No.	Title
1964	Ch.29	Lands Tribunal and Compensation Act (Northern Ireland) 1964
1965	Ch.23	Land Development Values (Compensation) Act (Northern Ireland) 1965
1971	Ch.23	Planning and Land Compensation Act (Northern Ireland) 1971
1972	1634 (N.I.17)	Planning (Northern Ireland) Order 1972 [Only Compensation Provisions Remain]
1973	1896 (N.I.21)	The Land Acquisition and Compensation (Northern Ireland) Order 1973
1978	1048 (N.I.18)	The Planning (Amendment) (Northern Ireland) Order 1978 [Only Compensation Provisions Remain]
1980	1086 (N.I.12)	The Private Streets (Northern Ireland) Order 1980 [as amended by 1992 N.I. 19)
1981	607 (N.I.15)	The Enterprise Zones (Northern Ireland) Order 1981
1981	608 (N.I.16)	The Planning Blight (Compensation) (Northern Ireland) Order 1981
1982	712 (N.I.9)	The Land Compensation (Northern Ireland) Order 1982
1982	1537 (N.I.20)	The Planning (Amendment) (Northern Ireland) Order 1982 [Only Compensation Provisions Remain]
1990	1510 (N.I.14)	The Planning and Building Regulations (Amendment) (Northern Ireland) Order 1990 [Only Compensation Provisions Remain]
1991	1220 (N.I.11)	Planning (Northern Ireland) Order 1991
1992	1307 (N.I.8)	The Home Loss Payments (Northern Ireland) Order 1992

Information on Community Infrastructure Levy

The Community Infrastructure Levy

An overview



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Contents

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Introduction

1. This document provides an overview of the Community Infrastructure Levy, a new planning charge that came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. It is not guidance issued by the Secretary of State, but explains the key features of the new charge, its rationale, purpose and how it will work in practice. The document is designed to inform all those who have an interest in the levy and who might be involved in its operation. The Government will issue guidance on specific aspects of establishing and running a Community Infrastructure Levy regime.

What is the Community Infrastructure Levy?

2. The Community Infrastructure Levy (the levy) came into force in April 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes transport schemes, flood defences, schools, hospitals and other health and social care facilities, parks, green spaces and leisure centres.

Who may charge the levy?

3. The Community Infrastructure Levy charging authorities (charging authorities) in England will be district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority and the Mayor of London. In Wales, the county and county borough councils and the national park authorities will have the power to charge the levy. These bodies all prepare development plans for their areas, which are informed by assessments of the infrastructure needs for which the levy may be collected.

The benefits of the levy

4. The Government has decided that this tariff-based approach provides the best framework to fund new infrastructure to unlock land for growth. The Community Infrastructure Levy is fairer, faster and more certain and transparent than the system of planning obligations which causes delay as a result of lengthy negotiations. Levy rates will be set in consultation with local communities and developers and will provide developers with much more certainty 'up front' about how much money they will be expected to contribute.

Under the system of planning obligations only six per cent of all planning permissions brought any contribution to the cost of supporting infrastructure[1], when even small developments can create a need for new services. The levy creates a fairer system, with all but the smallest building projects making a contribution towards additional infrastructure that is needed as a result of their development.

5. The Community Infrastructure Levy also has far greater legal certainty. It provides the basis for a charge in a manner that the planning obligations system alone could not easily achieve; enabling, for example, the mitigation of cumulative impacts from development.

Why should development pay for infrastructure?

6. Almost all development has some impact on the need for infrastructure, services and amenities - or benefits from it - so it is only fair that such development pays a share of the cost. It is also right that those who benefit financially when planning permission is given should share some of that gain with the community which granted it to help fund the infrastructure that is needed to make development acceptable and sustainable.

7. However, developers should have more certainty as to what they will be expected to contribute, thus speeding up the development process, and that the money raised from developer contributions should be spent in a way that developers will feel worthwhile; namely, on infrastructure to support development and the creation of sustainable communities set out in the Local Development Framework. This is what the levy will do.

How much will the levy raise?

8. The introduction of the levy has the potential to raise an estimated additional £700 million pounds a year of funding for local infrastructure by 2016 (the Impact Assessment on the

Community Infrastructure Levy published on 10 February 2010 sets out further details).The levy will make a significant contribution to infrastructure provision. The levy is intended to fill the funding gaps that remain once existing sources (to the extent that they are known) have been taken into account. Local authorities will be able to look across their full range of funding streams and decide how best to deliver their infrastructure priorities, including how to utilise revenue from the levy. This flexibility to mix funding sources at a local level will enable local authorities to be more efficient in delivering the outcomes that local communities want.

How will the levy be spent?

9. Local authorities are required to spend the levy's revenue on the infrastructure needed to support the development of their area and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

The Government will require charging authorities to allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood. This will ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. It complements the introduction of other powerful new incentives for local authorities that will ensure that local areas benefit from development they welcome.

Local authorities will need to work closely with neighbourhoods to decide what infrastructure they require, and balance neighbourhood funding with wider infrastructure funding that supports growth. They will retain the ability to use the levy income to address the cumulative impact on infrastructure that may occur further away from the development.

10. Charging authorities will be able to use revenue from the levy to recover the costs of administering the levy, with the regulations permitting them to use up to 5 per cent of their total revenue on administrative expenses to ensure that the overwhelming majority of revenue from the levy is directed towards infrastructure provision. Where a collecting authority has been appointed to collect a charging authority's levy, as will be the case in London where the boroughs will collect the Mayor's levy, the collecting authority may keep up to 4 per cent of the revenue from the levy to fund their administrative costs, with the remainder available to the charging authority up to the 5 per cent ceiling.

What is infrastructure?

11. The Planning Act 2008 provides a wide definition of the infrastructure which can be funded by the levy, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This gives local communities flexibility to choose what infrastructure they need to deliver their development plan.

12. The regulations rule out the application of the levy for providing affordable housing because the Government considers that planning obligations remain the best way of delivering affordable housing. Planning obligations enable affordable housing contributions to be tailored to the particular circumstances of the site and crucially, enable affordable housing to be delivered on-site.

13. In London, the regulations restrict spending by the Mayor to funding roads or other transport facilities, including Crossrail to ensure a balance between the spending priorities of the boroughs and the Mayor.

Infrastructure spending outside a charging area

14. Charging authorities may pass money to bodies outside their area to deliver infrastructure which will benefit the development of their area, such as the Environment Agency for flood defence or, in two tier areas, the county council, for education infrastructure.

15. If they wish, charging authorities will also be able to collaborate and pool their revenue from their respective levies to support the delivery of 'sub-regional infrastructure', for example, a larger transport project where they are satisfied that this would support the development of their own area.

Timely delivery of infrastructure

16. It is important that the infrastructure needed by local communities is delivered when the need arises. Therefore, the regulations allow authorities to use the levy to support the timely provision of infrastructure, for example, by using the levy to backfill early funding provided by another funding body.

17. The regulations also include provision to enable the Secretary of State to direct that authorities may 'prudentially' borrow against future income from the levy, should the Government conclude that, subject to the overall fiscal position, there is scope for local authorities to use revenue from the levy to repay loans used to support infrastructure.

Monitoring and reporting spending of the levy

18. To ensure that the levy is open and transparent, charging authorities must prepare short reports on the levy for the previous financial year which must be placed on their websites by 31 December each year. They may prepare a bespoke report or utilise an existing reporting mechanism, such as the Annual Monitoring Report which reports on their development plan.

19. These reports will ensure accountability and enable the local community to see what infrastructure is being funded from the levy. Charging authorities must report how much revenue from the levy they received in the last financial year and how much revenue was unspent at the end of the financial year. They must also report total expenditure from the levy in the preceding financial year, with summary details of what infrastructure the levy funded and how much of the levy was 'spent' on each item of infrastructure.

Setting the Community Infrastructure Levy charge

Charging schedules

20. Charging authorities should normally implement the levy on the basis of an up-to-date development plan or the London Plan for the Mayor's levy. A charging authority may use a draft plan if they are planning a joint examination of their core strategy or Local Development Plan and their Community Infrastructure Levy charging schedule.

21. Charging authorities wishing to charge the levy must produce a charging schedule setting out the levy's rates in their area. Charging schedules will be a new type of document within the

folder of documents making up the local authority's Local Development Framework in England, sitting alongside the Local Development Plan in Wales and the London Plan in the case of the Mayor's levy. In each case, charging schedules will not be part of the statutory development plan.

Deciding the levy's rate

22. Charging authorities wishing to introduce the levy should propose a rate which does not put at serious risk the overall development of their area. They will need to draw on the infrastructure planning that underpins the development strategy for their area. Charging authorities will use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy upon the economic viability of development across their area.

23. In setting their proposed rates for the levy, charging authorities should identify the total infrastructure funding gap that the levy is intended to support, having taken account of the other sources of available funding. They should use the infrastructure planning that underpinned their development plan to identify a selection of indicative infrastructure projects or types of infrastructure that are likely to be funded by the levy. If a charging authority considers that the infrastructure planning underpinning its development plan is weak, it may undertake some additional bespoke infrastructure planning to identify its infrastructure funding gap. In order to provide flexibility for charging authorities to respond to changing local circumstances over time, charging authorities may spend their revenue from the levy on different projects from those identified during the rate setting process.

Evidence of economic viability

24. Charging authorities will need to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon the economic viability of development across their area. Charging authorities should prepare evidence about the effect of the levy on economic viability in their area to demonstrate to an independent examiner that their proposed rates, for the levy, strike an appropriate balance.

25. In practice, charging authorities may need to sample a limited number of sites in their areas and in England, they may want to build on work undertaken to inform their Strategic Housing Land Availability Assessments. Charging authorities that decide to set differential rates may need to undertake more fine-grained sampling to help them to estimate the boundaries for their differential rates.

Charge setting in London

26. A London borough setting their levy must take into account any levy rates that have been set by the Mayor of London. Allowing both the Mayor and the boroughs to charge the levy will enable the levy to support the provision of both local and strategic infrastructure in London.

Differential rates

27. Charging schedules may include differential rates, where they can be justified either on the basis of the economic viability of development in different parts of the authority's area or by reference to the economic viability of different types of development within their area. The ability to set differential rates gives charging authorities more flexibility to deal with the varying circumstances within their area, for example where an authority's land values vary between an urban and a rural area.

Preparing the charging schedule

28. The process for preparing a charging schedule is similar to that which applies to development plan documents in England and Local Development Plans in Wales. Charging authorities are also able to work together when preparing their charging schedules.

Public consultation

29. Charging authorities must consult local communities and stakeholders on their proposed rates for the levy in a preliminary draft of the charging schedule. Then, before being examined, a draft charging schedule must be formally published for representations for a period of at least four weeks. During this period any person may request to be heard by the examiner. If a charging authority makes any further changes to the draft charging schedule after it has been published for representations, any person may request to be heard by the examiner, but only on those changes, during a further four-week period.

The examination of the charging schedule

30. A charging schedule must be examined in public by an independent person appointed by the charging authority. Any person requesting to be heard before the examiner at the examination, must be heard in public. The format for the levy's examination hearings will be similar to those for development plan documents and the independent examiner may determine the examination procedures and set time limits for those wishing to be heard to ensure that the examination is conducted in an efficient and effective manner.

31. Where a charging authority has chosen to work collaboratively with other charging authorities, they may opt for a joint examination of their charging schedule with those of the other charging authorities. In addition, an examination of one or more charging schedules may be conducted as an integrated examination with a draft development plan document.

Outcome of the levy's examination

32. The independent examiner will be able to recommend that the draft charging schedule should be approved, rejected, or approved with specified modifications and must give reasons for those recommendations. A charging schedule may be approved subject to modifications if the charging authority has complied with the legislative requirements, but for example, the proposed rate for the levy does not strike an appropriate balance given the evidence.

33. The independent examiner should reject a charging schedule if the charging authority has not complied with an aspect of the legislation (and this cannot be addressed by modifications), or if it is not based on appropriate available evidence. The examiner's recommendations will be binding on the charging authority, which means that the charging authority must make any modifications recommended if they intend to adopt the charging schedule and cannot adopt a schedule if the examiner rejects it. However, the charging authority is not under an obligation to adopt the final charging schedule, but can, if it prefers, submit a revised charging schedule to a fresh examination.

The Government will include provisions in the Localism Bill to limit the binding nature of the examiners' reports on levy rates. Currently, an examiner scrutinises a council's levy rates, and

all changes that they request are binding, including the rates set for specific areas or types of development.

Under the new provisions examiners will only be able to ensure councils do not set unreasonable charges. Councils will be required to correct charges that examiners consider to be unreasonable, but they will have more discretion on how this is done – for example, they could depart from the detail of the examiner's recommendations on the mix of charges to be applied to different classes of development or the rates to be applied in different parts of their area.

Procedure after the levy's examination

34. To ensure democratic accountability, the charging schedule must be formally approved by a resolution of the full council of the charging authority. In London, the Mayor must make a formal decision to approve his or her charging schedule.

35. In order to ensure that the correct rate for a levy is charged, certain errors in the charging schedule may be corrected for a period of up to six months after the charging schedule has been approved. If the charging authority corrects errors it must republish the charging schedule.

Ceasing to charge the levy

36. Charging authorities should keep their charging schedules under review (although there is no fixed end date). Charging authorities may formally resolve to cease charging the levy at any time through a resolution of the full council.

How will the Community Infrastructure Levy be applied?

What development is liable to pay the levy?

37. Most buildings that people normally use will be liable to pay the levy. But buildings into which people do not normally go, and buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, will not be liable to pay the levy. Structures which are not buildings, such as pylons and wind turbines, will not be liable to pay the levy. The levy will not be charged on changes of use that do not involve an increase in floorspace.

How will the levy be charged?

38. The levy must be charged in pounds per square metre on the net additional increase in floorspace of any given development. This will ensure that charging the levy does not discourage the redevelopment of sites.

39. Any new build – that is a new building or an extension – is only liable to pay the levy if it has 100 square metres, or more, of gross internal floorspace or involves the creation of one dwelling even when that is below 100 square metres. While any new build over this size will be subject to the levy, the gross floorspace of any existing buildings on the site that have been recently in use and are going to be demolished will be deducted from the final liability. To ensure the levy is cost effective to collect, any final net charge less than £50 must not be pursued by the charging authority.

40. In calculating individual charges for the levy, charging authorities will be required to apply an annually updated index of inflation to keep the levy responsive to market conditions. The index will be the national All-In Tender Price Index of construction costs published by the Building Cost Information Service of The Royal Institution of Chartered Surveyors.

How does the levy relate to planning permission?

41. The levy will be charged on new builds permitted through some form of planning permission. Examples are planning permissions granted by a local planning authority or a consent granted by the Infrastructure Planning Commission. However, some new builds rely on permitted development rights under the General Permitted Development Order 1995. There are also local planning orders that grant planning permission, for example Simplified Planning Zones and Local Development Orders. Finally, some Acts of Parliament grant planning permission for new builds: the Crossrail Act 2008 is one such Act. The levy will apply to all these types of planning consent.

42. The planning permission identifies the buildings that will be liable for a Community Infrastructure Levy charge: the 'chargeable development'. The planning permission also defines the land on which the chargeable buildings will stand, the 'relevant land'.

Who collects the levy?

43. Collection of the levy will be carried out by the 'Community Infrastructure Levy collecting authority'. In most cases this will be the charging authority but, in London, the boroughs will collect the levy on behalf of the Mayor. County councils will collect the levy charged by districts on developments for which the county gives consent. The Homes and Communities Agency, Urban Development Corporations and Enterprise Zone Authorities can also be collecting authorities for development where they grant permission, if the relevant charging authority agrees.

How is the levy collected?

44. The levy's charges will become due from the date that a chargeable development is commenced in accordance with the terms of the relevant planning permission. The definition of commencement of development for the levy's purposes is the same as that used in planning legislation, unless planning permission has been granted after commencement.

45. When planning permission is granted, the collecting authority will issue a liability notice setting out the amount of the levy that will be due for payment when the development is commenced, the payment procedure and the possible consequences of not following this procedure. The payment procedure encourages someone to assume liability to pay the levy before development commences. Where liability has been assumed, and the collecting authority has been notified of commencement, parties liable to pay the levy will benefit from a 60 day window in which they can make payment.

46. Where the charge is over £10,000, the liable parties will be able to pay the levy within a series of instalment periods from the commencement date. The number of instalments will vary, depending on the size of the amount due. If the payment procedure is not followed, payment will become due in full.

The Government will introduce changes to the Community Infrastructure Levy Regulations to free up payment arrangements. Local authorities will be able to decide their own levy payment deadlines and whether to offer the option of paying by instalments.

Who is liable to pay the levy?

47. The responsibility to pay the levy runs with the ownership of land on which the liable development will be situated. This is in keeping with the principle that those who benefit financially when planning permission is given should share some of that gain with the community. That benefit is transferred when the land is sold with planning permission, which also runs with the land. The regulations define landowner as a person who owns a 'material interest' in the relevant land. 'Material interests' are owners of freeholds and leaseholds that run for more than seven years after the day on which the planning permission first permits development.

48. Although ultimate liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay. To allow this, anyone can come forward and assume liability for the development. In order to benefit from payment windows and instalments, someone must assume liability in this way. Where no one has assumed liability to pay the levy, the liability will automatically default to the landowners of the relevant land and payment becomes due immediately upon commencement of development. Liability to pay the levy can also default to the landowners where the collecting authority, despite making all reasonable efforts, has been unable to recover the levy from the party that assumed liability for the levy.

Charity and Social Housing Relief

49. The regulations give relief from the levy in two specific instances. First, a charity landowner will benefit from full relief from their portion of the liability where the chargeable development will be used wholly, or mainly, for charitable purposes. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes. The charging authority must publish its policy for giving relief in such circumstances. Secondly, the regulations provide 100% relief from the levy on those parts of a chargeable development which are intended to be used as social housing.

50. To ensure that relief from the levy is not used to avoid proper liability for the levy, the regulations require that any relief must be repaid, a process known as 'clawback', if the development no longer qualifies for the relief granted within a period of seven years from commencement of the chargeable development.

Exceptional circumstances

51. Given the importance of ensuring that the levy does not prevent otherwise desirable development, the regulations provide that charging authorities have the option to offer a process for giving relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy. A charging authority wishing to offer exceptional circumstances relief in its area must first give notice publicly of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the following conditions are met. Firstly, a section 106 agreement must exist on the planning permission permitting the chargeable development. Secondly, the charging authority must consider that the cost of complying with the section 106 agreement is greater than the levy's charge on the development and that paying the full charge would have an unacceptable impact on the development's economic viability. Finally, relief must not constitute a notifiable state aid.

In-kind payments

52. There may be circumstances where it will be more desirable for a charging authority to receive land instead of monies to satisfy a charge arising from the levy, for example where the most suitable land for infrastructure is within the ownership of the party liable for payment of the levy. Therefore, the regulations provide for charging authorities to accept transfers of land as a payment 'in kind' for the whole or a part of a the levy, but only if this is done with the intention of using the land to provide, or facilitate the provision of, infrastructure to support the development of the charging authority's area.

53. To ensure that 'in-kind' payments are used appropriately, such payments may only be accepted where the amount of the levy payable is over £50,000 and where an agreement to make the in-kind payment has been entered into before commencement of development. Land that is to be paid 'in kind' may contain existing buildings and structures and must be valued by an independent valuer who will ascertain its 'open market value', which will determine how much liability the 'in-kind' payment will off-set. Payments in kind must be provided to the same timescales as cash payments.

The Government will introduce changes to the Community Infrastructure Levy Regulations to remove the £50,000 minimum threshold so authorities can accept a payment in-kind for any level of contribution.

How will payment of the levy be enforced?

54. The vast majority of parties liable to pay the levy are likely to pay their liabilities without problem or delay, guided by the information sent by the collecting authority in the liability notice. In contrast to negotiated planning obligations which can cause delay, confusion, and litigation over liability, the levy's charges are intended to be easily understood and easy to comply with. However, where there are problems in collecting the levy, it is important that collecting authorities have the means to penalise late payment and deter future non-compliance. To ensure payment, the regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments.

55. In most cases, these measures should be sufficient. However, in cases of persistent non-compliance, the regulations also enable collecting authorities to take more direct action to recover the amount due. One such measure is the Community Infrastructure Levy Stop Notice, which prohibits development from continuing until payment is made. Another is the ability to seek a court's consent to seize and sell assets of the liable party. In the very small number of cases where a collecting authority can demonstrate that recovery measures have been unsuccessful, a court may be asked to commit the liable party to a short prison sentence.

56. The payment and enforcement provisions of the regulations add substantial protection for both charging authorities and liable parties compared with the existing system of planning obligations, particularly for small businesses which may not have easy access to legal advice.

The relationship between the Community Infrastructure Levy and planning obligations

57. The levy is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations

to enable a local planning authority to be confident that the specific consequences of development can be mitigated.

58. However, in order to ensure that planning obligations and the levy can operate in a complementary way and the purposes of the two instruments are clarified, the regulations scale back the way planning obligations operate. Limitations are placed on the use of planning obligations in three respects:

(i) Putting the Government's policy tests on the use of planning obligations set out in Circular 5/05 on a statutory basis for developments which are capable of being charged the Levy

(ii) Ensuring the local use of the levy and planning obligations does not overlap; and

(iii) Limiting pooled contributions from planning obligations towards infrastructure which may be funded by the levy.

Making the Circular 5/05 tests statutory for development capable of being charged the levy

59. The regulations place into law for the first time the Government's policy tests on the use of planning obligations. The statutory tests are intended to clarify the purpose of planning obligations in light of the levy and provide a stronger basis to dispute planning obligations policies, or practice, that breach these criteria. This seeks to reinforce the purpose of planning obligations in seeking only essential contributions to allow the granting of planning permission, rather than more general contributions which are better suited to use of the levy.

60. From 6 April 2010 it has been unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged the levy, whether there is a local levy in operation or not, if the obligation does not meet all of the following tests:

(a) necessary to make the development acceptable in planning terms

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

61. For all other developments (i.e. those not capable of being charged the levy), the policy in Circular 5/05 will continue to apply until the new policy document on planning obligations is adopted.

Ensuring the local use of the levy and planning obligations does not overlap

62. On the local adoption of the levy, the regulations restrict the local use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and the levy. Where a charging authority sets out that it intends to fund an item of infrastructure via the levy then that authority cannot seek a planning obligation contribution towards the same item of infrastructure.

63. A charging authority should set out its intentions for how revenue raised from the levy will be spent on it's website. If a charging authority does not set out its intentions for use of the

levy's revenue then this would be taken to mean that the authority was intending to use the levy's revenue for any type of infrastructure capable of being funded by the levy, and consequently that authority could not seek a planning obligation contribution towards any such infrastructure.

Limiting pooled s106 contributions towards infrastructure capable of being funded by the levy

64. On the local adoption of the levy or nationally after a transitional period of four years (6 April 2014), the regulations restrict the local use of planning obligations for pooled contributions towards items that may be funded via the levy. The levy is the government's preferred vehicle for the collection of pooled contributions.

65. However, where an item of infrastructure is not locally intended to be funded by the levy, pooled planning obligation contributions may be sought from no more than five developments to maintain the flexibility of planning obligations to mitigate the cumulative impacts of a small number of developments.

66. For provision that is not capable of being funded by the levy, such as affordable housing or maintenance payments, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies set out in Circular 5/05.

67. Crossrail will bring benefits to communities across London and beyond and its funding will be met by a range of sources, including contributions from the levy and planning obligations. To effectively maintain the ability of planning obligations to raise revenue for Crossrail, this restriction will not apply to planning obligations that relate to or are connected with the funding of Crossrail.

[1] The Incidence, Value and Delivery of Planning Obligations in England in 2007-08, University of Sheffield, 2010.
www.communities.gov.uk/publications/planningandbuilding/planningobligationsreport

Annual Monitoring Report Example - Adur District Council

Annual Monitoring Report

1st April 2009 – 31st March 2010

Adur District Council
December 2010

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ADUR DISTRICT COUNCIL

LOCAL DEVELOPMENT FRAMEWORK - ANNUAL MONITORING REPORT

INTRODUCTION

This Annual Monitoring Report, produced under Section 35 of the Planning and Compulsory Purchase Act 2004, will assess the implementation of the Local Development Scheme and the extent to which policies set out in Local Development Documents are being achieved. Monitoring of policies in the Local Development Framework is essential to enable trends to be compared against existing policies and targets to determine whether these policies are working or need to be amended. The Act gives local planning authorities the flexibility to update parts of the Local Development Framework (rather than the whole document) to reflect changing circumstances.

Requirements of the Planning and Compulsory Purchase Act 2004

The Planning and Compulsory Purchase Act 2004 requires every local authority to produce an Annual Monitoring Report for submission to the Secretary of State. These reports should contain information on the implementation of the Local Development Scheme and the extent to which the policies set out in Development Plan Documents are being achieved.

ODPM Guidance on Monitoring

This Annual Monitoring Report has been produced in accordance with Planning Policy Statement 12: Local Development Frameworks (PPS12) and Local Development Framework Monitoring: A Good Practice Guide published in March 2005 (as amended by the Regional Spatial Strategy and Local Development Framework Core Output Indicators – Update 2/2008)

Local Authorities are required to undertake five key monitoring tasks:

- Review actual progress in terms of Local Development Document preparation against the Local Development Scheme timetable and milestones.
- Assess the extent to which policies and Local Development Documents are being implemented.
- Where policies are not being implemented, explain why and set out what steps are being taken to ensure that the policy is implemented, or whether the policy is to be amended or replaced.
- Identify the significant effects of implementing policies in Local Development Documents and whether they are as intended.

- Set out whether policies are to be amended or replaced.

The monitoring Good Practice Guide identifies three categories of indicators for monitoring the Local Development Framework:

Contextual Indicators – describe the wider social, environmental and economic background against which LDF policy operates;

Output Indicators – used to assess the performance of policies and are divided into:

- **Core Indicators** – these are a prescribed set of indicators that all local authorities are required to monitor. This enables consistent monitoring of, for example, housing delivery, at both national and regional level.
- **Local Indicators** – relate to local circumstances and issues and closely relate to policies in the Local Development Framework;

Significant Effects Indicators – these are derived from the Sustainability Appraisal process and are used to assess significant social, environmental and economic effects of policies.

MONITORING PERIOD

Annual Monitoring Reports address the period 1 April to 31 March and must be submitted to the Secretary of State by 31 December of each year. This Annual Monitoring Report covers the period 1 April 2009 to 31 March 2010.

LINKAGES WITH OTHER PLANS AND DOCUMENTS

The Community Strategy

Adur's Community Strategy 'Your Community, Your Future' was in place during the monitoring period and addressed the key themes of health and social care, education and training, housing, transport, young people and children, environment , community engagement - crime and community safety, business and the local economy, and culture and leisure. It identified the actions and key players relating to each of these themes and recognises that the Local Development Framework will contribute to the implementation of many of the actions.

(Please note that Adur District Council has since adopted a Sustainable Community Strategy, *'Waves Ahead'* jointly with Worthing Borough Council, outside of this AMR monitoring period. The emerging LDF will take account of this document and implement some of its key actions.)

Adur Development Plan (The Local Development Framework)

The Annual Monitoring Report will monitor the effectiveness of the policies in the Adur Local Development Plan documents. The first Local Development

Document being produced is the Core Strategy. Until this is adopted, a number of adopted Local Plan policies are saved and these are listed under the Current Policy Monitoring section of this document.

Sustainability Appraisal and Strategic Environmental Assessment

In accordance with the Planning and Compulsory Purchase Act 2004, all Development Plan Documents have to undergo a Sustainability Appraisal, which considers social, environmental and economic effects of the policies. Under the European Directive 2001/42/EC Local Authorities are also required to carry out a Strategic Environmental Assessment of the Development Plan Documents. The specific aim of this Directive is to ensure the compatibility of all land use plans with the environmental and conservation aims identified at a European level. A Sustainability Appraisal Report accompanied the Core Strategy Document when it was submitted in January 2007. (As outlined below, that Core Strategy was later withdrawn from submission; a new Core Strategy is being prepared. A revised Sustainability Appraisal is also being produced to inform the emerging Core Strategy.

PROGRESS WITH THE ADUR LOCAL DEVELOPMENT FRAMEWORK (LDF)

The Local Development Framework will consist of a number of documents, (some of which are outlined below). Delivery of these can be assessed against the timetables and milestones set out in the Local Development Scheme (LDS). A revised LDS was submitted to the Government Office for the South East in late March 2010 to cover the period 2010-2013.

(However, please note this remains unadopted by the Council for several reasons:
1) Uncertainty as to the timetabling of the Joint Area Action Plan for Shoreham Harbour
2) The revocation (and subsequent reinstatement) of the South East Plan
3) The forthcoming Decentralisation and Localism Bill to be announced late 2010, which is likely to have implications for public engagement and the plan-making process).

A new LDS needs to be produced to take account of the delay to the plans as a result of the issues outlined above. It is the intention to progress the Adur Core Strategy and the Area Action Plan in parallel for the initial stages and to submit the latter following the adoption of the Core Strategy. On the advice of the Planning Inspectorate, the Examination of the Area Action Plan should only take place once that of the Core Strategy has been heard and the Inspector has produced his/her report.

Until the new LDS is revised and agreed, it is not possible to assess the progress of the LDF against specific targets. However, an update on the progress of the LDF documents is provided below.

Local Development Scheme

The adopted LDS covers the period 2008-11 and sets out the Council's current planning policies for the area and the programme for the preparation of new policies to replace these. New policies and guidance will be produced in a series of Development Plan Documents and Supplementary Planning Documents which will be published over the next 3 years. As indicated above, the LDS will be reviewed to take account of changing circumstances and any proposed changes in the planning system.

The main documents in the new LDS (2010-13) will be:

- The Core Strategy Development Plan Document; this will set out key 'place based' policies, together with some strategic Development Management policies.
- Proposals Map and Inset Maps; these will indicate site specific policies and proposals, and key designations.
- Joint Area Action Plan DPD for Shoreham Harbour (to be prepared jointly with Brighton & Hove City Council and West Sussex County Council to help deliver regeneration in this area);
- A Site Allocations Development Plan Document to include some of the larger site allocations (not included in the Core Strategy) and some development management policies not addressed in the Core Strategy.
- Guidance on Infrastructure Provision (possibly a SPD). However, should the Council decide to utilise the Community Infrastructure Levy, a DPD of charges will need to be produced.
- Green Infrastructure and Open Space Strategy (SPD)
- A review of the Statement of Community Involvement (a joint document with Worthing Borough Council);
- A Supplementary Planning Document to address climate change;
- A Supplementary Planning Document to address Internal and External Space Standards for New Homes;
- A Supplementary Planning guidance Document on demonstrating genuine redundancy of Employment Sites.

Progress on LDS Documents:

Statement of Community Involvement

The Statement of Community Involvement (SCI) sets out how the local community is to be involved in progressing the LDF. It provides details on the groups we will be involving, including those who have traditionally been 'hard to reach', and on the different communication and involvement methods we will be using. This was approved by the Council in December 2006 (following an examination) and updated in January 2010 following an amendment to the Town and Country Planning (Local Development) (England) Regulations in 2008. It is the intention to review the SCI at the end of 2011 and progress a joint Statement with the neighbouring authority of Worthing Borough Council.

Core Strategy
The Core Strategy is the main development plan document, which will set out a vision for the District and the main policies to achieve this. It is the 'umbrella' document for all subsequent Development Plan Documents.

A new Core Strategy is being produced (following the withdrawal of the previous Core Strategy in 2007) which is more delivery focussed and which will identify the Shoreham Harbour area as a 'broad location' for development, reflecting its status as a strategic development area and growth point (the latter awarded by the Government in 2008).

A range of technical background studies have been undertaken to support both the emerging Core Strategy and Joint Area Action Plan.

The Local Development Framework and Sustainable Community Strategy Members Working Group met throughout the monitoring period to consider the development of the LDF (and continue to meet).

Joint Area Action Plan for Shoreham Harbour
An Area Action Plan to secure the regeneration of the Harbour area in line with its growth point status is being produced jointly by the local planning authorities of Adur District Council, Brighton & Hove City Council and West Sussex County Council working with relevant agencies and Shoreham Port Authority. Work has commenced, and technical background evidence continues to be developed. Members have agreed a vision and set of principles for the regeneration project. (Please note that subsequent to the monitoring period, the Shoreham Harbour project was awarded funding from both the government's Growth Point and Ecotown programmes).

Interim planning guidance for Shoreham Harbour
This has been produced by the three local planning authorities of Adur, Brighton & Hove and West Sussex. Until the joint Area Action Plan for the Harbour is produced, guidance is needed in the interim period to consider development proposals which continue to come forward in the Harbour area. This guidance will help to ensure that such developments do not prejudice the long term regeneration goals for the area. This guidance is not a formal SPD (it does not provide policy details) but a document which, in support of policies on the South East Plan, indicates an approach for dealing with early development proposals. The guidance was approved by the Council in January 2009. (Please note that subsequent to this monitoring period, this document is currently under review)

Strategic Environmental Assessment and Sustainability Appraisal

A Sustainability Appraisal (SA) of Development Plan Documents is required under the planning system and by law this must also incorporate the requirements of the European Strategic Environmental Assessment Directive (SEA). The main purpose of the Sustainability Appraisal process is to predict the positive and negative impacts of policies, whether social, environmental or economic, at an early stage, allowing any negative effects to be mitigated

A Sustainability Appraisal is being undertaken alongside the evolving Core Strategy; as an iterative process, this will inform the development of the document.

INDICATORS

Contextual Indicators

Contextual indicators describe the wider social, economic and environmental background against which Local Development Framework policies will operate. The aim is to enhance the understanding of the wider context for development of spatial polices.

Main Characteristics of Adur

Below are the key environmental, social and economic characteristics of Adur which are being used to inform the emerging Core Strategy.

Physical/Environmental Features

- Adur District is located on the south coast. The City of Brighton and Hove is to the east of Adur and the Borough of Worthing to the west. Adur covers an area of some 41.5 square kilometres. It includes the settlements of Shoreham, Lancing, Southwick, Sompting and Coombes.
- Adur has 7 conservation areas (Adur District Local Plan) and 118 listed buildings (Source: Statutory List of Buildings of Special Architectural or Historic Interest)
- Just over half of the District consists of the Sussex Downs Area of Outstanding Natural Beauty, which is to become a National Park in April 2010. Other key natural features in the district are the coastline and the River Adur, both of which are important for recreation as well as having significant biodiversity value.
- The coastal location of the district in combination with the River Adur presents notable flood risk issues.
- Adur has two Sites of Special Scientific Interest (SSSIs), four Local Nature Reserves (LNRs) and eleven Sites of Nature Conservation Importance.
- A number of protected species have been recorded in the District including barn owls and reptiles.

Population/Social Features

- Adur's population has been increasing relatively slowly (from 57,618 in 1991 to 59,625 in 2001). The last population estimates were carried out in 2007 producing a population figure of 60,600 (ONS Mid Year Estimate 2007). The population is estimated to increase to 67,677 by 2026 (ONS 2008-Based estimates).
- ONS 2006-based Sub-National Projections estimate that as of 2006 21% of the population of Adur was 65 years of age or over. This percentage is projected to increase as people continue to live longer. A more elderly population will have specific needs for housing, health and service provision.
- There are currently 27,280 dwellings in the district (ONS 2008). It is predicted that the number of households will increase to 31,071 by 2026 based on 2008-based ONS projections.

- There is a high demand for affordable housing, which greatly exceeds supply. The net annual affordable housing need is between 226 (low estimate) and 258 (high estimate) dwellings up to 2026. (Strategic Housing Market Assessment, May 2009).
- There is localised deprivation – four wards are ranked in the top ten most deprived wards in the County. These are Churchill, Eastbrook, Mash Barn and Southlands (IMD 2007, CWI 2009).
- Although only 8.9% of the residents in Adur have no qualifications (compared to the UK figure of 13.1%), there is a high proportion of residents with low skills – 26.5% have below level 2 qualifications compared to a national figure of 22.4%.

Economic Features

- Adur has a number of well-established business areas, including Lancing Business Park, Dolphin Road, Shoreham Harbour and Shoreham Airport, but there is a scarcity of readily available land for new economic development.
- Adur has a larger manufacturing base (accounts for 12% of employee jobs) than most of the Districts along the south coast although the service sector (80% of employee jobs) is now the largest sector in Adur.
- Adur's economy is linked most closely with Worthing and Brighton & Hove, although it also has good links with the Central Sussex economy (Crawley/Horsham and Mid Sussex Districts).
- Adur has a high level of out-commuting. Only 44% of people living in Adur work in Adur. A significant number of people living in Adur commute to Brighton & Hove (23%) and Worthing (15%) (Census 2001).
- As at 2007, Adur had 1800 VAT registered businesses (NOMIS). The majority of firms in the district are small businesses employing 1-10 people.
- New business formation rate is low. In 2007, Adur had a company birth rate of 36 businesses per 10,000 residents which is significantly behind the regional and national rates of 48 and 42 per 10,000 residents respectively (BERR 2007).
- 81% of the of the working age population in Adur are economically active (ONS 2010)
- The average income in Adur is £404 per week. This is significantly lower than the average for the South East (£537) and notably lower than the national average (£491) (NOMIS).

Output Indicators

Output indicators are used to assess the performance of policies and inform policy progress and achievement. They include Core and Local output indicators and housing trajectories.

CORE OUTPUT INDICATORS

BUSINESS DEVELOPMENT AND TOWN CENTRES

Indicator BD1: Total amount of additional employment floorspace - by type

Employment type	*Total Gross 2007-8*	*Total Net 2007-8*	*Total Gross 2008-9*	*Total Net 2008-9*	*Total Gross 2009-10*	*Total Net 2009-10*
B1 Offices	0	0	0	0	0	0
B1 Research and development	0	0	0	0	0	0
B1 Light industry	1146	1146	971	971	0	0
B1 Mixed Uses (designed for any B1 use)	2892	942			4810	0
B2 General industry	7927	316	2583	2215	1890	0
B8 Storage & Distribution	0	0	6289	2043	0	0
Sui generis (employment uses not covered by the above use classes e.g. motor vehicle sales)	0	0	0	0		
Total	11965	2404	9843	5229	6700	0

The Adur Employment Land Study (2006) suggested that at least 4000sqm (net) of employment floorspace should be provided a year in order to support economic growth and the vision for a more diverse economy. This monitoring year saw the completion of 6700sqm of gross employment floorspace but no net increase in floorspace at all. This is predominantly a result of the current economic climate. However, delays to the production of the Adur Core Strategy and the reliance on an outdated Local Plan are also likely to have an impact on the levels of new employment development.

All of the gross employment space completed in the monitoring year was located at Lancing Business Park.

Indicator BD2 – Total amount of employment floorspace on previously developed land – by type

Employment type	Total gross 2000-2010
B1 Offices	0
B1 Research and development	0
B1 Light industry	0
B1 Mixed (designed for any B1 use)	4810
B2 General industry	1890
B8 Storage & Distribution	0
Sui generis (employment uses not covered by the above use classes e.g. motor vehicle sales)	0
Total	6700

As can be seen from the above table, 100% of the employment space completed in the monitoring year was on previously developed land.

Indicator BD3 - Employment land available - by type

Employment type	Total (ha) 2007-8	Total (ha) 2008-9	Total (ha) 2009-10
B1 Offices	0.15	0.14	0.15
B1 Research and development	0	0	0
B1 Light industry	0.35	0	0.01
B1 Mixed Uses	0.28	1.42	1.19
B2 General industry	13.06	9.71	3.80
B8 Storage & Distribution	0.64	0.49	0.49
Sui generis (employment uses not covered by the above use classes e.g. motor vehicle sales)	0	0	0
Total	14.47	11.76	5.64

Based on sites in the existing Adur Local Plan (1996) and sites for which planning permission has been granted for employment uses, a total of 5.64 hectares of land now remains available for employment use, the vast majority of this being for general industry. This amount has decreased significantly from last year due to the lapsing of an unimplemented planning permission at Ricardo, an engineering firm based just north of Shoreham Airport.

The largest commitment (3.5 hectares) is located at Basin Road North, Southwick which is within Shoreham Port.

Indicator BD4 – Total amount of floorspace for 'town centre uses'

There was only one completed development for 'town centre uses' in the monitoring period. This was outside the town centre, at Landing Business Park, and involved the change of use of an industrial unit (B2) to a gymnastics facility (D2).

HOUSING

Indicator H1: Plan period and housing targets

The South East Plan was adopted in May 2009 and the Local Development Framework currently being prepared will provide for 2100 net new dwellings to meet the requirements of Policy N1 at an annual average rate of 105 dwellings over the period 2006-2026.

In addition, Shoreham Harbour has been identified as a Strategic Development Area in the South East Plan and has been awarded both Growth Point and Eco town funding. Evidence is still being gathered on the capacity of the area to deliver new homes and a separate housing trajectory will be prepared in due course.

Housing Land Supply Assessments - 1 April 2010

South East Plan provision compared with likely house building 2006 - 2026

		Annual Average
South East Plan Housing Requirement 2006-2026	**2100**	**105**
Completed 2006-2010	546	137
Remaining Requirement 2010-2026	**1554**	**97**
Requirement 2010-2015 (first 5 years)	**485**	
Supply:		
Commitments (sites with planning permission)		
Large sites	371	
Small sites	127	
Sites within settlements indentified in the SHLAA	210	
Total supply 2010-2015	**708**	**142**
Remaining Requirement 2015-2026	**846**	**77**
Requirement 2015-2020 (years 6-10)	**385**	
Supply:		
Commitments (sites with planning permission)		
Large sites	53	
Small sites	0	
Sites within settlements identified in the SHLAA	144	
Total supply 2015-2020	**197**	39
Remaining Requirement 2020-2026	**649**	**108**

The housing trajectory shows the past and projected completion rates over the plan period. Indications are that the District has sufficient capacity within the built up area to deliver the required number of new homes until around 2018 after which it is likely that some release of greenfield land will be necessary.

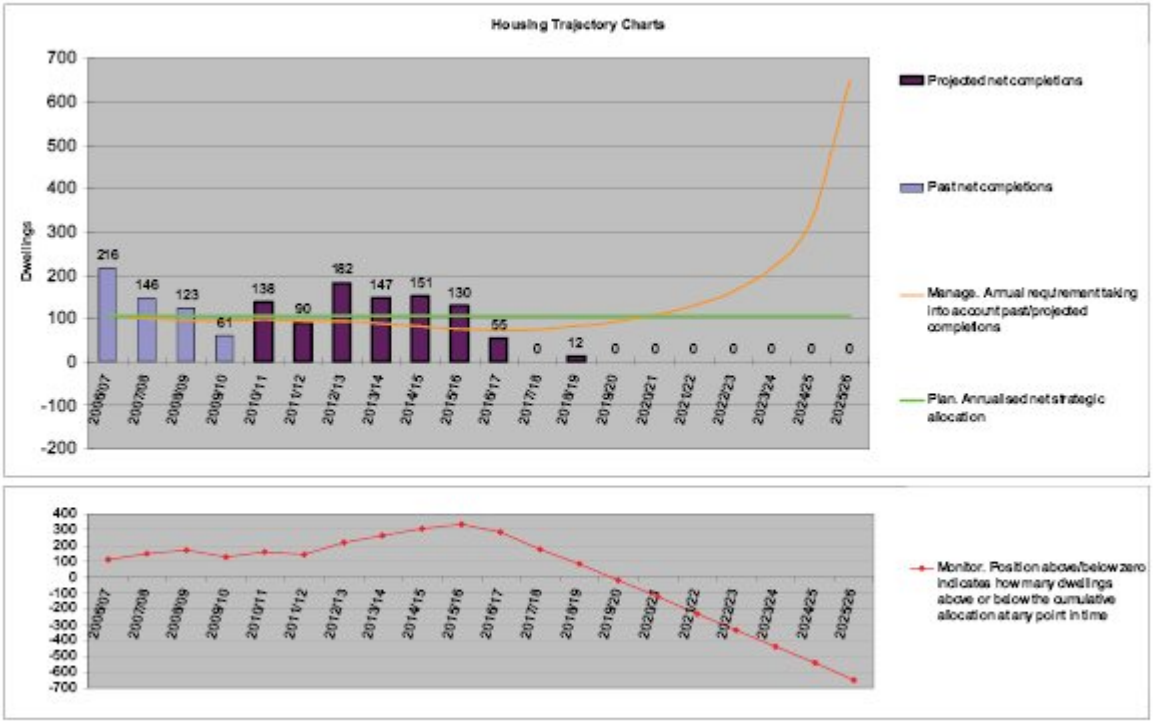
Housing Trajectory for Adur District Council 2010

	Actual Completions					Projected Completions														Totals
	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	
Completions (allocated sites)	218	230	159	134	92	160	94	158	88	43	43	13	0	0	0	0	0	0	0	0	0	1214
Completions (non-allocated sites)						0	0	43	59	108	87	45	0	12	0	0	0	0	0	0	0	354
Total Past Completions	218	230	159	134	276																	801
Total Projected Completions						160	94	201	147	151	130	58	0	12	0	0	0	0	0	0	0	953
Estimated losses*	18	14	13	11	31	22	4	19	0	0	0	3	0	0	0	0	0	0	0	0	0	117
Past net completions	200	216	146	123	61																	546
Projected net completions						138	90	182	147	151	130	55	0	12	0	0	0	0	0	0	0	905
Cumulative net completions		216	362	485	546	684	774	956	1103	1254	1384	1439	1439	1451	1451	1451	1451	1451	1451	1451	1451	
Plan. Annualised net strategic allocation	99	105	105	105	105	105	105	105	105	105	105	105	105	105	105	105	105	105	105	105	105	2100
Monitor. Position above/below zero indicates how many dwellings above or below the cumulative allocation at any point in time		111	152	170	126	159	144	221	263	309	334	284	179	86	-19	-124	-229	-334	-439	-544	-649	
Manage. Annual requirement taking into account past/projected completions		105	99	97	95	97	94	95	88	83	77	72	73	83	93	108	130	162	216	325	649	

Notes
Data for 2005/06 relates to the West Sussex Structure Plan Period and is shown for information only.
Allocated sites include sites with planning permission but which have not commenced and sites on which development has commenced.
Non allocated sites are those identified in the Strategic Housing Land Availability Assessment but have not been identified through the plan making process
* figures for the Structure Plan monitoring period are given in gross/net
This trajectory does not take account of the Shoreham harbour Strategic Development Area identified in the south East Plan and does not include any sites identified in the SHLAA that fall within the draft boundary of the Joint Area Action Plan currently being prepared.

