



Ballymena Borough
Council

Written Evidence to the
Environment Committee
on the Planning Bill 2013

March 2013

Ballymena Borough Council Response to the Planning Bill

Strategic Overview

Ballymena Borough Council has considered this consultation in light of its own Corporate Plan 2012-2016 which is aimed at helping the economy of the Borough to grow over this period and Elected Members are supportive of the Planning Bill. We welcome the modernisation of planning through this Bill particularly in the light of local government reform and the transfer of the planning functions to the 11 new councils. We believe that this Bill will modernise and streamline the planning function prior to its transfer to local government. It is particularly pleasing that this Bill will assist councils in progressing Local Development Plans and the Community Planning function and responsibilities. We believe that the Bill will allow the planning transfer to happen but also to ensure that it happens on the right terms and in the right way handing to the local councils a planning system that will allow local ratepayers — business and domestic — to see real change and real benefit when it comes to the future shape of the council clusters.

We welcome the main elements of the Bill to be introduced in advance of Local Government Reform including:

1. Faster processing of planning applications

We welcome the streamlining mechanism which will support faster processing of applications and decision making. Clause 23 stipulates a duty for statutory consultees to respond to consultation within the timeframe as agreed with the Department. By having a speedier decision making process, development can commence sooner on site and stimulate growth in the construction industry. By sound development, confidence should return to the local economy which will in turn and in time encourage speculative risk takers to enter the arena and contribute to further development projects. All this has to have an improvement in economic terms for the Borough of Ballymena. The local economy is seen as core to the wellbeing of the citizens of Ballymena. Faster processing of planning applications ought to lead to new investment, which will assist in overcoming economic challenges, including pressure on jobs, attracting investment and supporting local enterprise.

Clause 10 includes the appointment of persons other than the Planning Appeals Commission to conduct enquiries and hearings into major planning applications. The Council would comment that such a person should have the requisite skills, experience, qualifications and independence, together with local knowledge to conduct such enquiries. However there is an issue here as to whether an independent examiner could be considered truly independent to give the final decision on an application of regional significance.

2. Enhanced Community Involvement

The Council welcomes this proposal in that it puts an obligation on the Department to prepare and publish within one year of commencement an account of its policy for involving the community in its provision of planning functions. Developers will also be required to consult the community before submitting major planning applications and demonstrate they have done so by the production of a report. This enables the viewpoints of community representatives, neighbours, etc. to be included in the early stages of the decision making

process and potential difficulties to be resolved earlier. Community involvement in the planning process is key to improving quality of life for communities and reducing inequality. This system should generate a satisfactory planning outcome to suit the needs of all concerned. The outworking of such will be the improved natural and built surroundings, increased environmental sustainability and improved rural and urban environments.

3. Promoting Economic Development

The Council welcomes the fact that the Bill will reflect that which is already in policy statements, namely the objective of promoting economic development, paying particular regard to the desirability of achieving good design in respect of planning policy. We welcome the fact that the in the determination of planning applications by the Department and, in future, by the councils, material considerations will include a reference to any economic advantages or disadvantages that are likely to result from the approval or refusal of planning permission.

4. Other measures to enhance the environment

We welcome amendments designed to enhance the environment and strengthen the planning system including an amendment to the general functions of the Department and the Planning Appeals Commission to exercise certain roles with the objective of furthering sustainable development. We recognise that this is also supportive of improving well-being and promoting economic development. It pays particular attention to the appropriateness of achieving good design. The Council would welcome this approach since a pleasantly designed environment, particularly in the town and village centres encourages more public to visit and thus spend in the retail environment. This in turn encourages retail growth and stimulates a vibrant local economy within the Borough.

Regeneration, development, inward investment and marketing are key pillars for a successful and vibrant Council area. The provision of a modern infrastructure and service provision will produce a desirable place to live and work. Additional measures in relation to Conservation are to be welcomed in order to preserve areas of historical interest alongside the provisions that will allow the continuation of regeneration and revitalisation of the Borough.

