



BELFAST CITY COUNCIL WRITTEN SUBMISSION TO PLANNING BILL 2013

INTRODUCTION

Belfast City Council recognises the need for a reformed Planning System within Northern Ireland and welcomes the opportunity to submit its views on the Planning Bill, seeing it as progressive and instrumental in supporting reform.

The Council considers that an effective local planning function offers the potential to bring to fruition the new community planning role to be given to councils, enabling a much more strategic and integrated approach to be taken to the social, economic and physical regeneration of local areas and in improving the quality of life of citizens.

The Committee will be aware that the Council had made a detailed response, in 2009, to the original Departmental consultation "Reform of the Planning System in Northern Ireland: Your chance to influence change" which set out proposals for planning reform. The Council also submitted a detailed response to the subsequent Planning Bill (issued for consultation in December 2010) which provided the legislative basis for planning reform and give effect to the transfer of the majority of functions and decision making responsibilities relating to local development planning, development management plus planning enforcement to district councils as a result of local government reform.

Strategic Comments

The Council would welcome the introduction of the Planning Bill and its stated ambition of enabling the Department to bring-forward and test elements of planning reform to ensure that the functions are fit-for-purpose at point of transfer to local government. The Council would highlight the following strategic issues for the consideration of the Environment Committee in reviewing the Planning Bill.

- **Promotion of Economic Development** - The Bill introduces new provisions regarding the promotion of economic development as a statutory material consideration within the planning decision-making process. This seeks to give similar equivalence to economic development as to environmental and sustainable development considerations. It is important to note that this is in line with the key priority of the NI Executive and Programme for Government in relation to supporting economic growth and competitiveness within Northern Ireland.
- **Local Development Plans** – A key function to be undertaken by local government when they receive planning powers is the creation of local development plans. Planning Reform introduces a new local development plan system and associated obligations including a shorter 2-year development plan timetable, preparation of community statements etc. As this will be resource intensive should the Bill not seek to bring forward aspects of this process in advance to enable necessary testing to be undertaken and preparatory work progressed as appropriate
- **Transition Arrangements** – The Council may wish to commend to the Department that due consideration be given to maximising all opportunities to involve local government in the process of reforming the planning system through a programme of focused and meaningful pilot initiatives. This would provide a real opportunity to test new processes, governance arrangements and help develop joint institutional capacity for councils and the Department in lead up into 2015
- **Capacity Building** - The Council recognises that there is a critical need to ensure that there is sufficient capacity within both central and local government to ensure that the reformed planning service is delivered in an effective and efficient way both pre and post transfer of specific functions to councils. In taking forward the implementation of the Planning Bill, the Council would commend that there is a real opportunity to strengthen the relationship between the Planning Service and councils, enhancing the joint capacity of both and ensuring vital learning is gained in advance of the full transfer of the function to local government. Again, this is linked to the potential initiation of pilots referred to above.
- **Resources to deliver** – it will be important that appropriate resources are committed by the Department to bring forward the Planning Bill and the necessary subordinate legislation, in parallel with the detailed legislative programme required to bring effect to the wider reform and transfer of functions to local government.

COMMENTS ON SPECIFIC CLAUSES CONTAINED WITHIN THE BILL

CLAUSES	BELFAST CITY CONUCIL COMMENTS
<p>Clause 1 Statement of Community Involvement <i>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 management functions within one year of the clause coming into operation.</i></p>	<p>The Council has previously supported the introduction of a statement of community involvement but would again request greater clarity in relation to the process that will be undertaken by the department and ultimately local Councils, in addition to the content of the statement itself.</p>
<p>Clause 2 General functions of the Department and the Planning Appeals Commission <i>The Planning Bill (Clause 2 (1) a, b, c) introduces a new requirement for the Department or the PAC must exercise their planning function with the objective of</i></p> <ul style="list-style-type: none"> - <i>Furthering sustainable development</i> - <i>Promoting or improving well-being; and</i> - <i>Promoting economic development</i> <p><i>Clause 2 also introduces a requirement to “have regard to the desirability of promoting good design.”</i></p> <p><i>Other provisions in the Planning Bill require the economic advantages or disadvantages of granting or refusing planning permission to be considered.</i></p>	<p>The Council notes that the latter two objectives (i.e. improving well-being and promoting economic development) are new additions to the Planning Act 2011 and The 1991 Order.</p> <p>The Council recognises that the Bill promotion of economic development as a statutory material consideration within the planning decision-making process seeks to give similar equivalence to economic development as to environmental and sustainable development considerations. The Council recognises also that this is in line with the key priority of the NI Executive and Programme for Government in relation to supporting economic growth and competitiveness within Northern Ireland.</p> <p>The Council would commend that any such material considerations should be given equal weighting as the other stated objectives in regards to ‘furthering sustainable development’ and ‘improving well-being’</p>
<p>Clause 3 Meaning of development <i>This clause amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land to now include the structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.</i></p>	<p>The Council would welcome this clause as it is in line with recent environmental case law and would appear to achieve consistency with the requirements of the Planning (Environmental Impact Assessment) Regulations. It is also welcomed as <i>it means that developers, in certain circumstances, can no longer demolish without planning permission.</i></p> <p>Clarification is sought, however, if the Department would intend to provide a separate direction exempting demolition in certain areas as was proposed in the Department’s recent consultation: <i>Demolition and Development</i> and what implications this will have for the Development Management process.</p>