Nov-10

Housing Trajectory for Adur District (Nov 2010)



Indicator H2(a) Net additional dwellings – in previous years

The table below shows that completions since the start of the South East Plan monitoring period in 2006 is 546 net new dwellings (615 gross), giving an annual average of 136 (net) dwellings (154 gross). Whilst the number of completions has fallen each year since the start of the monitoring period, mainly due to market conditions, this monitoring period has seen a considerable fall in the number of houses being delivered and, for the first time since monitoring started, the annual requirement of 105 dwellings has not been achieved. Overall, however, sufficient dwellings have been completed to meet requirements. The Strategic Housing Land Availability Assessment for the District, completed in March 2009, identifies a number of sites that are likely to come forward for development over the plan period. It is predicted that the number of completions will increase in the next monitoring period as SHLAA sites come forward and together with sites that have recently been granted planning permission, and the higher densities encouraged by PPS3, the South East Plan target is expected to be met until around 2018.

Housing Completions 2006-2010

Relevant Plan	Year	Dwelling Completions		
		Gross	Net	Lost
Structure Plan	2005/2006	218	200	18
South East Plan	2006/2007	230	216	14
	2007/2008	159	146	13
	2008/2009	134	123	11
	2009/2010	92	61	31
Total for South East Plan		615	546	69

Note: Data relating to the West Sussex Structure Plan period is included to provide information for the last five years and is for information only.

Indicator H2(b) Net additional dwellings – for the reporting year

In this monitoring year from 1st April 2009 to 31st March 2010, a total of 61 new dwellings (92 gross) were completed. This is below the annual net requirement of 105 dwellings.

Indicator H2(c) – Net additional dwellings – in future years

The housing trajectory for the District indicates the actual and projected level of completions against the South East Plan requirement for the period 2006 to 2026. This is based on sites with planning permission but which have not commenced and sites which are under construction.

A Strategic Housing Land Availability Assessment (SHLAA) was completed in 2009 which identifies sites with potential for residential development and determines when they are likely to be developed. The housing trajectory also includes these sites. A total of 354 dwellings are considered to be available and deliverable in the period up to 2026, all within the built up area. To avoid future double counting, those sites identified in the SHLAA but which fall within the indicative joint Area Action Plan boundary for Shoreham Harbour are excluded from the trajectory.

The trajectory indicates that the total house building in the District over the early years of the South East Plan is above the annual average. The supply of sites coming forward within the built up area is expected to be sufficient to meet the requirement until approximately 2018. Windfall allowances are no longer included in the housing trajectory but will continue to come forward as unidentified sites. The SHLAA only includes sites of 6 or more units. The total number of dwellings completed is therefore expected to be higher than that shown in the trajectory.

Net additional dwellings in future years

Year	Gross dwellings	Net dwellings
2010/2011	160	138
2011/2012	94	90
2012/2013	201	182
2013/2014	147	147
2014/2015	151	151
2015/2016	130	130
2016/2017	58	55
2017/2018	0	0
2018/2019	12	12
2019/2020	0	0
2020/2026	0	0
Total	**953**	**905**

The SHLAA has identified a number of greenfield sites on the urban fringes of the District which could potentially deliver an additional 1100 dwellings (approximately). A further two greenfield sites could deliver around 450 dwellings. All of these sites have constraints, including highway and flood risk issues and the local development framework process will determine the most suitable sites to allocate in the Core Strategy and Site Allocations SPD, both to meet the housing requirement in the South East Plan and as contingencies should identified sites not come forward at the predicted rate.

Indicator H2(d) – Managed delivery target

National Indicator 159 – five year supply of ready to develop housing sites

The "manage" line of the housing trajectory indicates the housing requirement re-calculated each year to indicate any surplus or deficit in provision since the start of the monitoring period over the remaining years of the trajectory.

Planning Policy Statement 3 requires Local Planning authorities to maintain a five year supply of deliverable sites for housing. For this Annual Monitoring Report this will cover the five year period April 2010 to March 2015. A Strategic Housing Land Availability Assessment (March 2009), together with existing planning consents, has been used to assess how much land currently in the housing pipeline is available to be delivered.

In accordance with the Department of Communities and Local Government guidance, the five year housing supply percentage has been calculated against the requirement for the period 1st April 2011 to 31st March 2016. The following table, extracted from the housing trajectory, indicates that 700 completions are projected compared with the requirement of 437 completions over this period. This gives a NI 159 percentage of 160.2%.

Year	2010/11	2011/12	2012 /13	2013 /14	2014 /15	2015 /16	5 year supply 2011/16 excluding current year	6 year supply 2010/16 including current year
	Current year	1	2	3	4	5		
Projected completions	138	90	182	147	151	130	700	838
Target completions	97	94	95	88	83	77	437	534

NI 159 =700 /437 x 100% = 160.2%

The NI 159 percentage shows that the District is performing well against the South East Plan target. Since the adoption of the Adur Local Plan in 1996, a number of large unidentified sites have come forward which have been developed at reasonably high densities in line with PPS3.

Indicator H3 - **New and converted dwellings on previously developed land**

There were 92 dwellings (61 net) dwellings (including conversions) completed during the monitoring period all of which were on previously developed land. This is well above the South East Plan target of 60% of all new development on previously developed land (Policy SP3).

Percentage of new development on brownfield / greenfield sites

	Brownfield Units (gross)	% of total	Greenfield Units (gross)	% of total	Total Units
2006/07	228	99.1	2	0.9	230
2007/08	158	99.4	1	0.6	159
2008/09	134	100	0	0.0	134
2009/10	92	100	0	0.0	92
Total	612		3		615

Indicator H4 - **Net additional pitches (Gypsy and Traveller)**

There were no additional Gypsy and Traveller pitches delivered within the District during the monitoring year. The Gypsy and Traveller Accommodation Assessment undertaken on behalf of the West Sussex Districts and Boroughs (excluding Chichester District Council) indicated that there was a need to provide an additional 6 pitches within the Adur District up to 2011. The partial review of the South East Plan is proposing an additional 15 pitches to be provided in the District up to 2016. An Examination in Public took place in February 2010. However, as the new Coalition Government signalled its intentions to revoke the South East Plan and the

Inspectors report was never formally published. Given the current status of the South East Plan, it is not yet known whether the Inspectors report will now be published. Once the district requirement is known, the Local Development Framework will allocate/identify sites to meet the need.

Indicator H5 – Gross affordable housing completions

A total of 66 (gross) affordable homes have been completed in this monitoring year, which is a considerable increase compared with previous years. For this monitoring period 71.7% of all new homes built in the district were affordable homes, helping to meet the need in the District. There are a number of affordable housing schemes currently under construction or having recently been granted planning consent, but the current uncertainty around availability of grants for such schemes makes future provision uncertain.

A Strategic Housing Market Assessment has been completed for Coastal West Sussex (May 2009) which provides advice on potential threshold levels to be sought throughout the District. Further work on viability issues will be undertaken in 2011, to inform the affordable housing policy in the forthcoming Adur Core Strategy.

Affordable Housing Completions

	Affordable Housing	Total Dwellings	% Affordable Housing
2006/2007	31	230	13.5
2007/2008	33	159	20.8
2008/2009	14	134	10.4
2009/2010	66	92	71.7
Total	**144**	**615**	**23.4**

Indicator H6 – Housing Quality – Building for Life Assessments

No Building For Life Assessments were undertaken within the district during this monitoring period.

ENVIRONMENTAL QUALITY

Indicator E1- Number of planning permissions granted contrary to Environment Agency advice on flooding and water quality grounds

There were no planning applications granted contrary to Environment Agency advice on flooding and water quality grounds.

Indicator E2 - Change in areas of biodiversity importance

Included in this Annual Monitoring Report is the latest report that the Sussex Biodiversity Records Centre has prepared on behalf of Adur District Council, regarding biodiversity in the District. This information will be reviewed on an annual basis and will identify any changes in priority habitats and species as well as any changes in designated areas.

Just over half of the Adur District consists of the Sussex Downs Area of Outstanding Natural Beauty (AONB) which is in the process of being designated as a National Park. There are eleven SNCIs in the District. There are four LNRs – Lancing Ring, Lancing Widewater, Mill Hill and Shoreham Beach.

The tables included in the report show that there were no developments in the District which infringed on sites of National or Local importance or any habitats during this monitoring period.

Condition of Sites of Special Scientific Interest (SSSIs) in Adur
There are two SSSIs in the District. These are the Adur Estuary and part of Cissbury Ring and, in total they comprise 6 units. 4 of these are favourable condition, 1 unit is unfavourable but recovering, and the other unit is unfavourable with no change. This is exactly the same situation as last year.

Desktop Biodiversity Report

Adur District
Annual Monitoring Report

ESD/10/485

Prepared for Ben Daines (Adur District Council) – 16th December 2010

Sussex Biodiversity Record Centre

Sussex Biodiversity Record Centre

Statistical breakdown of planning applications with code of commencement within designated sites and habitats in Adur District between 1st April 2009 and 31st March 2010

Produced for Ben Daines, Adur District Council on 16/12/2010
ESD/10/485

Adur District area (ha)	4355.05
West Sussex area (ha)	203023.85
Area of planning applications with code of commencement 2009/2010 (ha)	1.92 (31 sites)
% of Adur infringed by planning applications	0.04

	Designated sites and reserves	Area of designation / reserve in West Sussex (ha)	% of West Sussex	Area of designation / reserve in Adur (ha)	% of Adur	Area of designation / reserve in Adur infringed by planning applications (ha)	% of designation / reserve in Adur infinged by planning applications	Number of planning applications within designation /
International	Ramsar	3747.61	1.84	0.00	0.00	0.00	0.00	0
	Special Area of Conservation (SAC)	3210.48	1.58	0.00	0.00	0.00	0.00	0
	Special Protection Area (SPA)	3789.21	1.87	0.00	0.00	0.00	0.00	0
National	Area of Outstanding Natural Beauty (AONB)	25985.06	12.80	0.00	0.00	0.00	0.00	0
	Chichester Harbour AONB	5986.69	2.95	0.00	0.00	0.00	0.00	0
	High Weald AONB	19998.36	9.85	0.00	0.00	0.00	0.00	0
	National Nature Reserve (NNR)	221.75	0.11	0.00	0.00	0.00	0.00	0
	National Park	81247.93	40.02	2324.98	53.39	0.00	0.00	0
	Site of Special Scientific Interest (SSSI)	8451.91	4.16	86.05	1.98	0.00	0.00	0
Local	Country Park	320.51	0.16	0.00	0.00	0.00	0.00	0
	Local Nature Reserve (LNR)	2028.47	1.00	77.73	1.78	0.00	0.00	0
	Regionally Important Geological Site (RIGS)	1635.36	0.81	2.28	0.05	0.00	0.00	0
	Site of Nature Conservation Importance (SNCI)	9942.76	4.90	214.64	4.93	0.00	0.00	0
Reserve / Property	Environmental Stewardship Agreements *	56756.77	27.96	562.57	12.92	0.00	0.00	0
	National Trust	5054.39	2.49	81.62	1.87	0.00	0.00	0
	RSPB Reserve	559.84	0.28	10.24	0.24	0.00	0.00	0
	Sussex Wildlife Trust Reserve	748.57	0.37	0.00	0.00	0.00	0.00	0
	Woodland Trust	67.93	0.03	0.00	0.00	0.00	0.00	0

* This only applies to 'live' Environmental Stewardship Agreements. Environmental Stewardship Agreements include: Entry Level Stewardship, Entry Level plus Higher Level Stewardship, Higher Level Stewardship, Organic Entry Level plus Higher Level Stewardship and Organic Entry Level Stewardship.

All statistics are based on information held at the Sussex Biodiversity Record Centre as at 30/09/10. Note that designated sites may overlap therefore the totals shown in the designated site table do not necessarily reflect the total percentage of the district covered by designated sites. Please inform us if you believe the data shown to be inaccurate. For explanations of the different wildlife site designations please email: sxbrc@sussexwt.org.uk

Adur District area (ha)	4355.05
West Sussex area (ha)	203023.85
Area of planning applications with code of commencement 2009/2010 (ha)	1.92 (31 sites)
% of Adur infringed by planning applications	0.04

Habitat *	Area of habitat in West Sussex (ha)	% of West Sussex	Area of habitat in Adur (ha)	% of Adur	Area of habitat in Adur infringed by planning applications (ha)	% of habitat in Adur infinged by planning applications	Number of planning applications within habitat
Ancient woodland **	21391.25	10.54	5.24	0.12	0.00	0.00	0
Chalk grassland	3160.21	1.56	215.56	4.95	0.00	0.00	0
Coastal & floodplain grazing marsh	4388.76	2.16	244.09	5.60	0.00	0.00	0
Deciduous woodland	21692.13	10.68	69.90	1.61	0.00	0.00	0
Ghyll woodland	1992.83	0.98	0.00	0.00	0.00	0.00	0
Lowland dry acid grassland	13.94	0.01	0.00	0.00	0.00	0.00	0
Lowland heathland	1569.84	0.77	0.00	0.00	0.00	0.00	0
Lowland meadow	34.18	0.02	0.00	0.00	0.00	0.00	0
Notable road verge	135.71	0.07	28.55	0.66	0.00	0.00	0
Reedbed/fen	89.19	0.04	5.18	0.12	0.00	0.00	0
Traditional orchard	182.27	0.09	0.59	0.01	0.00	0.00	0
Vegetated shingle	76.86	0.04	12.05	0.28	0.00	0.00	0

Other	Number of records in West Sussex	Number of records in Adur	Number of records within a 500m buffer of planning applications
Protected species #	6581	187	106
Rare species #	22165	514	180
Biodiversity Action Plan species #	27131	579	374
Bats #	7928	37	22
Invasive alien species #	4519	79	40
Black poplar	12	0	0
Ancient/veteran trees	1047	23	4
Saline lagoon	10	1	0
Marine SNCI	13	0	0

* Changes in habitat extent year on year may well be a reflection of improved data sets and should not be assumed to be habitat expansion or contraction.
Many habitat data sets overlap with one another, e.g. lowland meadow may be classed as grazing marsh and recorded in both inventories.

** Includes data from Revised Ancient Woodland Inventory (RAWI) for West Sussex, Lewes District and Brighton & Hove. RAW data for rest of East Sussex so tyet available.

Protected species does not include bat, bird, badger or otter records. Rare and BAP species does not include bat, bird or otter records.
Species records are labelled so that only one record per species per grid reference gets flagged up. This will usually be the most up to date record.

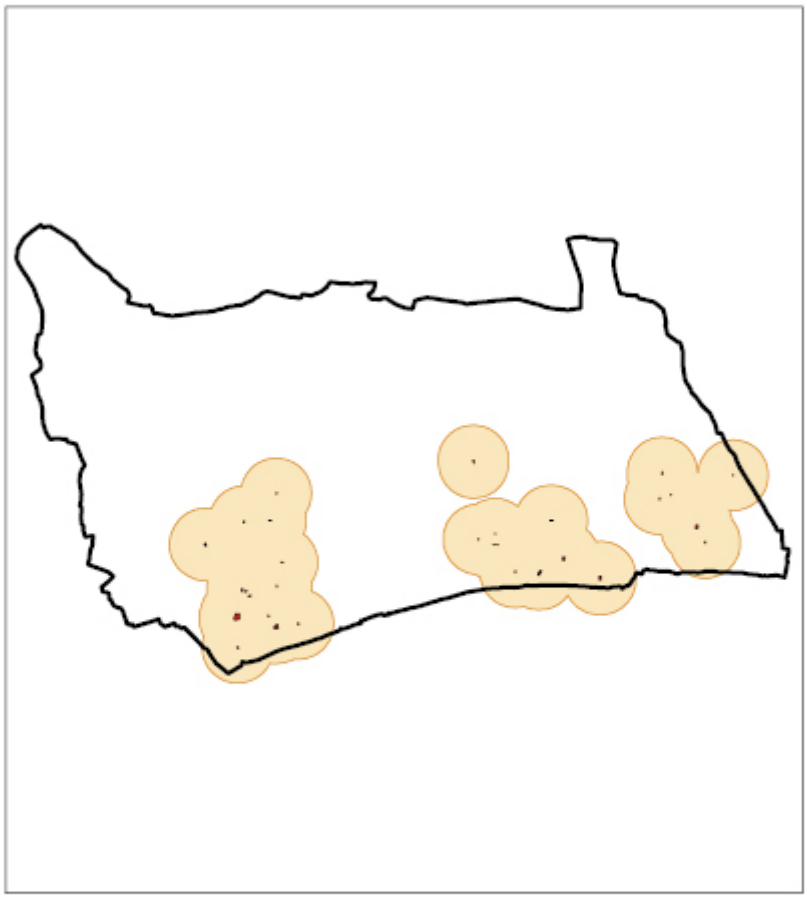
Adur District

Planning applications with code of commencement
1st April 2009 to 31st March 2010

Prepared for Ben Daines, Adur District Council - 16/12/2010

Sussex Biodiversity Record Centre

Email: sxbrc@sussex.ac.uk
Website: www.sxbrc.org.uk
Woods Hill, Henfield
West Sussex BN5 9SD
Tel: 01273 497 534/537
Fax: 0303 0100 109



Key to Map:

- Adur District
- Commenced planning applications
- 500m buffer zone

N

0 2.5 Km

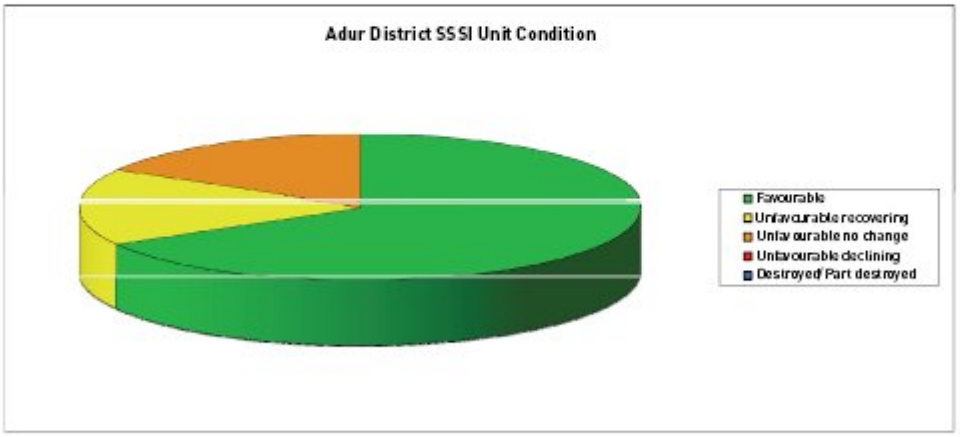
Adur District SSSI Unit Condition

SSSI Units in Adur District = 6

Condition	No of Units	% of Units
Favourable	4	66.67
Unfavourable recovering	1	16.67
Unfavourable no change	1	16.67
Unfavourable declining	0	0.00
Destroyed/Part destroyed	0	0.00

Sussex Biodiversity Record Centre

*Based on information derived from the Natural England SSSI GIS dataset
Prepared on 01/10/2010



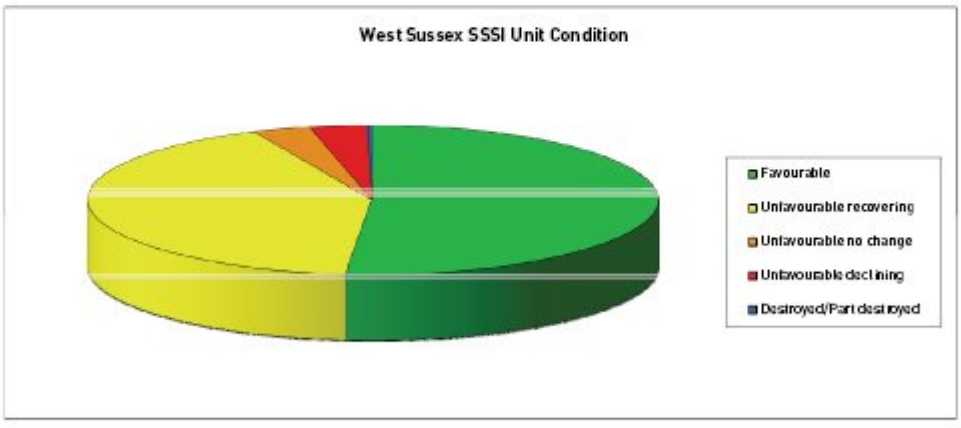
West Sussex SSSI Unit Condition

SSSI Units in West Sussex = 367

Condition	No of Units	% of Units
Favourable	189	51.50
Unfavourable recovering	153	41.69
Unfavourable no change	12	3.27
Unfavourable declining	12	3.27
Destroyed/Part destroyed	1	0.27

Sussex Biodiversity Record Centre

*Based on information derived from the Natural England SSSI GIS dataset
Prepared on 01/10/2010



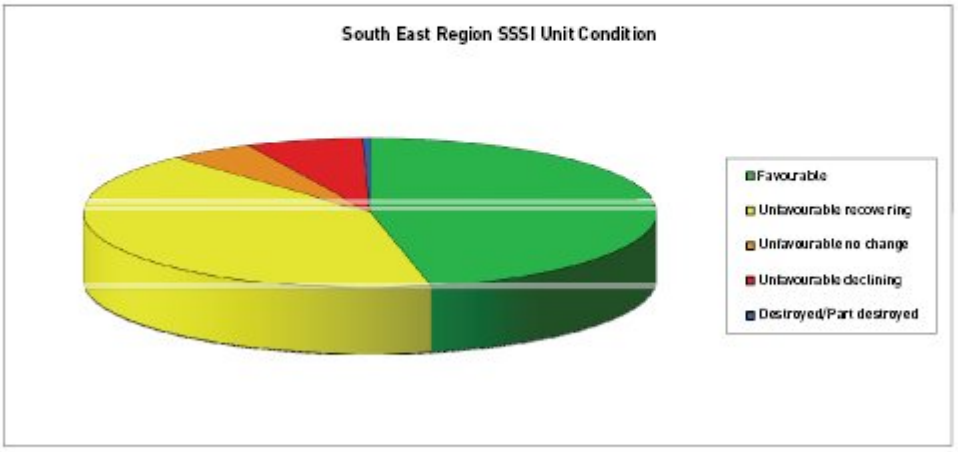
South East Region SSSI Unit Condition

SSSI Units in South East = 4699

Condition	No of Units	% of Units
Favourable	2188	46.56
Unfavourable recovering	1954	41.58
Unfavourable no change	227	4.83
Unfavourable declining	310	6.60
Destroyed/Part destroyed	20	0.43

Sussex Biodiversity Record Centre

*Based on information derived from the Natural England SSSI GIS dataset
Prepared on 01/10/2010



GIS DATASETS

The GIS datasets used to produce the statistics in the biodiversity annual monitoring reports are derived from a number of sources, which are detailed below.

Designated sites

Area of Outstanding Natural Beauty (AONB)	Dataset downloaded from MAGIC website. Owned by NE.
Country Park	Dataset downloaded from NE website.
Local Nature Reserve (LNR)	Dataset downloaded from NE website.
Marine Site of Nature Conservation Importance (MSNCI)	Supplied by ESCC in 2005.
National Nature Reserve (NNR)	Dataset downloaded from NE website.
National Park	Dataset downloaded from NE website.
Ramsar	Dataset downloaded from NE website.
Regionally Important Geological/Geomorphological Site (RIGS)	Data supplied by the Booth Museum, Brighton and digitised by SxBRC in April 2009.
Site of Nature Conservation Importance (SNCI)	Data supplied by WSCC, ESCC & BHCC.
Site of Special Scientific Interest (SSSI)	Dataset downloaded from NE website.
Special Area of Conservation (SAC)	Dataset downloaded from NE website.
Special Protection Area (SPA)	Dataset downloaded from NE website.

Ownership and management

National Trust property	Owned and provided by National Trust.
RSPB reserve	Owned and provided by RSPB.
Sussex Wildlife Trust reserve	Created and maintained by SxBRC on behalf of SWT.
Woodland Trust site	Owned and provided by the Woodland Trust.
Environmental Stewardship Agreement	Dataset downloaded from NE website.

Habitats and natural features

Ancient/Veteran tree	Merged dataset created in July 2009. Data from Ancient Tree Hunt (national survey carried out in 2007/2008) and Tree Register of the British Isles (a charity which collates and updates data on notable trees).
Ancient woodland	**West Sussex, Lewes District and Brighton & Hove** – data is from the Revised Ancient Woodland Inventory carried out between 2007 and 2010 (not yet publicly available). **East Sussex (excluding Lewes District)** – data is from the current Ancient Woodland Inventory and only includes sites larger than 2ha (dataset downloaded from NE website). N.B. Ancient Woodland data has limitations and should be treated as provisional. It is under constant review by NE. The full Revised Ancient Woodland Inventory for the whole of Sussex should be available in late 2010.
Black poplar	Dataset created by SxBRC based upon species records arising from Sussex Otters and Rivers Partnership.
Chalk grassland	Merged dataset from NE and SDJC created in 2005.
Coastal & floodplain grazing marsh	Dataset created by SxBRC using a variety of existing data sources, as well as newly digitised data. Identifies probable habitat. Provided to NE for eventual inclusion in the national inventory.

Ghyll woodland	Boundaries drawn on paper maps by Dr Francis Rose which were then digitised by SxBRC. Not ground-truthed.
Lowland dry acid grassland	Dataset (version 2.01) downloaded from NE website (updated since 2009 AMR).
Lowland heathland	High Weald Heathland data created by the High Weald Unit in 2006. The rest of Sussex Heathland data was created by SxBRC, with funding from WSCC and RSPB in 2007.
Lowland meadow	Dataset (version 2.01) downloaded from NE website (updated since 2009 AMR).
Notable road verge	Owned and provided by ESCC and WSCC.
Reedbed/Fen	Originally created in June 2007 by SxBRC. Ongoing updates provided by RSPB Sussex Reedbed Officer.
Saline lagoon	Dataset downloaded from NE website.
Traditional orchard	Provisional dataset from PTES. Based on existing survey data combined with aerial photography. Ground-truthing being undertaken by volunteers. Project to be completed in March 2011.
Vegetated shingle	Dataset downloaded from NE website.

Abbreviations

BHCC	Brighton and Hove City Council
EA	Environment Agency
ESCC	East Sussex County Council
NE	Natural England
PTES	People's Trust for Endangered Species
RSPB	Royal Society for the Protection of Birds
SDJC	South Downs Joint Committee
SWT	Sussex Wildlife Trust
SxBRC	Sussex Biodiversity Record Centre
WSCC	West Sussex County Council

Indicator E3 - Renewable energy generation

There were no renewable energy developments/installations in the monitoring period. However, a 10kw (0.01mw) wind turbine at Lancing Business Park was granted planning permission within the monitoring year but has not yet been constructed.

It should be noted that Adur District Council are currently relying on an outdated Local Plan which has little emphasis on renewable energy. The emerging Core Strategy will seek to address this issue and promote sustainable design and the use of renewable energy in new development.

LOCAL INDICATORS

Local indicators relate to local circumstances and issues not covered by the core output indicators. The emerging Core Strategy will contain such policies and, once adopted, local indicators to monitor these policies will be incorporated in the Annual Monitoring Report

SIGNIFICANT EFFECTS INDICATORS

Significant effects indicators are used to assess the significant social, economic and environmental effects of policies. They inform monitoring of the impacts of policies on sustainability. The Core Strategy is in the process of being revised so there are no current policies in the LDF for the Significant Effects Indicators to address.

CURRENT POLICY MONITORING

Saved Policies

The majority of the policies in the adopted Local Plan 1996 are considered to be operating successfully. In line with paragraph 5.15 in PPS12, Adur saved a significant number of policies from the Local Plan (see below). The policies that have been saved support, amongst other things, the delivery of housing, economic development and regeneration. Adur's request to the Secretary of State to save policies from the Local Plan beyond 27 September 2007 was made before the 1 April 2007 and was approved by the Government Office of the South East on 25 September 2007. These saved policies will be replaced by emerging DPDs in the Local Development Framework as and when they are adopted.

Policy number	Subject
AG1	Location of Development
AG3	The relationship between development and the provision of Infrastructure
AP4	Development & Land Drainage
AP5	Development & Land Drainage
AP9	Minimising Pollution: Visual
AC1	Development of the Countryside Generally
AC2	The Sussex Downs Area of Outstanding Natural Beauty
AC3	The Sussex Downs Area of Outstanding Natural Beauty
AC4	The Strategic Gaps
AC6	Agriculture, Horticulture and Forestry
AC7	Agriculture, Horticulture and Forestry
AC8	Diversification of the Rural Economy
AC9	Existing Buildings in the Countryside
AC15	Horse Riding Establishments
AB1	Archaeology
AB3	Conservation areas and their enhancement
AB4	Conservation areas and their enhancement
AB5	Conservation areas and their enhancement
AB6	Conservation areas and their enhancement
AB7	Listed buildings
AB8	Listed buildings

AB9	Listed buildings
AB10	Listed buildings
AB11	Listed buildings
AB13	Improving Town Centres
AB14	Improving Town Centres
AB15	Improving Town Centres
AB16	The Riverside setting of Shoreham-By-Sea
AB17	Controlling Advertisements
AB19	Controlling Advertisements
AB20	Shopfronts
AB21	Shopfronts
AB22	Safeguarding Amenity Open Space
AB23	Trees in the Urban Area
AB25	Trees in the Urban Area
AB26	Trees in the Urban Area
AB27	Landscaping
AB28	Satellite Television Dishes
AB29	Other Telecommunications Development
AB30	Crime Prevention
AB32	Per Cent for Art
AT1	The A259 Coast Road
AT2	The A283
AT3	The South Side of the Canal
AT4	The North Side of the Harbour & Shoreham Beach
AT5	Roadside Facilities for Motorists
DPAT1	Development proposal: Land at Pond Road
AT6	Development Proposal: Ropetackle
AT7	Public Lorry Parking
AT9	Shoreham Airport
AT10	Facilities for Pedestrians, Equestrians and Cyclists
AT11	The Coastal Link
AH2	Infill and Development
DPAH3	Part of Southlands Hospital Site, Upper Shoreham Road
AH3	Housing to Meet Local Need
AH5	Dwelling Size
AH6	Loss of Dwellings
AH7	Householder Proposals
AH9	Flat Conversions
AH10	Residential Care & Nursing Homes
AH11	Residential Mobile Homes
AE2	Redevelopment Opportunities
DPAE2	Land at Dolphin Road, Shoreham
AE4	Mixed Development
AE5	Office Development
DPAE4	Land at Ropetackle, Shoreham
AE6	Town centres
AE7	Shoreham Harbour
AE8	Shoreham Harbour
AE9	Shoreham Harbour
DPAE6	Land on the South Side of Canal
DPAE7	Land on the North Side of the Canal
DPAE8	Land on the North Side of the Canal

AE10 to AE14	Shoreham Airport
DPAE9	Land at Shoreham Airport
DPAE11	Heritage Aviation Museum
AE15	New Development Outside Established Business/Industrial Areas
AE16	Existing Businesses in Residential Areas
AE17	Existing businesses in Residential Areas
AE18	Business and Industry Outside the Built up area
AS1	Protection of the District's Shopping Centres
DPAS1	Land at Ropetackle, Shoreham-By-Sea
AS2,AS3, AS4,AS5	Retail development outside town centres
ACS1	Education
ACS2 to3	Lancing College
ACS4	Health Services
ACS5	Community Centres, Worship, Police, Fire Service
DPAN1	Land to South of Sompting Village
AR1, AR2, AR3, AR4, AR5 & AR6	Public Open Space, Recreation areas not owned by ADC, Allotments, New areas of public open space & Children's play areas
DPAR1	Land adjacent to Sompting Cemetery
AR7	Development of Leisure & Sporting Facilities
AR8	Recreation in the Countryside
AR9	Recreation in the Countryside
DPAR4	Shoreham Cement Works
DPAR5	Land east of Lancing bounded by A27 Trunk Road and Shoreham Airport
AR11	Coastal Recreation
AR12	Coastal Recreation
AR13, AR14, AR15, AR16, AR17,	Shoreham Harbour
AR20	Tourism

Planning Appeal Decisions

During the monitoring period 18 appeals were submitted to the Secretary of State and during the same monitoring period, 20 appeals were determined.

Allowed	3
Withdrawn	0
Dismissed	11
Enforcement notice quashed	1
Enforcement notice dismissed	5

CONCLUSION

This is the fifth Annual Monitoring Report submitted to the Government Office for the South East and covers the period 1 April 2009 – 31 March 2010.

As has been explained, for a variety of reasons the Council does not have an adopted Local Development Scheme against which to monitor progress of the Local Development Framework. However, work has continued in terms of the range of technical and background studies to support both the Core Strategy and the Joint Area Action Plan. The subsequent awarding of both Growth Point and Eco Town funding will help the delivery of these two documents and progress in their preparation is expected during the next monitoring period (this is dependent on any changes to the planning system resulting from the Decentralisation and Localism Bill when introduced)

Interim planning guidance for Shoreham Harbour has been approved and is being used by the three local authorities of Adur, Brighton & Hove and West Sussex County Council to ensure that any development proposal coming forward in the Harbour area does not prejudice the long term regeneration aims for the area.

In terms of housing delivery, as predicted in the trajectory included in the previous monitoring period, fewer homes have been completed this year. This is mainly due to continued uncertainties in the housing market. One significant achievement has been the delivery of much higher numbers of affordable housing this year, which will help meet the identified need in the District.

With regard to delivery of employment floorspace, there has been no net increase in the provision of employment floorspace in the district although a gross amount of 6700sqm of floorspace was provided. However, this low provision reflects national trends caused predominantly by the economic downturn.

No new developments have commenced near or within any sites in the district designated for their biodiversity/landscape value but this is partly due to the general lack of development in the district for reasons stated above.

Aberdeen City - Scheme of Delegation

Aberdeen City

Scheme of Delegation

Planning etc (Scotland) Act 2006

The Town and Country Planning (Scotland) Act 1997

Aug 09

ABERDEEN
CITY COUNCIL

www.aberdeencity.gov.uk/planning

INTRODUCTION

In keeping with the aims of the Scottish Ministers that the planning system should respond in a more proportionate and efficient way to proposals that come before it and to ensure that applications for planning permission are dealt with in a way that is appropriate to their scale and complexity, Aberdeen City Council (ACC) as planning authority for the city have adopted this Scheme of Delegation.

This Scheme of Delegation has been prepared in pursuance of the provisions of Section 43A of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act), as introduced by Section 17 of the Planning etc. (Scotland) Act 2006, and in accordance with the requirements set down within The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

The meaning of all words and phrases used within this Scheme, where not otherwise given, will be as provided for under the various Acts and Regulations referred to.

For the avoidance of doubt attention is drawn to the fact that, in accordance with the Planning etc. (Scotland) Act 2006, the Scottish Ministers will determine what applications fall into the category of "major development" or the category of "local development". There is no scope for local interpretation either by planning authorities, applicants or by other stakeholders.

"Local development" for the purposes of this Scheme of Delegation will include all development other than national development, as designated in a National Planning Framework document prepared and published by the Scottish Ministers under Part 1A of the 1997 Act; and major development, as identified in terms of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

SCHEME OF DELEGATION

1 Appointed Officer

ACC as planning authority shall for the purposes of this Scheme of Delegation, appoint a member of its professional planning staff to act as the "appointed officer", whose duties, subject to the terms of paragraphs 2 and 3 hereof, shall be to determine:

(a) all applications for planning permission in respect of development within the category of local development; and

(b) all applications for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within the category of local development.

2 Prohibition

The appointed officer under this Scheme of Delegation is prohibited however from determining an application for planning permission for development within the category of local development, where:

(a) that application has been made by or on behalf of ACC (the planning authority) or a member of that authority; or

(b) that application has been made by or on behalf of a member of staff directly involved with the Planning Service provided by the planning authority, by or on behalf of the Chief Executive or by or on behalf of any other member of the Senior Management Team, of the planning authority; or

(c) that application relates to land in the ownership of the planning authority or in respect of which the planning authority have a financial interest; or

(d) that application relates to development (one) which will for whatever reason, if supported by the planning authority, require to be the subject of formal notification to the Scottish Ministers, or (two) in respect of which it has been decided, an Environmental Impact Assessment should be undertaken; or

(e) that application relates to proposed development which would require to be the subject of a notice in a newspaper circulating in the locality in which the neighbouring land is situated, in accordance with regulation 20(1)(c) and Schedule 3 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008; or

(f) that application has been the subject of formal objection by the local Community Council, by local roads officers or by local environmental health officials; or

(g) that application following advertisement and/or notification has been the subject of a level of timeous objection which the planning authority have pre-determined as significant and to warrant consideration of the proposal by the Planning Committee. [For the purposes of this Scheme of Delegation the Planning Committee have indicated that six (6) or more letters of objection would represent a significant level of opposition to any local development proposal.]

3 Particular Circumstances

The powers delegated to the appointed officer under paragraph 1 hereof are further qualified to the extent outlined in the provisions of Section 43 A (6) of the 1997 Act. Accordingly the planning authority may decide, for whatever reason, that the particular circumstances of an application which would in terms of this Scheme fall to be determined by the Appointed Officer are such that the application should be determined by ACC Planning Committee. Applications shall be identified for potential treatment in accordance with the provisions of Sections 43A(6) and (7) of the Town and Country Planning (Scotland) Act 1997, by the Head of Planning and Infrastructure who, in consultation with the Convener of the Planning Committee, shall bring such cases to the notice of elected members in the form of a report to that Committee.

REVIEW

The Governments proposals for modernising the planning system involve changes to the appeals process. It continues, however, to be an important aspect of the modernised system that applicants who are unhappy with the terms of a planning decision have recourse to a process that enables an effective review of that decision to take place. It is also clear that people should have access to a review process which avoids unnecessary complexity or lengthy procedures that do not add value to the quality of a decision.

Accordingly, applicants for planning permission whose proposals are determined under this Scheme of Delegation will have the right to seek a review of the decision taken, by lodging a Notice of Review to that effect with the local planning authority.

A Notice of Review in accordance with the terms of regulation 9 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, would require to be served on the Local Review Body within a period of three months from the date of the decision notice or (in a deemed refusal situation) from the date of expiry of the period allowed for determining the application.

If you require further information, please contact us:

Planning and Sustainable Development
Enterprise, Planning and Infrastructure
Aberdeen City Council
8th Floor St Nicholas House
Broad Street
Aberdeen
AB10 1GY

Phone: 01224 523470
Fax: 01224 636181
Email: pi@aberdeencity.gov.uk

Departmental reply re Statutory List of Consultees

Department of the Environment
www.doeni.gov.uk

Private Office Assembly Unit
Clarence Court
10-18 Adelaide Street
BELFAST

BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference:
Our reference: CQ/276/11

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont

Belfast
BT4 3XX Date: 2 February 2011

Dear Alex

I refer to the request made by the Environment Committee, on 28 January 2011, requesting a list of the Department's statutory consultees and the timescales for the delivery of sustainability across Departments.

Department's statutory consultees:

Currently Article 20 of the Planning (NI) Order 1991 and the Planning (General Development) Order (Northern Ireland) 1993 (part 15) places a duty on the Department of the Environment's Planning Service to consult District Councils and the Health and Safety Executive in the Department of Economic Development (now the Department of Enterprise Trade and Investment) on planning applications. In addition, the Fire Authority of Northern Ireland is also a statutory consultee for applications for hazardous substances consent by virtue of regulation 10 of The Planning (Hazardous Substances) Regulations.

Article 224 of the new Planning Bill places a duty on those prescribed as statutory consultees to respond to consultation within a given timeframe. The list of statutory consultees to be consulted on certain types of planning applications will be consulted upon and extended through the subordinate legislation.

Guidance will set out how statutory consultees, should respond to consultation in line with key development management principles.

Timescales for the delivery of sustainability across Departments:

The sustainable development duty on both the Department and Councils (see clause 1 and 5) is an ongoing duty relating to certain planning functions for which they must have regard to the prevailing policies and guidance of other Departments including the Department for Regional Development (DRD) and Office of the First Minister and deputy First Minister (OFMDFM). This will mean having regard to, for example, the Sustainable Development Strategy prepared by OFMDFM and the Regional Development Strategy prepared by DRD. The timescales for the delivery of such documents is matter for the Departments concerned.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO
[by email]

Departmental reply re Planning Bill Stakeholder Event

Department of the Environment
www.doeni.gov.uk

Private Office Assembly Unit
Clarence Court
10-18 Adelaide Street
BELFAST

BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference:
Our reference: CQ/277/11

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX Date: 3 February 2011

Dear Alex

I refer to the request made by the Environment Committee for a written response to the points raised by stakeholders on the issues of

- Community Infrastructure Fund / Developer Contributions,
- Pre-application community consultation
- Third party appeals

I will address the issues in the order given.

Community Infrastructure Fund / Developer Contributions

PPS1 (General Principles) 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 which is also binding on future owners or occupiers of the land. Conditions and agreements must relate to the development to which the application for planning permission relates.

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 for payment to DOE. This

change broadens the potential scope of planning agreements; for example it would facilitate developer contributions be paid to DSD to help fund social housing.

Community Infrastructure Levy is a system of developer contributions introduced for England and Wales through the 2008 Planning Act which empowers local authorities to introduce a statutory planning charge on development and to use the proceeds to fund infrastructure. There is no equivalent in Northern Ireland.

Debate around increasing developer contributions is based on the premise that the granting of planning permission almost always increases the value of the land to which the permission relates. It is argued that, since the public sector grants planning permission, the public should share in the increased value of the land. 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 did not set out any policy proposals in relation to developer contributions but it did ask some general questions about the issue.

The Government Response to the Planning Reform Consultation which was agreed by the Executive Committee and published in July 2010 explained that developer contributions is essentially an issue which centres on the identification, funding and delivery of infrastructure necessary to support economic and social development, rather than a planning reform issue. It concluded that it needed to be considered at Executive level in relation to funding and infrastructure responsibilities.

Pre-Application Community Consultation

Pre-application community consultation as set out under clause 27 provides an opportunity for communities to get involved before the application is submitted. Early involvement of communities can bring about significant benefits for applicants, for communities and for planning authorities. It allows developers to resolve issues raised by the community and to include mitigating measures as necessary. This will improve the quality of the application and ultimately the development.

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 to be contained in the proposal of application notice. In addition, to ensure consistency of approach across all council areas, subordinate legislation will contain minimum requirements such as the holding of at least one public event, and advertising arrangements.

Clause 28 of the Bill introduces a requirement on applicants to prepare a pre-application consultation report. 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. If the district council or Department does not feel the applicant has carried out adequate consultation, it can request additional information.