The Department's permission must also be given to the felling of trees covered by a tree preservation order which are dying and the control of demolition in conservation areas will also be extended to include the partial demolition of buildings. The power of the Department to grant aid non-profit organisations has been extended to include furthering an understanding of planning policy. This would be viewed by this Council as a welcome attempt to educate citizens regarding relevant planning issues.

5. Faster and fairer planning appeals system

The development of a faster and fairer appeals system through restricting the presentation of new material at appeal is welcomed. The Council would view this as a fairer way to assess the evidence in the appeal process. However we believe that the proposal to reduce the time limit for lodging an appeal from six to four months could create a backlog, due to an increase in appeals and may not give parties sufficient time for gathering evidence in more major appeals. Clause 21 to award costs where the unreasonable actions of one party has left another with

unnecessary expenditure would in the Council's opinion require some clarification and guidance in order to ascertain a benchmark or threshold of cost.

6. Simpler and tougher enforcement

We note the objective of delivering simpler and tougher enforcement through increasing fines for a series of offences and Ballymena Council would encourage this approach. The introduction of fixed penalty notices as an alternative to costly and lengthy prosecutions through the Courts is to be encouraged, as well as multiple fees for retrospective planning applications. This ought to deter those who blatantly disregard the rules. However we would raise a note of caution in the implementation of such an increase for those who unintentionally commit an offence and who could under these proposals be unfairly penalised.

Detailed observations on each of the clauses follow below and comments are provided where relevant.

Clause 1: Statement of community involvement

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

Ballymena Council would endorse this.

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.

Ballymena Council would endorse this.

Clause 3: Meaning of development

This clause amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land that for the purposes of the Order are not to be taken to involve development. This now includes structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.

Ballymena Council would endorse this.

Clause 4: Publicity etc. in relation to applications

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.

Ballymena Council would endorse this.

Clause 5: Pre-application community consultation

Clause 5 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation.

Article 22A places an obligation on developers to consult the community in advance of submitting an application if the development falls within a class prescribed for the purposes of this Article. 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. Additional requirements may be placed on a particular development if the Department considers it appropriate.

Clause 5 also inserts Article 22B which requires the applicant to produce a report indicating what has been done to comply with the pre-application community consultation requirements. The report must be submitted with the application. The form of the pre-application consultation report may be set out in Regulations.

In addition Clause 5 inserts Article 25AB. If the pre-application community consultation requirements have not been complied with the Department must decline to determine the application. The Department can request additional information in order to decide whether to decline the application.

Clause 5 also places a requirement upon the Department to include notices of Pre-application community consultations and consultation reports in the planning register prepared in accordance with Article 124 of the Planning (Northern Ireland) Order 1991.

Ballymena Council would endorse this.

Clause 6: Determination of planning applications

Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

Ballymena Council would endorse this.

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.

Ballymena Council would endorse this

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 and the Commission has not issued its decision.

Ballymena Council would endorse this.

Clause 9: Aftercare conditions for ecological purposes on grant of mineral planning permission

Clause 9 amends Article 27A of the Planning (Northern Ireland) Order 1991 by extending the list of land uses to be considered when the land is being restored to a required standard to include "use for ecological purposes".

Ballymena Council would endorse this.

Clause 10: Public inquiries: major planning applications

This clause amends Article 31 of the Planning (Northern Ireland) Order 1991 to allow the Department to appoint a person other than the Planning Appeals Commission to hold a public local inquiry [or hearing] to consider representations made in respect of any application to which Article 31 has been applied.

Ballymena Council would generally endorse this with minor reservation.

Clause 11: Appeals: time limits

Clause 11 reduces the appeal periods for making an appeal to the Planning Appeals Commission under Articles 32 (planning decisions), 57 (hazardous substances consent) and 83E (certificates of lawful use or development) of the Planning (Northern Ireland) Order 1991 from six to four months or such other period as may be specified by development order.

Ballymena Council would have reservation about this.

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, 1) that the matter could not have been raised before that time or 2) that its not being raised was due to exceptional circumstances.

Ballymena Council would endorse this.

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

This clause inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to make a change to a planning permission already granted on application. The change must not have any material effect on the permission, and it includes the power to amend or remove conditions or impose new ones. Consultation and publicity arrangements may be set out in Regulations.

