



Submission to NI Assembly Committee for the Environment on the Planning Bill

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INTRODUCTION

Asda has invested £256 million in Northern Ireland in the past eight years. We are now the fourth largest private sector employer in the region with 5,000 colleagues in 17 stores and a distribution centre. Northern Ireland is a hugely important market to us and we have plans to double our number of stores here; creating more than 5000 new jobs and representing a further investment of £280 million. Our local sourcing policy can mean supplying a couple of shops or all Northern Ireland stores. We have seen double digit year on year growth in local sales and we now work with 111 suppliers on the island of Ireland, bringing around 1,900 lines to customers in Northern Ireland. This month (March 2013) we celebrate the first anniversary of our Community Life programme which is a long term commitment to help stores do the right things for the local communities we serve.

It is widely accepted that the supermarket retail sector is one of the major engines of the Northern Ireland economy and that price competition amongst the supermarkets has been recognised to have a significant downward effect on inflation.

However, the current planning regime hinders Asda and its parent company Wal-Mart from fulfilling its investment and job creation plans. The complex, protracted and inflexible nature of the planning system acts as a barrier to both growth and competition. Timescales are a major issue, with supermarket schemes typically taking between two and four years to complete the process.

The Planning (Northern Ireland) 2011 Act sets the legislative framework for planning reform with the explicit aim of improving its efficiency and effectiveness through: faster decisions on planning applications; enhanced community involvement; faster and fairer appeals; tougher and simpler enforcement; as well as a strengthened Departmental sustainable development duty. The legislation also provides for the transfer of the majority of planning functions and decision making responsibilities to district councils in April 2015.

The Planning Bill, which is currently being considered by the Committee, will accelerate the introduction of a number of reforms contained in the 2011 Act. The Bill also introduces for the first time additional provisions to underpin the role of planning in promoting economic development, which is welcomed.

Planning Reform in Northern Ireland is undeniably a significant and positive step, seeking to deliver 'root and branch' reform of the planning system here. As such, it is important that changes to planning legislation and guidance deliver a new planning system that is efficient with greater certainty for developers and faster processing of planning applications.

This paper sets out our comments on the clauses in the Planning Bill and provides recommendations on how the Planning Bill and the 2011 Act can be strengthened to provide a more efficient and responsive planning system that does not continue to act a barrier to growth and competition

RESPONSES TO CLAUSES

Clause 1: Statement of community involvement

This clause introduces the requirement for the Department to produce a statement in respect of its proposed policy for involving the community in its development plan and planning management functions within one year from this clause coming into operation.

Asda welcomes the steps being taken to provide clear policy pertaining to the involvement of interested persons in the exercise of the Department's Development Plan and Development Management Processes. The requirement for a Statement of Community Involvement was first introduced by the Planning Reform (NI) Order 2006. This clause merely places a time period for completing this statement.

Clarification is sought as to when this provision will come into effect and if the content of the Statement of Community Involvement will be subject to public consultation prior to its implementation.

Clause 2: General functions of the Department and the Planning Appeals Commission

Clause 2 amends Article 10A of the Planning (Northern Ireland) Order 1991. A statutory duty is imposed on the Department and the Planning Appeals Commission in exercising any function under Part 2 or Part 3 to do so with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. In addition where the Department, or as the case may be the Planning Appeals Commission, exercise any function under Part 2 or Part 3 of the Planning (Northern Ireland) Order 1991 they must have regard to the desirability of achieving good design. Corresponding amendments are made to Section 1 and Section 5 of the Planning Act (Northern Ireland) 2011.

The promotion of economic development is a much welcomed and a positive step towards recognising the important role that land development plays within the Northern Ireland economy; not just in terms of 'bricks and mortar' but in boosting employment opportunities, creating jobs and helping regenerate local communities. For this policy to be adopted successfully, there needs to be a clear understanding of what will be assessed, and how.

The promotion of good design and sustainable development are important, but often subjective matters. We believe that the current system has worked well with the promotion of these two elements provided for under existing policy, through PPS 1 and going forward, under the Single Planning Policy Statement.

We do not believe that there is a requirement for these principles to be enshrined in primary legislation nor do we believe that this would be of benefit to local communities. It is our opinion that leaving these elements in policy will allow for local design and character to run through developments and protect subjectivity within the process.

We recommend amending the Planning Bill to remove provision for the promotion of good design, while ensuring they remain strongly promoted within relevant planning policy guidance.

We recommend that the promotion and review of the economic benefits of a development should remain within the Planning Bill given the net effect it can have on NI as a whole.

This clause substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications for planning permission. The Department must not consider an application if the publicity requirements are not satisfied.

Article 25 as amended also makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination.

Similar amendments are made at Schedule 1 for applications for Listed Buildings consent.

We understand that the publicity arrangements, which currently rest with the Department, are to be reviewed and introduced through subordinate legislation. Clarification is required on whether the responsibility for publicising an application will remain with the Department or transfer to the applicant.

The current practice is for any representation received to be considered by the Department, irrespective of whether it is outside of the 14 day period specified in Article 21 of the Planning (Northern Ireland) Order 1991. This allows multiple opportunities to lodge objections and draw out the process.

The current system allows for multiple re-notifications of changes to the application, which creates severe delays to its determination. Should re-notification be required, this should be undertaken at the end of the process, particularly if responsibility for publicising the application is to be transferred to the applicant, as there are associated costs resulting from each re-notification. There is a perception that the Department is so blindsided by judicial review risks that there is now a culture of over notification

We recommend that the Planning Bill is amended to limit the period for submitting representations to a reasonable time period at the beginning of the planning application process.