In addition, a new power is being introduced under 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. This is to ensure that the community has been consulted in a meaningful way, and that their views are properly taken into account regarding what the developer is proposing, and is not just a case of following a set of procedures.

Clause 30 gives councils the power to hold pre-determination hearings. These 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 taken.

Subordinate legislation will set out the instances where a pre-determination hearing will be mandatory. This is likely to include applications for major developments which 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 these hearings will operate in their area. District councils may of course wish to consider other types of development application for which they could hold pre-determination hearings.

Third Party Appeals

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.

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.

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.

It concluded that

“in view of the likely impacts of the introduction of third party appeals upon the planning system and its objectives for planning reform, which include more proportionate processes, a “front loaded" planning system and greater speed and efficiency and decision-making, the Department at this stage is not proposing to make provision for third party appeals in the current package of reforms to be brought forward by 2011"

Having seen the outcome of the consultation, the Executive Committee agreed the following wording in the Government Response to the Planning Reform Consultation which was published in July 2010:

“further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and implementation of RPA 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 of appeal at this stage could well be a competitive economic disadvantage for 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."

The Executive Committee agreed the Planning Bill policy memorandum on 25th February 2010 and on 18th November it agreed the text of the Bill for introduction.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO
[by email]

Departmental Letter re Review of Statutory Advisory Councils (SACs)

Department of the Environment
www.doeni.gov.uk

DOE Private Office
Clarence Court
10-18 Adelaide Street
BELFAST

BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference:
Our reference:

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX Date: 2 February 2011

Dear Alex

The Department currently has three Statutory Advisory Councils (SACs) which provide independent advice on the natural and historic environment. They are the Historic Buildings Council, established in 1972, the Historic Monuments Council, set up in 1971, and the Council for Nature Conservation in the Countryside, set up in 1989.

Given the length of time these bodies have been in existence and significant changes in how the Department conducts its business, the Minister has decided to examine the role of each council in terms of the Department's external advice needs. The overall aim is to put in place mechanisms which are much more strategic, concise and focused on specific need. It is also intended that the review will reduce the overall costs and bureaucracy associated with the present regime.

The Department is currently preparing a consultation paper outlining proposals for the review of the three councils and a copy will be sent to the Environment Committee as soon as the detail is finalised.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO
[by email]

Departmental Letter on Clause 221

Private Office
Clarence Court
10-18 Adelaide Street
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BT2 8GB

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Your reference:
Our reference: CQ/282/11

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX Date: 8 February 2011

Dear Alex

Amendments to Planning Bill Clause 221

At the informal clause by clause consideration of the Planning Bill on 3 February 2011 Departmental Officials agreed to amendments to the Bill.

Clause 221 allows the Department to award a grant to any organisation which is assisting the community with particular applications for development, or which is providing technical expertise to allow an application to be easily understood. Grants may also be made to organisations which aim to further the preservation, conservation and regeneration of historic buildings. The organisations being funded must not be profit making bodies.

The Committee requested an amendment to this clause to include specific 'planning policy proposals' in addition to 'planning and other technical aspects of other proposals'. In considering this, the Department is of the view the proposed amendment would expand the basis by which grants to bodies providing assistance in relation to certain development proposals are made by the Department.

Appropriate amendments to clause 221 are set out below. It is proposed that the amendments will be tabled at Consideration Stage.

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'

I trust this information is of assistance, should you require anything further please contact me directly

Yours sincerely,

Úna Downey

DALO
[by email]

Annex to Departmental Letter

Annex to DALO Letter

Clause 1 - The Committee asked for an amendment to 1(2)b on contributing to sustainable development

The Minister will bring forward an amendment to amend 1(2)b to read "exercise its functions under subsection (1) with the objective of contributing to sustainable development"

Clause 1 - The Committee's requested that "wellbeing" be added at 1 (2) b, as one of the issues the Department should keep under review.

“Wellbeing" does not yet exist in legislation and so it is not possible to refer to it in the Bill.

Clause 10 – The Committee asked who would pay for independent examinations which are conducted by an independent person appointed by DOE.

DOE will pay the costs of these examinations

Clause 33 - the Committee asked that simplified planning zones be removed from the Bill

The Minister has decided not to bring forward such an amendment.

Clause 133 – The Committee asked for consideration of an amendment raising the level of fine in clause 133 (4) from level 3 to level 5

The Minister will bring forward the following amendment:

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

Clause 148 - The Committee asked for consideration of an amendment raising the level of fine in clause 148(5)

The fine at Clause 148(5) is at level 5. The Minister takes the view that it would be proportionate to raise the fine to £7,500 and will bring forward the following amendment to that effect:

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

Clause 178 – The Committee asked for consideration of a possible amendment to require the Department to pay any compensation due when a council is not fulfilling its responsibilities under the legislation and the Department exercises its intervention powers to revoke a planning permission.

Clause 71 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 clause 178. The Minister will not bring forward this amendment.

Clause 202 – The Committee asked for consideration of an amendment to stop the practice of new information being presented at appeals

The Minister will bring forward such an amendment.

Clause 221 – The Committee asked about the possibility of removing DFP’s oversight role in relation to this clause

The Minister will bring forward the following amendment.

Clause 221, Page 143, Line 8
Leave out from ‘, with’ to ‘Personnel,’ in line 9

Clause 221 – The Committee asked that the words “of planning policy proposals and" be inserted after “understanding"

The Minister has agreed the following amendment:

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’

New clauses – The Minister will bring forward an amendment allowing costs to be awarded where a party has been put to unnecessary expense and where the PAC has established that the other party has acted unreasonably.

Subordinate legislation – The Minister has agreed to bring forward subordinate legislation in relation to site notices and neighbour notification.

Draft Committee amendments to Planning Bill

Planning Reform Bill
Draft Committee Amendments

1. Amendment re: commencement of key provisions of bill

- making the commencement of Part 3 (Planning Control) subject to the draft affirmative procedure:

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.

2. Clause 1 amendment to include reference to “social well-being" and strengthening the Department’s obligation in relation sustainable development

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

3. Clause 3 amendment to make reference to climate change

Clause 3, page 2, line 27
At end insert-
‘( ) the potential impact of climate change;

4. Clause 5 - to strengthen obligation regarding sustainable development as per clause 1.

Clause 5, page 3, line 25
Leave out ‘contributing to the achievement of’ and insert ‘furthering’

Departemental response to QUB Research paper

Responses to Questions Raised in QUB Research Paper 1 on “Development Functions and Development Plans"

Question 1

If the new legislation is the beginning of a process of introducing spatial planning into Northern Ireland, then this represents a radical change to the planning system. Does the Assembly accept the need for such radical changes?

Answer

The Planning Bill was introduced into the Assembly on the 6th December 2010. It is for the Assembly to scrutinize the Bill and to decide whether to accept it as introduced, to amend it or to reject it.

Question 2

The legislation will require supportive policy and guidance. What is the timetable for this development and publication?

Answer

The Delegated Powers Memorandum lists the subordinate legislation expected to flow from the Bill, a time table for this legislation was provided to the Committee on January 10. PPS 1 (General Principles) will be reviewed in the light of the legislation. A substantial raft of Guidance will also produced. All of this work will be completed well in advance of the transfer of powers to councils.

Question 3

The new legislation and overall approach to spatial planning will require substantial training for all stakeholders. What preparations are being made for this?

Answer

The Minister announced on November 30 a pilot programme to test the proposed consultative and practical working arrangements between DOE staff and the councillors and staff in the 11 council groups, and to build capacity. Focused training is also planned, and organisations such as the Royal Town Planning Institute are already considering their role in this respect.

Question 4

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 relationship of the Local Development Plan (LDP) to the Regional Development Strategy (RDS) needs to be carefully considered. Area action planning has not been included in the proposed legislation, unlike the case in England. How can the legislation be employed to help facilitate the implementation of local spatial planning through regeneration?

Answer

Clause 8 (5) (a) requires councils to take account of the Regional Development Strategy in preparing their development plans. The councils will use their plan strategy to provide a clear and realistic vision of the future of their districts. The local policies plan will support that vision by clearly indicating where development, including regeneration, should take place, and what form it should take.

Question 5

The Department is not bound by the recommendations of the independent examination. Does the independent examination not bring some apolitical and objective assessment of policy, procedure and content?

Answer

The independent examination is designed be apolitical and objective, its purpose (set out at Clause 10 (5) is to determine whether the plan document is sound and whether it satisfies the requirements relating to its preparation. The person who conducted the examination must make recommendations and give reasons for them (Clause 10 (7)).

The Department must consider the recommendations and direct the council to adopt, modify or withdraw the development plan document (Clause 12). In the interests of democracy and public accountability, it is right that this decision is made by the Minister who democratically elected and accountable to the Assembly and not by the independent examiner who is neither elected nor unaccountable.

Question 6

The Department seeks the power to direct councils to produce joint development plans. Why does the Department need the power to direct councils to produce joint development plans? On what basis might it decide use that power?

Answer

The Department needs this power so that, where council districts are closely linked functionally and spatially, it can ensure that key strategic planning issues such as economic development, retailing, infrastructure, transportation and housing growth can be dealt with in a way which transcends council boundaries. Clause 18 therefore provides the Department with the power to require district councils to work together.

Where the Department directs two or more councils to work jointly, it will consult the relevant district councils. The direction will set out if it is a plan strategy only or a full local development plan that is to be prepared jointly and it will also specify the area to which the joint arrangements apply. The Department will work closely with councils in reaching a mutually agreed working arrangement and guidance will provide further information on joint working arrangements.

Question 7

Implementation and delivery is at the heart of spatial planning. Does this need to be strengthened in the legislation, for example by including specific mention of the implementation of the local development proposals in the annual monitoring report?

Answer

Councils must make an annual report to the Department. Clause 21(2) requires that the report contains “such information…… as to the extent to which the objectives set out in the local development plan are being achieved." Subordinate legislation will require councils to report on the implementation of the policies contained in the local development plan and the extent to which plan objectives are being achieved.

Question 8

A New Approach to Development Planning – As noted in the introduction, the proposed new legislation will trigger a significantly new approach to development planning in Northern Ireland (NI). Does the Assembly accept the need for such a major change to the Development Plan process, or would it prefer to make adjustments to the existing system?

Answer

The Planning Bill was introduced into the Assembly on the 6th December 2010. It is for the Assembly to scrutinize the Bill and to decide whether to accept it as introduced, to amend it or to reject it.

Question 9

Local Development Plan & the Community Plan - The proposed NI legislation does not include an explicit reference to the very important links between the Local Development Plan (LDP) and the Council’s Community Plan. In England & Wales the 2004 Act states that the local planning authority ‘must have regard to ..... the community strategy prepared by the authority’ [19 (2) (f)]. This explicit link is crucial if the new approach to development planning is to be effective. Indeed it can be argued that the Community Plan should provide the lead for the Local Development Plan so that the LDP becomes the spatial expression of the Community Plan. This then emphasizes the horizontal integration between functions and services and their spatial needs. How does the Department see this relationship and what about the sequencing of the two plans?

Answer

Policy proposals for the introduction of community planning were published for consultation on November 30. A strong link is envisaged between community plans and local development plans. Any statutory link between the two would need to be made through the legislation which introduces community planning.

Question 10

Supportive Policy & Guidance - The proposed new legislation will be supported by new policy and guidance. This may take the form of a new Planning Policy Statement (PPS) although other supportive guidance and manuals may also be forthcoming. It is critically important that these explanatory documents are developed in parallel with the legislation. What form will the policy and guidance take and what is the timetable for their development and publication?

Answer

The Delegated Powers Memorandum lists the subordinate legislation expected to flow from the Bill, a time table for this legislation was provided to the Committee on January 10. PPS 1 (General Principles) will be reviewed in the light of the legislation. A substantial raft of Guidance will also produced. All of this work will be completed well in advance of the transfer of powers to councils.

Question 11

The Local Development Plan & other Government objectives. The model of spatial planning allows for the planning system to coordinate and give spatial expression to a wide range of other government priorities. For example, in England the government has made extensive efforts to use the planning system as a major element in its climate change strategy, while in Wales efforts have been made to ensure that planning and development supports health objectives, such as reducing obesity. Does the Department envisage the Northern Ireland planning system to function in the same way and if so, does this require any changes to legislation?

Answer

The extent to which the planning system in Northern Ireland might be used in future to deliver other Executive objectives will be a matter for the Minister of the Environment and the Executive Committee of the day. Any changes could be brought forward through planning policy and guidance. The Planning Bill sets the overarching framework for the planning system and does not need to change in order to facilitate this.

Question 12

Area Action Plans - In the context of implementing spatial plans at council level in Northern Ireland this might be an important facility, particularly since it has the potential to bring regeneration and spatial planning together to achieve coherent change. Why has this facility not been included in the proposed legislation? How can the legislation be employed to help facilitate the implementation of local spatial planning through regeneration?

Answer

Clause 8 (5) (a) requires councils to take account of the Regional Development Strategy in preparing their development plans. The councils will use their plan strategy to provide a clear and realistic vision of the future of their districts. The local policies plan (Clause 9) will support that vision by clearly indicating where development, including regeneration, should take place, and what form it should take.

Question 13

Adopting the Local Development Plan - The proposed legislation requires councils to submit every development plan to the Department for independent examination. The plan will then be tested for its 'soundness' [10(5)(b)]. Presumably tests of soundness will be specified in follow-up policy and guidance publications. In relation to the adoption process [12], the Department has the power to direct the council to adopt the plan with or without modifications. In other words, it is not bound by the recommendations of the independent examination. There was some concern in the public consultation that this 'goes against the principle of devolved planning' (2.84). All of

this requires further explanation from the Department; does the independent examination not bring some apolitical and objective assessment of policy, procedure and content?

Answer

The independent examination is designed be apolitical and objective, its purpose (set out at Clause 10 (5) is to determine whether the plan document is sound and whether it satisfies the requirements relating to its preparation. The person who conducted the examination must make recommendations and give reasons for them (Clause 10 (7)).

The Department must consider the recommendations and direct the council to adopt, modify or withdraw the development plan document (Clause 12). In the interests of democracy and public accountability, it is right that this decision is made by the Minister who democratically elected and accountable to the Assembly and not by the independent examiner who is neither elected nor unaccountable.

The criteria for the tests of soundness will be set out in guidance, and will relate to:

(1) how the development plan document has been produced,

(2) the alignment of the development plan document with central government plans, policy and guidance, and

(3) the coherence, consistency and effectiveness of the content of the development plan document.

Question 14

Joint Development Plans – Two or more councils may agree to prepare joint development plans, however, the Department also has the power to direct councils to prepare joint development plans [18]. In England and Wales such arrangements are entirely voluntary, although the Secretary of State may constitute a joint committee to be the local planning authority. This raises a number of issues. Why does the Department need the power to direct, and indeed, on what basis might it decide to use that power? Where councils do prepare joint development plans, will they also assume a joint role as the local planning authority (i.e. for development management purposes)? Is it possible that joint Plan Strategies could be prepared that allow individual councils to develop their own Local Policy Plans?

Answer

The Department needs this power so that, where council district are closely linked functionally and spatially, it can ensure that key strategic planning issues such as economic development, retailing, infrastructure, transportation and housing growth can be dealt with in a way which transcends council boundaries. Clause 18 therefore provides the Department with the power to require district councils to work together.

Where the Department directs two or more councils to work jointly, it will consult the relevant district councils. The direction will set out if it is a plan strategy only or a full local development plan that is to be prepared jointly and it will also specify the area to which the joint arrangements apply. The Department will work closely with councils in reaching a mutually agreed working arrangement and guidance will provide further information on joint working arrangements.

Question 15

Training & Re-skilling - Experience from elsewhere suggests that a key to the success of implementing the new legislation and the new system in all its forms is preparatory training and re-skilling for all the key players. For the professional planners, officials and politicians the turn to spatial planning represents a 'substantial shift in thinking and practice requiring what Nadin calls a process of 'learning and unlearning'. This sea change in practice will also impact on all other stakeholders and they too will require an understanding of a new language, a new system and significantly changed practices. In relation to development planning, for example, a spatial approach will require collaborative working across disciplines and across sectors. This is quite different to the technocratic and sometimes narrow approach used in land-use planning.

What preparations are being made for this? (See also Paper 4 forthcoming).

Answer

During 2010 Local Planning Offices and Council Transition Committees engaged in preparatory studies intended to assist Councils progress their new local development plans quickly on the transfer of powers. The Minister announced on November 30 a pilot programme to test the proposed consultative and practical working arrangements between DOE staff and the councillors and staff in the 11 council groups and to build capacity. Focused training is also planned, and organisations such as the Royal Town Planning Institute are already considering their role in this respect.

Question 16

Implementation – A key to the success of a new spatial planning system will be its ability to oversee, direct and often lead the implementation process. Indeed, to some extent this is acknowledged in 8(2)(b):- 'a plan strategy must set out … its strategic policies for the implementation of (its) objectives. However, a spatial planning approach, in contrast to a land-use planning approach, is tasked with the challenge of integrating and coordinating the spatial investments of other public services. Consequently, this needs strong legislative support.

How can the legislation be strengthened in this regard? For example, should there be specific mention of the implementation of the local development proposals in the annual monitoring report?

Answer

Councils must make an annual report to the Department. Clause 21(2) requires that the report contains "such information…… as to the extent to which the objectives set out in the local development plan are being achieved." Subordinate legislation will require councils report on the implementation of the policies contained in the local development plan and the extent to which plan objectives are being achieved.

Departemental reply to QUB Research Paper 4

Responses to Questions Raised in QUB Research Paper 1 on "Implementation, Performance and Decision Making: Issues of Capacity, Delivery and Quality".

Question 1:

Planning within this Bill is not just about land use, but it transcends issues of Housing and development to encompass broader social well-being. How does the Department propose to disseminate sea change/paradigm shift that will be required among the key stakeholders?

The Minister announced on November 30 a pilot programme to test the proposed consultative and practical working arrangements between DOE staff and the councillors and staff in the 11 council groups, and to build capacity. Focused training is also planned, and organisations such as the Royal Town Planning Institute are already considering their role in this respect.

Question 2:

The integration of all components of planning will be central to the Bill's success and this relies on the institutional infrastructure or the governance arrangements. What is the vision for an effective and successful planning system?

Answer:

The vision is of stronger local democracy with planning powers devolved to the 11 new councils and with locally elected politicians at the heart of local decision-making. Councils will be responsible for their own development plans; they will set out a clear vision for the future and show how it will be implemented. Councils will also be responsible for the majority of management development decisions and for enforcement within their areas.

Question 3:

Buy-in from and participation of key stakeholders is crucial to the legislation. What arrangements are in place to ensure sufficient and equal involvement of different interest groups?

Answer:

The provisions in the Bill that facilitate community engagement are set out in the speaking note on Community Involvement dated 18 January 2011.

In particular it is worth noting that the Planning Bill includes requirements on the Department and councils to prepare a statement of community involvement (Clauses 2 and 4) and a requirement on applicants to carry out pre-application community consultation on major or regionally significant applications (Clause 27).

Question 4:

Developing a new strategic vision requires leadership and cultural change. How will the new planning system create space for leadership and nurture cultural transformation?

Answer:

In the new system, the councils will hold the majority of planning powers and they will provide leadership in relation to their respective areas. Through the development plan process councils will set out a vision for their area and how it will change in the future.

Question 5:

Currently, development planning in Northern Ireland is very land use based, overly technocratic, functional, legalistic and market-driven. A new form of planning would attempt to define the existing and potential distinctive quality of 'place'. How will the quality of the built environment become an integral feature of the new planning system?

Answer:

The new local development plan system introduced by the Planning Bill will assist councils to adopt a place shaping approach to planning which transcends the land use approach of the current system. The requirements of the Regional Development Strategy, PPS1 and other Planning Policy Statements already ensure that the quality of the built environment is in integral feature of the planning system. Councils will consider the quality of the built environment as part of the development plans process.

Question 6:

Creating the new structures simply provides circumstances to encourage a new approach. Transformation of the planning system in Northern Ireland will be reliant on consistent and coherent interpretation of this primary legislation and the timing and form of any subordinate legislation and supplementary guidance that will follow (see also Paper 1). How does the Department propose to promote the need for greater transparency and information on this matter?

Answer:

The Delegated Powers Memorandum lists the subordinate legislation expected to flow from the Bill, a time table for this legislation was provided to the Committee on January 10. PPS 1 (General Principles) is being reviewed in the light of the legislation. A substantial raft of Guidance will also be produced. All of this work will be completed well in advance of the transfer of powers to councils.

The pilot projects provide opportunities for councillors, council employees, planners and others to work together to test arrangements and relationships. There will also be tailored training. DOE will use a range of other channels to make information available. The councils will have a major role to play, not least through their respective Statements of Community Involvement.

Question 7:

Many of the issues surrounding effective implementation and delivery are amorphous, have the potential to be overly complex and risk confusion. What steps are being taken to guarantee clarity and transparency in emerging relations between departments, agencies and other interest groups?

Answer:

The Planning Bill sets the framework within which the Departments, councils and others must operate. It sets out the respective roles and responsibilities of DOE and of councils, and the nature of the relationships between them. Consultees to the planning system will be listed in subordinate legislation; the circumstances within which they will be consulted and timescales for their responses will also be set out.

Question 8:

The Department will have powers to assume a central position in the delivery and evaluation of planning. How will it be scrutinised and specifically, what are the limits on its power to exercise its function?

The powers of the Department are set out in legislation. The Committee of the Environment scrutinises the work of the Department and the Minister. The Minister of the Environment is accountable to the Assembly.

Question 9:

Local government reform is under consultation. Opportunities to make statutory connections in relation to issues such as Community planning or powers of well-being appear to have been missed. What will be done to ensure a coherent approach and one that avoids duplication of functions?

Answer:

Policy proposals for the introduction of community planning were published for consultation on November 30. A strong link is envisaged between community plans and local development plans. Any statutory link between the two would need to be made through the legislation which introduces community planning.

Question 10:

The new legislation will rely on capacity building across a diversity of stakeholders – professional/non-professional planners, community organisations and specific interest groups, etc. What additional resources will be available to support necessary development of skills and expertise?

Capacity building in respect of the transfer of functions to local government will take place in the context of the pilot projects which will be rolled out during 2011-12.

Question 11:

Why have explicit links not been made to the emerging functions that are following from reorganisation of the public sector and associated reform of local government? How will the Department ensure that an overly complex process is avoided and that an integrated approach is achieved?

Answer:

The purpose of the Planning Bill is to provide for the transfer of planning functions to the 11 councils; this will happen after appropriate governance arrangements and an ethical standards regime are put in place as part of local government reform.

DOE is responsible for both local government and planning reform. These policy areas are both the responsibility of the same team; they are being progressed together through a single coherent programme of policy, legislation and delivery.

Question 12:

Who has the power to provide leadership through a strategic and integrated approach? Who will lead this process - why has a Chief Planning Officer function not been created?

Answer:

Successive Ministers of the Environment have provided and continue to provide leadership. When powers transfer to councils, it will be for councils to set out their respective visions for the future of their areas and to show through their local development plans how that will be achieved.

Question 13:

What arrangements and resources are in place to ensure the advocacy, competency and capacity of local communities, vulnerable groups and other stakeholders so that they are able to fully participate in the planning process?

Answer:

Councils must prepare statements of community involvement setting out their policies on how and when the community they will consult the community in the preparation and revision of local development plans and in relation to development management. Subordinate legislation will set out minimum requirements in relation to consultation and best practice guidance will be provided.

Councils will are subject to sections 75 and 76 of the Northern Ireland Act 1998, the Human Rights Act and anti-discrimination legislation, and it is in this context that that the statement of community involvement will be developed and delivered.

Question 14:

Under what circumstances and in what conditions will the Department direct councils to work together? What powers do the Department have to insist upon such coalition? Why have formal arrangements not been provided for within the Bill? How does this affect accountability and responsibility for plans?

Answer:

Where two or more council districts are closely linked functionally and spatially, it will be important to ensure that key strategic planning issues such as economic development, retailing, infrastructure, transportation and housing growth can be dealt with in a way which transcends council boundaries. Clause 18 therefore provides the Department with the power to require district councils to prepare joint plans.

Where the Department directs two or more councils to work jointly, it will consult the relevant district councils. The direction will set out if it is a plan strategy only or a full local development plan that is to be prepared jointly and it will also specify the area to which the joint arrangements apply. The Department will work closely with councils in reaching a mutually agreed working arrangement and guidance will provide further information on joint working arrangements.

The Bill also states that the preparation requirements for a joint plan document development plan will be same as those for a single plan strategy or single local development plan.

The councils will share accountability and responsibility for the preparation of a joint plan strategy or joint local development plan, but each individual council will retain responsibility for the determination of planning applications in their own areas.

Question 15:

How can an assessment be made that the local planning process is 'fit for purpose' and is 'deliverable', and who makes the assessment? What measures will be used to monitor and evaluate the statements of community involvement and of sustainability? How will the "deagentisation" of the Planning Service effect the management and performance of the Department's planning functions? Who monitors and evaluates the performance and decision-making of the Department? How will Divisional Planning Offices be evaluated?

Answer:

The Department is currently consulting on a new service delivery and performance improvement framework for local government. This would include a revised, more expansive statutory duty than currently exists for councils requiring them to secure best value and to continuously improve the performance of services they deliver to ratepayers.

The Planning Bill empowers the Department to conduct an assessment of a Council's performance on some or all of its planning functions or of its decision making on planning applications and to publish recommendations for improvement. If the Council does not implement the recommendations, the Department may issue a direction requiring it to do so.

The Planning Bill also gives the Department powers of intervention. As a last resort, should a Council be failing in its duties, the Department may use its powers of intervention, for example to progress a Local Development Plan.

De-agentisation of Planning Service means that the area of the Department which deals with planning will no longer have its own accounts, management board and audit committee which are additional to those covering the whole Department.

As long as the Department retains its existing functions, its performance (including the contribution of Area Planning Offices) will continue to be monitored against Programme for Government targets, progress will also be reported in the Department's annual report. The Minister, under whose direction and control the Department acts, is accountable to the Assembly.

Question 16:

What is the intended implementation schedule, i.e. timing, form and content of supporting legislation and guidance?

Answer:

The Delegated Powers Memorandum lists the subordinate legislation expected to flow from the Bill, a time table for this legislation was provided to the Committee on January 10. PPS 1 (General Principles) will be reviewed in the light of the legislation. A substantial raft of Guidance will also produced. All of this work will be completed well in advance of the transfer of powers to councils.

Question 17:

Does the Department intend to introduce an incentive scheme or capacity building for district councils planning functions? Are there plans to implement a training and development programme to engender the shift in mindset that is necessary for a new understanding of planning? Especially in the light of budgetary cuts, what financial resources exist that will ensure sufficient technical knowledge and adequate capacity is developed among different planning agents – planning and non-planning professional; and community representatives? What expertise is available to evaluate planning (from individual officers through to council and departmental levels) as an all-encompassing process whereby places are created?

Answer:

The Minister announced on November 30 a pilot programme to test the proposed consultative and practical working arrangements between DOE staff and the councillors and staff in the 11 council groups and to build capacity. Focused training is also planned, and organisations such as the Royal Town Planning Institute are already considering their role in this respect.

Question 18:

Are any specific arrangements being made to uphold the probity of the planning system in the transfer to district councils?

Answer:

On the 30 of November the Minister launched for consultation policy proposals on governance arrangements for Councils and an ethnical standards regime for Councillors. The new governance arrangements aim to ensure that councils operate to high standards, that they pursue equality and fairness within a framework of checks and balances and that there is openness and transparency in the way they conduct their business.

The ethical standards regime for local government will include a mandatory code of conduct for councillors with supporting mechanisms for the investigation and adjudication of appeals. One section will be dedicated to planning. The code will be supplemented by guidance for councillors when dealing with planning matters. This will include issues such as lobbying of planning officers by councillors.

Furthermore, the Planning Bill provides for a statutory planning audit function.

Question 19:

Why has this important reference to ‘good design’ not been included in the current Bill? Can we be reassured that the design of the built environment will become an important feature in the new spatial planning system?

Answer:

Clause 40 of the Bill empowers councils to request design statements. However concepts such as good design are much more effectively dealt with through policy documents and guidance than in legislation.

The requirements of the Regional Development Strategy, PPS1 and other Planning Policy Statements already ensure that the quality of the built environment is an integral feature of the planning system. Councils will consider the quality of the built environment as part of the development plans process.

Question 20:

Creating place is not just about land use, concern with space involves wider issues of well-being, such as health, education and wider social care. Pivotal to this will be the establishment of effective working relations with different interest groups to deliver locally based solutions. How will these connections be defined, nurtured and maintained to avoid defensive reactions and strategies from individual councils? Is there a link between potential alliances and the new RPA boundaries? How will cross sectoral collaboration be guaranteed? Furthermore, many councils already collaborate under other policies, such as the NI Rural Development Programme. How will lessons already learned from collaborative activity be used? How will duplication of function be avoided? How will pre-existing relationships be protected?

Answer:

The RDS and framework of PPSs will articulate overarching policy and Executive direction. The Department will continue to publish Northern Ireland wide planning policies which articulate the intentions of the Minister and the Executive of the day and councils will be required to take full account of these when undertaking their planning functions. A key element to ensuring policy integration will be the links to and delivery of council's community plans. This will assist in integration of other local government transfer functions and ensure existing collaborations can continue and be developed further.

Question 21:

How will these cuts influence the implementation of the Bill? Other resource related contention may arise from the expanded expertise necessary within councils. Taking account of the expanded role of local government and associated pressures to perform while remaining attentive to quality standards, what resources will be available to ensure a smooth transition to the new system? Will sufficient resources and time be allocated for future consultations on subsidiary legislation and supplementary guidance? Finally, while the spirit of the Bill is about the transfer of powers, the reality remains that local areas are fairly limited in terms of directly influencing budgets. To what extent can processes of local development be implemented in the absence of locally held community funding?

Answer:

The planning system which transfers to councils along with planning powers has to be both effective and affordable.

DOE planning operational functions are now being resized and restructured to make sure that they are in balance with the workload and are affordable. In preparation for the transfer of powers, these functions are being organised into two Divisions. Local Planning Operations Division will be responsible for all the development plan and development management functions which will transfer to councils. Area Planning Offices in the North, South Antrim, the West and the South will each serve two of the new council clusters, while an office in Belfast will serve three.

Strategic Planning Operations Division will be responsible for all the functions which will remain in the Department – including advice and oversight and the determination of regionally significant planning applications.

The current fee structure does not address the true cost of processing planning applications and proposals for a more realistic structure were recently consulted upon. The synopsis of responses will be submitted to the Committee shortly.

The Planning Bill provides for councils to set planning fees. However, it is envisaged that the Department will continue to set planning fees for three years from the transfer of powers; the situation will then be reviewed.

After powers transfer, it will be for the Councils to keep the balance between workload, income and costs under review.

Question 22:

To what extent can an assessment be made that appropriate and effective community engagement has been achieved by local councils? How will the Department ensure that expectations are fulfilled?

Answer:

The provisions in the Bill that facilitate community engagement are set out in the speaking note on Community Involvement dated 18 January 2011.

In particular it is worth noting that the Planning Bill includes requirements on the Department and councils to prepare a statement of community involvement (Clauses 2 and 4) and a requirement on applicants to carry out pre-application community consultation on major or regionally significant applications (Clause 27).

The council's statement of community involvement will set out how the council intends to involve the community in its local development plan and development management functions. It will be subject to Departmental agreement before it can be adopted by the council.

In terms of community consultation for major and regionally significant development, the planning authority (whether a council or the Department) must decline to determine an application if the pre-application community consultation requirements in clause 27 have not been complied with.

Departmental Response to Environment Committee Request after 3 February Meeting

Expressions used in connection with enforcement

Clause 130

The Committee requested 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.

4. 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.

5. The Committee requested 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.

6. 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.

7. 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.

8. In exercising discretion, the Department is mindful of its duty to enforce planning legislation and to ensure that development is managed in a proactive and proportionate manner. In determining the most appropriate course of action in response to alleged breaches of planning control, the Department will take into account the extent of the breach and its potential impact on the environment. Any decision to proceed with enforcement action will also be informed by case law, precedents and appeal decisions.

9. The Departments general policy approach to dealing with breaches of planning control is contained in Planning Policy Statement (PPS) 9 'The Enforcement of Planning Control'.

10. In 2009, the Department published an Enforcement Strategy (copy attached) The purpose of this Strategy was to set out the Departments objectives for planning enforcement, its guiding principles and priorities for enforcement action and performance targets. This will enable the Agency's enforcement resources to be put to the best use and it will provide guidance to Planning Service Staff, other departments and agencies.

11. In the 2004/05 business year, the decision was taken to bolster enforcement teams throughout the Agency with each Divisional Office and HQ having dedicated enforcement staff. Additional staff were allocated to enforcement teams particularly at PPTO level.

12. The number of staff employed in each of the last five years in the Planning Service enforcement section is provided in the table below.

	2009/10	2008/09	2007/08	2006/07	2005/06
Number of staff employed in enforcement	50	45	39	43	34

13. Divisional Planning Managers are responsible for both development control and enforcement functions. There is an existing close and ongoing liaison between these two functions on a daily basis. Both in cases when offices are investigating potential breaches of planning control, and when planning applications stemming from enforcement cases are submitted, the relevant case officers from the development control and enforcement sections liaise closely in order to ensure that all relevant issues are fully considered. In addition, the enforcement team will proactively

monitor certain developments following the grant of planning permission to ensure the development is carried out as approved or conditions have been complied with.

14. Legal costs do not influence the Departments decisions to take enforcement action. The Departments key objectives for planning enforcement are

- To bring unauthorised activity under control;
- To remedy the undesirable effects of unauthorised development including, where necessary, the removal or cessation of unacceptable development; and
- To take legal action, where necessary, against those who ignore or flout planning legislation.

15. Planning Service is committed to securing these objectives in order to ensure that the credibility and integrity of the planning system is not undermined.

16. Planning Service will investigate all alleged breaches of planning control and any resulting enforcement action, without undue delay. However, when determining what (if any) action is to be taken, priority will be given to those breaches where, in the Departments opinion, the greatest harm is likely to be caused.

17. Enforcement Activity for the 2009 calendar year is set out in the tables below *.

Case opened by Breach Type and by Division (2009)

Description	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	106	70	114	137	26	125	125	703
Change of Use	127	201	123	65	79	89	59	743
Demolition Conservation Area		2	5				1	8
Non Compliance	4	9		12	2	1	8	36
Operational Devt	199	316	314	368	59	254	350	1860
Tree Preservation Order	3	7	1	13		9	3	36
Unauthorised Sign	36	133	39	56		79	104	447
Unpermitted Building	6	8	7	2		10	22	55
Works to Listed Building	2	3	14	5		16		40
Total	483	749	617	658	166	583	672	3928

Number of Cases Closed by Breach Type and by Division (2009)

Breach Type	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	109	82	162	105	21	136	102	717
Change of Use	131	225	123	56	168	86	76	865
Demolition Conservation Area	1	2	1	1			1	6
Listed Building		1	1	3		2		7
Miscellaneous		17	9	46	2	5	1	80
Non Compliance	46	53	47	87	13	13	31	290
Operational Devt	286	275	460	412	84	252	393	2162
Tree Preservation Order	2	6	2	13		10	2	35
Unauthorised Sign	41	180	84	50		79	105	539
Unpermitted Building	15	88	441	50	2	50	31	677
Works to Listed Building	1	2	11	5		16	2	37
Total	632	931	1341	828	290	649	744	5415

Enforcement Notices by Breach Type and by Division (2009)

Breach Type	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	10	4	24		8	7	19	72
Change of Use	8	10	52		25	10	15	120
Non Compliance							1	1
Operational Devt	24	24	72		21	15	50	206
Tree Preservation Order							1	1
Unpermitted Building		3	1	1				5
Works to Listed Building						1		1
Total	42	41	149	1	54	33	86	406

* this information was provided to assist with CJI follow up review in April 2010.

18. In the 2009/10 business year, 4512 enforcement cases were opened in respect of alleged breaches of planning control.

Please note: All figures have been extracted from a live dataset which is continuously updated and validated. They should therefore be regarded as indicative only at this point in time and should not be compared with any previous figures published by the agency.

Clauses 134 – 136; 149, 150, 184 & 186

The Departmental officials agreed to 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. Also the Committee would like a response to the concerns raised by the South Belfast Resident's group (emailed) and how they may be addressed in the Planning Bill.

27. Clauses 134, 135 and 136: Temporary stop notices including restrictions and offences

Clause 149: Service of stop notices by councils and Clause 150 Service of stop notices by Department; Clause 184: Compensation for loss due to stop notice; Clause 186: Compensation for loss due to temporary stop notice

28. The above are all forms of stop notices.

29. The Committee asked officials to 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 information is provided below.

30. Prior to 2009, Planning Service did not retain full electronic records for Enforcement. However, based on a manual check of records, the number of stop notices and temporary stop notices that have been issued since (time period) are set out in the table below. In addition, an indication of the number of temporary stop notices that were followed by final notices/injunction is also provided.

Type of Notice	Number issued
Stop Notice	10
Temporary Stop Notice • Number followed by Notice • Number followed by Injunction	7 3 1

Clause 237: Planning Register

Clause 237

The Departmental officials agreed to report back to the Committee on the compatibility of council and Departmental IT systems.

49. This clause requires all district councils to keep and make available a planning register containing copies of the items listed, which includes all applications for planning permission. 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 it issues a notice under departmental reserved powers.

50 The Committee requested that 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.

51. The Department responded to the Committee on 8 February 2011, however it would be helpful to advise the Committee that Planning systems conform to IT best practice and use NICS strategic tool sets which enable exchange of information and integration with other IT systems.

Departmental Letter re Additional Information on Planning Bill Clauses

Private Office Assembly Unit
Clarence Court
10-18 Adelaide Street
BELFAST

BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference:
Our reference: CQ/282/11

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX Date: 8 February 2011

Dear Alex

I refer to the request made by the Environment Committee, on 2 February 2011 seeking comments following the Department's attendance at the Environment Committee on Tuesday 1 February.

Clause 130

Information 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. Figures on the number of enforcement cases that have arisen and how many of these the Department has considered "expedient to pursue"

An answer to this will follow.

Clause 134

Information on the number of stop notices issued, how many were temporary stop notices that were followed by final notices.

An answer to this will follow.

A response to the concerns raised by South Belfast Residents Group:

1. The introduction of the necessary legislation whereby the Planning Service has a statutory duty to put an immediate STOP NOTICE on a development once it has exceeded its current planning permission for that site. (To be applicable to all developments regardless of size)

Currently where the Department considers that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, Article 67E of the Planning (Northern Ireland) Order 1991 enables the Department to issue a Temporary Stop Notice.

This differs from the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued.

These powers have been carried forward to the Planning Bill at 134. It enables the Department to prevent unauthorised development at an early stage without first having had to issue an enforcement notice. In addition it allows the Department up to 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue. The provisions also impose certain limitations on activities (Article 67Fof the Planning (Northern Ireland) Order 1991/See clause 135 of the Planning Bill) and specify that contravention of such a notice would become a criminal offence, punishable on summary conviction by a fine of up to £30,000 or on indictment by an unlimited fine (Article 67G of the Planning (Northern Ireland) Order 1991/See clause 136 of the Planning Bill).

2. The introduction of Third Party Right of Appeal. (TPRA) (To be applicable to all developments regardless of size.)

This has been covered in previous correspondence.

Clause 160

Further clarification on ownership in relation to this clause and any legal implications which may be associated with urgent works to preserve buildings

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 area whose preservation is important for maintaining the character or appearance of that area.

The owner must be given at least 7 day's notice of the works to be carried out

The owner may appeal the notice within 28 days. 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.

Clause 196

Current system for dealing with historic/listed buildings

DOE is responsible for the listing and de-listing of buildings of special architectural or historic interest under the Planning (Northern Ireland Order) 1991(which have been carried forward into the Planning Bill). Listing covers the complete interior and exterior of the building and can also extend to fixtures and free standing objects within the curtilage of the building. Around 8,500 structures are listed.

The process of listing is described in Annex 1 and illustrated by the flow chart at Annex 2.

DOE is required to consult the Historic Buildings Council when it compiles or amends a list of buildings of special architectural or historic interest.

Clause 197

The Committee asked whether councils will be charged for expertise services provided by NIEA, and/or any statutory body or agency

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.

The Committee would like to know who would be responsible for a national register for trees

There not a statutory “national register for trees". DARD is responsible for forestry.

Clause 237

Compatibility of council and Departmental IT systems

Practical issues such as the compatibility of Departmental and council IT systems will be dealt with as under the pilot projects with councils.

I trust this information is of assistance, should you require anything further please contact me directly

Yours sincerely,

Úna Downey

DALO
[by email]

Departmental Response to Queries on Planning Bill

Alex

I sought advice from officials(in red below) and they responded to your queries as follows:

I have been unable to find responses from the Department on the following

- Clause 1 (not directly but raised under it) - A Land Use Strategy for Northern Ireland . Please clarify query - the Regional Development Strategy is the overarching strategy for Northern Ireland
- Clause 130 – Reference to an 'Enforcement Strategy' attached - Apologies now attached
- Clause 131 – response on time limit being reduced from 10-4 – mentioned by Maggie on Tuesday – said she'd already provided it Remains under consideration - will provide verbal update
- Clause 178 – number of applications revoked and amount of compensation paid Response to follow
- Clause 229 – Advocate General or Attorney General – apparently talking to DOJ Awaiting response from DOJ

I trust this information is of assistance, should you require anything further please contact me directly.

Regards

Adele Willis

Clarence Court
DOE-Private Office
Rm-715

Tel: 40120
Email: adele.willis@doeni.gov.uk

Departmental reply re Clause 178

Alex

Please see response below from our officials in relation to your queries:

Clause 178

Departmental records show that 24 revocation/modification cases arose between 2000 and 2006.

Compensation for revocation and modification is dealt with by the Land Development Values Compensation Act of 1965. However, prior to 2000 the 1965 Act also dealt with compensation for refusal for planning permission in certain specified cases. Unfortunately financial records relating to compensation payments under the 1965 Act do not distinguish between payment for revocation/modification and refusals. There were however no payments relating to revocation/modification for April-Nov 2010, 2009-2010, 2008-2009, 2007-2008 and 2006-2007.

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.

Regards

Adele Willis

Clarence Court
DOE-Private Office
Rm-715

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Email: adele.willis@doeni.gov.uk

Northern Ireland Environment Agency (NIEA) Information on the Listing Process

NIEA | Northern Ireland Environment Agency
www.ni-environment.gov.uk

The Listing Process

Listed buildings are defined under Article 42 (1) of the Planning Order 1991 as: ***'buildings of special architectural or historical interest'***. Under the article it is stated that the department '*shall*' i.e. must, draw up lists of these buildings. Under Article 42(7) such structures are to be known as a ***'listed building'***. Special architectural or historic interest is therefore the legislative test to which all new listing proposals must be compared.

The flow chart, attached to this paper, summarises the process in graphic form.

Initial Decision to Survey

The Historic Buildings Unit of the Built Heritage Directorate will decide to investigate if a building is worthy of putting to the legislative test as a result of three normal routes:

a. A thematic survey may be commissioned to look at a particular building type. Recent surveys have included thatched buildings, historic pumps and Belfast Roof Trusses and the Mourne Water Scheme. In the past post war buildings have been considered in a similar way. A feature of some of this research has been voluntary help (Belfast Trusses) to isolate the best items for survey. In most cases an expert specialising in the field has been commissioned to carry out the task.

b. The normal or 'main' route, is via a systematic survey of an area (generally known as the Second Survey). In this way buildings worthy of detailed recording and assessment are identified through general background research of an area and a 'brief site inspection' by commissioned surveyors. This provides the most holistic approach to recording because all the various strands of influence can be identified and put into a local context (eg, historical context, local preponderance, etc). It is also the most cost effective. Council Areas are surveyed, as a batch, because this also allows for good engagement with Councils and local stakeholders.

c. The third route is in response to listing requests from the public, the voluntary sector, from other Departmental Officers (including Planning Service), or from members of the advisory councils, such as the Historic Buildings Council or the Joint Committee on Industrial Heritage. We receive on average of 100 such requests each year. Following some

initial (historical) research, each of these subject buildings (of which the definition is very wide) is visited by an NIEA Conservation Architect and/or architectural historian (an Inspector). His/her illustrated report is presented to the Forum of Conservation Architects (which includes an Architectural Historian). A group view is taken on whether or not more detailed research is required.

By working in a group we seek to avoid any idiosyncrasies, personal likes or dislikes, or other inconsistencies, in the decision making.

Further consideration of listing may be rejected at this stage.