Ballymena Council would endorse this.

Clause 14: Aftercare conditions imposed on revocation or modification of mineral planning permission.

This clause inserts a provision at Article 38A of the Planning (Northern Ireland) Order 1991 which permits the Department to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under Article 38, provided a restoration condition is included or in place on the land.

Ballymena Council would endorse this.

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.

Ballymena Council would endorse this.

Clause 16: Increase in Certain Penalties

Clause 16 increases penalties in relation to 7 articles in the Planning (Northern Ireland) Order 1991. For offences under Article 49 (acts causing or likely to result in damage to listed buildings) the maximum level of fine, on summary conviction, has been raised to the statutory maximum. Also the fine payable on summary conviction when a person fails to prevent damage or further damage resulting from the offence is raised from one tenth of a level 3 fine to one

tenth of a level 5 fine on the standard scale for each day on which the failure continues. Offences may also be convicted on indictment.

This clause also increases the maximum level of fine, on summary conviction, for a range of offences relating to breaches of planning control or consents from £30,000 to £100,000. This applies to offences under Articles 61 (hazardous substances); 67G (temporary stop notices); 72 (enforcement notices) and 73 (stop notices) of the Planning (Northern Ireland) Order 1991. The fine on summary conviction for an offence under Article 67 D (non-compliance with planning contravention notice) is raised from level 3 to level 5 on the standard scale while the fine for an offence on summary conviction under Article 76 (enforcement notice to have effect against subsequent development) increases from level 5 on the standard scale to £7500. The increased fines do not apply to any offence committed before this clause comes into operation.

Ballymena Council would endorse this.

Clause 17: Conservation areas

Clause 17 amends Article 50 of the Planning (Northern Ireland) Order 1991 to include provision that the Department must pay special attention to (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.

Ballymena Council would endorse this.

Clause 18: Control of demolition in conservation areas

Clause 18 amends Article 51 of the Planning (Northern Ireland) Order 1991 by adding additional provision that any structural alteration to a building in a conservation area, where the alteration consists of demolishing part of the building, shall be taken to be demolition for the purposes of Article 51.

Ballymena Council would endorse this.

Clause 19: Tree preservation orders: dying trees

Clause 19 amends Articles 65 and 65B of the Planning (Northern Ireland) Order 1991 and Section 125 of the Planning Act (Northern Ireland) 2011 by removing the reference to dying trees. Dying trees are no longer exempt from the provisions of a tree preservation order.

Ballymena Council would endorse this.

Clause 20: Fixed Penalties

This clause inserts 2 articles into the Planning (Northern Ireland) Order 1991.

Articles 76C and 76D enable an authorised officer to issue a fixed penalty notice for the offences of failing to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court.

The amount of the penalty can be such amount as may be prescribed. The level of fixed penalty will be prescribed by Regulations and is reduced by 25% if paid within 14 days.

Ballymena Council would endorse this.

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 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.

Ballymena Council would generally endorse this with minor reservation

Clause 22: Grants

Clause 22 amends Article 120 of the Planning (Northern Ireland) Order 1991 to extend the Department's power to grant aid non profit organisations whose objectives include furthering an understanding of planning policy. The Department of Finance and Personnel's approval to such grants is no longer required.

Ballymena Council would endorse this.

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. The section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

Ballymena Council would endorse this.

Clause 24: Fees and Charges

Clause 24 amends Article 127 of the 1991 Order to enable the Department to charge multiple fees for retrospective planning applications.

Ballymena Council would endorse this.

Clause 25: Duration

This clause allows the Department to make subordinate legislation to repeal provisions in the Bill and to include 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.

Ballymena Council would endorse this.

Clause 26: Interpretation

This clause contains interpretation provisions and defines a number of terms used throughout the Bill.

Clause 27: Commencement

This clause concerns the commencement of the Bill and enables the Department to make commencement orders. Clauses 1,15,16, 22, 26, 27 and 28 shall come into operation on Royal Assent.

Clause 28: Short title for the Bill