We recommend that Planning Bill is amended to provide for a fixed timescale for determining a planning application, as this would provide certainty for developers.

Clause 5: Pre-application community consultation

This clause places an obligation on developers to consult the community in advance of submitting an application if the development is a major development (as defined by the legislation). The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the applicant.

Asda welcomes the introduction of this requirement and already undertake community consultations on our schemes in Northern Ireland.

Housing Associations are required by the Department of Social Development to undertake a 6 week community consultation exercise on social housing schemes. This demonstrates that effective community consultation can be undertaken in a shorter timeframe. We do not believe, therefore, that anything is to be gained by a 12 week consultation period. It will only serve to delay the development and the benefits it will bring to the local community.

While the minimum consultation requirements will be prescribed in subordinate legislation, these must be prescriptive with no ambiguity around them.

We recommend that the Planning Bill is amended to provide for a reduction in the pre-application community consultation period to 8 weeks.

We would recommend the adoption of the Scottish model for pre-application community consultation, including a requirement for one event along with an advert in the local press and engagement with local community groups. The English definition is currently too wide ranging and can be open to differing interpretation.

Clause 7: Power to decline to determine subsequent application

This clause extends the Department's power to decline subsequent applications for planning permission or listed building consent under Article 25A and paragraph 4A of Schedule 1 of the Planning (Northern Ireland) Order 1991. This now includes the power to decline applications where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.

Asda is concerned that this provision extends the power to decline applications to include applications that have gone to appeal but subsequently withdrawn.

The extent of revisions that may be required to address a previous reason for refusal may not necessarily be substantially different from the previous submission. This provision in the Bill could stifle the ability to develop our sites and could result in significant financial losses being accrued. This runs contrary to the measures being put into effect to promote economic development.

We recommend amending the Planning Bill to provide for the repeal of Article 25A of the of the Planning (Northern Ireland) Order 1991.

Clause 8: Power to decline to determine overlapping applications

This clause extends the Department's power to decline to determine overlapping applications for planning permission or listed building consent under Article 25AA and paragraph 4B of Schedule 1 of the Planning (Northern Ireland) Order 1991 to include the power to decline to determine similar applications made on the same day. It also includes the power to decline a planning application where the same development is subject to a "deemed application" determination by the Planning Appeals Commission arising from an appeal against an Enforcement Notice under which the Commission has not issued its decision.

It is counterproductive for the Department to decline to accept more than one application on the same site. A developer should be free to pursue various development options on a specific site at the same time in order to realise the best possible development opportunity within the same timeframe. This could stifle development and result in significant financial losses being accrued and runs contrary to the provision in the Bill to promote economic development.

We recommend amending the Planning Bill to provide for the repeal of Article 25AA of the Planning (Northern Ireland) Order 1991.

Clause 12: Matters which may be raised in an appeal

Clause 12 inserts "Article 32A" in the Planning (Northern Ireland) Order 1991, so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that it not being raised before that time was due to exceptional circumstances.

We support the recommendation to restrict the amount of new information being submitted post lodging of the appeal. This should ensure fewer adjournments or delays to Public Inquiries and Appeals.

Clause 13: Power to make non-material changes to planning permission

This clause inserts provision within Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to make a change to a planning permission subject to it being satisfied that the change is not material. It includes the power to amend or remove conditions or impose new ones. Consultation and publicity arrangements will be set out in Regulations.

The ability to make non-material changes to planning permissions will help ensure faster decision making for minor alterations.

Clause 15: Planning agreements: payments to departments

This clause amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland Department and not solely the Department of the Environment.

Firstly, it is important to consider the principles of the payment. These should be bound by the following tests:

- relevant to planning
- necessary to make the development acceptable in planning terms
- directly relate to the proposed development
- fair and reasonable in scale and kind
- reasonable in all other aspects.

Secondly, due consideration must be given to the process which governs these payments. We believe the system would work in a more efficient and timely manner if these contributions were organised and decided upon by one single NI Executive Department and recorded in one document. Whilst separate Departments would still make requests for financial support, there needs to be consistency in the level and application of these contributions.

We would also like to see greater understanding amongst Departments of the purpose of these contributions and their collective benefit

We recommend that Guidance is introduced to ensure all Departments understand the role of Article 40 Agreements and when they can be utilized.

Clause 21: Power of planning appeals commission to award costs

Clause 21 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.

Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.

The awarding of costs is welcomed.

We recommend amending the Planning Bill to introduce enabling powers to introduce a standard formula for awarding costs to allow developers to better predict costs and ensure appellants are fully aware of the penalties for failed appeals.

Clause 23: Duty to respond to consultation

Clause 23 inserts Article 126A which requires those persons or bodies which the Department is required to consult before determining certain applications for planning permission or consent to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and the Department. This section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

We would welcome the introduction of a strict 28 day time-frame for consultation responses, which should be enforced with suitable penalties. Provided adequate thought is given to the likely response, applications should be able to be determined without a response, should a consultee not provide their response within the timeframe allowed.

Clause 23 accommodates a 'get out' clause, which allows for certain consultees to amend the prescribed period for providing a response. This will only seek to add uncertainty to the process and will likely be used to stymie development as currently occurs. We believe this 'get out' clause should be removed and replaced with a policy that, in extreme cases where a response cannot be provided within 28 days, still ensures a response is given within the statutory period for consideration. Due regard should also be given to how these timeframes will be enforced once decision making is transferred to individual councils in 2015

We recommend amending the Planning Bill to provide a prescribed time-frame for the deadline for the submission of consultation responses, ideally 28 days, which is enforced with suitable penalties.

We recommend that due regard should be given to ensuring the decision making process is robust against legal challenge should a decision be taken without the input of late consultees.