Choice of 'Route'

Because the area based approach is the most holistic, and the most efficient, thematic surveys are commissioned only when a pressing need, or other key reason has been identified. For similar reasons listing queries are also only progressed to a full survey after a type of risk assessment has been carried out.

For the majority of listing queries considered worthy of more detailed research, an enquirer will be informed (as a result of the risk assessment process) that work will not be carried out until the area based (second) survey visits that area.

However, in some cases the potential threat is considered sufficient to justify the commissioning of a one off ('ad hoc') survey, out of sequence with the second survey.

In a few cases the threat is considered so great that the use of a 'Building Preservation Notice' is justified. BPN's are defined under Article 42A of the Planning Amendment Order 2003. They '*may*' be issued if:

'… it appears to the Department that a building which is not a listed building-

(a) is of special architectural or historic interest; and

(b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest'.

This protects a building, as if it were listed, for a period of up to six months.

If a BPN is considered likely then further research is often undertaken (asap) by Departmental architects and historians, to satisfy criteria (a) above, in advance of presenting a final recommendation to the Director of Built Heritage. As with final listing decisions the Director may determine to consult with, or to alert, the CX, Board, other Departmental colleagues, or the Minister, before proceeding with the issue of such a notice.

The Survey

However commissioned, the survey, consists of a written external and internal description, accompanied by photographs, together with historical research. An evaluation of the architectural and historic value of the structure is made relative to the listing criteria. The criteria have been derived to accord with, and flesh out, the legislative tests. Owners are informed of the process, and their potential involvement, through discussion with the surveyor and/or the issue of an explanatory leaflet.

Once complete, the survey is presented to the Department using a standard pro forma with a recommendation from the surveyor on listing. If a Building Preservation notice has been issued then, when at all possible, this work is carried out within a tight timeframe to ensure that a final decision on listing or otherwise is made within the six month BPN period.

Evaluation Meeting

Reports from surveyors are checked, and presented to an evaluation meeting, by the senior conservation architect (SCA) who will become responsible for the management of that record. At the meeting at least three conservation architects of senior or principal grade and (ideally also) an architectural historian will be present. These officers have wide experience and knowledge of the built heritage of Northern Ireland.

The proposal and record is considered relative to the listing criteria and a 'proposal' made. The surveyors report will subsequently be edited, if necessary, to reflect the group opinion.

At this stage the owner, and/or the person/group who has raised the matter in regard to an individual listing query, will be informed if the Architect's Forum has decided against listing.

Information on thematic and area based surveys are dealt with as a batch to avoid confusion for consultees and will be delayed until the whole batch has been processed.

Consultation

Under Article 42(3) of the Planning Order *'Before compiling or amending any list under this Article, the Department shall'* (i.e. must) *'consult with the Historic Buildings Council and the appropriate district council'*. Formal consultation papers are issued (simultaneously) to these consultees.

As a matter of routine NIEA architects present and illustrate listing proposals to the HBC but attend district council meetings only in exceptional cases, and generally at their specific request. [As HBC members come from throughout NI we do not expect them to be aware of the majority of buildings that come up for listing, however more local familiarity, and easier local access to the buildings is anticipated in relation to district councils and their staff].

The owner; Planning Service; Road Service, and; NI Water, is also advised of the Department's intention at the same time. From this year onwards owners will be sent copies of the listing report along with this advisory note to (a) help them to confirm its accuracy and (b) to increase their understanding of the case being made for listing.

Representation from these groups is considered, by the Agency, before a final decision is made. It is important to note however that the legislative test allows only the architectural or historic interest to be considered.

Concerns over the impact of listing on future planning considerations, such as development proposals, cannot be considered as part of this assessment.

NIEA gives district councils six weeks to reply to the written consultation. If they do not reply, or seek an extension of time, within the 6-week period, then their support for the proposal is assumed. This approach follows normal business practice and it is clearly indicated in the letter of consultation.

Evaluation of Consultation: The 'Wash up Meeting'.

All responses to consultations are considered at a, so called, 'wash up' meeting (a scaled down Architect's Forum) which is attended by at least two Senior Conservation Architects (SCAs) and chaired by the Principal Conservation Architect (PCA) in charge of the listing process.

Proposals which have been opposed are re-evaluated. This may involve a detailed reconsideration, provided that the case has been presented based upon architectural or historic grounds. As a result further research could be commissioned at this stage.

If NIEA's proposal to list has been opposed by both statutory consultees then, as a rule NIEA does not proceed with listing. (But note that rules are proven by their exceptions!)

The decision at this stage of the process becomes a 'recommendation' when signed off by the Principal Conservation Architect (PCA) before forwarding it to the Director.

In exceptional circumstances, the PCA may, overrule the opinion of the Architect's Forum and either, require more research, or, decide that the case for listing has not been made.

As with the previous evaluation stage, the record may be updated to take account of the revised view. If an ad-hoc query is being considered, then the owner and the proposer is informed of the Departmental decision. If the record is part of a batch it is held for processing along with the others in that group.

Preparation of Listing Papers

Following sign-off of the 'recommendation', by the PCA, listing papers are prepared by the Administrative Team in the Historic Buildings Unit.

'The list' as contained in files that are maintained, on public access in the MBR and deposited in the Public Record Office are retrieved and draft amendments made.

Under Article 131 of the Planning Order an entry in a list compiled under article 42 must be registered in the *'Statutory Charges Register'* of the Land Registry. A map is drawn up for this purpose clearly indicating the listed building. The extent of listing is checked and finally determined, on site, by the Senior Conservation Architect (SCA) responsible for the record.

This architect (SCA) also confirms that the report is still accurate and up to date (ie, it is re-compared against the original building). If it is not then the proposal may have to be re-evaluated or even resurveyed.

The listing papers are then formally signed off by the SCA, and the PCA, before they are presented to the Director.

Director's Consideration

The Director of Built Heritage is an authorised officer of sufficient seniority to sign off legal papers on behalf of the Department.

He is presented with a recommendation for listing along with a summary of the various consultation responses and other correspondence on the case. He may also have received direct communication on the case from others. Before arriving at a final decision, relative to the legislative test, he may choose to consult with other senior Departmental colleagues. This is rarely required, but may be appropriate for high profile or particularly sensitive cases.

The Director may decide that he has insufficient information or may disagree with the proposal put to him. In this case further research can be carried out and/or the proposal re-evaluated by the Forum of Conservation Architects.

The Director may, in exceptional circumstances, over rule the view of the PCA/Architect's Forum and decide that a case for listing has not been made, or that some modification of the recommendation is required.

Alteration of the List

With the signature of the Director a final decision to list has been made and the list is formally altered. The Departmental Seal is affixed to the new list entry and a record is placed on, or modified at, the Land Registry.

As required under Article 42(4) the District Council is issued with a copy of the amendment to the list for its area. In addition, the owner; Planning Service; Road Service, and; NI Water receive a formal notification of the action of the Department. The HBC is informed at its next meeting. Owners are also issued with a pack of information, including a guide, informing them of the implications of the designation.

The survey record is also transferred onto the NIEA website, for public information purposes. Information on the interior of private buildings is withheld to respect owners privacy rights and other security considerations.

END

22 September 2008

Deramore Residents Association Letter to Committee

For Alex McGarel, Committee Clerk, Environment Committee

Proposed Amendments to Planning Reform Bill.

I am the spokesman for fifteen residents groups which provide representation for a complete cross-section of South Belfast.

We have met our politicians many times over the past seven years. Our South Belfast politicians are in total agreement with us regarding the need for the amendments we have suggested, mainly because the amendments are long overdue and would lead to a more democratic system, while reducing the workload of the Planning Service or whatever body takes over role of Planning.

On Thursday 20th January 2011 we met our MLAs and councillors and put forward our list of amendments to the Reform Bill. We met our MLAs today, Tuesday 1st Feb. 2011 in room 279 in Stormont to finalise our amendments, with their assistance. They recommended that I write to you.

1. The introduction of the necessary legislation whereby the Planning Service has a statutory duty to put an immediate STOP NOTICE on a development once it has exceeded its current planning permission for that site. (To be applicable to all developments regardless of size)

Justification. It is plainly wrong that a developer should be allowed to carry on building while the planning authority considers the retrospective application. It would obviate unwelcome extra work for the planning authority because it would prevent the developer creating a situation which is clearly untenable and which would have to be opposed. It makes it easier for the authority to issue a firm refusal to an obviously unacceptable development and establish the principle that when the authority says NO, it means NO.

It would also be advantageous to include an obligation on the part of the Planning Authority to monitor periodically development rather than depend on residents to inform them.

2. The introduction of Third Party Right of Appeal. (TPRA) (To be applicable to all developments regardless of size.

Justification. The introduction of TPRA need not add to the planning burden. A range of restrictions can be imposed to deter vexatious or frivolous objections. It would improve the quality of the planning applications. It would encourage the planning being sought to be rigorously inspected before an application is made. It would involve the community in all aspects of planning and so enhance local democracy.

Other planning issues. We are particularly concerned by the grossly unfair advantage the developer has through “Presumption in favour of development". We recommend that this be applicable only to development that is clearly in the economic interests of the country. In conservation areas there should be a presumption against development. Or more precisely the developer must prove that the proposed development will enhance the conservation area. For residential and conservation areas, the onus must be firmly placed on the developer to prove that no harm will be done. Many residential areas have suffered a detrimental effect by the Planning Service justifying planning decisions using the PRESUMPTION IN FAVOUR OF DEVELOPMENT route.

Yours sincerely
Paddy McCrossan, Deramore Residents Association

Information re - Clauses 130 and 131 - Operational Development Cases including reason for closure for the 2009/10 Business Year

Operational Development Cases including reason for closure for the 2009/10 business year.

Table 3	Ballymena	Belfast	Coleraine	Craigavon	Downpatrick	Enniskillen	Headquarters	Londonderry	Omagh	Total
Unknown code:					1					1
Remedied/Resolved	19	37	16	43	36	14	41	22	54	282
Planning Permission Granted	70	86	56	100	75	26	12	29	62	516
Not Expedient	57	74	25	134	78	18	7	20	44	457
No Breach	86	133	46	159	201	31	31	32	102	821
Immune	13	23	6	69	32	3	1	17	22	186
Appeal Allowed/Notice Quashed	1	1	3	1	2	2			4	14
	246	354	152	506	425	94	92	120	288	2277

Enforcement Activity for 2008 Calendar Year

Case opened by Breach Type and by Division (2008)

Breach Type	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	56	37	48	79	16	83	46	365
Change of Use	126	115	51	56	102	54	52	556
Demolition Conservation Area	1	1		1		2		5
Listed Building		4		2		3	1	10
Miscellaneous		4		7				11
Non Compliance	131	91	2	94	4	47	52	421
Operational Devt	240	108	168	355	93	96	314	1374
Tree Preservation Order	2	6	1	14			3	26
Unauthorised Sign	40	168	18	61		62	46	395
Unpermitted Building	22	201	217	70		159	33	702
Works to Listed Building		2	3	5		3	2	15
Total	618	737	508	744	215	509	549	3880

Number of Cases closed by Breach Type and by Division (2008)

Breach Type	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	2	3		14	5	22	38	84
Change of Use	98	61	6	29	104	36	33	367
Demolition Conservation Area	1	2		6		2		11
Listed Building	1	3	2	2		6	3	17
Miscellaneous		103	6	130	2	52	2	295
Non Compliance	198	123	30	184	13	91	82	721
Operational Devt	259	38	51	154	101	25	327	955
Tree Preservation Order	2	3		15			6	26
Unauthorised Sign	46	145	7	49		112	68	427
Unpermitted Building	14	273	220	100		221	29	857
Works to Listed Building			1	3		1	5	10
Total	621	754	323	686	225	568	593	3770

Enforcement Notices served by Breach Type and by Division (2008)

Breach Type	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	4	3	3	1	5	1	5	22
Change of Use	5	20	9		45	5	15	99
Listed Building		1						1
Miscellaneous		3						3
Non Compliance	2	1	2	2	1		2	10
Operational Devt	16	11	12	3	20	10	53	125
Tree Preservation Order		1					1	2
Unauthorised Sign		1						1
Unpermitted Building		9	8	2		1		20
Works to Listed Building		1	1				1	3
Total	27	51	35	8	71	17	77	286

Criminal Justice Inspectorate report on enforcement within DOE – Planning Service

Enforcement Activity for 2009 Calendar Year

Case opened by Breach Type and by Division (2009)

Description	BA	BLF	CR	DPT	HQ	LO	OM	Total
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Unauthorised Sign	36	133	39	56		79	104	447
Unpermitted Building	6	8	7	2		10	22	55

Description	BA	BLF	CR	DPT	HQ	LO	OM	Total
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Listed Building		1	1	3		2		7
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Unpermitted Building	15	88	441	50	2	50	31	677
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Breach of Planning Condition	10	4	24		8	7	19	72
Change of Use	8	10	52		25	10	15	120
Non Compliance							1	1
Operational Devt	24	24	72		21	15	50	206
Tree Preservation Order							1	1
Unpermitted Building		3	1	1				5
Works to Listed Building						1		1
Total	42	41	149	1	54	33	86	406

Proposed New Clause before Clause 224

New Clause before Clause 224

‘Review of Planning Reform Act

223A.-(1) The department must-

(a) not later than 3 years after the commencement of this Act, and

(b) at least once in every period of 5 years thereafter, review and publish a report on the implementation of this Act.

(2) Regulations under this section shall set out the terms of the review.’

Planning Bill - Draft Committee Amendments

Planning Reform Bill
Draft Amendments for Committee

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

Insert New Clause after Clause 78

‘Community Amenity Levy

78A. (1) The department may make regulations providing for the imposition of a charge to be known as Community Amenity Levy (CAL).

(2) In making the regulations the department shall aim to ensure that the overall purpose of CAL is to ensure that the costs incurred by councils in providing amenities can be funded (wholly or partly) by contributions from owners or developers of land.

(2) The regulations shall include a charging schedule setting rates or other criteria by reference to which the amount of CAL chargeable in respect of development is to be determined.

(3) The regulations must include provision about enforcement of CAL, rights of appeal and collection of CAL.

(4) The regulations may provide for exemptions from liability to pay CAL.

(5) A council may charge CAL in respect of local developments in its area.’

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.’

Departmental reply re Committee Request for Amendments

Private Office
Clarence Court
10-18 Adelaide Street
BELFAST

BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: una.downey@doeni.gov.uk
Your reference:
Our reference: CQ/286/11

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX Date: 15 February 2011

Dear Alex

I refer to the request for amendments made by the Environment Committee on Friday 10 February

In my letter yesterday, I set out the Minister’s responses to the majority of the questions posed. I now attach in the annex to this letter the amendments as drafted.

The Minister will not be bringing forward amendments on Clause 224 or on a two year review of the Bill. The amendment substituting Attorney General for Advocate General at Clause 229 is being drafted and will follow.

As regards clause 116 – fines go to the consolidated fund – that is to Treasury.

Thank you for your clarifying your query on clause 131 - we will respond separately on 130 and 131.

You asked this morning for a further amendment to Clause 102 and a different amendment to follow Clause 58 – we are working on these and will respond as soon as we have had the opportunity to discuss with the Minister.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO
[by email]

Annex

Amendments

Clause 1, Page 1, Line 10

Leave out ‘contributing to the achievement of’ and insert ‘furthering’

Clause 5, Page 3, Line 25

Leave out ‘contributing to the achievement of’ and insert ‘furthering’

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’

Clause 215, Page 140, Line 2

After ‘it’ insert ‘-(a)’

Clause 215, Page 140, Line 2

After ‘(a)’ insert ‘: or

(b)’

Clause 224 – council liability for decisions made in absence of response from statutory consultees

The Minister is not bringing forward an amendment on this issue

Clause 229 – substituting Attorney General for Advocate General

Amendment being drafted and will follow

Two year review of the Bill

As previously indicated, the Minister is not bringing forward an amendment on this issue.

Departmental reply following 10 February Meeting

Department of the Environment
www.doeni.gov.uk

Private Office
Clarence Court
10-18 Adelaide Street
BELFAST

BT2 8GB

Telephone: 028 90 5 40855
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Email: una.downey@doeni.gov.uk
Your reference:
Our reference: CQ/286/11

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw

Stormont
Belfast
BT4 3XX Date: 14 February 2011

Dear Alex

I refer to the request for amendments made by the Environment Committee on Friday 10 February

The attached annexes sets out the Minister's responses to the majority of the questions, Annex 1 deals with amendments and Annex 2 with general information. We are still working on some of the Committee's points and will provide further information as soon as it is available.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO
[by email]

Annex 1

Amendments

Clause 1 – the Committee asked for consideration of an amendment "leave out line 11 and insert (i) furthering sustainable development and (ii) promoting or improving social well-being.

The Minister has agreed to an amendment referring to "further and sustainable development". Well-being does not appear in statute and so cannot be referenced in the Bill. However, this is something which can be addressed very effectively through PPS1 under sustainable development and references to legislative links between community planning and development plans.

Amendment to follow.

Clause 58 – In our February 9 response to CQ 282 we indicated that the Minister, as asked by the Committee would bring forward an amendment restricting the introduction of new material at planning appeals.

The Minister's amendment is 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.'

Clauses 84, 116, 125 and other Clauses, The Committee agreed amendments to these clauses to raise the levels of fines from £30,000 to £100,000 and wishes to know whether the Minister might adopt these amendments.

The Minister is minded to support this increase. Amendment to follow.

Clause 178 – The Committee asked for consideration of a possible amendment to require the Department to pay any compensation due when a councils is not fulfilling its responsibilities under the legislation and the Department exercises its intervention powers to revoke a planning permission.

As the councils remains the responsible authority, it should be liable for the compensation costs, the Minister will not bring forward this amendment.

Clause 202 – In our February 9 response to CQ 282 indicated that, as the Committee asked, the Minister would bring forward an amendment allowing costs to be awarded where a party has been put to unnecessary expense and where the PAC has established that the other party has acted unreasonably.

The Minister's amendment is 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 section [Department/DSO to supply current clause numbers of the Bill], and as to the parties by whom the costs are to be paid.

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

(3) Without prejudice to the generality of subsection (2)(a), 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.

[(4) 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.’

Clause 215 – the Committee has asked that this clause be made less cumbersome.

Redraft to follow.

Clause 224 – The Committee asked for an amendment in relation to compensation.

The Minister will not bring forward such an amendment.

Clause 229 – Department of Justice has advised that this clause should refer to the Attorney General.

Amendment to follow

Amendments to ensure consistency through out the Bill

We have also identified the following few further textual amendments to be moved at Consideration Stage. These amendments are proposed to provide consistency of approach throughout the Bill. They do not impact on the policy content of the Bill.

Clause 8, Page 5, Line 11

At end insert-

‘(7) A plan strategy is a plan strategy only if it is -

(a) adopted by resolution of the council; or

(b) approved by the Department in accordance with section 16(6).’

Clause 9, page 5, Line 36

At end insert-

‘(8) A local policies plan is a local policies plan only if it is -

(a) adopted by resolution of the council; or

(b) approved by the Department in accordance with section 16(6).’

Schedule 6, Page 195, Line 14

At end insert -

‘39A. In Articles 14 and 15 for “Department “ substitute “council".’

Annex 2

Planning Bill Environment Committee Request CQ

Clause 1

The Departmental officials agreed to consider an amendment to Leave out line 11 and insert-

(i) furthering sustainable development; and

(ii) promoting or improving social well-being.

See Annex 1

Clauses 33 – 38

The Departmental officials to provide the Committee with examples of guidance for simplified planning zones and to consider an amendment to the Clause to include the following criteria, a time period, thresholds and a sound business case.

In Scotland the following circular contains guidance on SPZ procedures:
http://www.scotland.gov.uk/Publications/1995/08/circular-18-1995

In England and Wales PPG 5 Simplified Planning Zones was published in November 1992 but was cancelled and replaced by Planning Policy Statement 4: Planning for Sustainable Economic Growth (PPS4) published on 29 December 2009. There is only a brief reference to SPZs in PPS4:

“Local authorities should make full use of planning tools to facilitate development, including compulsory purchase orders and other planning tools including area action plans, simplified planning zones and local development orders"

The Planning Bill sets the time Period for SPZs as 10 years. It will be possible for councils to set their own thresholds when they prepare their SPZs in accordance with local circumstances.

All councils will be expected to comply with normal public sector guidance in relation to business cases and economic appraisals etc.

Clause 84

The Committee agreed to an amendment to the Clause to the raise the level of fine to £100,000 and Departmental officials agreed to report back to members if the Minister would be prepared to consider an amendment to this effect.

See Annex 1

Clause 102

The Committee agreed to revisit this clause at Tuesday's meeting. The Department may wish to be prepared to answer queries in relation to arson attacks on listed buildings.

Noted

Clause 107

The Departmental officials agreed to provide clarification on the respective roles of NIEA and the Planning Authority with regards to hazardous substances.

Hazardous substances must be disposed of in ways which render them as safe as possible and minimise their environmental impact. Their disposal must be in line with the following NIEA regulations:

- The Waste and Contaminated Land (NI) Order 1997
- Landfill Regulations (NI) 2003
- Pollution Prevention & Control Regulations (NI) 2003
- Waste Management Licensing Regulations (NI) 2003

The Hazardous Waste Regulations (NI) 2005, deal with the movement of hazardous waste in Northern Ireland.

Clause 116

The Departmental officials agreed to 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.

The list of Hazardous substances is contained at Appendix 3.

Only one warning letter has been issued in Northern Ireland regard to a hazardous substances contravention in recent years.

Planning Service, Minerals Unit meet with HSENI usually monthly to discuss any upcoming or potential cases and new sites and advice is provided by both parties to new or proposed applicants in addition to any sites interested in raising quantities. In addition, when new or amended legislation is made any sites potentially affected are usually highlighted and informed at the earliest opportunity thus avoiding the incidence of a breach.

Clause 125

The Committee agreed to an amendment to the Clause to the raise the level of fine to £100,000 and Departmental officials agreed to report back to members if the Minister would be prepared to consider a Departmental amendment to this effect.

See Annex 1

Clause 130

The Departmental officials agreed to provide information on how many closed breaches were brought to a conclusion or just dropped and an indication of the types of breaches were being investigated in the open cases.

See information at Appendix 1 – attached as pdf document

Clause 131

The Departmental officials agreed to provide clarification on when a breach would occur, would this clause apply to open cases and an indication of the types of open cases.

Clarification required on this.

Clauses 152 - 154

The Committee agreed to defer a decision on these Clauses until it had received an answer from the Department to queries on Clause 130.

Information on Clause 130 is at Appendix 1

Clause 202

The Committee agreed to defer a decision on this Clause until it had sight of the Departmental amendment.

See Annex 1

Clause 203

The Departmental officials agreed to provide more information on how the level of scrutiny under this Clause ties in with the audit function.

Clause 203 gives the Department powers to conduct an assessment of a council's performance, or to 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. Together with clause 204 – 206 it forms a key part of the Department's audit role for council functions.

A key way to demonstrate the effectiveness and integrity of the planning system will be 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. These functions will also be important in providing a quality assurance service for the councils.

At present, the Department has its own planning audit function which undertakes regular reviews of planning processes within the 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.

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, the Department 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. It is the Department's view that this approach would help to provide further assurance to the public that the planning system is open, fair and transparent.

Clause 215

The Departmental officials agreed to consider amending the wording of this Clause as it was felt the current language is cumbersome.

See Annex 1

Clause 224

The Departmental officials agreed to consider an amendment that ensures councils will not be liable for decisions or compensation as a result of a non response from a statutory consultee to a consultation with the deadline.

See Annex 1

Clause 229

The Departmental officials stated that they were still awaiting a reply from the Department of Justice on this Clause and the Committee deferred a decision on the Clause until it had sight of the reply.

See Annex 1

Two Year Review

The Committee has called for a two year review of the legislation to be built into the Bill and would like to know if the Department has decided if this will be included and, if so, what amendments to the Bill will be necessary.

See Annex 1

Community Infrastructure Levy

During discussions of a Community Infrastructure Levy the Departmental officials agreed to provide the Committee with guidance on planning agreements and information on developer contributions.

The Guidance on Planning Agreements is attached separately as Appendix 2.

Developer contributions is a separate issue from planning reform and the transfer of planning functions to councils. There were no firm proposals in the planning reform consultation paper – the intention was simply to initiate debate on the issue.

Responses to the consultation identified an appetite for seeking increased contributions to support the delivery of infrastructure necessary to deliver Northern Ireland's economic and social development.

However, given that this is an issue which cuts across the provision of infrastructure by a number of departments, the Minister has recommended that it be considered at Executive level in relation to the funding and infrastructure responsibilities of central government departments.

In light of the current cuts in public expenditure it is important that the Executive explores the possibility of levering private funds to deliver wider public infrastructure. The Department will contribute to this future work to investigate what role the planning process might play in any future system of contributions.

Land Use Strategy

The Committee would like to know on what basis, or against what framework, the Department will make decisions for major applications and those of regional significance. In the absence of a land use strategy, how will consistency be achieved?

The Department will make decisions on regionally significant applications based on the policy framework provided by the Regional Development Strategy, PPSs, Local Development Plans and other relevant material considerations.

The RDS currently provides a land use strategy of sorts for Northern Ireland to a greater extent than, for example, the National planning Framework does in Scotland. However, if such a land use strategy is required, clause 1 of the Planning Bill gives the Department the power to develop one in due course.

Appendix 1

Environment Committee

Additional Enforcement Statistics
14 February 2011

(1) More detailed breakdown on Closures.

Prior to April 2009, Planning Service did not retain full electronic records for Enforcement and as such, a detailed break down of case closure information prior to the 1 April 2009 would not be readily available.

Reason for closure information for cases closed during the 2009/10 business year is set out in Table 1 below.

Table 1: Enforcement Cases Closures including Reason for Closure for 2009/10 Business Year

Reason For Closure	Number
Remedied/Resolved	1093
Planning Permission Granted	842
Not Expedient	978
No Breach	1636
Immune	324
Appeal Allowed/ Notice Quashed	26
Total	4899

(2) Successful Enforcement Actions (Prosecutions)

Based on cases closed during the 2009/10 business year, 73 cases have proceeded to court and of these, 59 have resulted in a successful prosecution.

It is important to note that the vast majority of breaches of planning control are resolved informally through negotiation with the owner/occupier or through the submission and consideration of a retrospective planning application.

(3) Number of Cases under 10 year Rule

Breach of Condition and Material Change of Use cases would fall within the time frame for taking enforcement action under the 10 year rule.

Where there has been a breach of planning control consisting in the change of use of any building to use as a dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.

In the 2009/10 business year, Planning Service received 800 Breach of Condition and 836 Material Change of Use Cases. 1221 cases were closed (577 Breach of Condition and 646 Change of Use) as of 10 February 2011 which represents 75% of Cases.

Reason for closure information in respect of Breach of Condition and Material Change of use cases only is set out in Table 2 below.

Table 2: Reason for closure information in respect of Breach of Condition and Material Change of use cases

Reason For Closure	Number
Remedied/Resolved	260
Planning Permission Granted	130
Not Expedient	229
No Breach	519
Immune	76

Reason For Closure	Number
Appeal Allowed/ Notice Quashed	2
Unknown code	5
Total	1221

All figures have been extracted from a live data set which is continuously updated and validated. They should therefore be regarded as indicative only at this point in time and should not be compared with any previous figures published by the agency.

Appendix 2

Planning Agreements and the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005

PC 06/05
September 2005

Introduction

1. The purpose of this circular is to alert you to the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005 and associated arrangements, which came into operation on 31st August 2005.

Background

2. Article 23 of the Planning (Amendment) (Northern Ireland) Order 2003 amends by substitution Article 40 of the Planning (Northern Ireland) Order 1991. This enables the Department to enter into planning agreements with any person who has an estate in land for the purposes of:-

- facilitating, or restricting the development or use of land in any specified way;
- requiring specified operations or activities to be carried out in, on, under or over land;
- requiring the land to be used in any specified way (either indefinitely or for a period as may be specified) ; or
- requiring a sum or sums to be paid to the Department on a specified day or dates or periodically.

3. Agreements may be unconditional or subject to conditions and may only be entered into by way of a legal document. The legal document must state that the agreement is a planning agreement for the purposes of Article 40 of the Planning Order. It must identify the land in which the person entering into the agreement has an estate and must identify the person entering into the agreement and his estate in the land.

Where Planning Agreement are Appropriate

4. Planning Policy Statement 1 sets out the general principles[1] governing the use of Planning Agreements and states that:-

“If there is a choice between imposing planning conditions and entering into a planning agreement, the Department will normally opt for conditions since they are simpler to administer and are subject to appeal…Before entering into an agreement, the Department will wish to be satisfied that it provides an acceptable means of overcoming particular obstacles to development"

5. PPS1 also clarifies that the Department will only seek an agreement where the perceived benefit is related to the development and necessary to the grant of planning permission. It sets out the circumstances which the Department regards as reasonable to seek planning agreements: -

- where what is required is needed to enable the development to go ahead; or
- where what is required will contribute to meeting the cost of providing necessary facilities in the near future; or
- where what is required is otherwise so directly related to the proposed development and to the use of the land after, that the development ought not to be permitted without it; or
- where what is required is designed to secure an acceptable balance of uses; or
- where what is required is designed to secure the implementation of development plan policies in respect of a particular area or type of development; or
- where what is required is intended to offset the loss of or impact on any amenity or resource present on the site prior to development.

6. Other Planning Policy Statements also make reference to the use of planning agreements and when they may be appropriate in relation to specific development proposals.

- In relation to the development and operation of public car parks by the private sector, the Department may require developers to enter into a planning agreement under Article 40 to control the use of parking spaces in order to deter long stay commuter parking. It will normally include restrictions on the leasing of contract spaces (PPS3 – Access, Movement and Parking, paragraph 5.72)
- Where approval of a major out-of-centre retail development is being considered, the department may secure developer contributions to new or improved public transport provision or road improvements, by way of an Article 40 agreement or may use an agreement to facilitate, regulate or restrict the development as necessary. (PPS5 – Retailing and Town Centres, paragraph 37).
- Planning agreements may be used in association with development proposals that affect the archaeological or built heritage. For example, planning permission could be granted for a development where, by means of an agreement, the developer agrees to restore a listed building on the same site (PPS6 – Planning, Archaeology and the Built Environment, paragraph 10.2).
- In major housing schemes and some smaller schemes, a planning agreement to secure infrastructure and/or the provision of maintenance of open space may be required to allow the granting of planning permission (PPS7 – Quality Residential Developments, paragraph 4.54).
- Planning agreements may be used to secure the provision of alternative open space to substitute the loss of an existing open space, or where redevelopment of part of an existing urban facility is being considered, to tie the financial gain arising from the development to the retention and enhancement of the open space facility (PPS8, Open Space, Sport and Outdoor Recreation, paragraphs 5.7 – 5.9). There may also be

instances where the provision and maintenance of open space within a new development can only be facilitated by entering into an Article 40 agreement (PPS8, paragraph 5.19 – 5.23).

- Annex A of PPS11 – Planning and Waste Management advises that where planning permission is being considered for waste management proposals, the Department may impose conditions or negotiate agreements in respect of detailed matters – listed at Annex A.

Consideration

7. Requests for the preparation of Planning Agreements should be made by the Division directly to Departmental Solicitors Branch.

8. When discussing the detail of any proposed planning agreement with the applicant, he should be made aware that the agreement will contain a clause allowing the Department to register the agreement as a charge in the Registry of Deeds or Land Registry whichever is appropriate.

9. The agreement does not confer planning permission nor does it determine the outcome of a related application. An agreement must be signed before planning permission is granted.

Council Consultation

10. Under new Article 40(3) a provision has been added that before entering into an agreement, the Department must consult with the local district council. The council is given 4 weeks to comment on the proposed agreement. Attached at Annex A is the draft letter to be used when consulting with council. A significant level of detail should be included in the letter to allow the council to fully consider the purpose of the agreement and its implications.

Enforcement

11. Any breach of the agreement is enforceable against the person entering into the agreement and any person deriving title from that person. There is no time limit for enforcement action.

12. The legal document by which the agreement is entered into may provide that a person is not bound by the agreement for any period during which he no longer has an estate in the land. This enables someone entering into a planning agreement to cease to be bound by its terms once he has disposed of his interest in the land concerned.

13. Any restriction imposed under agreement is enforceable by injunction, which means the Department can take action where there is a clear or threatened breach of the agreement.

14. If there is a breach of a requirement to carry out operations in, on, over or under land to which the agreement relates, the Department has the power to enter onto the land and carry out the operations, and recover any expenses incurred from the person against which the agreement is enforceable. Before the Department enters onto the land to carry out such operations, it must give 21 days notice of its intention to do so to anyone against whom the agreement is enforceable. Any person who wilfully obstructs the Department if it enters the land shall be guilty of an offence and liable on summary conviction to a fine of up to £1000.00.

Modification and Discharge of Planning Agreements

15. Article 40A of the 1991 Order (Modification and Discharge of Planning Agreement) introduces new provisions to allow for the modification and discharge of an agreement. Under this Article there are two ways in which an existing agreement may be modified or discharged:-

- By way of a new agreement between the Department and the person against whom the agreement is enforceable: or
- By making an application to the Department.

16. Where the applicant requests the Department to enter into a new agreement, the Department must first consult with the local council. The Department must write to the Council advising that they have been requested to enter into a new agreement and including a significant level of detail to allow the council to the consider the implications of the new agreement. Any new agreement between the Department and the applicant must be contained in an instrument under seal.

17. Alternatively, the applicant may decide to make an application to the Department. An application to modify or discharge may only be made after 5 years, beginning with the date on which the agreement was entered into. This provision applies to existing agreements in the same manner as it applies new agreements.

18. The Department may then determine that:-

- the agreement should continue to have effect without modification; or
- the agreement should be discharged; or
- the agreement still serves a useful purpose, but may be subject to the modifications specified in the applications

19. An application for modification or discharge of an agreement may not result in the imposition of an obligation on any other person against whom the agreement is enforceable – it may only result in the imposition of an obligation on the person making the application to the Department.

20. Where on receipt of an application to modify or discharge an agreement, the Department determines that the agreement should be discharged or modified, there is no requirement to draw up a new agreement under Article 40.

21. The Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005 make provision for the form and content of applications to modify or discharge an agreement, procedures for notification of the application by the applicant, publicity for such applications and the notice of determination to be given to applicants.

Receipt of an application

22. Applications to modify or discharge a planning agreement should be entered and validated on the 20/20 system in the normal way - the Application Type drop-down list has been amended to include ‘Modify/Discharge Agreement’. The requirements for a valid application are detailed at Regulation 2 of the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005.

Form and Content of Applications

23. An application to modify or discharge should be made on application form MDA1 which is available on the Department's website. The Regulations prescribe the information that is required by the Department and includes:

- the name and address of the applicant
- the address or location of the land to which the application relates and the nature of the applicant's estate in that land
- sufficient information to enable the Department to identify the planning agreement
- the applicant's reasons for applying for modification or discharge of the agreement
- such other information as the Department considers necessary to enable it to determine the application

24. The Regulations also prescribe that an application to modify or discharge an agreement must be accompanied by:

- the information required by the application form
- a map identifying the land to which the agreement relates; and
- such other information as the applicant considers relevant to the determination of the application

25. In the case of an application to modify an agreement, the Department can only consider the modifications specified in the application. Therefore, it is important to ensure that the modifications are clearly set out in the application form.

Notification of Applications by Applicant.

26. Where an agreement is enforceable against persons other than the applicant, the regulations require the applicant to give notice of the application to any other third party against whom the agreement is enforceable, or was enforceable 21 days before the date of the application.

27. The applicant is required to take reasonable steps to ascertain the name and address of every such person, but where all names and addresses are not known the applicant must publish notice of the application in a local newspaper at least 21 days before the application is submitted to the Department.

28. The notice required to be served or published must be in the form set out in Part 1 of the Schedule, which invites representation to be made to the Department within 21 days of the date on which the notice is served or published, as the case may be.

29. The application must be accompanied by a certificate certifying that these requirements have been satisfied. The certificate is prescribed at Part 2 of the Schedule and is included as part of the planning application form, entitled the Certificate of Compliance.

Council Consultation

30. When an application has been received, the Department must consult with the local council. Attached at Annex B is the draft letter to be used when consulting with council. This letter is available on the 20/20 system and may be amended as required. When the relevant council has been entered on the Consultations page, a Notify letter can be generated. The relevant letter is entitled 'Letter to Council on Receipt of an Application to Modify/Discharge an Agreement'. A

significant level of detail should be included in the letter to allow the council to identify the existing agreement and consider the implications of modifying or discharging the agreement. The applicant's reasons for making the application (as stated on the application form) must also be included in the letter to council.

Publicity for Applications

31. The Regulations require the Department to publicise an application received for modification or discharge of an existing planning agreement by:-

- Publishing notice of the application in at least one newspaper circulating in the locality; and
- Publishing notice of the application on the Departments website.

32. Notice of the application must be published with the weekly list of applications as per the attached draft advertisement at Annex C. The advertisement, with the relevant details fully completed, should be sent to Graphics along with the weekly advertising schedule. The public has 4 weeks from the date the advertisement appears in the paper, or appears on the departmental website (whichever is the later) within which to submit representations.

33. The Department must also make a copy of the application, and the relevant part of the instrument by which the planning agreement was entered into, available for inspection during the 4 week period allowed for making representations.

Determination of Applications by the Department

34. The Department must give the applicant written notice of its determination within 16 weeks of receipt of the application, or an extended period as agreed in writing between the applicant and the Department.

35. Written notification is to be issued on a standard decision notice, advising that the Department determines that:

- the agreement should continue to have effect without modification, in which case the decision is a refusal and issued on red decision paper and including the reasons for refusing the application; or
- the agreement should be discharged in which case the decision is an approval and should be issued in green decision paper; or
- the agreement still serves a useful purpose, but may be subject to modifications (which must be specified on the decision notice) in which case the decision is again an approval to be issued on green paper.

36. In the case where the Department determines that the agreement should continue to have effect without modification (as per the first bullet point), the decision notice must state the full reasons for the determination and include a statement to the effect that the applicant may appeal to the Planning Appeals Commission against the determination within 6 months of the date of the notice.

37. In the case where the Department determines that the agreement may be subject to modifications, the modifications can only be those modifications applied for on the application form and no others and these must be listed on the decision notice.

38. Copies of sample decision notices are attached at Annex D. These are available on the 20/20 system and can be generated from the drop-down list on the decision screen.

Appeals

39. Article 40B of the 1991 Order (Appeals), introduces the right to appeal against the determination of an application made under Article 40A. The applicant may appeal to the PAC where the Department fails to give notice of its determination within the prescribed period (16 weeks) or where the Department determines that the original agreement shall continue to have effect without modifications.

40. Where the Department determines that the original agreement shall continue to have effect without modification, the appeal must be lodged within 6 months of the date of the decision notice.

41. Where the Department fails to give notice within the 16 week period, it is assumed that the Department has determined that the agreement remains in place without modification.

42. The PAC may then determine that:-

- the agreement should continue to have effect without modification; or
- the agreement should be discharged; or
- the agreement still serves a useful purpose, but may be subject to the modifications specified in the application.

43. Both parties will be given an opportunity to appear before and be heard by the commission. The determination of the PAC under this Article is final.

P J McBride

Director of Operations

Letter to Council Before Entering into a Planning Agreement

Your Reference:

Our Reference:

Date:

Chief Executive

District Council

Address

Address

Address

Dear Mr Sir

Planning Application ……..

I refer to the above planning application which was received on ……..

The Department is currently considering entering into a legal agreement with ……. under Article 40 of the Planning (Northern Ireland) Order 1991 (as amended). The purpose of the agreement is:

Under the provisions of the legislation, the Department is required to consult with the local district council before entering into an agreement.

I would be grateful if you could forward any comments within 4 weeks of the date of this letter. If you have any queries, you may find it beneficial to discuss the matter with the relevant case officer at the above address.

Yours faithfully

Divisional Planning Manager

Letter to Council on Receipt of an Application to Modify/Discharge a Planning Agreement

Your Reference:

Our Reference:

Date:

Chief Executive

District Council

Address

Address

Dear Mr Sir

Application to Modify/Discharge Planning Agreement on Lands At ……

I refer to the above application to *modify/discharge an existing planning agreement.

The existing legal agreement relates to …… (description of agreement) ……. on lands at…… (address/location)…….and was entered into by the Department and ……. (name of 3rd party)……. on…(date)…….under Article 40 of the Planning (Northern Ireland) order 1991.

The Department has received an application to *modify/discharge the above agreement under Article 40A of the Planning (Northern Ireland) Order 1991. The applicant has stated his reasons for making the application as being:

Under the provisions of the legislation, the Department is required to consult with the local district council before entering into an agreement to modify or discharge an existing agreement.

I would be grateful if you could forward any comments within 4 weeks of the date of this letter. If you have any queries, you may find it beneficial to discuss the matter with the relevant case officer at the above address.

Yours faithfully

Divisional Planning Manager

* Delete as appropriate. Where application relates to modification of an agreement, please include proposed modifications as set out in the application form.

Draft Advertisement

Notification of Application to *Modify/Discharge Existing Planning Agreement Under Article 40A of the Planning (Northern Ireland) Order 1991.

The Department has received an application to *modify/discharge an existing planning agreement. The agreement relates to …… (description of agreement) ……. on lands at…… (address/location)……..and was entered into by the Department and ……..(name of 3rd party)……. on…(date)…….under Article 40 of the Planning (Northern Ireland) order 1991.

The application to modify/discharge the agreement, including the applicant's reasons for applying, may be examined at the Divisional Planning Office…(address)…. between the hours of 9.30am and 4.30pm on Monday to Thursday and 10.00am – 4.20pm on Friday. It is advisable make an appointment before calling at the office.

Any person who wishes to make representations about this application should write to the Divisional Planning Office at the above address. Comments must be received by …(4 weeks from the date of publication)….. Please quote the application number in any correspondence and note that any representations made, including objections, will be publicly available on the application file.

Application No:

Location:

Proposal:

* Delete as appropriate

Sample Decision Notices

Modification or Discharge of A Planning Agreement

Planning (Northern Ireland) Order 1991

Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005

Application No:

Date of Application:

Land to which proposal relates:

Description of proposal:

Applicant: Agent:

Address: Address:

Drawing Ref:

With respect to the above-mentioned proposal the Department of the Environment in pursuance of its powers under the above Order and Regulations, and in accordance with your application hereby

Grants Permission To Modify Agreement

which was entered into by.....
on..... in connection with application No.....

subject to the modifications set out in this application, which were as follows:

Signed.....

(Authorised Officer)

Date.....

Modification or Discharge of a Planning Agreement

Planning (Northern Ireland) Order 1991

Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005

Application No:

Date of Application:

Land to which proposal relates:

Description of proposal:

Applicant: Agent:

Address: Address:

Drawing Ref:

With respect to the above-mentioned proposal the Department of the Environment in pursuance of its powers under the above Order and Regulations, and in accordance with your application hereby

Grants Permission to Discharge Agreement

which was entered into by…….. on……..in connection with application No……..

Signed……..

(Authorised Officer)

Date……..

Your Right of Appeal

Under Article 40B of the Planning (Northern Ireland) Order 1991 if the Department either fails to give notice of its decision within 16 weeks of the date of the application being received, or determines that the agreement shall continue to have effect without modifications, you have the right to appeal to the planning appeals commission.

Where the Department determines that the original agreement shall continue to have effect without modification, the appeal must be lodged within 6 months of the date of the decision notice.

Where the Department fails to give notice within the 16-week period, it is assumed that the Department has determined that the agreement remains in place without modification.

The PAC may then determine that:-

- the agreement should continue to have effect without modification; or
- the agreement should be discharged; or
- the agreement still serves a useful purpose, but may be subject to the modifications specified in the application.

Both parties will be given an opportunity to appear before and be heard by the Commission. The determination of the PAC is final.

Hazardous Substances, Controlled Quantities and Exemptions

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PART 1

HAZARDOUS SUBSTANCES, CONTOLLED QUANTITIES AND EXEMPTIONS

Hazardous substances and controlled quantities

— (1) Substances, mixtures or preparations—

specified in column 1 of Part A;

falling within a category in column 1 of Part B; or

meeting the description in column 1 of Part C,

of Schedule 3 and present as raw materials, products, by-products, residues or intermediates are hazardous substances for the purposes of the 1991 Order. [Amended by S.R. 2000 No. 101 regulation 3(3) (a)]

[Omitted by SR 2000 No. 101 regulation 3 (3) (b)]

The quantity specified in column 2 of Schedule 3 is the controlled quantity of the corresponding hazardous substance in column 1 of that Schedule for the purposes of the 1991 Order.

SCHEDULE 3 Regulations 3(1) and (3)

[As substituted by S.R. 2009 No. 399, Regulation 3(5)]

[As amended by S.R. 2010 No. 329 Regulation 2(2) which deleted the entry in table A, Column, no. 1]

HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART A

NAMED SUBSTANCES

Column 1 Hazardous Substances	Column 2 Controlled quantity (Q) tonnes	Column 3 Quantity for the purposes of Note 4 to the notes to Parts A and B (Q*)
1. Ammonium nitrate to which Note 1 of the notes to this Part applies	5000.00	
2. Ammonium nitrate to which Note 2 of the notes to this Part applies	1000.00	1250.00
3. Ammonium nitrate to which Note 3 of the notes to this Part applies	350.00	
4. Ammonium nitrate to which Note 4 of the notes to this Part applies	10.00	
5. Potassium nitrate to which Note 5 of the notes to this Part applies	5000.00	
6. Potassium nitrate to which Note 6 of the notes to this Part applies	1250.00	
7. Arsenic pentoxide, arsenic (V) acid and/or salts	1.00	

Column 1 Hazardous Substances	Column 2 Controlled quantity (Q) tonnes	Column 3 Quantity for the purposes of Note 4 to the notes to Parts A and B (Q*)
8. Arsenic trioxide, arsenious (III) acid and/or salts	0.10	
9. Bromine	20.00	
10. Chlorine	10.00	
11. Nickel compounds in inhalable powder form (nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide)	1.00	
12. Ethyleneimine	10.00	
13. Fluorine	10.00	
14. Formaldehyde (=90%)	5.00	
15. Hydrogen	2.00	5.00
16. Hydrogen chloride (liquefied gas)	25.00	
17. Lead alkyls	5.00	
18. Liquefied petroleum gas, including commercial propane and commercial butane, and any mixture thereof, when held at a pressure greater than 1.4 bar absolute.	25.00	50.00
19. Liquefied extremely flammable gases excluding pressurised LPG (entry no.18)	50.00	
20. Natural gas	15.00	50.00
21. Acetylene	5.00	
22. Ethylene oxide	5.00	
23. Propylene oxide	5.00	
24. Methanol	500.00	
25. 4,4-Methylenebis (2-Chloraniline) and/or salts, in powder form	0.01	
26. Methylisocyanate	0.15	
27. Oxygen	200.00	
28. Toluene diisocyanate	10.00	
29. Carbonyl dichloride (phosgene)	0.30	
30. Arsenic trihydride (arsine)	0.20	
31. Phosphorus trihydride (phosphine)	0.20	
32. Sulphur dichloride	1.00	
33. Sulphur trioxide (including sulphur trioxide dissolved in sulphuric acid to form Oleum)	15.00	

Column 1 Hazardous Substances	Column 2 Controlled quantity (Q) tonnes	Column 3 Quantity for the purposes of Note 4 to the notes to Parts A and B (Q*)
34. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (to which Note 7 of the Notes to this Part applies)	0.001	
35. The following CARCINOGENS at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts; Benzotrichloride; Benzidine and/or salts; Bis(chloromethyl) ether; Chloromethyl methyl ether; 1,2-Dibromoethane; Diethyl sulphate; Dimethyl sulphate; Dimethylcarbamoyl chloride; 1,2-Dibromo-3-chloropropane; 1,2-Dimethylhydrazine; Dimethylnitrosamine; Hexamethylphosphoric triamide; Hydrazine; 2- Naphthylamine and/or salts; 4-Nitrodiphenyl; and 1,3 Propanesultone	0.5	
36. Petroleum products (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams)	2500.00	
37. Acrylonitrile	20.00	50.00
38. Carbon disulphide	20.00	50.00
39. Hydrogen selenide	1.00	50.00
40. Nickel tetracarbonyl	1.00	5.00
41. Oxygen difluoride	1.00	5.00
42. Pentaborane	1.00	5.00
43. Selenium hexafluoride	1.00	50.00
44. Stibine (antimony hydride)	1.00	5.00
45. Sulphur dioxide	20.00	50.00
46. Tellurium hexafluoride	1.00	5.00
47. 2,2-Bis(tert-butylperoxy) butane (>70%)	5.00	50.00
48. 1,1-Bis(tert-butylperoxy) cyclohexane (>80%)	5.00	50.00
49. tert-Butyl peroxyacetate (>70%)	5.00	50.00
50. tert-Butyl peroxyisobutyrate (>80%)	5.00	50.00
51. tert-Butyl peroxyisopropylcarbonate (>80%)	5.00	50.00
52. tert-Butyl peroxymaleate (>80%)	5.00	50.00
53. tert-Butyl peroxypivalate (>77%)	5.00	50.00
54. Cellulose Nitrate other than— (1) cellulose nitrate for which a licence, granted under the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006(2), is required; or (2) cellulose nitrate where the nitrogen content of the cellulose nitrate does not exceed 12.3% by weight and contains not more than 55 parts of cellulose nitrate per 100 parts by weight of solution.	50.00	

Column 1 Hazardous Substances	Column 2 Controlled quantity (Q) tonnes	Column 3 Quantity for the purposes of Note 4 to the notes to Parts A and B (Q*)
55. Dibenzyl peroxydicarbonate (>90%)	5.00	50.00
56. Diethyl peroxydicarbonate (>30%)	5.00	50.00
57. 2,2- Dihydroperoxypropane (>30%)	5.00	50.00
58. Di-isobutyryl peroxide (>50%)	5.00	50.00
59. Di-n-propyl peroxydicarbonate (>80%)	5.00	50.00
60. Di-sec-butyl peroxydicarbonate (>80%)	5.00	50.00
61. 3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane (>75%)	5.00	50.00
62. Methyl ethyl ketone peroxide (>60%)	5.00	50.00
63. Methyl isobutyl ketone peroxide (>60%)	5.00	50.00
64. Peracetic acid (>60%)	5.00	50.00
65. Sodium chlorate	25.00	50.00
66. Gas or any mixture of gases (not covered by entry 20) which is flammable in air, when held as a gas	15.00	
67. A substance or any mixture of substances which is flammable in air when held above its boiling point (measured at 1 bar absolute) as a liquid or as a mixture of liquid and gas at a pressure of more than 1.4 bar absolute (see Note 8 of the notes to this Part).	25.00	

[2]

Notes to Part A

1. Ammonium nitrate: fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers containing ammonium nitrate with phosphate and/ or potash) in which the nitrogen content as a result of ammonium nitrate is

(a) between 15.75 per cent([3]) and 24.5 per cent([4]) by weight, and either with not more than 0.4 per cent total combustible/organic materials or which satisfy the detonation resistance test described in Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003([5]),

(b) 15.75 per cent by weight or less and unrestricted combustible materials,

and which are capable of self-sustaining decomposition according to the UN Trough Test (see United Nations Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria, Part III, sub-section 38.2).

2. Ammonium nitrate: fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers in which the nitrogen content as a result of ammonium nitrate is

(a) more than 24.5 per cent by weight, except for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 per cent,

(b) more than 15.75 per cent by weight for mixtures of ammonium nitrate and ammonium sulphate,

(c) more than 28 per cent([6]) by weight for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 per cent,

and which satisfy the detonation resistance test described in Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003.

3. Ammonium nitrate: technical grade

This applies to

(a) ammonium nitrate and preparations of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is

(i) between 24.5 per cent and 28 per cent by weight, and which contain not more than 0.4 per cent combustible substances,

(ii) more than 28 per cent by weight, and which contain not more than 0.2 per cent combustible substances,

(b) aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80 per cent by weight.

4. Ammonium nitrate: “off-specs" material and fertilisers not fulfilling the detonation resistance test

This applies to

(a) material rejected during the manufacturing process and to ammonium nitrate and preparations of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Notes 2 and 3, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 2 and 3; and

(b) fertilisers referred to in Note 1(a) and Note 2 which do not satisfy the detonation resistance test described in Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003.

5. Potassium nitrate: composite potassium–nitrate based fertilisers composed of potassium nitrate in prilled /granular form.

6. Potassium nitrate: composite potassium–nitrate based fertilisers composed of potassium nitrate in crystalline form.

7. Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following factors:

International Toxic Equivalent Factors (ITEF) for the congeners of concern (NATO/CCMS)[7]

2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDD	0.5	2,3,4,7,8-PeCDF	0.5
		1,2,3,7,8-PeCDF	0.05
1,2,3,4,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,6,7,8-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,6,7,8-HxCDF	0.1
		2,3,4,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01		
OCDD	0.001	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.001
(T = tetra, Pe = penta, Hx = hexa, Hp = hepta, O = octa)			

8. Entry number 67

The controlled quantity of 25 tonnes in column 2 of entry 67 refers, in the case of a mixture of substances, to the quantity of substances within that mixture held above their boiling point (measured at 1 bar absolute).

Part B

Categories Of Substances And Preparations Not Specifically Named In Part A[8][9]

Column 1 Categories of hazardous substances		Column 2 Controlled quantity (Q) in tonnes
1.	VERY TOXIC	5.00
2.	TOXIC	50.00
3.	OXIDISING	50.00
4.	EXPLOSIVE ((see Note 2 to this Part) where the substance, preparation or article falls under UN/ADR Division 1.4, excluding those at a factory subject to the public hearing procedure under regulation 12 of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006(8) or those licensed under the Explosives in Harbour Areas Regulations (Northern Ireland) 1995(9))	50.00
5.	EXPLOSIVE ((see Note 2 to this Part) where the substance, preparation or article falls under any of : UN/ADR Divisions 1.1, 1.2, 1.3, 1.5 or 1.6 or risk phrase R2 or R3, excluding those at a factory subject to the public hearing procedure under regulation 12 of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 or those licensed under the Explosives in Harbour Areas Regulations (Northern Ireland) 1995)	10.00
6.	FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(a) to this Part)	5000.00
7.	HIGHLY FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(b(i) and (b)(ii) to this Part)	50.00
8.	HIGHLY FLAMMABLE liquids (where the substance or preparation falls within the definition given in Note 3(b)(iii) to this Part)	5000.00
9.	EXTREMELY FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(c) to this Part)	10.00
10.	DANGEROUS FOR THE ENVIRONMENT risk phrases: (i) R50: “Very toxic to aquatic organisms" (including R50/53); (ii) R51/53: “Toxic to aquatic organisms; may cause long term adverse effects in the aquatic environment"	100.00 200.00
11.	ANY CLASSIFICATION not covered by those given above in combination with risk phrases: (i) R14: “reacts violently with water" (including R14/15); (ii) R29: “in contact with water, liberates toxic gas"	100.00 50.00

Notes to Part B

1. Substances and preparations shall be classified for the purposes of this Schedule according to regulation 4 of the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009([10]) (“CHIP") whether or not the substance or preparation is required to be classified for the purposes of those Regulations or, in the case of a pesticide approved under the Food and Environment Protection Act 1985([11]) in accordance with the classification assigned to it by that approval.

2. An “explosive" means:

(a) a substance or preparation which creates the risk of an explosion by shock, friction, fire or other sources of ignition (risk phrase R2),

(b) a substance or preparation which creates extreme risks of explosion by shock, friction, fire or other sources of ignition (risk phrase R3), or

(c) a substance, preparation or article covered by Class 1 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (UN/ADR), concluded on 30 September 1957, as amended, as transposed by Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road([12]).

Included in this definition are pyrotechnics, which for the purposes of these Regulations are defined as substances (or mixtures of substances) designated to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions.

Where a substance or preparation is classified by both UN/ADR and risk phrase R2 or R3, the UN/ADR classification shall take precedence over assignment of risk phrases.

Substances and articles of Class 1 are classified in any of the divisions 1.1 to 1.6 in accordance with the UN/ADR classification scheme. The divisions concerned are:

Division 1.1: Substances and articles which have a mass explosion hazard (a mass explosion is an explosion which affects almost the entire load virtually instantaneously).

Division 1.2: Substances and articles which have a projection hazard but not a mass explosion hazard.

Division 1.3: Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard:

(i) combustion of which gives rise to considerable radiant heat; or

(ii) which burn one after another, producing minor blast or projection effects or both.

Division 1.4: Substances and articles which present only a slight risk in the event of ignition or initiation during carriage. The effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire shall not cause virtually instantaneous explosion of virtually the entire contents of the package.

Division 1.5: Very insensitive substances having a mass explosion hazard which are so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of carriage. As a minimum requirement they shall not explode in the external fire test.

Division 1.6: Extremely insensitive articles which do not have a mass explosion hazard. The articles contain only extremely insensitive detonating substances and demonstrate a negligible probability of accidental initiation or propagation. The risk is limited to the explosion of a single article.

Included in this definition are also explosive or pyrotechnic substances or preparations contained in articles. In the case of articles containing explosive or pyrotechnic substances or preparations, if the quantity of the substance or preparation contained is known, that quantity shall be considered for the purposes of these Regulations. If the quantity is not known, then, for the purposes of these Regulations, the whole article shall be treated as explosive.

3. In categories 6, 7, 8 and 9 “flammable", “highly flammable", and “extremely flammable" mean—

(a) flammable liquids: means substances and preparations having a flash point equal to or greater than 21 °C and less than or equal to 55°C (risk phrase R 10), supporting combustion;

(b) highly flammable liquids means—

(i) substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any input of energy (risk phrase R 17); and

(ii) substances and preparations which have a flash point lower than 55°C and which remain liquid under pressure, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards;

(iii) substances and preparations having a flash point lower than 21 °C and which are not extremely flammable (risk phrase R 11, second indent);

(c) extremely flammable gases and liquids means—

(i) liquid substances and preparations which have a flash point lower than 0 °C and the boiling point (or, in the case of a boiling range, the initial boiling point) of which at normal pressure is less than or equal to 35 °C (risk phrase R 12, first indent); and

(ii) gases which are flammable in contact with air at ambient temperature and pressure (risk phrase R12, second indent), which are in a gaseous or supercritical state; and

(iii) flammable and highly flammable liquid substances and preparations maintained at a temperature above their boiling point.

Notes to Parts A and B

1. Mixtures and preparations shall be treated in the same way as pure substances provided they remain within the concentration limits set according to their properties under the relevant provisions specified in CHIP, unless a percentage composition or other description is specifically given.

2. In the case of substances and preparations with properties giving rise to more than one classification the lowest thresholds shall apply.

3. Where a substance or group of substances listed in Part A also falls within a category of Part B, the controlled quantities set out in Part A must be used.

4. In the case of an establishment where no individual substance or preparation is present in a quantity above or equal to the relevant controlled quantity for that substance or preparation, the addition of hazardous substances to determine the controlled quantity shall be carried out according to the following rule:

If the sum—

$q1/Q + q2/Q + q3/Q + q4/Q + q5/Q + \ldots = 1$

(where qx = the quantity of hazardous substance x (or category of substance) present, Q = the relevant controlled quantity (Q) from Part A or Part B, except for those substances for which column 3 of Part A contains a quantity Q*, in which case the quantity Q* shall be used in place of the controlled quantity Q in column 2) then the controlled quantity of each of the substances which are added together in accordance with each of paragraphs 5(a) to (c) below shall be deemed to be present for the purposes of Articles 53(1), 59(2)(a), 61(2)(a) of the 1991 Order and of Article 76 (enforcement notice to have effect against subsequent development) of the 1991 Order as modified by regulation 19(1) and Part 2 of Schedule 4 to the Hazardous Substances Regulations.

5. The addition rule in paragraph 4 will apply for the following circumstances:—

(a) for the addition of substances and preparations named in Part A and classified as toxic or very toxic, together with substances and preparations falling into categories 1 or 2 of Part B;

(b) for the addition of substances and preparations named in Part A and classified as oxidising, explosive, flammable, highly flammable, or extremely flammable, together with substances and preparations falling into categories 3, 4, 5, 6, 7, 8 or 9 of Part B;

(c) for the addition of substances and preparations named in Part A and classified as dangerous for the environment (R50 (including R50/53) or R51/53), together with substances and preparations falling into categories 10(i) or 10(ii) of Part B.

Part C

Substances Used In An Industrial Chemical Process

Column 1 Hazardous substances	Column 2 Controlled quantity
Where it is believed that a substance, which is within Part A or Part B, may be generated during loss of control of an industrial chemical process (“HS"), any substance which is used in that process (“S").	The amount of S which it is believed may generate, on its own or in combination with other substances used in the relevant industrial chemical process, the controlled quantity of the HS in question.

Notes to Part C

1. The expression “which it is believed may be generated during loss of control of an industrial chemical process" has the same meaning as in the Directive.

2. Where a substance falling within Part A or B also falls within Part C, the classification with the lowest controlled quantity shall apply, subject to Note 3 to the notes to Parts A and B.

[1] Planning Policy Statement 1 – General Principles, Paragraphs 62-66.

[2] S.R. 2006 No. 425

[3]15.75 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 45 per cent ammonium nitrate

[4]24.5 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 70 per cent ammonium nitrate

[5] S.I. 2003/1082

[6]28 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 80 per cent ammonium nitrate.

[7] North Atlantic Treaty Organisation / Committee for the Challenges of Modern Society

[8] S.R. 2006 No. 425

[9] S.R. 1995 No. 87

[10] S.R. 2009 No. 238

[11] 1985 c.48

[12] O.J. No. L.319, 12.12.1994, p. 7. Directive as last amended by Commission Directive 2003/28/EC O.J No. L 90,8.4.2003, p.45

Draft Committee amendments to Clause 1

Planning Reform Bill
Draft Committee Amendments

1. Clause 1 amendment to include reference to “social well-being" and strengthening the Department’s obligation in relation sustainable development

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 6

At end insert-

‘(1A) The department must-

(a) not later than 3 years after the commencement of this Act, and

(b) at least once in every period of 5 years thereafter, publish a report on the implementation of this Act.’

Departmental reply re Clause 1

Clause 1 - The Committee asked for an amendment to 1(2)b on contributing to sustainable development

The Minister will bring forward the following amendment:

Clause 1, Page 1, Line 11
Leave out 'the achievement of'

Clause 1 - The Committee's requested that "wellbeing" be added at 1 (2) b, as one of the issues the Department should keep under review.

"Wellbeing" does not yet exist in legislation and so it is not possible to refer to it in the Bill.

Departmental reply re Clauses 33 - 38

Clause 33 - the Committee asked that simplified planning zones be removed from the Bill

The Minister has decided not to bring forward such an amendment.

Departmental response re Clause 130

Departmental Response to Environment Committee Request after
3 February Meeting

Expressions used in connection with enforcement

Clause 130

The Committee requested 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.

4. 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.

5. The Committee requested 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.

6. 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.

7. 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.

8. In exercising discretion, the Department is mindful of its duty to enforce planning legislation and to ensure that development is managed in a proactive and proportionate manner. In determining the most appropriate course of action in response to alleged breaches of planning control, the Department will take into account the extent of the breach and its potential impact on the environment. Any decision to proceed with enforcement action will also be informed by case law, precedents and appeal decisions.

9. The Departments general policy approach to dealing with breaches of planning control is contained in Planning Policy Statement (PPS) 9 'The Enforcement of Planning Control'.

10. In 2009, the Department published an Enforcement Strategy (copy attached) The purpose of this Strategy was to set out the Departments objectives for planning enforcement, its guiding principles and priorities for enforcement action and performance targets. This will enable the Agency's enforcement resources to be put to the best use and it will provide guidance to Planning Service Staff, other departments and agencies.

11. In the 2004/05 business year, the decision was taken to bolster enforcement teams throughout the Agency with each Divisional Office and HQ having dedicated enforcement staff. Additional staff were allocated to enforcement teams particularly at PPTO level.

12. The number of staff employed in each of the last five years in the Planning Service enforcement section is provided in the table below.

	2009/10	2008/09	2007/08	2006/07	2005/06
Number of staff employed in enforcement	50	45	39	43	34

13. Divisional Planning Managers are responsible for both development control and enforcement functions. There is an existing close and ongoing liaison between these two functions on a daily basis. Both in cases when offices are investigating potential breaches of planning control, and when planning applications stemming from enforcement cases are submitted, the relevant case officers from the development control and enforcement sections liaise closely in order to ensure that all relevant issues are fully considered. In addition, the enforcement team will proactively monitor certain developments following the grant of planning permission to ensure the development is carried out as approved or conditions have been complied with.

14. Legal costs do not influence the Departments decisions to take enforcement action. The Departments key objectives for planning enforcement are

- To bring unauthorised activity under control;
- To remedy the undesirable effects of unauthorised development including, where necessary, the removal or cessation of unacceptable development; and
- To take legal action, where necessary, against those who ignore or flout planning legislation.

15. Planning Service is committed to securing these objectives in order to ensure that the credibility and integrity of the planning system is not undermined.

16. Planning Service will investigate all alleged breaches of planning control and any resulting enforcement action, without undue delay. However, when determining what (if any) action is to be taken, priority will be given to those breaches where, in the Departments opinion, the greatest harm is likely to be caused.

17. Enforcement Activity for the 2009 calendar year is set out in the tables below *.

Case opened by Breach Type and by Division (2009)

Description	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	106	70	114	137	26	125	125	703
Change of Use	127	201	123	65	79	89	59	743
Demolition Conservation Area		2	5				1	8
Non Compliance	4	9		12	2	1	8	36
Operational Devt	199	316	314	368	59	254	350	1860
Tree Preservation Order	3	7	1	13		9	3	36
Unauthorised Sign	36	133	39	56		79	104	447
Unpermitted Building	6	8	7	2		10	22	55
Works to Listed Building	2	3	14	5		16		40
Total	483	749	617	658	166	583	672	3928

Number of Cases Closed by Breach Type and by Division (2009)

Breach Type	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	109	82	162	105	21	136	102	717
Change of Use	131	225	123	56	168	86	76	865
Demolition Conservation Area	1	2	1	1			1	6

Breach Type	BA	BLF	CR	DPT	HQ	LO	OM	Total
Listed Building		1	1	3		2		7
Miscellaneous		17	9	46	2	5	1	80
Non Compliance	46	53	47	87	13	13	31	290
Operational Devt	286	275	460	412	84	252	393	2162
Tree Preservation Order	2	6	2	13		10	2	35
Unauthorised Sign	41	180	84	50		79	105	539
Unpermitted Building	15	88	441	50	2	50	31	677
Works to Listed Building	1	2	11	5		16	2	37
Total	632	931	1341	828	290	649	744	5415

Enforcement Notices by Breach Type and by Division (2009)

Breach Type	BA	BLF	CR	DPT	HQ	LO	OM	Total
Breach of Planning Condition	10	4	24		8	7	19	72
Change of Use	8	10	52		25	10	15	120
Non Compliance							1	1
Operational Devt	24	24	72		21	15	50	206
Tree Preservation Order							1	1
Unpermitted Building		3	1	1				5
Works to Listed Building						1		1
Total	42	41	149	1	54	33	86	406

* this information was provided to assist with CJI follow up review in April 2010.

18. In the 2009/10 business year, 4512 enforcement cases were opened in respect of alleged breaches of planning control.

Please note: All figures have been extracted from a live dataset which is continuously updated and validated. They should therefore be regarded as indicative only at this point in time and should not be compared with any previous figures published by the agency.

Clauses 134 – 136; 149, 150, 184 & 186

The Departmental officials agreed to 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. Also the Committee would like a response to the concerns raised by the South Belfast Resident's group (emailed) and how they may be addressed in the Planning Bill.

27. Clauses 134, 135 and 136: Temporary stop notices including restrictions and offences

Clause 149: Service of stop notices by councils and Clause 150 Service of stop notices by Department; Clause 184: Compensation for loss due to stop notice; Clause 186: Compensation for loss due to temporary stop notice

28. The above are all forms of stop notices.

29. The Committee asked officials to 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 information is provided below.

30. Prior to 2009, Planning Service did not retain full electronic records for Enforcement. However, based on a manual check of records, the number of stop notices and temporary stop notices that have been issued since (time period) are set out in the table below. In addition, an indication of the number of temporary stop notices that were followed by final notices/injunction is also provided.

Type of Notice	Number issued
Stop Notice	10
Temporary Stop Notice • Number followed by Notice • Number followed by Injunction	7 3 1

Clause 237: Planning Register

Clause 237

The Departmental officials agreed to report back to the Committee on the compatibility of council and Departmental IT systems.

49. This clause requires all district councils to keep and make available a planning register containing copies of the items listed, which includes all applications for planning permission. 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 it issues a notice under departmental reserved powers.

50 The Committee requested that 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.

51. The Department responded to the Committee on 8 February 2011, however it would be helpful to advise the Committee that Planning systems conform to IT best practice and use NICS strategic tool sets which enable exchange of information and integration with other IT systems.

Departmental reply re Clause 202

Clause 202 – The Committee asked for consideration of an amendment to stop the practice of new information being presented at appeals

The Minister will bring forward such an amendment.

Simplified Planning Zone Scheme - Slough Trading Estate

Simplified Planning Zone Scheme

for the

SLOUGH TRADING ESTATE

Adopted 12th November 2004

Prepared by Slough Borough Council
in conjunction with Slough Estates Plc.

Simplified Planning Zone Scheme for the Slough Trading Estate

Contents

PART 1

Simplified Planning Zone (SPZ) for The Slough Trading Estate

INTRODUCTION

This document sets out the terms for the implementation of the second SPZ for the Slough Trading Estate.

The regional context for the SPZ is shown on Plan No. 1. The Trading Estate is located approximately 1.6 kilometres (1 mile) to the west of Slough Town Centre. The Trading Estate dominates a large area of the town and is well located with the Bath Road (A4) to the south providing access to the M4 motorway and the Farnham Road (A355) to the east. The Trading Estate is also bisected by the London (Paddington) to Bristol railway line.

The Trading Estate covers approximately 197 hectares (486 acres) in area and currently includes a wide variety of business, industrial and warehouse uses, together with a limited but growing number of service activities, including shops and banks. The Estate is relatively self-contained and in the single ownership of Slough Estates. For avoidance of doubt, Plan 2 outlines the area of land to be included within the scheme. SPZ designation of the Trading Estate complies with accepted criteria of eligibility.

The SPZ boundaries are broadly defined by Montrose Avenue, Perth Trading Estate and residential development/public open space to the north; Haymill Valley and Burnham Lane to the west; Bath Road (A4) to the south; residential development in Thirkleby Close and Pitts Road to the south-east, and Farnham Road (A355) to the east. Also included is a small area east of Farnham Road which is bounded by the London to Bristol railway line to the south, Whitby Road to the north and a minor highway to the west of Carlisle Road and Lake Avenue.

PART 2

LEGAL BASIS FOR SIMPLIFIED PLANNING ZONE'S AND SLOUGH'S CURRENT PLANNING POSITION

Legal Basis

The legal basis for the creation of Simplified Planning Zones is to be found in Sections 82 to 87 and Schedule 7 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").

Subordinate legislation and guidance on Simplified Planning Zones is also found in the Town and Country Planning (Simplified Planning Zones) (Excluded Development) Order 1987 as amended by SI 1996 No. 396 ("the 1987 Order"), the Town and Country Planning (Simplified Planning Zones) Regulations 1992 ("the 1992 Regulations") and PPG5: Simplified Planning Zones issued by the Government in November 1992 ("PPG5"). In addition the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the 1999 Regulations") contain provisions relating to Simplified Planning Zones.

Simplified Planning Zones are areas within which planning permission is granted as part of a scheme for defined types of development. Provided that the development is in accordance with the Simplified Planning Zone scheme, there is no need to gain planning permission in the normal way.

On 6 January 1995 Slough Borough Council ("the Borough Council") adopted a Simplified Planning Zone scheme for the Slough Trading Estate ("the 1995 SPZ"). The 1995 SPZ has a lifetime of ten years expiring on 5 January 2005.

Under Section 83(1) of the 1990 Act the Borough Council is under a statutory duty to keep under review the question of for which part or parts of its administrative area the creation of Simplified Planning Zone is desirable. The Borough Council may, under Section 83(2) of the 1990 Act, also at any time decide to make or alter a Simplified Planning Zone scheme.

The designation of this SPZ will have major advantages for the continued regeneration of the Trading Estate including:

- Sustainability - as part of the renewal of the SPZ a new Integrated Transport Strategy will be implemented to deliver new bus routes, new public transport infrastructure and links, new facilities for cyclists, travel planning and reduced maximum car parking standards.

- Flexibility - subject to compliance with the scheme, developers will be in a position to respond more quickly and effectively to changes in market demands and tenants' requirements.

- Certainty - the scheme clarifies the types of development acceptable to the Borough Council and providing proposals accord with the scheme, detailed planning approval will not be required. This will help foster confidence in investment on the Trading Estate.

- Speed - developers do not have to obtain individual planning permissions for compliant proposals, thus reducing administrative burdens and assisting the overall redevelopment of the Trading Estate.

- Marketability - it is hoped that this SPZ will enhance the marketability of Slough as a business/employment centre.

If a form of development is proposed which does not fall within this SPZ planning consent is required in the normal way. The prescribed SPZ permission for the Trading Estate is included within Part 3 of this document and only those uses included therein are permissible in conjunction with the various conditions, and special controls which are to be implemented in the Sub-zones. Informatives have also been included so as to ensure developers are aware of the many additional factors, which must be considered.

Restrictions imposed under this SPZ scheme relate only to development implemented following its adoption. It should be noted that an SPZ grants only planning permission. All other legislative controls remain and must be complied with. These include the following:

- Environmental health legislation, and other environmental protection legislation such as that directly dealing with noise and pollution control.

- Consent to display advertisements.

- Consent for the stopping up or diversion of a highway or footpath.

- Approval under the Building Regulations.

- Authority for any highway works which are to be carried out within the boundaries of the public highway.

At the date of adoption, there were no listed buildings, ancient monuments, conservation areas or tree preservation orders located within the area of this SPZ. However, if any such designations are made within the lifetime of this SPZ, development involving any of these would not fall within this SPZ permission and planning and other associated consents would be required in the normal way.

In respect of environmental assessment, Regulation 24 of the 1999 Regulations confirms that this SPZ shall not permit EIA development, being development which is either development of the kind referred to in Schedule 1 of the 1999 Regulations or of the kind referred to in Schedule 2 of the 1999 Regulations likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

As a result, this SPZ does not grant planning permission for these types of development for which separate planning applications accompanied by an environmental statement or statements would need to be submitted to the Borough Council.

Current Planning Position

The SPZ has been prepared within the context of the national, regional and local

planning framework.

The Regional Planning Guidance for the South East (RPG9), which *was* published in March 2001, seeks the development of a strong and sustainable economy across the region which takes into account the potential and problems of thriving areas such as the Thames Valley and the problems and opportunities of areas in need of support and regeneration.

Strategic level planning guidance is contained in the adopted Berkshire Structure Plan 1991-2006 and the new Berkshire Structure Plan 2001-2016 to be adopted on 10 December 2004.

This Plan attempts to deal with the consequences of the sustained history of economic growth in Berkshire, notably the high cost of housing and the increase in the average length of journeys to work. It aims to strike a balance between maintaining a healthy economy that attracts and retains companies and the need to protect the environment and promote sustainability.

The policies in the Structure Plan make it clear that existing employment areas, such as the Trading Estate, will be acceptable as locations for employment development but the centres of the major towns will be the principal location for major office development.

The adopted Local Plan for Slough (2004) seeks to encourage economic regeneration, a strong economy and economic success. In this respect it notes that:

- the scale and range of businesses on the Trading Estate and the employment they create are vital components of the local economy.
- the Trading Estate accommodates many firms that contribute to important economic clusters of similar industries both within Slough and the wider Thames Valley.
- the ability of the Trading Estate to respond to the changing needs of business has been enhanced by its SPZ status.
- the Trading Estate is a preferred location for business accommodation, light industrial, general industrial and distribution and storage uses.

The relevant Local Plan Policy for the Estate states:

> Policy EMP7 (Slough Trading Estate)
>
> Within the Slough Trading Estate, as shown on the Proposals Map, developments for B1 business, B2 general industrial and B8 warehousing and distribution will be permitted subject to:
>
> a) major independent B1(a) office developments being located on the Bath Road frontage in accordance with the application of a sequential approach under Policy EMP1; and
>
> b) there being no overall increase in the number of car parking spaces within the estate.

It is considered that the proposed SPZ is consistent with Policy EMP7 in that it does not allow for office development to take place. It also introduces increasingly restrictive car parking standards in parallel with the implementation of the Integrated Transport Strategy (ITS) which has been prepared in conjunction with the SPZ.

The Local Plan also makes it clear that major improvements to public transport provision will be sought along the A4 Bath Road corridor in order to improve accessibility to the Trading Estate by alternative means of transport to the car. Improved links to Burnham and Slough railway stations will also be sought which will make it easier to commute to the estate by train. In addition, all major new developments will be required to produce Company Travel Plans to demonstrate how firms will encourage staff to use public transport.

A new bus route linking the Trading Estate to Slough and Burnham stations has been introduced and the Integrated Transport Strategy sets out how further improvements to public transport, cycling and walking will be achieved.

The policies and proposals in the approved and emerging Regional, Structure and Local Plans, and their successors, will continue to apply to all development within the Trading Estate, such as B1a offices, which are not permitted by this SPZ and which will require planning permission in the normal way.

All development permitted under this SPZ will continue to be monitored for Regional Planning, Structure Plan and Local Plan purposes. This scheme has been drawn up in accordance with present planning legislation. It does not seek to pre-empt any future changes to planning legislation. It is, however, envisaged that the SPZ will be replaced in due course by a Local Development Order which will be prepared in the context of the proposed Local Development Framework for Slough. During this process due weight will be given by Slough Borough Council to the parking strategy agreed for the purposes of this SPZ in the Integrated Transport Strategy in the approach to car parking in any Local Development Order.

Integrated Transport Strategy

Over the course of the lifetime of this SPZ the associated Integrated Transport Strategy will provide an integrated package of transport measures that will improve accessibility and promote sustainable travel to the Trading Estate. The key components of the ITS are summarised below:

- a new bus route operating on a 10 minute frequency linking the Trading Estate to Burnham and Slough national rail stations. The route will also serve the residential areas of Burnham and Manor Park as well as the town centre. The route will feature state-of-the-art buses with distinctive livery, integrated rail/bus ticketing, high quality bus shelters, a new section of bus lane and SVD bus priority on all signal controlled intersections along the route. This new service started operations in January 2004.

- two further bus routes are included within the ITS. These will link the Trading Estate with surrounding residential areas (Cippenham and Manor Park by early 2007 and Chalvey and Britwell by early 2009) as well as serving established district centres within the Borough. This bus strategy when complete will connect the Trading Estate to key destinations within the Borough with high quality, high frequency bus services operating between the hours 0700 and 1900 Monday to Friday.

- schemes to improve pedestrian accessibility will be made in and around the Trading Estate. These will include the provision of Toucan Crossing facilities on the A4 Bath Road to help reduce the severance associated with this heavily trafficked road, new footpaths connecting to the residential areas of Britwell and Lynch Hill located north of the Trading Estate. A comprehensive programme of dropped kerb, tactile paving and direction signing to improve the continuity and safety of pedestrian routes within the Estate is also proposed.

- provision for cyclists will also be improved through the introduction of advisory cycle lanes on the distributor roads within the Trading Estate. The initial phase of advisory cycle lane will be implemented in parallel with the first new bus route, and will provide advisory cycle lanes along the complete length of the Trading Estate's primary distributor road. Trading Estate cycle routes will link into and form a cogent part of SBC's wider Cycling Strategy for Slough. The improved provision for cyclists will be made in partnership with the proposals for improved pedestrian accessibility through common initiatives such as the A4 Bath Road Toucan Crossing and shared use of the new pedestrian routes to Britwell and Lynch Hill. Secure cycle parking will also be introduced at key locations within the Trading Estate, and increased cycle parking provision made in association with redevelopment taking place under the SPZ.

- through the ITS a Trading Estate travel plan will be initiated. Slough Estates will appoint a travel plan co-ordinator for the Trading Estate. Through the co-ordinator Slough Estates will provide a focal point and mechanism for occupiers to implement a travel plan that is consistent with the overall aims of the ITS.

- a phased reduction in parking standards for permitted development will be introduced over the period of the SPZ. The ITS contains a phased reduction in maximum parking standards that is linked to the integrated programme of public transport improvements described above. The parking strategy will also consider the provision/extension of on-street waiting and loading restrictions within the Trading Estate to address any localised road safety problems.

Table Trading Estate ITS Parking Standards

Use Class Order	One Car Space per GFA				One Lorry space per GFA	One Cycle Space per GFA
	Jan 2006 to Dec 2006	Jan 2007 to Dec 2007	Jan 2008 to Dec 2012	Jan 2013 to Dec 2014	Jan 2005 – Dec 2014	
B1 (b)	40m²	45m²	50m²	Current adopted standard	c.o.m	125m²
B1 (c)	40m²	45m²	50m²	Current adopted standard	500m² to 2000m² 1000m² beyond 2000m²	125m²

Use Class Order	One Car Space per GFA				One Lorry space per GFA	One Cycle Space per GFA
	Jan 2005 to Dec 2006	Jan 2007 to Dec 2007	Jan 2008 to Dec 2012	Jan 2013 to Dec 2014	Jan 2005 – Dec 2014	
B2	40m²	45m²	50m²	Current adopted standard	500m²	500m²
B8 first 2000m²	40m²	45m²	50m²	Current adopted standard	500m	
B8 additional space over 2000m²	40m²	45m²	50m²		1000m²	500m²
Sui Generis including Colocation	40m²	45m²	50m²	50m²	c.o.m	125m²
A1-A2 first 2000m²	30m²	30m²	30m²	30m²	500m²	125m²
A1-A2 additional space over 2000m²	20m²	20m²	20m²	20m²	1000m²	350m²
A3 Food and Drink	5m² of public area	5m² of public area	5m² of public area	5m² of public area	N/A	c.o.m

- the ITS will support a freight strategy which will manage goods vehicle movements on the local highway network in a manner that is conducive to the economic and environmental development of the Borough. Through the ITS, a strategy will be developed to ensure that freight movements do not compromise the viability, amenity or safety of the Trading Estate, the residential areas that surround it, the town centre or the Borough. A key aspect of this strategy will be a freight routing agreement to ensure that goods vehicles use appropriate routes on the local highway network.

In delivering these benefits the ITS will help achieve the transportation and sustainability objectives set out in the Slough Local Transport Plan, the Slough Local Plan, the Berkshire Structure Plan, the Regional Transport Strategy and the Government's guidance in PPG 13.

PART 3

The Slough Trading Estate Simplified Planning Zone - Details of the Scheme

THE SPZ BOUNDARIES

The boundaries of the SPZ and of the sub-zones are defined on Plan No. 2. The permission granted by this SPZ relates solely to this area.

TIME PERIOD

This SPZ Scheme was adopted on 12th November 2004 and is in operation for a ten year period, ending on 11th November 2014.

Any planning permission granted by the SPZ must be started within 10 years of the date of adoption of the SPZ Scheme. At the end of 10 years the SPZ ceases to have effect, except for development that has already begun. For clarification, Section 56 of the Town and Country Planning Act 1990 states when development within an SPZ is considered to have commenced. With respect to unfinished schemes, the Local Planning Authority may serve a Completion Notice (subject to confirmation by the Secretary of State) stating that the planning permission granted by the SPZ will cease to have effect after a further specified period of not less than 12 months.

It should be noted that the term "developer" as used in the SPZ Scheme, is intended to include any party or organisation who, in the case of a normal planning application, would be referred to as the applicant.

PLANNING PERMISSION GRANTED BY THIS SPZ

This SPZ grants planning permission for certain types of uses as defined in the 1987 Use Classes Order. For avoidance of doubt, a definition of all uses permitted under the scheme is included within Appendix 1.

Uses permitted under the scheme

Planning Permission is granted by the SPZ scheme for the following development subject to the conditions and the provisions of the various sub-zones set out below:

i) **Business Use (Only B1(b) and B1(c) of this use class).**

- B1(b) Research and development of products or processes; or
- B1(c) Any industrial process,

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

ii) **General Industrial Use (Class B2)**

A use involving the carrying on of an industrial process, other than a use falling within Class B1 above of the 1987 Use Classes Order.

iii) **Storage and Distribution (Class B8)**

Use for storage purposes and/or as a distribution centre.

iv) **Shops (Class A1)**

This use class includes uses when the sale, display or service is to visiting members of the public.

v) **Financial and Professional (Class A2)**

This use class includes services which are provided principally to visiting members of the public. Banks are included within this category.

vi) **Food and drink (Class A3)**

This use class provides for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises.

vii) **Colocation (Sui Generis)**

The electronic storage, receipt and transmission of data and information including (but not exclusively) Internet Service Provision, web hosting, disaster recovery and other server farm operations.

USE OF SUB-ZONES WITHIN THE TRADING ESTATE as shown on PLAN 2

- Business and Industrial Use Sub-Zone:- The Business and Industrial Use Sub-Zone covers most of the Estate. Within this area, planning permission is granted for B1(b) (Research and Development), B1(c) (Light Industry), B2 (General Industry), B8 (Storage and Distribution) and colocation uses, subject to the relevant planning conditions included within this document

- Service Use Sub-Zone:- To the north of Bedford Avenue, adjacent to Gresham Road, there is an existing service area which contains several banks and a block of small retail shops. Given the size of the Trading Estate, there is a need to maintain an adequate level of services available to occupiers. Within this Sub-Zone, planning permission is granted for fast-food units and restaurants (Class A3), banks and other professional/financial services (Class A2) and A1 uses such as shops and Business Use (Class B1(b)/B1(c)).

  General Industrial (Class B2) and Storage and Distribution (Class B8) are excluded from this area. No single retail unit (Class A1) or premises for the sale of food or drink (Class A3) shall exceed 200 square metres gross floor area. With the exception of the existing shopping parade, the total new floor area space occupied for retail purposes (Class A1) and for the sale of food and drink (Class A3) within the sub zone shall not exceed 2000 square metres gross. All development within this sub-zone is subject to the relevant planning conditions as included within this document

- Retail Sub-Zone: The Retail Sub-Zone forms part of the Farnham Road district centre as defined in the adopted Local Plan for Slough. Within this sub-zone planning permission is granted for retail purposes (Class A1), subject to the relevant planning conditions included in this document

  All other uses are excluded from this Sub-Zone and retailing in other areas covered by the SPZ unless permitted within the service use sub-zone, will require planning permission in the normal way.

- Power Station Sub-Zone:- The Estate power station, located on Edinburgh Avenue, constitutes a special type of use which requires careful consideration. Existing planning control is therefore retained over the power station and all developments within its curtilage as defined by the sub-zone, where the provisions of the SPZ will not apply.

- Highway Safeguarding Sub-Zones: There are road improvement schemes proposed on the Bath Road and Farnham Road which affect the Estate. These are included by the Highway Authority in long term programmes as schemes which could be undertaken in the period of the SPZ scheme. Other approved schemes affecting roads within the Trading Estate, notably Buckingham Avenue, Liverpool Road and Leigh Road are not yet programmed. Other proposals include Bedford Avenue widening, from Hamilton Road to Liverpool Road. These proposals may change following consideration by the Borough Council and the Highway Authority of the findings of the current traffic study. In the interim period however, it will be necessary to protect all approved road widening lines in the SPZ scheme, for these planned improvements. No development will be permitted by the SPZ consent within this sub-zone.

- Power Line Sub-Zones The function of this sub-zone is to secure a satisfactory relationship between the new development and the power lines which cross the eastern part of the Estate. Within this sub-zone, no development can take place without prior consultation with Scottish and Southern Electric, in order to ensure that it will not interfere with the operation and maintenance of the power lines which cross the Trading Estate.

- Landscape Sub-Zones:- The scheme identifies three landscape areas, two of which are identified as sub-zones, within which there will be general landscaping requirements. The hierarchy of landscaping requirements is as follows:-

  a) Strategic Landscape sub-zones.
  b) Arterial Road Landscape sub-zones
  c) Non-arterial Roads.

  All development permitted by the SPZ Scheme should take account of the landscaping guidance note contained in Appendix 2 which covers the following:-

  a) Landscape design considerations
  b) Statutory undertakers services and plant
  c) Retention of existing trees
  d) Management of retained trees and existing trees
  e) Replacing mature trees
  f) New trees
  g) Maintenance
  h) Design standards and reference documents

- Sensitive Boundary Sub-Zones:- The specific conditions relating to these Sub-Zones aim to minimise potential nuisance in residential areas adjacent to the Trading Estate. They are located in Burnham Lane, Galvin Road, Montrose Avenue, Stirling Road and south of Whitby Road (west of Carlisle Road/Lake Avenue).

  Within these Sub-Zones planning permission is granted for development for Business (Use Classes B1(b) and B1(c)), Storage and Distribution (Use Class B8) and colocation uses. Planning permission is also granted in all Sub-Zones save for the Burnham Lane Sub-Zone for General Industry (Use Class B2), subject to it replacing existing industry of this type. Planning permission is not granted for General Industry (use Class B2) in the Burnham Lane Sub-Zone.

  Specific conditions relating to the hours of operation and deliveries apply in these Sub-Zones in addition to those applied throughout the SPZ area. These additional conditions are designed to protect the amenity of local residents. These conditions are set out in Appendix 3. The Sensitive Boundary Sub-Zones are shown on Plan No. 2.

PLANNING CONDITIONS APPLYING THROUGHOUT THE SPZ

All development permitted under the SPZ Scheme is subject to the following conditions:

i) Appropriate provision is made for off-street parking, manoeuvring and servicing of all vehicles within the curtilage of each development site. These areas should be provided before the buildings/sites are occupied. The car parking standards for development permitted under this SPZ are set out in the ITS and are included in this document at Table 1.

ii) All vehicular accesses to an adopted highway or highway that the developer proposes for adoption, are designed and located in accordance with conditions and standards specified in the current edition of the Local Highway Authority Design Guide at the time of development. Generally the spacing and layout of accesses including site lines, being in accordance with the standards for road junctions as stated in the aforementioned design guide. This shall incorporate suitable pedestrian and cycle facilities for all movements including those to and within the site itself. Except by agreement in writing with the Borough Council, no alterations to an existing vehicular access to an adopted highway shall be undertaken.

When development takes place the objective should be to close or combine the existing accesses where alternative access arrangements can be provided. Redundant accesses to be fully reinstated to footway.

iii) Except by agreement in writing with the Borough Council no new vehicular accesses will be permitted directly onto the Bath Road (A4), Farnham Road (A355) or Burnham Lane. However, the scheme does permit new vehicular access and alterations to existing vehicular access to the service road adjacent to the north side of Bath Road (A4), subject to such access complying with the standards set down in the current edition of the Local Highway Authority Design Guide.

iv) Site coverage by buildings to be erected - the building's "footprint", including any future extensions but excluding any "deck" parking facilities, shall not exceed 50% of the total site area of any individual development plot.

v) The total height of development (excluding plant and machinery) shall not exceed 3 storeys in height from ground level. The roof is not regarded as a storey if it is to be used for the storage of plant and machinery. However, if the roof is used for a permitted use contained within the SPZ consent, it is classified as a storey. Use of a basement floor for parking or for a use permitted by the SPZ consent, will not be classified as a storey. The office element of any three storey development will be limited to an area not exceeding 49% of floor area.

vi) No permission will be granted for development which requires specified potentially hazardous activities, the storage/manufacture of defined potentially hazardous substances, the carrying out of prescribed processes or laying or construction of a notifiable pipeline.

vii) No building work is to be carried out until the developer has carried out the necessary consultations with statutory undertakers and other interested

parties such as the HSE. A list of bodies to be consulted though not exhaustive is contained within Appendix 4.

viii) Landscaping on individual sites within the Trading Estate must comply with the hierarchy of landscaping requirements, (Strategic Landscape Sub-Zones, Arterial Road Landscape Sub-zones and Non-arterial Roads), as contained within the landscape Guidance Note in Appendix 2.

ix) Walls up to 2 metres in height and all other means of enclosure up to a height of 3 metres are permitted under the SPZ consent, if they are to be carried out in conjunction with other major building works, which are granted under the SPZ consent.

x) Open storage is not permitted as part of any of the developments included within the SPZ consent, either as the main use or ancillary to the main use.

xi) Any development adjacent to the Haymill Valley must maintain an appropriate means of enclosure.

xii) In Sensitive Boundary Sub-Zones specific conditions relating to the hours of operation and deliveries apply. These conditions are set out in Appendix 3.

xiii) In the Service Use Sub-Zone, no single retail unit (Class A1) or premises for the sale of food and drink (Class A3) shall exceed 200 square metres gross floor area. With the exception of the existing shopping parade, the total floor area occupied for retail purposes (Class A1) and for the sale of food and drink (Class A3) shall not exceed 2000 square metres gross.

xiv) All new development permitted by the SPZ immediately adjoining the northern boundary between Yeovil Road in the west and Stirling Road in the east, shall be designed so as to minimise potential noise levels in adjacent residential areas through such measures as the layout of the development and the enclosure of plant, machinery and equipment.

xv) CCTV masts and equipment are permitted as follows

1. Only in locations within a diameter of 4 metres of the positions marked on CCTV1.

2. Poles and camera fittings are to be no more than 10 metres high. This allows for a 9 metre pole plus camera fittings.

3. Poles are to be set so as not to interfere with sight lines, unless specifically agreed with Slough Borough Council.

4. Poles are to be freestanding or cabinet based, subject to the cabinets being no larger than 0.5 m square and 1.25 m high. (Total height no more than 10m see xv) point 2 above).

xvi) Independent entrance feature structures located at the entrance to buildings to identify the vehicular and pedestrian points of access and the identity of the occupiers will be permitted subject to them having a footprint not exceeding 2m x 2m and a height not exceeding 4m from ground level. Illumination of

entrance signs must comply with the Slough Borough Council design criteria current at the time of the development.

Developments permitted under this SPZ are not exempt from enforcement action. If any development fails to comply with any of the restrictions or conditions set out in this SPZ the Borough Council can instigate enforcement procedures in the normal way.

If a developer or occupier does not wish to comply with a particular condition set out in this SPZ scheme they must submit a planning application to the Borough Council for the relaxation of that condition.

INFORMATIVES

All development permitted under the SPZ Scheme should take into account the following informatives:

i) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 a change of use from a Class B1(b) and/or B1(c) use permitted by this SPZ to a primary use within Class B1(a) shall not be permitted. Ancillary class B1(a) uses are, however permitted.

ii) Development (including any alterations to existing buildings and parking facilities) shall be suitable for use by people with disabilities, designed in accordance with Building Regulations and Slough Borough Council's parking standards current at the time of development.

iii) The granting of the SPZ consent does not prevent the Borough Council from taking action under Environmental Health Legislation against activities resulting in noise, smoke, odours, smells, dust, grit or litter. Action can also be taken under other environmental legislation where infringements occur.

iv) Given its past industrial use, there is a possibility that some of the land within the proposed SPZ may be contaminated. Attention is drawn to PPG23 "Planning and Pollution Control" 1997 which provides guidance on this issue.

v) If geotechnical investigation indicates the presence of significant contamination the developer should contact the Environment Agency at the following address.

Environment Agency
Swift House,
Frimley Business Park,
Frimley,
Camberley,
Surrey GU16 5SQ

It is an offence to cause or knowingly permit any poisonous, noxious or polluting matter to enter groundwater or surface water, (Section 85, Water Resources Act,1991).

vii) The Environment Agency has no objections to development within the Trading Estate under the SPZ Scheme provided:-

a) Any increase in surface water discharge from the Trading Estate must not increase peak flood discharge within the "main river" section of the Chalvey Ditch.

b) Any site that has had previous industrial use shall be subject to a detailed site investigation prior to redevelopment to establish whether the site is contaminated; to assess the degree and nature of any contamination present, and to determine its potential for pollution of the water environment. The method and extent of this investigation shall be agreed with the Environmental Agency in advance, and details of appropriate measures to prevent pollution of groundwater and surface water, including provisions for monitoring, shall be approved in writing by the Environment Agency before development

commences. The development shall then proceed in strict accordance with the measures approved.

vii) Pursuant to the Land Drainage Act (1991) and the Environment Agency's Land Drainage Bylaws (1981), details of the following should be submitted for consideration by the Environment Agency prior to commencement of work.

a) Any works affecting the bed, banks or Bow of the Chalvey Ditch including details of any outfall structures discharging into the water course (Section 23, Land Drainage Act 1991).

b) Any proposed culverts or control structures affecting the bed, banks or Bow of non main rivers (Section 23, Land Drainage Act 1991).

c) The erection of any fence, post, pylon, wall or any other building or structure within 8 metres measured horizontally from the foot of any bank of the Chalvey Ditch on the landward side or, where there is no such bank within 8 metres measured horizontally from the top edge of the batter enclosing the river, (Bylaw 4, Land Drainage Bylaws 1981).

viii) Any access required on to land owned by Network Rail should be the subject of prior application to the Property Manager at the following address:-

Network Rail
First Floor
Templepoint
Redcliffe Way
Bristol
BS1 6NL

ix) No drainage/surface water must be discharged onto Network Rail's property or into any of Network Rail's existing drainage systems except by prior agreement with Network Rail's Property Manager.

x) No drainage soakaways should be constructed within 5 metres of Network Rail's property.

xi) Developers must ensure that no pollution of Network Rail's property occurs.

xii) Network Rail has a statutory duty to provide a stock-proof barrier alongside the railway where no fence exists at present. This barrier will normally comprise a 1.4 metre high concrete post and wire fence. Should a developer wish to improve on this type of fence, Network Rail would have no objection but would appreciate prior notice of this. Should a new fence be erected, Network Rail will not accept any maintenance liability for this.

xiii) If any development includes amenity areas, garage blocks, open spaces, areas which will be open to the public/children/animals, the developer is strongly advised to provide as minimum 1.8 metre high concrete post and weldmesh fence alongside the railway

xiv) It would be advisable to construct a steel vehicle barrier next to the lineside fencing; adjacent to all roads, turning circles and parking areas where the railway is situated at or below the level of the development site.

xv) All plant to be positioned in such a way that, in the event of failure, it will not encroach or fall nearer than 1 metre from the nearest running railway track. However, should this be unavoidable, Network Rail's Property Manager would require at least 3 months notice prior to the commencement of such works to enable the arrangement of any necessary protection.

xvi) Full details of any external lighting schemes should be submitted to Network Rail's Property Manager for prior approval, so as to ensure these do not interfere with Network Rail's own signalling equipment.

xvii) Details of any planting schemes should be sent to Network Rail's Property Manager for comment. No trees or climbing shrubs should be planted in such a way that they could create a nuisance to the Railway due to falling leaves or penetration of roots, or by providing a means of gaining access to the Railway or on reaching their mature height could fall within 3 metres of Network Rail's nearest running rail, building, or structure. The planting of broad leaved trees or any form of broad leaved planting, in the landscaping of areas adjacent to the railway should be particularly avoided.

xviii) Scottish and Southern Electric wish to be consulted on all developments within the Trading Estate, as each development is examined on an individual basis. They can be contacted at the following address:-

Scottish and Southern Electric
The Works Manager
PO. Box 123
Chalvey
Slough
Berkshire
SL1 2UD

Telephone number 01753 695602

xix) Thames Water Utilities should be contacted on all developments proposed for the estate, at the following address:-

Thames Water Utilities
Development Control
Asset Investment Unit
Maple Lodge
Denham Way
Rickmansworth
Hertfordshire WD3 9SQ

xx) The developer will be prohibited from building over or close to an existing public sewer unless a satisfactory diversion can be achieved. There are exceptions for very small developments over some minor sewers.

xxi) Any industrial process resulting in the discharge of trade effluent to the public foul sewer will require a Trade Effluent Consent from Thames Water Utilities.

xxii) Surface water should be drained to soakaways wherever possible, and in any case no additional impermeable areas will be allowed to connect into surface water sewers unless satisfactory on-site balancing provisions have been agreed. Soakaways should not penetrate the water table or exceed 3 metres

in depth below existing ground level unless in a form approved by the Environment Agency. No soakaway should be constructed in contaminated ground.

xxiii) Surface level car parks with 30 or more spaces shall drain via an approved oil interceptor

xxiv) Covered car parks shall drain to the foul sewer via an interceptor.

xxv) Any above ground fuel storage tank(s) or chemical storage tank(s) shall be sited on an impervious base and surrounded by bund walls. No drainage outlet should be provided. The bunded area should be capable of retaining at least 110% of the volume of the tanks and any spillages from fill or draw pipes. All fill pipes and sight gauges should be enclosed within its curtilage. The vent pipe should be directed downwards into the bund. Guidelines are available from the Environment Agency. Details of the containment system are to be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development.

xxvi) Where demolition of an existing building is planned, all redundant drains shall be grubbed up or sealed to prevent rodents gaining access to the public sewers.

xxvii) Demolition consent must be obtained under Section 81 of the Building Act 1984 prior to demolition of a building. Any notice of intended demolition should be made to the Head of Building Control Officer, at Slough Borough Council.

xxviii) SPZ status does not confer immunity from Building Regulations compliance.

xxix) The Berkshire Act (1986) may apply at the Building Regulations stage, where applicable.

xxx) No landscaping will be permitted on the public highway verges except under licence issued in accordance with the Highways Act 1980.

xxxi) An environmental guidance note is included in Appendix 5 to assist developers in curbing any potential detrimental effects upon the environment.

xxxii) The construction details of access to an adopted highway, or highway that the developer proposes for adoption, should be in accordance with standard details current at the time of development provided by the Head of Highways. No work should be undertaken on the public highway without his or her permission.

xxxiii) All development should take account of the provisions contained within Circular 2/92 with regard to the height restrictions on tall buildings within aircraft flight paths.

xxxiv) The Environment Agency (or the relevant waste regulation authority) should be contacted by the Developer with regards to all development which falls within the provisions included within Article 10(1) of the General Development Procedure Order (1995) which deals with development on or within 250m of landfill sites.

xxxv) Any landscaping proposed on the public highway will be subject to the Borough Council granting a licence under Section 142 of the Highway Act.

xxxvi) Slough Borough Council is required to monitor and assess air quality within its area and to seek to ensure that the air quality objectives set out in the National Air Quality Strategy are met. An air quality assessment may be required for any development proposal likely to have an adverse impact on air quality such as large industrial developments or those that will result in increased traffic in the local area or significantly alter the traffic composition. Guidance on carrying out an air quality impact assessment is available from the Air Quality Officer at Slough Borough Council at P O Box 580, Slough SL1 1FS; telephone 01753 875255.

xxxvii) All development is expected to take into account the provisions of Section 17 of the Crime and Disorder Act 1998 regarding surveillance, structure, ownership , access and movement, physical protection, activity, adaptability, and management and maintenance, as well as current Government policy on these matters.

PART 4

Additional Information

i) The responsibility to contact Statutory Undertakers and other interested parties now falls to Slough Estates or its tenants.

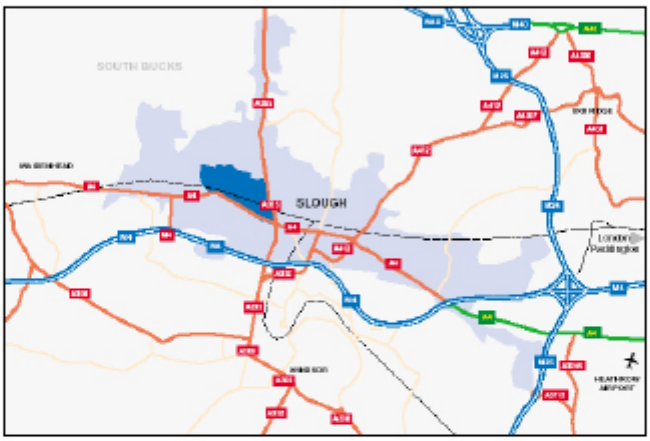
ii) Developers are reminded that the only definitive way to determine if individual development proposals comply with the SPZ consent is to apply to the Borough Council for a lawful use certificate, as included within Section 192 of the 1990 Town and Country Planning Act, as inserted by Section 10 of the Planning and Compensation Act 1991. There is a fee payable.

iii) Under Section 69 of the 1990 Town and Country Planning Act, as required by Article 27 of the Town and Country Planning General Development Procedure Order 1995 (SI 1995/419), Slough Borough Council will maintain a register containing brief particulars of all SPZs in its area, including particulars of all proposals for the preparation or alteration of SPZs and a map showing the definitive boundary of any operative or proposed SPZ schemes.

iv) Slough Estates or its tenants will supply the Borough Council with details of all works carried out on the estate, which fall within the SPZ consent. This will enable the Borough Council to continue to monitor the level of development on the Trading Estate and to make this information available to the public in place of a planning register. In addition, the Borough Council will formally hold meetings on a six monthly basis with Slough Estates to discuss developments granted by the SPZ Consent and any subsequent issues.

Plan No. 1

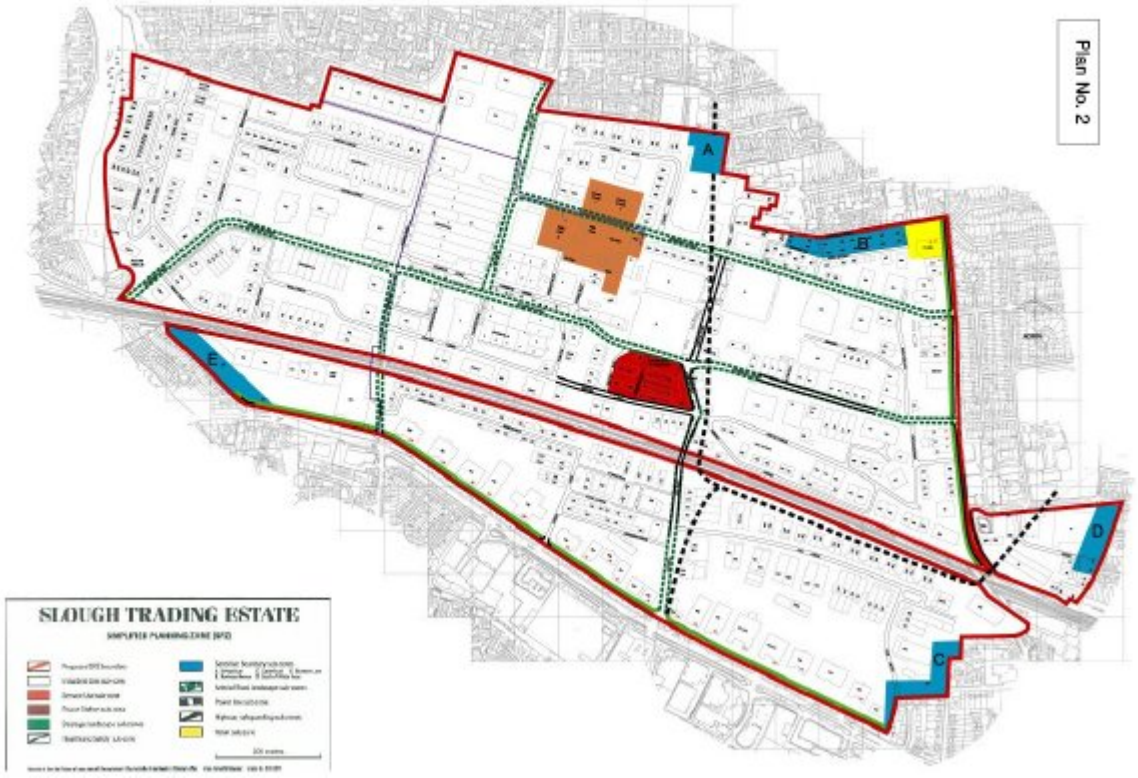
Slough Simplified Planning Zone – Regional Context



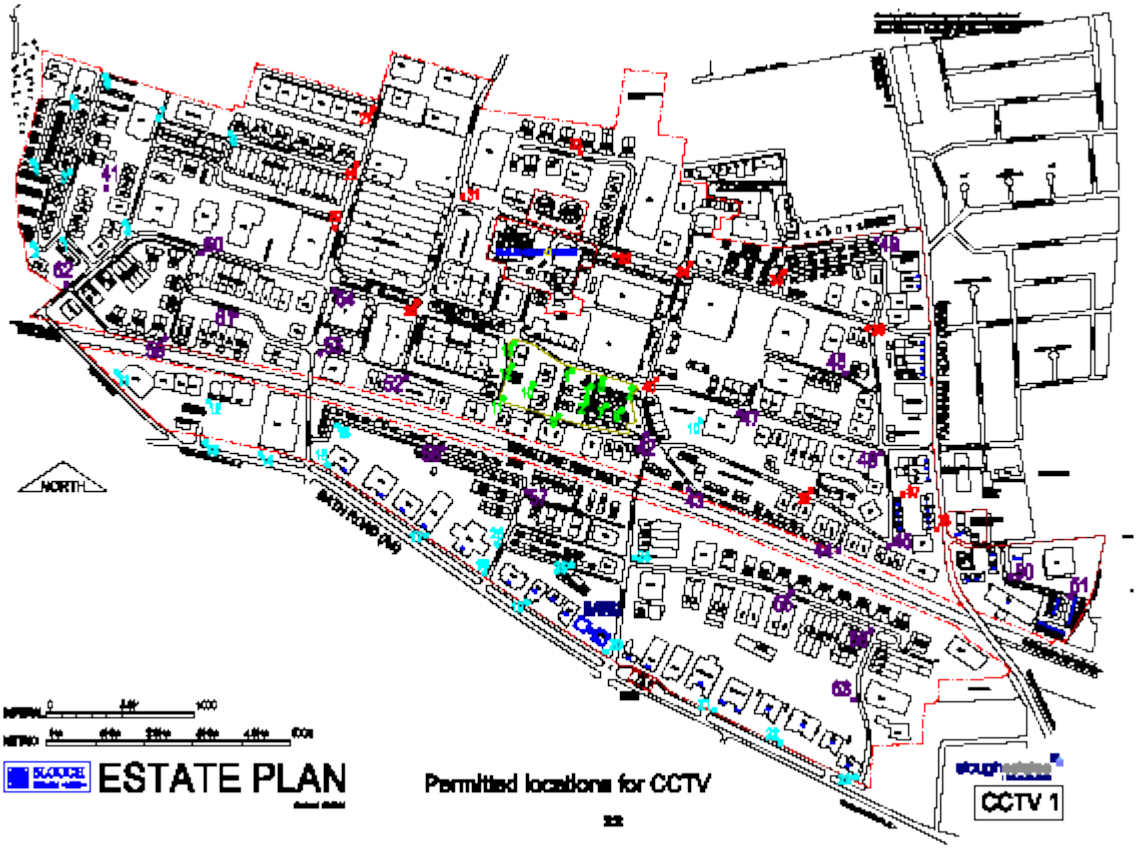
Slough Borough Council Boundary

Slough Trading Estate

Plan No. 2


A
B
C
D
E

SLOUGH TRADING ESTATE


NORTH
ESTATE PLAN
Permitted locations for CCTV
CCTV 1

Definition of uses permitted under the simplified planning zone (SPZ) permission, as included within the 1987 Use Classes Order

Class A1 - Shops

Use for all or any of the following purposes:-

a) For the retail sale of goods other than hot food
b) As a post office
c) For the sale of tickets or as a travel agent
d) For the sale of sandwiches or other cold food for consumption off the premises
e) For hairdressing
f) For the direction of funerals
g) For the display of goods for sale
h) For the hiring out of domestic or personal goods or articles
i) For the reception of goods to be washed, cleaned or repaired

where the sale, display or services is to visiting members of the public

Class A2 - Financial and Professional Services

Use for the provision of:-

a) Financial Services
b) Professional Services (other than health or medical services)
d) Any other services (including use as a betting office) which it is appropriate to provide in a shopping area

where the services are provided principally to visiting members of the public.

Class A3 - Food and Drink

Use for the sale of food and drink for consumption on the premises or of hot food for consumption off the premises.

Class B1 - Business

Use for all or any of the following purposes:-

a) Not permitted under the SPZ permission
b) For research and development of products or processes, or
c) For any industrial process

being a use which can be carried out in any residential area, without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2 - General Industrial

Use for the carrying on of an industrial process other than one falling within Class B1 or within Classes B4 to B7 inclusive, (Special Industrial Uses).

Class B8 - Storage, Distribution

Use for storage, a distribution centre.

Sui Generis

Use for colocation purposes - defined as the electronic storage, receipt and transmission of data and information including (but not exclusively) Internet Service Provision, web hosting, disaster recovery and other server farm operations.

SPZ - Landscape Sub-Zones

It is proposed to identify three distinctive landscape areas within which general landscape requirements will be defined. These are established in the following locations:

a) **Strategic Landscape Sub-Zones**

- i) the Bath Road (A4) frontage (north side)
- ii) the Farnham Road (A355) frontage (west side)

b) **Arterial Road Landscape Sub-Zones**

- i) Buckingham Avenue frontages
- ii) Dover Road frontages
- iii) Edinburgh Road frontages
- iv) Fairlie Road frontages
- v) Leigh Road frontages
- vi) Liverpool Road frontages

c) **Non-Arterial Roads**

All remaining development areas which have a frontage onto an estate road.

The developer will be required to provide appropriate landscaping in association with individual development proposals. The Borough Council considers that well designed and imaginative landscaping proposals are essential within the Strategic Landscape sub-zones and the Arterial Road landscape sub-zones.

The Borough Council will actively encourage suitably well designed landscaping proposals for developments proposed on Non-arterial Road frontages.

All redevelopment proposals should seek to incorporate retention of existing trees where these will form the initial landscape structure planting. Where existing trees are considered not worthy of retention due to structural problems and/or maturity etc, their replacement with suitable species is to be actively encouraged.

INFORMATIVE

1. Any landscaping proposed on the public highway will be subject to the Borough Council granting a licence under Section 142 of the Highway Act 1980.

SPZ - Guidance Note on Landscaping Matters

Introduction

In normal planning applications for industrial or commercial development, the Borough Council gives important consideration to the landscape elements of the scheme and requires details of landscaping to be submitted as part of any planning approval. This requirement by the Borough Council will not be practical with the general planning permission contained in the Slough Trading Estate SPZ scheme.

Thus, in the case of developments carried out under the provisions of the SPZ scheme, the question of landscape treatment is left to the discretion of the individual developers who are to be actively encouraged to undertake landscaping works incorporating the advice contained within this guidance note.

However the Slough Trading Estate SPZ Scheme, does include three specific landscape areas, two of which are identified as sub-zones and are clearly shown on Plan No. 2. The following general conditions relate to the Highway frontages:-

a) Sight lines advised by the Borough Highways Engineer at junctions which allow for the event of traffic signal failure as well as possible interim junction improvements shall not have any form of landscape planting in front of the site lines exceeding 600mm in height.

b) Landscaping shall not obscure direction signs or obstruct street lighting, bearing in mind that the lighting of many of the service roads relies upon overspill lighting from main road lights.

c) No trees or large shrub planting (with aggressive root growth) shall be planted within one metre of the back edge of footpaths.

d) No trees or aggressive rooting shrubs shall be planted over existing statutory undertaker's plant.

It is a usual requirement to serve notice on all statutory undertakers with details of development proposals, to comply with their requirements.

Landscape Design Consideration

The services of a qualified landscape designer are to be encouraged with regard to the landscape element of any redevelopment within the SPZ scheme. Designers are encouraged to look at their site as part of a wider area and adopt a style of design which is at least compatible with the surroundings and reflects an understanding of the character of the area. New landscaping should contribute to improving not only the site itself but enhance the wider environment.

It is necessary to ensure at the outset that landscaping is a fundamental part of the overall cost plan, and that it should not be seen as a softening cosmetic to be added at the end if there are sufficient funds left or, as happens more often, to be cut back if the planned budget is exceeded.

The landscape proposals should be designed in accordance with current best landscape practice and should reflect the buildings use, form, architectural features

and local environment to provide a developing and sustainable landscape. Each development site should aim if appropriate to have set aside an area of between 6 and 10 per cent for landscape treatment.

Landscape designs should provide a balance of four distinctive planting elements:-

- Shrubs, be they groundcover or specimens
- Hedges, formal or informal
- Trees
- Grass

The balance and relationship between these elements must reflect the 'areas' available to be landscaped - size, proximity to buildings, hard surfaces and the functions the elements are required and desired to perform. Additionally, consideration of the adjoining schemes, as applicable, form and layout should be reflected to provide a structured consistent Landscape Zone road frontage.

Native indigenous stock is to be encouraged where appropriate and as part of the design process environmental and wildlife benefits for inclusion into the scheme are to be considered.

Design proposals should, noting the schemes and Zones requirements, provide bold structured and maintainable landscape that reflects the urban environment of the Trading Estate.

Statutory Undertakers Services and Plant

Planting in the proximity to services and within service margins is to be limited to grass or inexpensive and non-aggressive rooting ground cover planting. This is to avoid damage to the service plant and to take account that the statutory undertakers may excavate and expose their services at any time.

There is a danger that new service trenches will be cut along the shortest possible line and will sever the roots of trees. Where possible all services should be placed outside the root spread of existing trees. Where the excavation of trenches close to trees is unavoidable, excavation should be by hand and all major roots greater than 40mm (1.5") in diameter are to be left undamaged.

Placement of services by boring beneath tree roots from pits dug on either side of the tree is to be encouraged to minimise route disturbance.

Planting works within the vicinity of the various statutory services is, unless otherwise agreed with the appropriate Companies, to be carried out in accordance with the respective company's advice notes such as British Gas Advice Document, PSB 481 10/86 or current legislation such as the Electricity at Works Regulations 1989. The advice contained in the Joint Utilities group publication entitled "Recommendations on the Avoidance of Danger from Underground Electricity Cables" is also to be recommended.

Retention of Existing Trees

As part of the design process a review of all existing mature trees should be undertaken to establish the principle and possibility of retaining the best specimen stock, noting the schemes overall layout, future use, health of the stock and relevance to the schemes intended design. Conditions must be provided in order to ensure that the existing trees being retained not only survive but continue to thrive.

Retained trees give an immediate maturity to a new scheme and semi-mature trees are a poor substitute for existing trees as they may not grow for several years after they have been planted.

It is essential to record the ground levels at the base of every important tree to be retained to ensure that these levels are maintained in the new layout. Where changes in levels are unavoidable, it may be possible to maintain the original levels and water table by the careful use of revetments or retaining walls/structures.

Management of Retained Trees and Existing Vegetation

The Highways Act 1980 stipulates that Trees, Hedges and Shrub planting adjacent to any Highway must be adequately managed. Where trees, etc, overhang the Highway causing danger, or obstruct the passage of vehicles or pedestrians or interfere with the view of drivers, then the Highway Authority may by notice require the owner to cut the Tree, Hedge or Shrubs so as to remove the danger.

Where trees are retained close to buildings there is inevitably some danger that a diseased or dying branch might fall on to the building or adjacent footpaths, etc. Therefore regular inspection of the developing landscape planting is to be actively encouraged to diagnose possible dangerous conditions and carry out appropriate remedial works.

The correct pruning of trees will ensure:-

a) Good husbandry ie, removal of dead, dying, diseased or broken branches and snags.

b) Thinning to allow more light to nearby buildings.

c) Reduction in length of branches to reduce the risk of breakage, particularly in trees with exceptionally long branches or brittle wood.

d) Reduction in height and spread and any reshaping that may be necessary because of closeness to buildings, overhead service lines, columns, roadside signage, etc

e) Crown lifting of maturing trees to comply with the clearance for vehicular traffic. Branches should clear the highway by approximately 5.2m (17'.0") and footpath 2.4m (8'0").

Replacing Mature Trees

In addition to new landscaping initiated by redevelopment, a programme of planned replacement of mature trees over a gradual period of a number of years is to be encouraged and seen as an overall improvement of the Slough Trading Estate.

Careful thought must be given to the tree species to be used for replacement bearing in mind any changes in surrounding design layout, locality etc.

New Trees

Trees are natural objects and are best used to provide maturity, structure and presence to the built environment. Tree development should be recognised as a long-term maturing asset of the landscape, therefore care in the initial selection and respective planting centres must be fully considered.

New tree planting should be undertaken to provide a consistent structured appearance to the scheme and its locality, the use of variegated or purple leaved species must be avoided on strategic and all arterial frontages, where the planting of native or hybrid selections is to be encouraged. Variegated or purple leaved trees should have only limited use within the design on non-strategic or arterial areas of a scheme, and should be used sparingly.

The selection of trees species to be planted within an area should be considered in light of proximity of buildings, hard surfaces, services and any other feature or aspect that would detrimentally effect the long-term establishment and development of the tree. Not withstanding the aforementioned it should be noted and accepted that within native 'groupings' tree selection and removal may be required to provide natural copse diversification.

Planting centres should be such that a balance is maintained in providing initial presence and the trees eventual maturity. Densities of the group, avenue, single specimen should be such that they reflect with the overall schemes intent and requirement, noting the Zones frontage and the adoption and agreement of particular species along the roads and avenues of the estate.

Planting centres will vary with the species, but distances from 6m to 12m are usual. On adopted highway verge areas a minimum of 5m is recommended to take account of maintenance machinery such as gang mowers.

In general, it is advisable not to plant large growing species such as Oak, Ash, Poplar or similar within 5m of any building and greater distances will usually be advisable.

Consideration should be given to loss of sight to major windows in adjacent buildings when positioning new trees within the landscaping scheme. Trees of moderate growth rate and ultimate size such as Birch, Rowan and Whitebeam can be grown close to buildings with little risk of damage to modern foundations.

Incorporation of trees within car parking areas where appropriate is to be encouraged to visually soften the impact of large expanses of parked cars on the general amenity of development sites. Trees are to be planted within lines or groups in borders to divide up rows of car parking. The species chosen must be vigorous, tolerant of fumes and dry conditions and ideally have a spreading habit which gives good shade.

However, trees such as certain species of Lime and Sycamore which drop a resinous gum on to the roofs of cars must be avoided.

Maintenance

The completed landscape planting keeps on growing and evolving and active management to adequately maintain the scheme will be required. The planting provided should be designed so that it can be maintained efficiently and economically. The expense of suppressing weed growth, pruning and regular grass cutting is unavoidable, but if adequate maintenance is overlooked, unnecessary additional expense will be incurred at a later date.

The landscape planting must be maintained free of competing weed growth until there is adequate cover from both the trees and shrubs/groundcover plants.

As an aid to good management, it is recommended that after completion of planting operations, all tree pits in grass areas and planted borders are mulched with a good quality pulverised bark mulch to an average depth of 40 - 50mm.

The maintenance of new tree planting should include the adequate staking and support of the trees during the establishment period.

Any planting elements of the scheme that fail due to vandalism, poor maintenance or natural causes, must be replaced ideally with the same plant species or that more suited to the evolving site conditions. Such works should be programmed for the next available autumn/spring planting season.

Design Standards and Reference Documents

This section sets out various documents of interest to the landscape designer which can serve as useful reference for schemes proposed within the SPZ area.

It is recommended that all landscape materials and works to be undertaken shall be to the reasonable satisfaction of a qualified landscape designer appointed for each redevelopment site. It is considered reasonable to expect that good Horticultural Practice will be adopted and that all relevant British Standards, European Standards and Codes of Practice are adhered to.

S.44 Construction (General Provisions) Act 1961
British Standard No. 1192 Part 5: 1998
Construction Drawing Practice. Guide for Structuring and Exchange of CAD Data
British Standard No. 3882 1994
Specification for Topsoil
British Standard No. 3936 Part 1: 1992
Specification for Trees and Shrubs
British Standard No. 3936 Part 2: 1990
Specification for Roses
British Standard No. 3936 Part 7: 1989
Specification for Bedding Plants
British Standard No. 3936 Part 9: 1988
Specification for Bulbs, Corms and Tubers
British Standard No. 3936 Part 10:1989
Specification for Ground Cover Plants
British Standard No. 3969: 1998
Recommendation for Turf for General Purposes
British Standard No. 3998: 1989
Recommendation for Tree Works

British Standard No. 4043: 1989
Recommendations for Transplanting Root-Balled Trees
British Standard No. 4428: 1989
Code of Practice for General Landscape Operations (excluding hard surfaces)
British Standard No. 5837: 1991
Guide for Trees In Relation To Construction

The Handbook of Urban Landscape published by the Architectural Press

Trees and Shrubs for Landscape Planting published for the Joint Council for Landscape Industries (JCLI) by The Landscape Institute - Revision 1997

The Good Planting Guide published by the Horticultural Trades Association (HTA)

Specification of Standards for British Container Grown Stock published by the HTA - Revision 1987

The Recommended Standard Form of Tender for The Supply and Delivery of Plants - 7th Edition 1992 published by the HTA

Standard Form of Agreement for Landscape Works - January 1991 Edition published by the Timber Research and Development Association

Peat Alternatives Manual for Professional Groundsmen, Horticulturists and landscapers published by Friends of the Earth in collaboration with the Department of Planning and Landscape at Manchester University and the Agricultural Development Advisory Service (ADAS)

BAA Amenity Handbook - March 1993 Edition
A guide to the selection and use of Amenity Pesticides published by the British Agrochemicals Association

Approved Code of Practice: Safe Use of Pesticides for Non-Agricultural Purposes published by the Health & Safety Commission

Code of Practice for the Use of Approved Pesticides in Amenity and Industrial Areas prepared by the National Turfgrass Council (NTC) and the National Association of Agricultural Contractors (NAAC)

Control of Substances Hazardous to Health Regulations (COSHH) published by Her Majesty's Stationery Office (HMSO)

Trees SULE - Safe Useful Life Expectancy System, Jeremy Barrell, Arboricultural Journal 1993 Volume 17 pp 33-36

Sensitive Boundary Sub-Zones

Within these sub-zones, permission will be granted for development (including the erection of buildings and use for land) for Business Use (Classes B1(b) and B1(c)) and use for storage and distribution Purposes (Class B8) and for sui generis (colocation). Permission would also be granted for General Industrial (Class B2) development where this would replace existing general industry within the sub-zone. For avoidance of doubt, the planning permission granted in each Sensitive Boundary sub-zone shown on the Proposals Map would
therefore be as follows:-

	Location of Sub Zone	Nature of Permission
a)	Stirling Road	Business use (Class B1(b) and (c), General Industry (Class B2), Storage and Distribution (Class B8), and Sui Generis (Co-location)
b)	Montrose Avenue	
c)	Galvin Road	
d)	South of Whitby Road	
e)	Burnham Lane	Business use (Class B1(b) and B1(c)), storage and distribution (Class B8), and Sui Generis (Co-location)

All development within the Sensitive Boundary Sub-Zones would be subject to the following conditions, in addition to the planning conditions which apply throughout the SPZ area.

1. **Whitby Road (Zone D) and Burnham Lane (Zone E)**

   a) Except by agreement in writing with the Local Planning Authority, deliveries or collection of goods to or from the premises within these sub-zones shall take place as follows:

   Monday to Friday 0800 - 1800
   Saturday 0800 - 1300

   There shall be no deliveries or collections on Sundays or Bank Holidays.

   b) Except by agreement in writing with the Local Planning Authority, the hours of operation for General Industry (Class B2), where permitted, and Storage and Distribution (Class B8) as follows:

   Monday to Friday 0800 - 1800
   Saturday 0800 - 1300

   There shall be no operations on Sundays or Bank Holidays.

2 **Montrose Avenue (Zone B) for schemes over 3,500 sq ft**

   a) Except by agreement in writing with the Local Planning Authority, deliveries or collection of goods to or from the premises within this sub-zone shall take place as follows:

Monday to Friday - 0800 - 1800
Saturday - 0800 - 1300

b) Except by agreement in writing with the Local Planning Authority, the hours of operation for the General Industry (Class B2) where permitted and Storage and Distribution (Class B8) are as follows:-

Monday to Friday	0800 - 1800
Saturday	0800 - 1300

There shall be no operations on Sundays or Bank Holidays.

3. **Stirling Road (Zone A), Galvin Road (Zone C)**

a) Except by agreement in writing with the Local Planning Authority, no deliveries or collection of goods to or from the premises within the sub-zone shall take place at any time on Sundays or on any other day between 2200 and 0700 hours.

b) Except by agreement in writing with the Local Planning Authority, the hours of operation for General Industry (Class B2), where permitted, and Storage and Distribution (Class B8) are as follows:

Monday to Saturday 0700-2200

There shall be no operations on Sundays.

4. Development should not include the storage or cutting of metal in the open.

5. **EXCLUDED DEVELOPMENT WITHIN THE SENSITIVE BOUNDARY SUB-ZONES -**

General Industry (Class B2) in Burnham Lane; additional General Industry (Class B2) in Stirling Road, Montrose Avenue, Galvin Road and South of Whitby Road; Shops (Class A1), Financial and Professional Services (Class A2) and use for the sale of Food and Drink (Class A3).

Consultations with Statutory Undertakers and Other Interested Parties

In order to continue the consultations exercise presently carried out on individual planning applications, this responsibility will fall to the developer or its tenants, and where necessary the following bodies will be contacted. This list is not exhaustive.

Slough Heat and Power Limited	343 Edinburgh Avenue, Slough, Berkshire SL1 4TU
British Telecommunications	Repayment and Alterations, Room G020, Reading Central Telephone Exchanged, 41 Minster Street, Reading, Berkshire RG1 2JB
Scottish and Southern Electricity	Depot Manager, High Street, Chalvey, Slough, Berkshire SL1 2UD
Transco	North London LDZ, Uxbridge Road, Slough, Berkshire SL2 5NA
Thames Water	Development Control, Asset Investment Unit, Maple Lodge, Denham Way, Rickmansworth, Hertfordshire WD3 9SQ
ntl Communications	Marlborough Road, Churchill Industrial Estate, Lancing, West Sussex BN15 8QJ
MCI WorldCom Limited	Reading International Business Park, Basingstoke Road, Reading, Berkshire RG2 6DA
Telewest Broadband	Scimitar Park, Courtauld Road, Basildon, Essex SS13 1ND
Easynet	70 Buckingham Avenue, Slough, Berkshire SL1 EPN
Kingston Communications	Melbourne House, Brandy Carr Road, Wrenthorpe, Wakefield WF2 0UG
Global Crossing	Plant Protection Administrator Fujitsu Communications Europe Limited, Solihull Parkway, Birmingham Business Park, Birmingham B8 7YU
Network Rail	Regional Infrastructure Clearance Manager, First Floor, Templepoint, Redcliffe Way, Bristol BS1 6NL
Environment Agency	Swift House, Frimley Business Park, Frimley, Camberley, Surrey GU16 5SQ

Health and Safety Executive	Priestley House, Priestley Road, Basingstoke, Hants RG24 9NW
Thames Valley Police	Architectural Liaison Officer, Thames Valley Police, Thatcham Police Station, 20 Chapel Street, Thatcham, Berkshire RG18 4QL

Environmental Health Considerations

These are the Environmental Health issues the Local Planning Authority would expect developers to consider when drawing up individual schemes. It is within the best interests of developers to confer with the Borough Council's Environmental Health Division over environmental matters, if in doubt. This may avoid the need for remedial action at a later stage.

Class A1 (such as shops) and Class A3 (Food and Drink)

Environmental Issues to consider:-

Noise from plant/machinery, eg. ventilation systems, refrigeration plant etc.

Odours from cooking, food preparation, chemicals and solvents, products, materials, refuse.

Refuse storage and collection arrangements.

Food safety and hygiene issues, particularly where food is prepared.

Health and safety issues. (Generally only if obvious, such as lack of sanitary provision).

Recommendation for referral to the Borough Council's Environmental Health Division in all cases.

Hot food takeaways and restaurants.

Class A2 Financial and Professional Services

No specific considerations.

Class B1(b) (Research and Development) and Class B1(c) (Light Industry)

Environmental Issues to consider:-

Noise from plant/machinery, eg. ventilation systems, refrigeration plant, etc.

Refuse storage and collection arrangements.

Health and safety issues. (Generally only if obvious, such as lack of sanitary provision).

Class B2 (General Industry)

Environmental Issues to consider:-

Noise from plant & machinery, internal and external.

Insulation/layout/positioning of building from noise/fumes viewpoint.

Noise & air pollution emissions from ventilation and arrestment plant, eg. position, height of chimneys & flues.

Emissions from products, materials, storage and handling including noise from fork-lift trucks.

Food safety and hygiene issues, eg. canteens and food preparation.

Impact of the Development on the environment.

Concern if there is an adjacent, significant "bad neighbour" use, eg. existing foundry next to proposed food manufacturing.

Recommendations for referral to the Borough Council's Environmental Health Division in all cases

Developments near housing or other sensitive uses.

Class B8 (Storage & Distribution)

Generally, comments as relevant for General Industry (Class B2) as above.

Sui Generis - Colocation

The electronic storage receipt and transmission of data and information including (but not exclusively) Internet Service Provision, web hosting, disaster recovery and other server farm operations.

Recommendation for referral to the Borough Council's Environmental Health Division in all cases

Development adjacent to housing or other sensitive uses.

Departmental reply re Clause 131

Subject: FW: TRIM: Planning Bill amendments
From: Private Office Assembly Unit [mailto:PrivateOffice.AssemblyUnit@doeni.gov.uk]
Sent: 16 February 2011 16:47
To: McCann, Sean
Cc: Private Office Assembly Unit
Subject: FW: TRIM: Planning Bill amendments

Sean

Further to our telephone conversation. I have been advised by officials of the following:

We have provided you with a response to point 1.

In terms of point 2 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.

The full response will be forwarded as soon as available.

Regards

Adele Willis

Clarence Court
DOE-Private Office
Rm-715
(-40120
*-adele.willis@doeni.gov.uk

From: McGarel, Alex [mailto:Alex.McGarel@niassembly.gov.uk]
Sent: 15 February 2011 18:11
To: Private Office Assembly Unit
Cc: McCann, Sean
Subject: TRIM: Planning Bill amendments

Una

As mentioned on the phone I am expecting electronic versions of amendments provided in hard copy after this afternoon's meeting on the Planning Bill.

Whilst it would be useful to have all as soon as possible, the Chairperson is particularly keen to see an amended version of the amendment to Clauses 131 confirming that both the 4 year period and the 10 year period will be amended to 5 years by the Department. The amendment provided only indicated amendments to the two 4 year periods at lines 23 and 27 of the clause on page 83.

The other amendments were updated version of those already provided to the Committee in advance of the meeting.

Regards

Alex

Alex McGarel
Clerk to the Committee for the Environment
Room 245
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Ballymiscaw
Stormont
Belfast
BT4 3XX

028 9052 1347
07799718929

Letter from Belfast Residents Group

Northern Ireland Assembly

Anna Lo,MBE,MSc,Dip S.W.
Alliance Assembly Member for South Belfast
www.annalo.org

Alex McGurrel
Clerk to Committee for the Environment
Room 245
Parliament Buildings
Stormont
Belfast
BT4 3XX

21st January 2011

Dear Alex,

We met recently with a number of residents groups from our South Belfast Constituency in relation to Planning Bill, currently undergoing clause by clause scrutiny by the Committee.

We understand that they have written to you to request the opportunity to make a presentation to the Committee regarding a number of amendments they would like the Committee to consider.

We appreciate that this is a busy period, for the Committee for the Environment in particular. However these amendments are of particular concerns to a number of residents groups and as such we hope you will find time to meet with the representative.

Yours Sincerely,

Anna Lo MLA **Alasdair McDonnell MP MLA**

Alex Maskey MLA **Conall McDevitt MLA**

Cllr Jimmy Spratt MLA ~~**Sigmund McSimpson MLA**~~

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Presentation - Assessment of Councils' Performance and Remaining Provisions

Environment Committee Presentation

Planning Bill

Assessment of Councils' performance and remaining provisions

20 January 2011

Environment Committee Presentation

- Mr Chairman our 13 and 18 January presentations to the Committee on the Planning Bill briefed Members on the new local development plan, development management, enforcement and community involvement provisions contained within the Bill.
- Today's presentation considers additional Departmental audit, oversight and intervention powers. It also highlights any remaining new or significant amendments brought forward by the Bill. A list of other minor amendments is attached at Annex A to these Speaking Notes.
- Mr Chairman, we would also propose to pick up on some points raised at Tuesday's briefing.

Assessment of council's performance or decision making & remaining provisions - Part 10 clauses 203 - 206

- I shall begin by outlining the Department's new audit role contained in Part 10 of the Bill at clauses 203 to 206.
- Members will 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. These functions will also be important in providing a quality assurance service for the councils.
- Planning Service created its own Audit Team to examine the handling of applications, application of policy, development plan process and so on in order 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 function to be legislatively based.
- In order 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. These powers are planning specific and are in addition to other local government audit powers.
- Part 10 therefore introduces new powers for the Department (or other appointed person) to assess the performance of councils in carrying out some or all of their planning functions, and also to assess their decision making on planning applications.
- Recommendations for improvement will be published. If the council does not implement the recommendations the Department may issue a direction requiring it to do so.

Oversight arrangements for completion notices, revocation modification etc clauses 63, 64, 65, 67, 69, 72, 73 & 74

- 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. This approach is in line with other jurisdictions.
- A council may issue a completion notice under clause 63 requiring a development which has a time bound permission, and which has been commenced, to be finished within a specified time. Such orders require confirmation by the Department under clause 64. The Department will also be able to modify the notice if it thinks fit. The Department will also retain the power at clause 65 to issue completion notices but only after consultation with the relevant council.
- 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.
- 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 also retain the power at clause 74 to issue discontinuance notices but only after consultation with the relevant council.

Further oversight arrangements

- Safeguards have also been built into the provisions governing additional planning controls in Part 4 of the Bill. Part 4 provides the powers for specialist planning functions for buildings of special architectural or historic interest, these are "listed buildings", conservation areas, hazardous substances, tree preservation orders, review of old mineral permissions ("ROMP") and control of advertisements.
- The listing of buildings of architectural or historic interest will remain a Departmental function, however, the Department must consult 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 as well as notifying the Department under clause 88 of applications for listed building consent, thereby giving the Department the opportunity to call-in (under clause 87) certain applications, if it considers it 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.
- Likewise 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 HSENI. This would give the HSENI time to consider a request for a Departmental call-in. The power to make the necessary regulations to enable this are contained on clause 108.
- In addition the Department will retain the power to discharge certain additional planning controls in the rare event that this should be required. Thus the Department will still be able to modify or revoke listed building consent (clause 100), designate conservation areas (clause 103), apply tree preservation orders (clause 123) and create or revoke areas of special control for the display of advertisements (clause 129). There will,

however, be a requirement for the Department to consult the relevant council before exercising these powers.

- Finally, the Department will be able to call-in certain applications from councils for its own determination if it considers this appropriate, although it is anticipated that such powers will be used sparingly. We discussed call in powers for planning applications on Tuesday. Powers of call-in are also contained in the Bill in relation to listed building consent applications (Clause 87) , hazardous substances consent applications (Clause 113) and reviews of old mineral permission in paragraph 13 of schedule 2 and paragraph 10 of schedule 3.

Turning then to other provisions within the Bill which add new powers or make significant amendments to existing powers

Simplified planning zones clause 33-38

- The powers relating to simplified planning zones at clauses 33 – 38 are largely unchanged, but I will take this opportunity to provide more details as 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 this by granting blanket planning permission for particular types of development, often industrial / commercial. Any conforming development proposed within 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 transfer the powers to make or alter an SPZ to councils. These powers have been have modified, where necessary, to reflect the two tier planning system.

Non material changes to planning permissions clause 66

- Statutory provision is being introduced at clause 66 to provide a simple and quick mechanism for allowing non material amendments to be made to planning permissions. Recent case law had been interpreted by many as restricting the potential for developers and planning authorities to agree even the most minor changes to a planning permission. This proposed change will ensure there is a legal basis for doing so. The Department will be required to prescribe the form and manner of applications and the notification and representation arrangements.

Land belonging to councils and development by councils - clause 78

- Councils will have to make planning applications in the same way as other applicants for planning permission .Clause 78 enables councils to grant planning permission for their own development or for development carried out jointly with another person and for development to be carried out on land owned by councils.
- Similar provisions apply for listed building and hazardous substances consent applications at clauses 106 and 119 of the Bill.

Conservation area enhancement clause 103

- Clause 103 specifies that special attention should be paid to the desirability of enhancing the character or appearance of a conservation area where there is an opportunity to do so.

Urgent crown development clause 209 – 210

- There may be instances where 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 the processing procedures of councils.
- Clause 209 provides for the direct submission of such applications to the Department. Clause 210 covers a similar procedure for urgent works to a listed building on Crown land.

Financial provisions clause 219 – 223

- Clause 219 provides the Department with the powers that it needs to make regulations allowing fees and charges to be set for the various Planning Bill functions. The principle amendment here is to extend fees and charges to take account of the actions of councils. Clause 219 (8) (b) will allow the Department to make the necessary regulations to give the councils the ability to set their own fees. This said, the Minister's current intention is that DOE should set fees centrally for the first 3 years and then review the situation.
- New financial powers are taken by clauses 222 and 223 to provide a measure of additional financial support to councils. Clause 222 provides a discretionary power so that a statutory undertaker or another council can contribute to a council's costs in certain circumstances. Finally, clause 223 allows government 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.

Miscellaneous

Inquiries and exceptions where issues of national security are involved

- A number of amendments are made to the legislation dealing with public inquiries and related clauses, that is clauses 227-230 of the Bill.
- These amendments, relating to the existing provisions of Articles 123A and 123B of the Planning (Northern Ireland) Order 1991, are mainly as a result of the recent devolution of policing and justice powers to the Department of Justice.

Clause 227 Inquiries to be held in public subject to certain exceptions

- Clause 227 continues the general rule that any inquiry or independent examination required to be held under the Act must be held in public and documentary evidence relating to it must be open to public inspection. However, it provides an exception to this general rule in instances where certain categories of sensitive information are involved. In such cases it enables the Secretary of State or the Department of Justice to direct that access to that information should be restricted.

Clause 230 National Security

- Clause 230 contains the procedures for the certification by the Secretary of State, or in certain cases the Department of Justice, of applications for planning permission or for other consents or approvals under the Act were consideration may firstly, raise issues of national security or matters relating to the security of Crown or other properties and

secondly, the public disclosure of that information would be contrary to the national or public interest.

- Various other provisions of the Act ensure that a public local inquiry will be held in circumstances where an application has been certified under this clause.
- The holding of 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 an appointed representative 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.
- Mr Chairman this completes the Department's briefing on the remaining new provisions within the Bill
- We welcome any questions Members may have.

Annex A: Clauses with minor amendments

Clause number	Description	Nature of amendment
Clause 23(3)(g)	Meaning of development	The meaning of development is amended to exclude (for certain buildings specified by direction) structural alteration consisting of partial development.
Clause 41	Notice etc., of applications for planning permission	Amends the publicity requirements for applications previously contained in the 1991 Planning Order. The power to specify the publicity requirements will now be contained in subordinate legislation. This will allow the requirements to be regularly reviewed to keep up to date with changing media.
Clause 46 – 49	Power to decline to determine subsequent or overlapping applications	Expanded to allow councils and Department to decline to determine a subsequent application where the PAC has refused a similar deemed planning application within the last 2 years or an appeal has been withdrawn. Councils and Department may also decline to determine overlapping applications made on the same day as a similar application and where similar applications are under consideration by the PAC.
Clause 56	Directions etc. as to method of dealing with applications	The Department may make a development order to specify how applications are to be dealt with. It can direct that the council is restricted in its power to grant permission for some developments, and require it to consider conditions suggested by the Department before granting permission on an application. A development order may require councils and the Department to consult specified authorities or persons before determining applications. A development order can also specify who applications need to be sent to under the Bill, and who should in turn be sent copies.
Clause 68	Aftercare conditions imposed on revocation or modification of	Allows a council to impose aftercare conditions where a mineral planning permission has been modified or revoked via an order served under clause 67.

Clause number	Description	Nature of amendment
	mineral planning permission	
Clause 75	Planning agreements	Amended to allow any sums involved in a planning agreement to be paid to a council or a government department other than DOE.
Clause 89	Directions concerning notification of applications, etc.	Councils have a duty to notify the Department of applications for listed building consent under clause 88. Clause 89 allows the Department to direct that clause 88 may not apply for particular applications or for certain descriptions of applications. Clause 89(4) allows the Department to direct that councils notify it of any applications made to it for listed building consent and the decisions taken by councils. This will give the Department oversight of how the councils administer listed building policy.
Clause 91 – 92	Power to decline to determine subsequent or overlapping application for listed building consent	Expanded to include subsequent applications submitted on the same day.
Clause 95(3)	Appeal against decision (for listed building consent)	The time in which an appeal must be lodged with the PAC is reduced to 4 months or such other period as may be prescribed.
Clause 114(3)	Appeals (hazardous substances consent)	The time in which an appeal must be lodged with the PAC is reduced to 4 months or such other period as may be prescribed.
Clause 215 -218	Correction of errors	The requirement to obtain the written consent of the applicant (or the landowner if that is not the applicant) before a minor typographical error – one which is not part of any reasons given for the decision – in a planning decision document is removed. Applies to both councils and the Department.
Clause 231 -233	Rights of entry	Gives councils and the Department the powers of entry required to discharge their functions under this Bill. Powers of entry are also given to the Department of Finance and Personnel and the PAC in respect of their functions under this Bill.
Clause 237	Planning register	Requires all district councils to keep and make available a planning register containing copies of the items listed, which includes all applications for planning permission. 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 it issues a notice under departmental reserved powers.

Northern Ireland Housing Executive Supplementary Information

NIHE Response to the Planning Bill

The Housing Executive is content with the majority of the proposals contained within the Planning Bill. However, we have a number of comments in relation to:

- **Part 1 - Functions of the Department of the Environment with Respect to the Development of Land**
- **Part 2 - Local Development Plans**
- **Part 3 – Planning Control**

NIHE Role:

1. The Housing Executive is the Regional Strategic Housing Authority for Northern Ireland and is a key stakeholder at all levels of the planning system. Roles the Housing Executive performs include:

    - The Housing Executive provides consultation responses to Planning Policy Statements
    - Housing Executive has produced Joint Protocols with Planning Service on the implementation of policies – PPS 8 'Open Space' OS 1 & PPS 21'Development in the Countryside' – CTY 5
    - NIHE provides annual Housing Needs Assessments (HNAs) to Planning Service Divisions
    - NIHE provides housing analysis reports to inform Development Plans.
    - NIHE is a key witness for Planning Service at Public Examinations
    - NIHE has taken part as a Planning Service witness on appeals
    - NIHE is an applicant
    - NIHE takes part in Pre Application Discussions for social housing schemes

General Comments:

2. The Housing Executive looks forward to having a strong and central relationship with the new planning authorities within the new councils. The Housing Executive looks to forge close working relationships with local planning authorities on community planning, local development plans and on planning application matters.

3. The Housing Executive considers it essential that resources, planning guidance, planning policy and procedures are firmly in place by the time the Planning Bill is enacted, for its successful implementation. For example:
    - Guidance on the preparation and content of Statements of Community Involvement should be in place so that these can be carried out systematically, without delay and to ensure that the

Hierarchy of Housing Development (Reform of the Planning System in Northern Ireland', July 2009)

Regionally significant applications will be determined by the Department and major and local applications will be determined by the councils. The hierarchy is defined as follows:

- Regionally Significant Development is development that is:
  - of strategic importance to the whole or substantial part of Northern Ireland
  - Involves a substantial departure from the local development plan
  - Involve significant proposals by a district council on land in which it has an interest
  - Includes housing developments of 500 units or 4 ha ore more

- Major developments are developments with important economic, social or environmental implications for a district council and include:
  - Brownfield development of 50 or more residential units or exceeds 0.5 ha
  - Greenfield development of 100 units or of 2 ha or more but less than 4 ha.
  - Greater than 20 units but less than 100 residential units within villages and rural areas.

- Local developments will comprise of all other developments not falling into regionally significant or major categories.

- Pre Application Discussions will be offered for all Regionally Significant and Major categories of development, but not for local developments.

Example of 3rd Party Appeal

The Republic of Ireland introduced 3rd party appeals and have conditions to minimise any delays in the planning system.

- There are 4 weeks to lodge an appeal
- You can only appeal if you originally objected to the application or if you have an interest in the adjoining land
- 3rd Party appeals against major infrastructure can be fast tracked.
- There can be special zonings where appeals are restricted. E.g. Dublin docklands -there is a prescriptive masterplan that was publically consulted on. This sets certain terms of development such as restrictions on floorspace, heights etc. I f a development proposal adheres to the strict conditions then it will be automatically approved and there will be no right of appeal.

A 3rd party appeal could be important for local communities e.g. if a heavy industrial site is approved beside a residential community, the community could have right of appeal if they feel it will be detrimental to their environment. A 3rd party appeal could also be used if development is approved on an environmentally sensitive site e.g. the habitat of an endangered species.

Summary of Recommendations:

Part 2 - Local Development Plans

Recommendation

1. The Housing Executive would like clarification of the clause under Section 6 and sub section (3). This clause appears to state that where there is a conflict between two plan policies within one development plan, the previous adopted plan should be referred to for a resolution. The Housing Executive considers that this may not be appropriate for all cases. In some situations, it might be preferable to defer to the Department, in its monitoring role, to resolve the conflicting matters.

Recommendation

2. The Housing Executive would like to see Section 8 (5) amended. This states that the council must 'take account' of the RDS when preparing the plan strategy. The Housing Executive supports the retention of the requirement for development plans to be in 'general conformity' with the RDS.

Recommendation

3. Sections 13 and 14 provide legislation for the council to review and revise the local development plan at such a time the Department describes or when the council deems necessary. The Housing Executive agrees that standard time frames for the life span of a development plan and plan review are set, so that stakeholders can know when to expect to engage with planning authorities on development plan revisions.

Recommendation

4. The Planning Bill does not require a statutory link between the community plan and the development plan. In England and Wales there is a duty that the Planning Authority 'must have regard to the community strategy prepared by the authority' (Planning and Compulsory Purchase Act 2004). The Housing Executive supports such a clause to be contained within the Planning Bill to ensure that any community strategies are closely tied to the Development Plan.

Part 3 – Planning Control

Recommendation

5. Section 24 (2) states that where planning permission is granted to develop land for a limited period, planning permission is not required for the resumption, at the end of this period, for the use for which it was normally used. The Housing Executive believes that this clause is open to interpretation and should be clarified.

Recommendation

6. The Housing Executive would like to see Section 8 (5) amended. This states that the council must 'take account' of the RDS when preparing the plan strategy. The Housing Executive supports the retention of the requirement for development plans to be in 'general conformity' with the RDS. The Housing Executive believes 'take account' is too discretionary. 'General conformity' still allows for some flexibility while ensuring a consistency of approach and adherence to RDS aims. Similarly, the Housing Executive would also like to see Section 9 (6) amended to state that local plans should also be in 'general conformity' with the RDS.

Recommendation

7. Sections 13 and 14 provide legislation for the council to review and revise the local development plan at such a time the Department describes or when the council deems necessary. The Housing Executive agrees that standard time frames for the life span of a development plan and plan review are set so that stakeholders can know when to expect to engage with planning authorities on development plan revisions.

Support

8. The Housing Executive welcomes Section 17, which facilitates Joint Working of two or more councils working on a joint development plan.

Support

9. The Housing Executive welcomes legislation supporting the Department's role of monitoring the production, examination and review of development plans. This should ensure consistency in approach across all council areas.

Recommendation

10. The Planning Bill does not require a statutory link between the community plan and the development plan. In England and Wales there is a duty that the Planning Authority 'must have regard to the community strategy prepared by the authority' (Planning and Compulsory Purchase Act 2004). The Housing Executive supports such a clause to be contained within the Planning Bill to ensure that any community strategies are closely tied to the Development Plan.

Part 3 – Planning Control

Recommendation

10. The Housing Executive would like Section 24 (2) clarified. This sections states that where planning permission is granted to develop land for a limited period, planning permission is not required for the resumption, at the end of this period, for the use for which it was normally used. The Housing Executive believes that the wording of this clause is open to interpretation. For instance, it could suggest that on land where housing has been demolished and an application for temporary open space has been granted; that housing could be built on this land without planning

NIHE Detailed Comments:

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

Support

1. The Housing Executive supports Section 1, which states that the Department will retain responsibility for formulating Planning Policy and that Policy should be in general conformity with the Regional Development Strategy (RDS). The Housing Executive also supports that all Planning Policy should contribute to the achievement of sustainable development.

Support

2. The Housing Executive supports Section 2, which requires the Department to prepare a Statement of Community Involvement (SCI) to involve those who have an interest in policy matters relating to development, in carrying out its planning functions

Part 2 - Local Development Plans

Support

3. The Housing Executive supports Section 4 and Section 5, which require the Council to undertake a Statement of Community Involvement and to contribute to the achievement of sustainable development when preparing development plans.

Support

4. The Housing Executive welcomes the fact that the development plan should contain two parts: a plan strategy and a local policies plan; and that the plan strategy should be adopted before the local policies plan is prepared (Sections 6, 8 & 9).

Recommendation

5. The Housing Executive would like clarification of the clause under Section 6 and sub section (3). This clause appears to state that where there is a conflict between two plan policies within one development plan, the previous adopted plan should be referred to for a resolution. The Housing Executive considers that the previous plan may not always provide a coherent or an appropriate resolution if it is at variance with the newer plan strategy & newer planning policy directions. Many current plans e.g. Derry local development plan was prepared before the RDS and Planning Policy Statements including PPS 7, 8, 12,15 & 21. The Housing Executive expects that the Department (in its monitoring role of development plans) would flag up any conflicting policies or in some situations; it might be preferable to defer to the Department, in its monitoring role, to resolve the conflicting matters.

permission. The Housing Executive would also like 'normally used' to be defined. Is there a time span, after which 'normal use' can be considered to have lapsed?

Recommendation

11. The Housing Executive expects that a definition and further details of what constitute local and major development will be set out in regional policy, such as in a review of PPS 1. For example, there may be different site sizes, unit numbers or floorspace thresholds to determine whether the application is local or major development. The NIHE would like to highlight that an agreement was made with Planning Service that planning applications for social housing would be defined as major development and therefore Pre Application Discussions and Performance Agreements would be made available for all social housing applications. The Housing Executive would like confirmation that this agreement is still in place and will be addressed in secondary legislation and policy guidance.

Support

12. The Housing Executive supports sections 46, 47, 48 & 49, which provide powers to decline to determine applications. The planning authority will be able to send back applications that in essence are duplicated applications and where there have been no significant changes to material considerations. These sections will facilitate the delivery of more efficient working practises for the planning authority and consultees.

Recommendation

13. Section 58 states that an applicant may appeal a planning decision if their application is refused planning permission or to remove a planning condition. The Housing Executive would like to see Section 58 amended to introduce third party appeals. This would produce a more equitable planning system as local communities would be afforded the same opportunities as developers to question and scrutinise planning decisions. The Housing Executive considers the issue of third party appeals should be revisited.

Recommendation

14. Section 60 (1) states that where planning permission has been granted, development must be started within five years of the date on which permission is granted or another period which may be longer or shorter as the council or department considers appropriate. The Housing Executive has concerns with permitting a longer duration of planning permission as this could encourage land banking, leading to a shortage of development land and the consequent price inflation etc. This could also result in a lack of revenue for planning authorities, if there is a long lead in time and therefore no requirement to reapply or renew permission.

Recommendation

15. The Housing Executive welcomes clause (1) (e) in Section 75 which allows a planning agreement to require a sum or sums to be paid to a Northern Ireland department. This clause will allow developers to pay

commuted sums in lieu of affordable housing to DSD, if a developer contribution policy for affordable housing is brought forward.

Developer Contributions

Recommendation

16. The Housing Executive notes that the Planning Bill is silent on developer contributions. In the 'Reform of the Planning System in Northern Ireland' (July 2009), the Department argued that 'it is right that developers contribute to the provision of infrastructure'. The Housing Executive would wish to see the inclusion of a section in the Planning Bill, which introduces further powers for developer contributions. The Housing Executive would like to see legislation for developer contributions being brought forward in the near future.

Appendix

The Housing Executive is a key stakeholder at all levels of planning system:

- The Housing Executive provides consultation responses to Planning Policy Statements
- Housing Executive has produced Joint Protocols with Planning Service on the implementation of policies – PPS 8 OS 1 & PPS 21 – CTY 5
- NIHE provides annual HNAs to Planning Service Divisions
- NIHE provides full HNAs to Development Plan teams.
- Works with Planning Service on Development Plans
- NIHE is a key witness for Planning Service at Development Plan Public Examination on 3rd Party Objections
- NIHE has taken part as a Planning Service witness on appeals
- NIHE is an applicant
- NIHE takes part in Pre Application Discussions for social housing schemes

The NIHE will work with Councils on:

- Community Planning
- NIHE will provide annual HNAs to Councils
- NIHE will provide full HNAs and HMAs to Development Plan teams.
- NIHE will work with Councils on Development Plans (plan Strategy documents and local plan documents).
- NIHE is a key witness for local planning authorities at Development Plan Public Examinations on 3rd Party Objections
- NIHE will take part as a witness on appeals
- NIHE is an applicant
- NIHE will take part in Pre Application Discussions with local planning authorities on social housing schemes

Planning Policy Statements:

Priorities for the DOE policy team are PPS 22 and a revision of PPS 1 and PPS 2 (DOE Business Plan 2010-2011)

Planning Policy Statements	Date Published
Final Published Statements	
PPS 1: General Principles	1998
PPS 2: Planning and Nature Conservation	1997
PPS 3: Access, Movement and Parking	2005
PPS 3 (Clarification): Access, Movement and Parking	2010
PPS 4: Planning and Economic Development	1996
PPS 5: Retailing and Town Centres	1996
PPS 6: Planning, Archaeology and The Built Heritage	1999
PPS 6 (Addendum): Areas of Townscape Character	2005
PPS 7: Quality Residential Environments	2001
PPS 7 (Addendum): Residential Extensions and Alterations	2008
PPS 7 (Addendum): Safeguarding the Character of Established Residential Areas	2010
PPS 8: Open Space, Sport and Outdoor Recreation	2004
PPS 9: The Enforcement of Planning Control	2000
PPS 10: Telecommunications	2002
PPS 11: Planning and Waste Management	2002
PPS 12: Housing in Settlements	2005
PPS 13: Transportation and Land Use	2005
PPS 15: Planning and Flood Risk	2006
PPS 17: Control of Outdoor Advertisements	2006
PPS 18: Renewable Energy	2009
PPS 21: Sustainable Development in the Countryside	2010
For Public Consultation (Draft) PPSs	
PPS 5 (Draft): Retailing, Town Centres and Commercial Leisure Developments	2006
PPS 16 (Draft): Tourism	2010
PPS 23 (Draft): Enabling Development	2011
PPS 24 (Draft): Economic Considerations	2011

Development Plans Prepared Pre 2001 RDS & PPS 8,12,15,21 & PPS 7 Addendums		
Antrim Area Plan 1984-2001*	Adopted	Jun 1989
Armagh Area Plan 2004*	Adopted	Jan 1995
Ballymena Area Plan 1986-2001*	Adopted	Nov 1989
Ballymoney Town Centre Local Plan 1991-2002*	Adopted	Oct 1993
Cookstown Area Plan 2010	Adopted	Jun 2004
Craigavon Area Plan 2010	Adopted	Aug 2004
Derry Area Plan 2011*	Adopted	May 2000
Dungannon & South Tyrone Area Plan 2010	Adopted	Mar 2005
Fermanagh Area Plan 2007*	Adopted	Mar 1997
Lame Area Plan 2010*	Adopted	Mar 1998
North East Area Plan 1987-2002*	Adopted	Oct 1990
Omagh Area Plan 1987-2002*	Adopted	Sep 1992
Strabane Area Plan 1986-2001*	Adopted	Apr 1991

* Plans also prepared pre PPS 7

Planning Act 2008 - Community Infrastructure Levy

Planning Act 2008

Part 11 Community Infrastructure Levy

205The levy

(1) The Secretary of State may with the consent of the Treasury make regulations providing for the imposition of a charge to be known as Community Infrastructure Levy (CIL).

(2) In making the regulations the Secretary of State shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land.

(3) The Table describes the provisions of this Part.

Section	Topic
Section 206	The charge
Section 207	Joint committees
Sections 208 and 209	Liability
Section 210	Charities
Section 211	Amount
Sections 212 to 214	Charging schedule
Section 215	Appeals
Section 216	Application
Section 217	Collection
Section 218	Enforcement
Section 219	Compensation
Section 220	Procedure
Section 221	Secretary of State
Section 222	CIL regulations and orders: general
Section 223	Relationship with other powers
Section 224	Amendments
Section 225	Repeals

(4) In those sections regulations under this section are referred to as “CIL regulations".

206 The charge

(1) A charging authority may charge CIL in respect of development of land in its area.

(2) A local planning authority is the charging authority for its area.

(3) But—

(a) the Mayor of London is a charging authority for Greater London (in addition to the local planning authorities),

(b) the Broads Authority is the only charging authority for the Broads (within the meaning given by section 2(3) of the Norfolk and Suffolk Broads Act 1988 (c. 4)), and

(c) the Council of the Isles of Scilly is the only charging authority for the Isles of Scilly.

(4) CIL regulations may provide for any of the following to be the charging authority for an area, or in the case of Greater London one of the charging authorities, in place of the charging authority under subsection (2), (3)(b) or (c)—

(a) a county council,

(b) a county borough council,

(c) a district council,

(d) a metropolitan district council, and

(e) a London borough council (within the meaning of TCPA 1990).

(5) In this section, “local planning authority" has the meaning given by—

(a) section 37 of PCPA 2004 in relation to England, and

(b section 78 of PCPA 2004 in relation to Wales.

207 Joint committees

(1) This section applies if a joint committee that includes a charging authority is established under section 29 of PCPA 2004.

(2) CIL regulations may provide that the joint committee is to exercise specified functions, in respect of the area specified in the agreement under section 29(1) of PCPA 2004, on behalf of the charging authority.

(3) The regulations may make provision corresponding to provisions relating to joint committees in Part 6 of the Local Government Act 1972 (c. 70) in respect of the discharge of the specified functions.

208 Liability

(1) Where liability to CIL would arise in respect of proposed development (in accordance with provision made by a charging authority under and by virtue of section 206 and CIL regulations) a person may assume liability to pay the levy.

(2) An assumption of liability—

(a) may be made before development commences, and

(b) must be made in accordance with any provision of CIL regulations about the procedure for assuming liability.

(3) A person who assumes liability for CIL before the commencement of development becomes liable when development is commenced in reliance on planning permission.

(4) CIL regulations must make provision for an owner or developer of land to be liable for CIL where development is commenced in reliance on planning permission if—

(a) nobody has assumed liability in accordance with the regulations, or

(b) other specified circumstances arise (such as the insolvency or withdrawal of a person who has assumed liability).

(5) CIL regulations may make provision about—

(a) joint liability (with or without several liability);

(b) liability of partnerships;

(c) assumption of partial liability (and subsection (4)(a) applies where liability has not been wholly assumed);

(d) apportionment of liability (which may—

(i) include provision for referral to a specified person or body for determination, and

(ii) include provision for appeals);

(e) withdrawal of assumption of liability;

(f) cancellation of assumption of liability by a charging authority (in which case subsection (4)(a) applies);

(g) transfer of liability (whether before or after development commences and whether or not liability has been assumed).

(6) The amount of any liability for CIL is to be calculated by reference to the time when planning permission first permits the development as a result of which the levy becomes payable.

(7) CIL regulations may make provision for liability for CIL to arise where development which requires planning permission is commenced without it (and subsection (6) is subject to this subsection).

(8) CIL regulations may provide for liability to CIL to arise in respect of a development where—

(a) the development was exempt from CIL, or subject to a reduced rate of CIL charge, and

(b) the description or purpose of the development changes.

209 Liability: interpretation of key terms

(1) In section 208 “development" means—

(a) anything done by way of or for the purpose of the creation of a new building, or

(b) anything done to or in respect of an existing building.

(2) CIL regulations may provide for—

(a) works or changes in use of a specified kind not to be treated as development;

(b) the creation of, or anything done to or in respect of, a structure of a specified kind to be treated as development.

(3) CIL regulations must include provision for determining when development is treated as commencing.

(4) Regulations under subsection (3) may, in particular, provide for development to be treated as commencing when some specified activity or event is undertaken or occurs, where the activity or event—

(a) is not development within the meaning of subsection (1), but

(b) has a specified kind of connection with a development within the meaning of that subsection.

(5) CIL regulations must define planning permission (which may include planning permission within the meaning of TCPA 1990 and any other kind of permission or consent (however called, and whether general or specific)).

(6) CIL regulations must include provision for determining the time at which planning permission is treated as first permitting development; and the regulations may, in particular, make provision—

(a) about outline planning permission;

(b) for permission to be treated as having been given at a particular time in the case of general consents.

(7) For the purposes of section 208—

(a) “owner" of land means a person who owns an interest in the land, and

(b) “developer" means a person who is wholly or partly responsible for carrying out a development.

(8) CIL regulations may make provision for a person to be or not to be treated as an owner or developer of land in specified circumstances.

210 Charities

(1) CIL regulations must provide for an exemption from liability to pay CIL in respect of a development where—

(a) the person who would otherwise be liable to pay CIL in respect of the development is a relevant charity in England and Wales, and

(b) the building or structure in respect of which CIL liability would otherwise arise is to be used wholly or mainly for a charitable purpose of the charity within the meaning of section 2 of the Charities Act 2006 (c. 50).

(2) CIL regulations may—

(a) provide for an exemption from liability to pay CIL where the person who would otherwise be liable to pay CIL in respect of the development is an institution established for a charitable purpose;

(b) require charging authorities to make arrangements for an exemption from, or reduction in, liability to pay CIL where the person who would otherwise be liable to pay CIL in respect of the development is an institution established for a charitable purpose.

(3) Regulations under subsection (1) or (2) may provide that an exemption or reduction does not apply if specified conditions are satisfied.

(4) For the purposes of subsection (1), a relevant charity in England and Wales is an institution which—

(a) is registered in the register of charities kept by the Charity Commission under section 3 of the Charities Act 1993 (c. 10), or

(b)is a charity within the meaning of section 1(1) of the Charities Act 2006 but is not required to be registered in the register kept under section 3 of the Charities Act 1993.

(5) In subsection (2), a charitable purpose is a purpose falling within section 2(2) of the Charities Act 2006; but CIL regulations may provide for an institution of a specified kind to be, or not to be, treated as an institution established for a charitable purpose.

211 Amount

(1) A charging authority which proposes to charge CIL must issue a document (a “charging schedule") setting rates, or other criteria, by reference to which the amount of CIL chargeable in respect of development in its area is to be determined.

(2) A charging authority, in setting rates or other criteria, must have regard, to the extent and in the manner specified by CIL regulations, to—

(a) actual and expected costs of infrastructure (whether by reference to lists prepared by virtue of section 216(5)(a) or otherwise);

(b) matters specified by CIL regulations relating to the economic viability of development (which may include, in particular, actual or potential economic effects of planning permission or of the imposition of CIL);

(c) other actual and expected sources of funding for infrastructure.

(3) CIL regulations may make other provision about setting rates or other criteria.

(4) The regulations may, in particular, permit or require charging authorities in setting rates or other criteria—

(a) to have regard, to the extent and in the manner specified by the regulations, to actual or expected administrative expenses in connection with CIL;

(b) to have regard, to the extent and in the manner specified by the regulations, to values used or documents produced for other statutory purposes;

(c) to integrate the process, to the extent and in the manner specified by the regulations, with processes undertaken for other statutory purposes;

(d) to produce charging schedules having effect in relation to specified periods (subject to revision).

(5) The regulations may permit or require charging schedules to adopt specified methods of calculation.

(6) In particular, the regulations may—

(a) permit or require charging schedules to operate by reference to descriptions or purposes of development;

(b) permit or require charging schedules to operate by reference to any measurement of the amount or nature of development (whether by reference to measurements of floor space, to numbers or intended uses of buildings, to numbers or intended uses of units within buildings, to allocation of space within buildings or units, to values or expected values or in any other way);

(c) permit or require charging schedules to operate by reference to the nature or existing use of the place where development is undertaken;

(d) permit or require charging schedules to operate by reference to an index used for determining a rate of inflation;

(e) permit or require charging schedules to operate by reference to values used or documents produced for other statutory purposes;

(f) provide, or permit or require provision, for differential rates, which may include provision for supplementary charges, a nil rate, increased rates or reductions.

(7) A charging authority may consult, or take other steps, in connection with the preparation of a charging schedule (subject to CIL regulations).

(8) The regulations may require a charging authority to provide in specified circumstances an estimate of the amount of CIL chargeable in respect of development of land.

(9) A charging authority may revise a charging schedule.

(10) This section and sections 212, 213 and 214(1) and (2) apply to the revision of a charging schedule as they apply to the preparation of a charging schedule.

212 Charging schedule: examination

(1) Before approving a charging schedule a charging authority must appoint a person (“the examiner") to examine a draft.

(2) The charging authority must appoint someone who, in the opinion of the authority—

(a) is independent of the charging authority, and

(b) has appropriate qualifications and experience.

(3) The charging authority may, with the agreement of the examiner, appoint persons to assist the examiner.

(4) The draft submitted to the examiner must be accompanied by a declaration (approved under subsection (5) or (6))—

(a) that the charging authority has complied with the requirements of this Part and CIL regulations (including the requirements to have regard to the matters listed in section 211(2) and (4)),

(b) that the charging authority has used appropriate available evidence to inform the draft charging schedule, and

(c) dealing with any other matter prescribed by CIL regulations.

(5) A charging authority (other than the Mayor of London) must approve the declaration—

(a) at a meeting of the authority, and

(b) by a majority of votes of members present.

(6) The Mayor of London must approve the declaration personally.

(7) The examiner must consider the matters listed in subsection (4) and—

(a) recommend that the draft charging schedule be approved, rejected or approved with specified modifications, and

(b) give reasons for the recommendations.

(8) The charging authority must publish the recommendations and reasons.

(9)C IL regulations must require a charging authority to allow anyone who makes representations about a draft charging schedule to be heard by the examiner; and the regulations may make provision about timing and procedure.

(10) CIL regulations may make provision for examiners to reconsider their decisions with a view to correcting errors (before or after the approval of a charging schedule).

(11) The charging authority may withdraw a draft.

213 Charging schedule: approval

(1) A charging authority may approve a charging schedule only—

(a) if the examiner under section 212 has recommended approval, and

(b) subject to any modifications recommended by the examiner.

(2) A charging authority (other than the Mayor of London) must approve a charging schedule—

(a) at a meeting of the authority, and

(b) by a majority of votes of members present.

(3) The Mayor of London must approve a charging schedule personally.

(4) CIL regulations may make provision for the correction of errors in a charging schedule after approval.

214 Charging schedule: effect

(1) A charging schedule approved under section 213 may not take effect before it is published by the charging authority.

(2) CIL regulations may make provision about publication of a charging schedule after approval.

(3) A charging authority may determine that a charging schedule is to cease to have effect.

(4) CIL regulations may provide that a charging authority may only make a determination under subsection (3) in circumstances specified by the regulations.

(5) A charging authority (other than the Mayor of London) must make a determination under subsection (3)—

(a) at a meeting of the authority, and

(b) by a majority of votes of members present.

(6) The Mayor of London must make a determination under subsection (3) personally.

215 Appeals

(1) CIL regulations must provide for a right of appeal on a question of fact in relation to the application of methods for calculating CIL to a person appointed by the Commissioners for Her Majesty's Revenue and Customs.

(2) The regulations must require that the person appointed under subsection (1) is—

(a) a valuation officer appointed under section 61 of the Local Government Finance Act 1988 (c. 41), or

(b) a district valuer within the meaning of section 622 of the Housing Act 1985 (c. 68).

(3) Regulations under this section or section 208(5)(d)(ii) may, in particular, make provision about—

(a) the period within which the right of appeal may be exercised,

(b) the procedure on an appeal, and

(c) the payment of fees, and award of costs, in relation to an appeal.

(4) In any proceedings for judicial review of a decision on an appeal, the defendant shall be the Commissioners for Her Majesty's Revenue and Customs and not the person appointed under subsection (1).

216 Application

(1) Subject to section 219(5), CIL regulations must require the authority that charges CIL to apply it, or cause it to be applied, to funding infrastructure.

(2) In subsection (1) "infrastructure" includes—

(a) roads and other transport facilities,

(b) flood defences,

(c) schools and other educational facilities,

(d) medical facilities,

(e) sporting and recreational facilities,

(f) open spaces, and

(g) affordable housing (being social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008 (c. 17) and such other housing as CIL regulations may specify).

(3) The regulations may amend subsection (2) so as to—

(a) add, remove or vary an entry in the list of matters included within the meaning of "infrastructure";

(b) list matters excluded from the meaning of "infrastructure".

(4) The regulations may specify—

(a) works, installations and other facilities that are to be, or not to be, funded by CIL,

(b) criteria for determining the areas in relation to which infrastructure may be funded by CIL in respect of land, and

(c) what is to be, or not to be, treated as funding.

(5) The regulations may—

(a) require charging authorities to prepare and publish a list of projects that are to be, or may be, wholly or partly funded by CIL;

(b) include provision about the procedure to be followed in preparing a list (which may include provision for consultation, for the appointment of an independent person or a combination);

(c) include provision about the circumstances in which a charging authority may and may not apply CIL to projects not included on the list.

(6) In making provision about funding the regulations may, in particular—

(a) permit CIL to be used to reimburse expenditure already incurred;

(b) permit CIL to be reserved for expenditure that may be incurred on future projects;

(c) permit CIL to be applied (either generally or subject to limits set by or determined in accordance with the regulations) to administrative expenses in connection with infrastructure or in connection with CIL;

(d) include provision for the giving of loans, guarantees or indemnities;

(e) make provision about the application of CIL where the projects to which it was to be applied no longer require funding.

(7) The regulations may—

(a) require a charging authority to account separately, and in accordance with the regulations, for CIL received or due;

(b) require a charging authority to monitor the use made and to be made of CIL in its area;

(c) require a charging authority to report on actual or expected charging, collection and application of CIL;

(d) permit a charging authority to cause money to be applied in respect of things done outside its area;

(e) permit a charging authority or other body to spend money;

(f) permit a charging authority to pass money to another body (and in paragraphs (a) to (e) a reference to a charging authority includes a reference to a body to which a charging authority passes money in reliance on this paragraph).

217 Collection

(1) CIL regulations must include provision about the collection of CIL.

(2) The regulations may make provision for payment—

(a) on account;

(b) by instalments.

(3) The regulations may make provision about repayment (with or without interest) in cases of overpayment.

(4) The regulations may make provision about payment in forms other than money (such as making land available, carrying out works or providing services).

(5) The regulations may permit or require a charging authority or other public authority to collect CIL charged by another authority; and section 216(7)(a) and (c) apply to a collecting authority in respect of collection as to a charging authority.

(6) Regulations under this section may replicate or apply (with or without modifications) any enactment relating to the collection of a tax.

(7) Regulations under this section may make provision about the source of payments in respect of Crown interests.

218 Enforcement

(1) CIL regulations must include provision about enforcement of CIL.

(2) The regulations must make provision about the consequences of late payment and failure to pay.

(3) The regulations may make provision about the consequences of failure to assume liability, to give a notice or to comply with another procedure under CIL regulations in connection with CIL.

(4) The regulations may, in particular, include provision—

(a) for the payment of interest;

(b) for the imposition of a penalty or surcharge;

(c) for the suspension or cancellation of a decision relating to planning permission;

(d) enabling an authority to prohibit development pending assumption of liability for CIL or pending payment of CIL;

(e) conferring a power of entry onto land;

(f) requiring the provision of information;

(g) creating a criminal offence (including, in particular, offences relating to evasion or attempted evasion or to the provision of false or misleading information or failure to provide information, and offences relating to the prevention or investigation of other offences created by the regulations);

(h) conferring power to prosecute an offence;

(i) for enforcement of sums owed (whether by action on a debt, by distraint against goods or in any other way);

(j) conferring jurisdiction on a court to grant injunctive or other relief to enforce a provision of the regulations (including a provision included in reliance on this section);

(k) for enforcement in the case of death or insolvency of a person liable for CIL.

(5) CIL regulations may include provision (whether or not in the context of late payment or failure to pay) about registration or notification of actual or potential liability to CIL; and the regulations may include provision—

(a) for the creation of local land charges;

(b) for the registration of local land charges;

(c) for enforcement of local land charges (including, in particular, for enforcement—

(i) against successive owners, and

(ii) by way of sale or other disposal with consent of a court);

(d) for making entries in statutory registers;

(e) for the cancellation of charges and entries.

(6) Regulations under this section may—

(a) replicate or apply (with or without modifications) any enactment relating to the enforcement of a tax;

(b) provide for appeals.

(7) Regulations under this section may provide that any interest, penalty or surcharge payable by virtue of the regulations is to be treated for the purposes of sections 216 to 220 as if it were CIL.

(8) The regulations providing for a surcharge or penalty must ensure that no surcharge or penalty in respect of an amount of CIL exceeds the higher of—

(a) 30% of that amount, and

(b) £20,000.

(9) But the regulations may provide for more than one surcharge or penalty to be imposed in relation to a CIL charge.

(10) The regulations may not authorise entry to a private dwelling without a warrant issued by a justice of the peace.

(11) Regulations under this section creating a criminal offence may not provide for—

(a) a maximum fine exceeding £20,000 on summary conviction,

(b) a maximum term of imprisonment exceeding 6 months on summary conviction, or

(c) a maximum term of imprisonment exceeding 2 years on conviction on indictment.

(12) The Secretary of State may by order amend subsection (11) to reflect commencement of section 283 of the Criminal Justice Act 2003 (c. 44).

(13) In this Part a reference to administrative expenses in connection with CIL includes a reference to enforcement expenses.

219 Compensation

(1) CIL regulations may require a charging authority or other public authority to pay compensation in respect of loss or damage suffered as a result of enforcement action.

(2) In this section, “enforcement action" means action taken under regulations under section 218, including—

(a) the suspension or cancellation of a decision relating to planning permission, and

(b) the prohibition of development pending assumption of liability for CIL or pending payment of CIL.

(3) The regulations shall not require payment of compensation—

(a) to a person who has failed to satisfy a liability to pay CIL, or

(b) in other circumstances specified by the regulations.

(4) Regulations under this section may make provision about—

(a) the time and manner in which a claim for compensation is to be made, and

(b) the sums, or the method of determining the sums, payable by way of compensation.

(5) CIL regulations may permit or require a charging authority to apply CIL (either generally or subject to limits set by or determined in accordance with the regulations) for expenditure incurred under this section.

(6) A dispute about compensation may be referred to and determined by the Lands Tribunal.

(7) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 (c. 33) apply subject to any necessary modifications and to the provisions of CIL regulations.

220 Community Infrastructure Levy: procedure

(1) CIL regulations may include provision about procedures to be followed in connection with CIL.

(2) In particular, the regulations may make provision about—

(a) procedures to be followed by a charging authority proposing to begin charging CIL;

(b) procedures to be followed by a charging authority in relation to charging CIL;

(c) procedures to be followed by a charging authority proposing to stop charging CIL;

(d) consultation;

(e) the publication or other treatment of reports;

(f) timing and methods of publication;

(g) making documents available for inspection;

(h) providing copies of documents (with or without charge);

(i) the form and content of documents;

(j) giving notice;

(k) serving notices or other documents;

(l) examinations to be held in public in the course of setting or revising rates or other criteria or of preparing lists;

(m) the terms and conditions of appointment of independent persons;

(n) emuneration and expenses of independent persons (which may be required to be paid by the Secretary of State or by a charging authority);

(o) other costs in connection with examinations;

(p) reimbursement of expenditure incurred by the Secretary of State (including provision for enforcement);

(q) apportionment of costs;

(r) combining procedures in connection with CIL with procedures for another purpose of a charging authority (including a purpose of that authority in another capacity);

(s) procedures to be followed in connection with actual or potential liability for CIL.

(3) CIL regulations may make provision about the procedure to be followed in respect of an exemption from CIL or a reduction of CIL; in particular, the regulations may include provision—

(a) about the procedure for determining whether any conditions are satisfied;

(b) requiring a charging authority or other person to notify specified persons of any exemption or reduction;

(c) requiring a charging authority or other person to keep a record of any exemption or reduction.

(4) A provision of this Part conferring express power to make procedural provision in a specified context includes, in particular, power to make provision about the matters specified in subsection (2).

(5) A power in this Part to make provision about publishing something includes a power to make provision about making it available for inspection.

(6) Sections 229 to 231 do not apply to this Part (but CIL regulations may make similar provision).

221 Secretary of State

The Secretary of State may give guidance to a charging authority or other public authority (including an examiner appointed under section 212) about any matter connected with CIL; and the authority must have regard to the guidance.

222 Regulations and orders: general

(1) CIL regulations—

(a) may make provision that applies generally or only to specified cases, circumstances or areas,

(b) may make different provision for different cases, circumstances or areas,

(c) may provide, or allow a charging schedule to provide, for exceptions,

(d) may confer, or allow a charging schedule to confer, a discretionary power on the Secretary of State, a local authority or another specified person,

(e) may apply an enactment, with or without modifications, and

(f) may include provision of a kind permitted by section 232(3)(b) (and incidental, supplemental or consequential provision may include provision disapplying, modifying the effect of or amending an enactment).

(2) CIL regulations—

(a) shall be made by statutory instrument, and

(b) shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.

(3) An order under section 218(12) or 225(2)—

(a) shall be made by statutory instrument, and

(b) may include provision of a kind permitted by subsection (1)(a), (b) or (f) above, but may not amend an Act of Parliament in reliance on subsection (1)(f).

(4) An order under section 218(12) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) An order under section 225(2) shall be subject to annulment in pursuance of a resolution of the House of Commons.

223 Relationship with other powers

(1) CIL regulations may include provision about how the following powers are to be used, or are not to be used—

(a) section 106 of TCPA 1990 (planning obligations), and

(b) section 278 of the Highways Act 1980 (c. 66) (execution of works).

(2) CIL regulations may include provision about the exercise of any other power relating to planning or development.

(3) The Secretary of State may give guidance to a charging or other authority about how a power relating to planning or development is to be exercised; and authorities must have regard to the guidance.

(4) Provision may be made under subsection (1) or (2), and guidance may be given under subsection (3), only if the Secretary of State thinks it necessary or expedient for—

(a) complementing the main purpose of CIL regulations,

(b) enhancing the effectiveness, or increasing the use, of CIL regulations,

(c) preventing agreements, undertakings or other transactions from being used to undermine or circumvent CIL regulations,

(d) preventing agreements, undertakings or other transactions from being used to achieve a purpose that the Secretary of State thinks would better be achieved through the application of CIL regulations, or

(e) preventing or restricting the imposition of burdens, the making of agreements or the giving of undertakings, in addition to CIL.

(5) CIL regulations may provide that a power to give guidance or directions may not be exercised—

(a) in relation to matters specified in the regulations,

(b) in cases or circumstances specified in the regulations,

(c) for a purpose specified in the regulations, or

(d) to an extent specified in the regulations.

224 Community Infrastructure Levy: amendments

(1) In section 101 of the Local Government Act 1972 (c. 70) (arrangements for discharge of functions by local authorities) after subsection (6) insert—

“(6A) Community Infrastructure Levy under Part 11 of the Planning Act 2008 is not a rate for the purposes of subsection (6)."

(2) In section 9 of the Norfolk and Suffolk Broads Act 1988 (c. 4) (the Navigation Committee)—

(a) in subsection (8), after “Subject" insert “to subsection (8A) and";

(b) after subsection (8) insert—

“(8A)Subsection (8) does not apply in relation to functions under Part 11 of the Planning Act 2008 (Community Infrastructure Levy)."

(3) In section 71(3) of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out: functions of local authorities) omit the word “and" at the end of paragraph (g) and after paragraph (h) insert “; and

(i) sections 217 and 218 of the Planning Act 2008 (Community Infrastructure Levy: collection and enforcement)."

(4) In section 38 of the Greater London Authority Act 1999 (c. 29) (delegation), after subsection (2) insert—

“(2A) In relation to functions exercisable by the Mayor under Part 11 of the Planning Act 2008 (Community Infrastructure Levy) subsection (2) has effect with the omission of paragraphs (c) to (f)."

225 Community Infrastructure Levy: repeals

(1) The following provisions of PCPA 2004 shall cease to have effect—

(a) sections 46 to 48 (planning contribution), and

(b) paragraph 5 of Schedule 6 (repeal of sections 106 to 106B of TCPA 1990 (planning obligations)).

(2) The Treasury may by order repeal the Planning-gain Supplement (Preparations) Act 2007 (c. 2).

Note of Meeting with Gregg Lloyd

Date: 8 February 2011

Time: 9am

Venue; Blue Flax Restaurant, Parliament Buildings

Present: Cathal Boylan, Chairperson, Committee for the Environment

Gregg Lloyd, University of Ulster

Alex McGarel, Clerk

Sean McCann, Assistant Clerk

Simplified Planning Zones (SPZ)

- ‘Pandora’s box’ and shouldn’t be needed in a plan-led system
- Will introduce contention round boundaries and risk of legal challenge
- Could be tacked on to any area – not just urban

- Requires a ‘master planning’ approach
- If SPZs are introduced they could be improved by:
- A time limit
- A PPS
- The requirement for the support of a sound business case
- Thresholds

Community Infrastructure Levy

- Could be used to develop Northern Ireland as a whole – developer contribution confined to site only
- Would be dependent on the ‘wellbeing’ of the development sector
- Involves the whole community
- In England is linked to delivery of the UK National Infrastructure Plan for England
- ‘Tariff’ a more appropriate term
- In areas of growth can be negotiated on a site by site basis and dependent on the state of the local market
- Responds to an identified need for industry and commerce as well as residential

Land Use Strategy for Northern Ireland

- In Scotland they are developing a land use plan to link urban regional development to rural areas
- Provides a national planning framework that identifies areas for growth / use etc.
- When applications are ‘called in’ to the centre, on what basis will decisions be made? How will they be fair and consistent in the absence of an overarching strategy?

Chief Planner for Northern Ireland

- Not yet convinced of the benefit of a Chief Planner for NI but worth exploring
- Would need to be a ‘charismatic leader and champion’ rather than a career civil servant who would and could make strategic decisions for the benefit of Northern Ireland when decisions were called in.
- Could boost innovation

Completion Notices

- Should be included
- Could be done through building control by bringing building control into the planning system – a one stop shop

Third Party Rights of Appeal

- Should not be needed in a front loaded system

- In times of low economic growth could stifle the system and give opportunity to NIMBYism

Equality

- Needs to be built in
- Notes the small size of NI compared with other regions
- If go to 11 planning authorities it will need to be well resourced

Hierarchy

- Need a mechanism now but over time could envisage a council group taking forward a major development
- If going down that route the must be an appropriate mechanism for making consistent decision (ref back to Land Use Strategy for NI)

Single Planning Policy Statement

- Dangerous to move to a single PPS – strong risk of legal challenge

Cost Neutrality

- Does not believe the Department should be claiming the process will be cost-neutral
- Planning reform must be well resourced if it is to work well
- Local authorities must be given sufficient capacity to deliver competently
- Resourcing is a big issue

Need for New Ideas

- New designs
- Innovative ideas
- More discussion

Marine Spatial Planning and Off shore Control of Aquaculture

- Where is this?
- Not mentioned in the Planning Bill
- How will it be managed?

Stop Notices

- Can see the need for these but hopes they don't have to be used

Departmental Letter re Clause 226

Private Office
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: una.downey@doeni.gov.uk

Our reference: CQ294/11

Date: 22 February 2011

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

I refer to the request made by the Environment Committee, on 16 February 2011 in relation to Clause 226(3) of the Planning Bill.

The Examiner had commented that Local inquiry rules made by this clause are subject to no Assembly procedure and suggested that these should be subject to negative resolution.

The Minister is content to bring forward the following amendment to include a negative resolution Assembly control.

Clause 226, page 145, Line 27

At end insert-

'(4) Rules made under subsection (3) shall be subject to negative resolution.'

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO
[by email]

Dept reply re Planning Bill timetable

Private Office
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: privateoffice.assemblyunit@doeni.gov.uk
Our reference: CQ/224/10

Date: 8 December 2010

Mrs Alex Mc Garel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

Planning Bill

At the 25 November Committee meeting the Committee requested a timetable for the Planning Bill. Please find attached an indicative timetable.

As you know the Bill proposals were subject to extensive consultation and stakeholder engagement over the past 18 months. There are a number of documents which may assist the Committee in its scrutiny should the Bill pass through Second Stage. The Committee will be familiar with the documents but I thought it might be helpful to highlight two key documents and remind you of where they can be found on the Planning Service web site.

These are:-

“Reform of the Planning System in Northern Ireland: Your chance to influence change" Consultation Paper July 2009

http://www.planningni.gov.uk/index/news/news_consultation/consultation_paper_final_200709_2.pdf

and

“Reform of the Planning System in Northern Ireland: Your chance to influence change" Government Response to Public Consultation July – October 2009.

http://www.planningni.gov.uk/index/news/news_consultation/government_response_final.pdf

The web site also includes copies of all responses to the Public Consultation.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely

Úna Downey
DALO
[by email]

Planning Bill Indicative Timetable

Stage	Start Date
Planning Bill: Introduction	6 Dec 2010
Planning Bill: Second Stage	14 Dec 2010
Planning Bill: Committee Stage Begins	15 Dec 2010
Planning Bill: Consideration Stage	1 Mar 2011**
Planning Bill: Further Consideration Stage	14 Mar 2011
Planning Bill: Final Stage	22 Mar 2011
Planning Bill: Royal Assent	23 May 2011
Act: Operative Date	

** All subsequent dates are indicative and based on minimum time for the Environment Committee's scrutiny as well as subject to Speaker's/Assembly Business Office agreement.

Departmental Letter re Clause 102

Private Office
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: una.downey@doeni.gov.uk
Our reference: CQ294/11

Date: 23 February 2011

Mrs Alex McGarel
Clerk to the Environment Committee

Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

I refer to the Committee's 15 February request (CQ 295/11) for electronic copies of the amendments passed to the Committee at the 15 February meeting. Unfortunately the Department's proposed amendments to clause 102, which were discussed on 15 February, were not included in that response. These are now attached at Annex A.

I apologise for this oversight and should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO
[by email]

Annex A

Departmental Planning Bill Amendments

Amendments to Clause 102

Clause 102, Page 64, Line 3
Leave out '3' and insert '5'

Clause 102, page 64, Line 11
Leave out '3' and insert '5'

Consulation List for Planning Bill

Consultation list for Committee for The Environment

Departmental Consultation list and inclusions recommended by the Committee Clerk

- 20-20 Architects
- Age Concern Northern Ireland (now AGE NI)
- Archbishop of Armagh and Primate of All Ireland
- Architecture and Planning Information Services, QUB
- Arcus Architect
- ASI Architects
- Atlas Communications

- B9 Energy Services Ltd
- Bar Library
- BB Planning and Design
- BBC Engineering Information Department
- Belfast City Airport
- Belfast Civic Trust
- Belfast Harbour Commissioner
- Belfast Healthy Cities
- Belfast Hills Partnership
- Belfast International Airport
- Belfast Metropolitan College
- Belfast Metropolitan Residents Group (NB no postal address only an email)
- Belfast Solicitors'' Association
- Bell Architects
- Big Picture Developments
- Bishop of Down and Connor
- Brennan Associates
- British Telecom (NI)
- British Wind Energy Association
- Bryson House
- Building Design Partnership
- Cable & Wireless
- Cabletel (NI) Ltd
- Carers Northern Ireland
- Carvill Group Limited
- Catholic Bishops of Northern Ireland
- Cedar Foundation
- Chartered Institute of Environmental Health
- Chartered Institute of Housing
- Chief Executive of the Northern Ireland Judicial Appointments Commission
- Chinese Welfare Association
- City of Derry Airport
- Civil Law reform Division
- Clarion Hotel
- Coalition on Sexual Orientation
- Coleraine Harbour Commissioners
- Committee for the Administration of Justice

- Community Relations Council
- Community Places
- Confederation of British Industry Northern Ireland Branch
- Construction Employers Federation
- Construction Register Ltd
- Coogan and Co
- Council for Catholic Maintained Schools
- Council for Nature Conservation and the Countryside
- Countryside Access and Activities Network for Northern Ireland
- Crown Castle Uk Ltd
- Department of Civil Engineering, QUB
- Department of Environmental Planning, QUB
- Derryhale Residents Association
- Disability Action
- District Judge (Magistrates Court)
- DSD Housing Association Branch
- Duddy Group
- Enniskillen Aerodrome
- Environment and Planning Law Association of Northern Ireland
- Equality Commission for Northern Ireland
- Executive Council of the Inn of Court of Northern Ireland
- Exitoso
- Federation of Small Businesses
- Ferguson and McIlveen
- Fire Authority for Northern Ireland
- Fisheries Conservancy Board for Northern Ireland
- Food Standards Agency Northern Ireland
- Forest of Belfast c/o Parks and Amenities Section
- Friends of the Earth
- General Consumer Council for Northern Ireland (Consumer Council)
- Geological Survey of Northern Ireland
- Gingerbread Northern Ireland
- Government Relations Department Vodaphone Group Services Ltd
- Help the Aged Northern Ireland (now AGE NI)
- Historical Buildings Council
- Historical Monuments Council
- HM Revenue and Customs

- Human Rights Commission
- I Document Systems
- Irish Congress of Trade Unions (northern Ireland Committee)
- Inland Revenue
- Institute of Professional Legal Studies
- Institute of Directors
- Institute of Historic Building Conservation
- Institution of Civil Engineers (Northern Ireland Association)
- International Tree Foundation
- Invest Northern Ireland
- Kenneth Crothers, Deane and Curry
- Lagan Valley Regional Park Office
- Laganside Courts
- Landscape Institute Northern Ireland
- Larne Harbours Commissioners
- Law Centre (Northern Ireland)
- Law Society of Northern Ireland
- Londonderry Port and Harbour Commissioners
- Lough Neagh and Lower Bann Management Committees
- LPG Association – email only, no postal address
- Marks and Spencer
- McClelland/Slater Estate Agents
- Men's Action Network
- Methodist Church in Ireland
- Ministry of Defence
- Ministry of Defence HQNI
- MKA Planning
- Mobile Operators Association
- Mono Consultants Limited
- Mourne Heritage Trust
- Mournes Advisory Council
- National Grid Wireless Group
- National Trust
- Newtownards Aerodrome
- Northern Ireland 2000
- Northern Ireland Affairs Committee
- Northern Ireland Agricultural Producers Association

- Northern Ireland Amenity Council
- Northern Ireland Assembly Environment Committee
- Northern Ireland Association of Citizen Advice Bureau
- Northern Ireland Association Engineering Employers Federation
- Northern Ireland Chamber of Commerce and Industry
- Northern Ireland Chamber of Trade
- Northern Ireland Council for Ethnic Minorities
- Northern Ireland Council for Voluntary Action
- Northern Ireland Court Service
- Northern Ireland District Councils – Chief Executives and Health Officers
- Northern Ireland Economic Council
- Northern Ireland Education and Library Board
- Northern Ireland Electricity plc (Viridian)
- Northern Ireland Environmental Link
- Northern Ireland Federation of Housing Associations
- Northern Ireland Gay Rights Association
- Northern Ireland Health and Social Services Boards, Trusts and Agencies
- Northern Ireland Housing Council
- Northern Ireland Housing Executive
- Northern Ireland Law Commission
- Northern Ireland Local Government Association
- Northern Ireland MPs, MEPS, MLAs and political parties
- Northern Ireland Ombudsman
- Northern Ireland Office
- Northern Ireland Public Service Alliance
- Northern Ireland Quarry Owners Association
- Northern Ireland Quarry Products Association
- Northern Ireland Resident Magistrates Association
- Northern Ireland Tourist Board
- Northern Ireland Women's European Platform
- North West Architectural Association
- NTL Cabletel
- O2
- OFCOM
- OFREG
- Orange
- Orange PC5 Consultants

- Ostick and Williams
- Participation and the Practice of Rights Project
- Phoenix Natural Gas Ltd
- Planning Appeals Commission
- Planning Magazine
- Playboard NI Ltd
- POBAL
- Policing Board of Northern Ireland
- Pragma Planning
- Presbyterian Church in Ireland
- Property Services Agency
- PSNI Architectural Liaison Officer
- PSNI Traffic Branch HQ
- Public Policy Executive RICS Northern Ireland
- RELATE
- Research and Information Services
- Robert Turley Associates
- Royal Institution of Chartered Surveyors in Northern Ireland
- Royal National Institute for the Blind
- Royal National Institute for the Deaf
- Royal Society for the Protection of Birds
- Royal Society of Ulster Architects
- Royal Town Planning Institute (Irish Branch, Northern Ireland)
- RPP Architects
- RPS Group
- Rural Community Network
- Rural Development Council for Northern Ireland
- School of Law, QUB
- Secretary HM Council of County Court Judges
- Society of Local Authority Chief Executives
- Sport Northern Ireland
- Strangford Lough Advisory Council
- Strangford Lough Management Committee
- Strategic Investment Board Ltd
- Sustainable Development Commission
- Sustrans
- Three

- Three, Parliamentary and Community Affairs Manager
- T-Mobile
- Training for Women's Network Ltd
- Translink
- Transport 2000
- Traveller's Movement Northern Ireland
- Tyrone Brick
- Ulster Angling Federation
- Ulster Architectural Heritage Society
- Ulster Farmers' Union
- Ulster Society for the Preservation of the Countryside
- Ulster Wildlife Trust
- University of Ulster School of the Built Environment
- Urban and Regional Planning Associates
- UTV Engineering Information Department
- Victims Unit
- Vodaphone LTD
- Warrenpoint Harbour Authority
- WDR & RT Taggart
- Wildfowl and Wetland trust
- William Ewart Properties Ltd
- Women's Forum Northern Ireland
- Woodland Trust
- World Wildlife Fund (NI)
- Youth Council for Northern Ireland

Grouped lists

- Councils – Chief Executives
- Councils – Environmental Health senior officers
- MLAs – all 108 representatives
- MEPs – 3 Northern Ireland representatives
- MPs – 18 Northern Ireland representatives
- Committee Chairs – of Statutory Committees in the Northern Ireland Assembly
- Political Parties – central offices
- Education and Library Boards
- Health and Social Care Trusts

Section 75 groups listed by the Assembly

- Note that there may be some overlap with Departmental consultation list
- ACOVO – now CO3
- Age Concern Northern Ireland – now Age NI
- Alliance Party
- Al-Nisa Association NI
- An Munia Tober
- Association for Spina Bifida & Hydrocephalus
- Autism NI
- Baha'I Community of Belfast
- Bahai Council for NI
- Baha'I Council for NI
- Ballymena Inter-Ethnic Forum
- Barnardos
- Belfast Chinese Christian Church
- Belfast City Council Youth Forum
- Belfast Hebrew Congregation
- Belfast Islamic Centre
- Belfast Jewish Community
- Belfast Jewish Community
- British Deaf Association
- Bulgarian Association NI
- Cara-Friend
- Care in NI
- Carers Northern Ireland
- CCMS
- Children in Need NI
- Childrens Law Centre
- Chinese Chamber of Commerce
- Chinese Welfare Association
- Church of Ireland
- Community Development & Health Network NI
- Craigavon Traveller Support Committee
- DARD
- DCAL
- DEL
- Derry Travellers Support Group
- Derry Well Woman

- DETI
- DFP
- DHSSPS
- Disability Action
- DOE
- Down's Syndrome Association
- DRD
- DSD
- DUP
- East Belfast Community Development Agency
- Employers Forum on Disability
- Equality Commission for NI
- Equality Commission for Northern Ireland
- Equality Forum NI
- Falls Community Council
- FPA
- Gingerbread Northern Ireland
- GMB
- Green Party
- Guru Nanak Dev Ji Sikh Community Association
- Hare Krishna Community
- Help the Aged NI
- Hungarian Community Association
- Include Youth
- Independent Health Coalition
- Indian Community Centre
- Indian Community Centre
- Lasi (Lesbian Advocacy Services Initiative)
- Latino America Unida
- Lesbian Line
- Mandarin Speakers Association
- MENCAP
- Methodist Church in Ireland
- Mid Ulster International Cultural Group
- Multi-Cultural Resource Centre
- Newry & Mourne Senior Citizens Consortium
- Newtownabbey Senior Citizens Forum

- NI Anti-Poverty Network
- NI Council for Intergrated Schools
- NI Filipino Community in Action
- NI Human Rights Commission
- NI Mediation Service
- NI Multicultural Association
- NI Muslim Family Association
- NI Somali Community Association
- NI Women's Aid Federation
- NI Youth Forum
- NIACRO
- NICEM
- NIC-ICTU
- NICVA
- NIPPA
- NIPSA
- NISRA
- North West Community Network
- Northern Ireland Association for Mental Health
- NSPCC
- NUS USI
- OFMDFM
- Oi Kwan Chinese Women Group
- Oi kwan Chinese Women's Group
- Oi Wah Chinese Women's Group
- Oi Yin Women's Group
- Omagh Ethnic Minorities Community Association
- Opportunity Youth
- Pakistani Community Association
- PHAB Northern Ireland
- Polish Association NI
- Presbyterian Church in Ireland
- Probation Board for Northern Ireland
- Progressive Unionist Party
- Public Achievement
- RNIB
- RNID

- Roman Catholic Church
- Romanian Community Group
- Rural Community Network
- Sai Pak Chinese Community Project
- Save the Children
- SDLP
- Sense NI
- Sikh Cultural Centre
- Sikh Women & Children's Association
- Sinn Fein
- Skill Northern Ireland
- Staff Commission for Education & Library Boards
- Staff Commission for Local Government
- Strabane Ethnic Community Association
- The Cedar Foundation
- The Community Relations Council
- The Egyptian Society of NI
- The Guide Dogs for the Blind Association
- The Rainbow Project
- The Youth Justice Agency NI
- Trademark
- Tuar Ceatha
- Tuar/Barnardos
- Ulster Scots Agency
- Ulster Teachers Union
- Ulster Unionist Party
- UNISON
- VOYPIC
- Wah-Hip Chinese Community Association
- Women of the World
- Women's Forum NI
- Women's Information Group
- Women's Resource & Development Agency
- Women's Support Network
- Youth Action NI
- Youth Council for Northern Ireland
- Youth Link Northern Ireland

- Youthnet

Letter from Craigavon Borough Council

CRAIGAVON
Borough Council

Craigavon Civic & Conference Centre
Lakeview Road, Craigavon, Co. Armagh, BT64 1AL
Tel: 028 3831 2400 Fax: 028 3831 2444
Minicom: 028 3831 2757 www.craigavon.gov.uk

29 December 2010

Mr Cathal Boylan
Chairperson
Committee of the Environment
Room 247 Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST
BT4 3XX

Dear Sir

COMMITTEE FOR THE ENVIRONMENT – CALL FOR EVIDENCE ON THE PLANNING BILL
Thank you for the invitation to consider the above matter and offer a response on these proposals. The officers of Craigavon Borough Council will be considering the document with a view to having a formal response submitted.

However, the deadline for reply specified being Friday, 14th January 2011 is quite inadequate for any meaningful response to be formulated given that some key officers will not be available over the Christmas period, and does not recognise the procedural constraints that Councils must work within in relation to timing of meetings and sub-committees. Therefore, I am writing to request that an extension of time to respond to the Planning Bill is provided that will enable a full consideration to be given and enable the relevant papers to be presented to Council for ratification through the normal procedures established in standing orders.

I understand that other Councils share the same concerns over the short time frame provided for consultation, and this is a matter that will be raised with NILGA.

We trust that favourable consideration will be given to extending the timeframe for response and await your further advices.

Yours faithfully

Dr Theresa Donaldson
Chief Executive

Letter from Jean Forbes re Planning Bill

From : Jean Forbes BA, MSc, MEd, DipTP, MRTPI (ret), FRSGS.
1 The Courtyard, Strathern Manor, Tollymore Road, Newcastle, Co Down, Northern Ireland BT33 0TE

Tel 028 4372 2154 email jeanforbes2@btinternet.com

Mr McGarel
Clerk of the Environment Committee
NI Assembly

4th February 2011

Dear Mr McGarel

Committee discussion regarding the current Planning Bill

Thank you for your kind and quick response to my request regarding the nature of the committee discussion. I must say it was a revelation. I knew nothing about the fact that " matters of principle" had been discussed by the Assembly during one single week in December past.

It was really a waste of my time writing up a document about the need for a major change in principle , when such principle had already been set aside.

I wonder what all that scrutiny business was about? Indeed what is the whole current NI Planning system supposed to be about ?

Beats me

Yours sincerely

Jean Forbes

CC MLAs : William Clarke, Margaret Ritchie, John McCallister, Jim Wells.

Letter from Department re Clauses 202 and 226

Private Office Assembly Unit
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 41169
Email: una.downey@doeni.gov.uk
Your reference: CQ 294/11 & CQ 295/11

Date: 16 February 2011

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

I refer to the request made by the Environment Committee, on 6 February 2011, seeking the Department's response to outstanding issues on clauses 202(5) and 226(3) of the Planning Bill.

Clause 202(5) – The Examiner had commented that PAC rules made by OFMdFM are subject to no Assembly procedure and suggested that these should be subject to negative resolution. The Department agreed to discuss with OFMdFM the issue raised by the Examiner of Statutory Rules. OFMdFM has confirmed it is content with the Examiner's recommendation. An amendment to the Bill is included in the attached Annex A.

Clause 226(3) – The Examiner commented that Local inquiry rules made by this clause are subject to no Assembly procedure and suggested that these should be subject to negative resolution. The Department agreed to raise the matter with the Minister. A response will follow.

The Committee has also requested (CQ 295 /11) electronic copies of the amendments passed to the Committee at the 15 February meeting. These are attached at Annex B and C. A response to the other issues raised in CQ 295/11 will follow.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO
[by email]

Annex A

Departmental Planning Bill Amendments

Clause 202, Page 133, Line 32

At end insert-

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

Annex B

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.’

New clause

After clause 58 insert¾

‘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 demonstrate¾

(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 to¾

(a) the provisions of the local development plan, or

(b) any other material consideration.’

New clause

After clause 202 insert¾

‘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 are¾

(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 insert¾

'Orders as to costs: supplementary

202B.—(1) This section applies where¾

(a) for the purpose of any proceedings under this Act¾

(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.'

Annex C

Departmental Amendments

Clause 1, Page 1, Line 10
Leave out 'contributing to the achievement of' and insert 'furthering'

Clause 5, Page 3, Line 25
Leave out 'contributing to the achievement of' and insert 'furthering'

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’

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

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

Departmental Reply re amendments to Clauses 1, 2, 5 and 10

Private Office Assembly Unit
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Telephone: 028 90 5 40855
Facsimile: 028 90 5 4116
Email: una.downey@doeni.gov.uk

Our reference: CQ281/11

Date: 7 February 2011

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

Planning Bill

Following the informal clause by clause consideration of the Planning Bill on 1 February, the Committee requested the Department consider amendments to clauses Clauses 1, 2, 5, 10 and for the Committee to have sight of these amendments.

Clause 1

Clause 1 re-enacts the requirement for the Department to exercise its general functions with respect to development of land “with the objective of contibuting to the achievement of sustainable development". A number of bodies which submitted evidence to the Committee called for this duty to be amended to place greater emphasis on securing sustainable

development. Officialls agreed to consider changing the reference on sustainable development from “contributing to" to “securing".

The Department considers that efforts to secure sustainable development cut across all departments and it is therefore appropriate that the Deparment’s duty remains one of contributing to these efforts.

The Committee requested a further amendment to clause 1. This relates to the Committee’s concerns about the different approach taken between this clause 8 (5) and clause 1(3) in terms of requirements on the council in preparing its plan strategy to “take account of" various matters, while the Department in exercising its functions “must have regard to" various policies and guidance. In considering this, the Department is of the view that it would be more appropriate to amend clauses 1(3) and similarly 5(2) by substituting the phrase “have regard to" with “take account of".

The Minister intends to table the following amendments at Consideration Stage.

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’

Clause 2

The Commitee has asked that clause 2 contain a requirement for the statement of community involvement to be published within a time period linked to the commencement of the Bill. Following consideration the Department proposes that it will prepare and publish its statement of community involvement within 1 year of clause 2 coming into operation.

The Minister intends to table the following amendments at Consideration Stage.

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 10

Clause 10 makes provision for the independent examination of local development plan documents. Officials agreed to consider Belfast City Councils’s comment that “in order to safeguard the objectivity and impartiality of the the planning process, the Department should only appoint a person other than the Planning Appeals Commission (PAC) to conduct a hearing in exceptional circumstances when there are are unacceptable delays caused by the increasing workload of the PAC. The wording of the statute would need to be amended to incorporate this excetional clause".

The Department has maintained the policy position that the PAC will be the first port of call for conducting independent examinations, however 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 this position by amending the Bill to indicate that the Department can not appoint an independent examiner under clause 10 4 (b) unless it considers it expedient to do so, having first considered the Council's timetable for preparing the plan.

The Minister intends to table the following amendments at Consideration Stage.

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 timetable prepared by the council under section 7(1), the Department considers it expedient to do so.'

Further textual amendments

The Department has also identified further textual amendments to be moved at Consideration Stage. These amendments are proposed to provide consistency of approach throughout the Bill. They do not impact on the policy content of the Bill.

These are listed at Annex 1 and are described below.

Clause 78

Clause 78 details the provisions within the Bill which apply to land belonging to and development by district councils. In line with the policy approach of councils falling under the same obligations as other users of the planning system it is proposed to amend Clause 78 to include enforcement provisions within Part 5 of the Bill. A further textual amendment is also proposed to delete an unnecessary reference.

The Minister intends to table the following amendments at Consideration Stage.

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 115

Clause 115 deals with the effect on a hazardous substances consent where there is a change in the control of land. The Department proposes to maintain the current policy position by carrying forward provisions from the Planning (Northern Ireland) Order 1991 which allow the hazardous substances consent to remain in place if the control of land remains within the Crown.

The Minister intends to table the following amendments at Consideration Stage.

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 160

Clause 160 allows a council to carry out urgent works to preserve a listed building or a building in a conservation area which the Department has directed this clause should apply. An amendment is proposed to clarify the position that the Department may execute an urgent works notice not only in relation to a listed building but also in relation to a building in respect of which it has given a direction.

The Minister intends to table the following amendments at Consideration Stage.

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, the Department’

Clause 174

Clause 174 deals with the enforcement of advertisement control. Clause 174 (3) re-enacts Article 84 (3) of the Planning (Northern Ireland) Order 1991 and contains defences where an advertisement is displayed in contravention of the Advertisement Regulations. These defences have been amended by Clause 37 of the Clean Neighbourhoods Bill. Clause 37 provides:

Unlawful display of advertisements

37. —(1) Article 84 of the Planning (Northern Ireland) Order 1991 (NI 11) (enforcement of advertisement control) shall be amended as follows.

(2) In paragraph (3) for “that it was displayed without his knowledge or consent" substitute “either of the matters specified in paragraph (4)".

(3) After that paragraph insert—

“(4) The matters are that—

(a) the advertisement was displayed without his knowledge; or

(b) he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.".

(4) This section does not have effect in relation to an offence committed, or alleged to have been committed, before the commencement of this section.

It is anticipated that clause 37 of the Clean Neighbourhoods Bill will be brought into operation in advance of the Planning Bill and that by the time the Planning Bill is in operation, Article 84 of the Planning Order will have been amended. Clause 174 therefore needs to be amended to reflect the amended Article 84.

The Minister intends to table the following amendments at Consideration Stage.

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.'

Clauses 49, 70, 85, 104, 106, 113, 133, 144, 145, 167, 208, 222, 223, 224, 239, 240

Textual amendments are proposed to these clauses to ensure a consistent approach throughout the Bill. These amendments have no impact on the policy content of the Bill.

Annex 1 provides a composite list of the textual amendments the Minister intends to table at Consideration Stage.

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO

Annex 1

Planning Bill

Departmental Amendments to Clauses 49, 70, 85, 104, 106, 113, 133, 144, 145, 167, 208, 222, 223, 224, 231, 239, & 240 to be Tabled at Consideration Stage

Clause 49, Page 30, Line 29
After 'land' insert 'made to it in accordance with section 26(5)'

Clause 70, Page 42
Leave out lines 32 to 35

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 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 104, Page 65, Line 38
Leave out from 'consent' to 'section made' in line39 and insert 'conservation area consent made'

Clause 104, Page 65, Line 40
After 'any' insert 'conservation area'

Clause 106, Page 67, Line 2
Leave out 'Act' and insert 'Chapter'

Clause 113, Page 72, Line 28
Leave out ', 109 and 118(2) to (4)' and insert 'and 109'

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 133, Page 85, Line 24
After 'contravention' insert 'notice'

Clause 144, Page 92, Line 38
Leave out 'Department' and insert 'council'

Clause 145, Page 93, Line 42
Leave out 'carrying into effect this Part' and insert 'taking steps under subsection (1)'

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, the Department'

Clause 167, Page 112, Line 22
After 'council' insert 'or, as the case may be, by the Department'

Clause 172, Page 115, Line 26
Leave out from 'within' to the end of line 27 and insert—
'—
(i) 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];

(ii) 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 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 208, Page 137
Leave out line 1

Clause 208, Page 137
Leave out lines 16 and 17

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, 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, Page 144, Line 30
Leave out 'prescribe' and insert 'specify'

Clause 224, Page 144, Line 31
Leave out 'prescribe' and insert 'specify'

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 239, Page 155, line 14
Leave out '125(1) or'

Clause 240, Page 155, Line 21
At end insert—
'( ) planning agreements under section 75;'

Annex A

Table 1 – Department consideration of proposed Environment Committee Changes to the Planning Bill.

Environment Committee Request	Response
Clause 1(2) The Departmental officials agreed to consider changing the reference on sustainable development from 'contributing to' to 'securing'. The Committee requires sight of this amendment prior to formally agreeing Clause 1.	A schedule of amendments agreed by the Minister will be provided separately.
Clause 2 The Departmental officials agreed to ask the Minister to write to the Committee in relation to the inclusion of a statutory link between local development plans and community strategies and the new governance arrangements and ethical standards regime.	This letter is being sent under separate cover.
The Committee accepted that in the absence of a date for its implementation precise dates would be best avoided on the face of the Bill. Instead, the Committee requests 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. The Committee requires sight of this amendment prior to formally agreeing Clause 2.	A schedule of amendments agreed by the Minister will be provided separately.
Clause 3 The Departmental officials agreed to report back to the Committee on the possibility of including climate change on the face of the Bill along with a possible amendment if appropriate.	Clause 3 (1) requires councils to keep under review matters which may be expected to affect the development of their districts. Committee members asked us to report on whether "climate change" should be included in the list. Estimates of greenhouse gas emissions are recorded on an annual basis and included in the Greenhouse Gas Inventories for England, Scotland Wales and Northern Ireland. The estimates are consistent with the United Nations Framework Convention on Climate Change (FCCC) reporting guidelines. The Inventories are prepared by AEA, which is a trading name of AEA Technology plc. It would be impossible for the councils to collate information

Environment Committee Request	Response
	from the sectors which produce emissions, such as agriculture, transport, domestic and industry.
Clause 4 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.	Neighbourhood notification is a form of advertising and is therefore provided for at Clause129 of the Bill. Examples of SCIs emailed to the Committee on February 2.
Clause 8 The Departmental officials agreed to provide the Committee with details of the subordinate legislation that will follow from this clause and to consider the amendment members requested to Clause 1 (3).	Subordinate legislation will deal with the form and content of each development plan document, including mapping requirements and justification of the policies. It will also cover publicity for the draft development plan documents and how and where they must be made available for inspection. A schedule of amendments agreed by the Minister will be provided separately.
Clause 10 The Departmental officials agreed to consider Belfast City Council's comment –' In order to safeguard the objectivity and impartiality of the planning process, the Department should only appoint a person other than the PAC to conduct a hearing in exceptional circumstances when there are unacceptable delays caused by the increasing workload of the PAC. The wording of the statute would need to be amended to incorporate this exceptional clause.' The Committee would require sight of an appropriate amendment before considering Clause 10 formally.	A schedule of amendments agreed by the Minister will be provided separately.
Clause 10 and 16 The Committee requested that the Department reports back to members on consultation with the Planning Appeals Commission to ensure their buy in on their role in this Clause.	In its response Planning Reform consultation, the PAC did not agree that DOE should have the power to appoint Independent Examiners for plans or public inquiries/hearings into planning applications. The Department 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 lengthy delays to this stage of the development plan process. The PAC would remain the first point of contact for conducting independent examinations; however, given the significant work load pressures recently faced by the PAC, it is considered that it would be beneficial to be able to appoint other independent examiners, if required. The

Environment Committee Request	Response
	Department will produce clear guidance on the use of other independent examiners. This will include details on a process for the appointment of Independent Examiners that will ensure that they are appropriately qualified and independent. See amendments referred to under clause 10 above.
Clause 21 The Departmental officials agreed to provide the Committee with examples of monitoring reports.	Examples were emailed to the Committee on February 2.
Clause 25 The Departmental officials agreed to report back to the Committee with details of discussions with DSO regarding the wording of this Clause. 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.	This clause (25 (3)) refers to local development which may be directed to be dealt with as a major development. Under this provision the Department may issue a direction in relation to any number of applications for local development. A direction is most likely to be issued by the Department if there are 2 or more applications for local development and the cumulative effect of these applications would meet the threshold identified under the Major development category in the development hierarchy. In that situation a direction would issue in respect of each of the applications. This would allow pre-application community consultation to occur. The development hierarchy will be set out in subordinate legislation. A draft of the hierarchy was sent to the Committee on 12th January 2011 and guidance will be provided on its use.
Clause 27 The Departmental officials agreed to consider 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’.	Oxford Dictionaries Online defines “consult" as “have discussion with (someone), typically before taking a course of action". This point is illustrated by the example “the government must consult with interested bodies". “Participate" on the other hand is defined as “be involved, take part". The purpose of this Clause is to require prospective applicants to discuss their applications with the community and take account of views in finalising their applications. A “Community participation" duty suggests a duty on the community to take part in the process: this is not the intention, participation is voluntary. Clause 4 refers to the community as “persons who appear to the council to have an interest in matters relating to development in its district". This is wider than people who live in the district, and can for example include people who work or invest there or who visit it to use services. Guidance on pre-application consultation will explain the role of the prospective applicant, and how active and

Environment Committee Request	Response
	meaningful consultation with communities can best be achieved.
Clause 31 The Departmental officials agreed to provide the Committee with an example of a scheme of delegation.	Examples were emailed to the Committee on February 2
Clause 53 The Departmental officials agreed to consider an amendment to include landfill in this Clause and to report back to the Committee on how aftercare conditions will be delivered in the event of insolvency.	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 EHS Interim Guidance on Landfill Closure, Capping and Restoration (2007) identifies the main after-use options for landfills as agricultural use, ecological uses, recreational and amenity uses, and woodland. As landfill is comprehensively dealt with elsewhere, there is no need to include it in the Planning Bill
Clause 75 The Departmental officials agreed to provide the Committee with further clarification on a Community Infrastructure Levy and how it would work in practice.	Community Infrastructure Levy is a system of developer contributions introduced for England and Wales through the 2008 Planning Act which empowers local authorities to introduce a statutory planning charge on development and to use the proceeds to fund infrastructure. There is no equivalent in Northern Ireland. Debate around increasing developer contributions is based on the premise that the granting of planning permission almost always increases the value of the land to which the permission relates. It is argued that, since the public sector grants planning permission, the public should share in the increased value of the land. A levy based system relies on an agreed identification of required infrastructure including a cost analysis and schedule of delivery. Where a shortfall in available funding sources to support the delivery of the identified infrastructure is identified a charging authority may set out a charging schedule designed to address that shortfall. This charging schedule may set out the proposed charge to be levied on particular types and sizes of future developments. Such a levy may also involve arrangements for any change to the initial schedule for delivery of infrastructure.
Clause 97 Members 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 issue of arbitration was raised in relation to cases where the Department has exercised its oversight or intervention in relation to e.g. the designation of conservation areas or revocation of listed building consent. Such powers are a safeguard and will only be used in rare,

Environment Committee Request	Response
	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. In practice therefore the Department would expect to be in close contact and discussion with a council before it would exercise such powers. Given such cases will be very few and far between the Department does not consider it necessary to establish formal arbitration arrangements.
Clause 116 The Departmental officials agreed to report back to the Committee on the possibility of criminalisation being included in this Clause.	This is already and offence and Clause 116 creates a criminal offence if there is a contravention of hazardous substances control.
Clause 121 The Departmental officials agreed to report back to the Committee with further thoughts on the issues raised by the submissions on this Clause, particularly the approach to dead or dying trees. Members also requested that the Department reports back on the need for arbitration on this issue.	This clause provides that TPO's in relation to "trees, groups of trees or woodlands" would include "areas" of trees. The Department does not propose to change its approach to dead, dying or dangerous trees. The Department does not see the requirement for expanding TPOs to include areas of trees as groups of trees or entire woodlands can already be encompassed within TPOs and blanket TPOs are automatically established within conservation areas.
Clause 125 The Departmental officials agreed to consider the possibility of codifying the two offences in this Clause in a way that would retain the flexibility but make the law applying to trees stronger.	Clause 125 is an established provision which deals with penalties for the contravention of a tree preservation order. It provides a balanced, proportionate approach and flexibility for dealing with a range of potential offences recognising some offences should attract higher penalties. While it may be possible to merge the two offences the Department considers this balanced approach will be of benefit to both landowners and councils and would recommend the clause should remain as existing.
Clause 128 The Departmental officials agreed to report back to the Committee on the need for centralised expertise in this area as there was a feeling that the 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 within the planning system (such as the review of mineral planning permissions) which councils will wish to consider how best to deliver. One option might be a shared service delivery model, or if certain types of development were clustered a lead council delivering the function. The future staffing arrangements for the planning system will be looked at in the context of the wider planning service restructuring and in preparation for the transfer of planning functions.
PPS1 The Committee Chairperson requested a copy of PPS1 as it currently stands	Emailed to Committee on February 2