<p>Clause 4 Publicity, etc., in relation to applications</p> <p><i>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.</i></p>	<p>The Council previously welcomed the proposed approach whereby the Department will specify the publicity requirement in subordinate legislation, in this case a Development Order.</p> <p>The Council would request early engagement in the formulation of any such Development Order and associated subordinate legislation.</p>
<p>Clause 5: Pre-application community consultation</p> <p><i>Clause 5 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>	<p>The Council is supportive of the proposed requirement for pre-application community consultation. Clause 5 does not define the class of application to which this requirement applies. The Planning Act 2011 specifically refers to 'applications for planning permission for a major development' and thus relates directly to the proposed hierarchy of developments (Regionally Significant, Major, Local). The Bill should provide greater clarity in terms of what applications will be affected by this clause.</p> <p>Clause 5 places the onus on regulation to prescribe the persons to be involved in pre-application consultation. The Council would request early involvement in the formulation of these regulations.</p> <p>The Council previously commented that pre-application consultation with communities should be a statutory requirement in respect of regionally significant applications to ensure the process is open and transparent and allow communities the opportunity to influence proposal at an early stage. The applicant should be responsible for the community consultation and further clarification of guidance in relation to the relationship with the formal statutory process including details on the statutory consultee is required.</p> <p>Clarification is sought in relation to the requirements and what is considered to constitute both the process and the definition of communities for the purposes of applications potentially broad areas of impact. Liaison with Councils in relation to the proposed arrangement may facilitate the development of effective consultation processes.</p>

<p>Clause 6 Determination of planning applications</p> <p><i>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.</i></p>	<p>This Clause amends the established approach in the planning system. Current legislation (the 1991 Order and the 2011 Act) both outline that the Department, in dealing with a planning application, shall have regard to the development plan in so far as material to the application, and to any other material considerations.</p> <p>Clause 6, ‘without prejudice to the generality of the existing provisions’, introduces a specific requirement to consider any economic advantages or disadvantages likely to result from the planning decision.</p> <p>Whilst the Council recognises the need for introducing such provisions, it would commend that there is no unbalanced weighting given to such considerations as to the other planning objectives in regards to ‘furthering sustainable development’ and ‘improving well-being’</p> <p>The Council would commend that clarification and Guidance is required in relation to the process of framework through which such provisions will be assessed e.g. a form of economic impact assessment, similar to the ‘environmental impact assessment’ used to assess environmental implications.</p>
<p>Clauses 7 and 8 : Power to decline to determine subsequent and/or overlapping application</p> <p><i>These clauses extend the DOE’s power to decline subsequent and overlapping applications for planning permission or listed building consent. It 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 similar applications made on the same day, as well as 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.</i></p>	<p>The Council has previously stated their support for these clauses as they will prevent developers from submitting repeat applications on the same site.</p>

<p>Clause 9 Aftercare conditions for ecological purposes on grant of mineral permission</p> <p><i>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”</i></p>	<p>The Council has previously stated their support for these clauses.</p>
<p>Clause 10: Public inquiries: major planning applications</p> <p><i>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 (major planning application) has been applied.</i></p>	<p>The legislation states that persons other than the PAC can be appointed by the DOE to carry out public inquiries and conduct appeals. However, the Planning Appeals Commission currently falls under the remit of OFMDFM. Should the power to appoint “persons other than the PAC” should lie with OFMDFM rather than DOE to maintain the independence of these persons from the Department</p>
<p>Clause 11: Appeals: time limits</p> <p><i>Clause 11 reduces the period for making an appeal to the Planning Appeals Commission from six to four months or such other period as may be specified by development order.</i></p>	<p>The Council has previously stated their support for this clause as it will ensure that planning decisions are not delayed unnecessarily by lengthy timescales associated with appeal procedures.</p>
<p>Clause 12: Matters which may be raised in an appeal</p> <p><i>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’s not being raised was due to exceptional circumstances.</i></p>	<p>The Council would support this clause.</p>

<p>Clause 13: Power to make non-material changes to planning permission</p> <p><i>This clause inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to may 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.</i></p>	<p>The Council has previously stated their support for this clause.</p>
<p>Clause 14: Aftercare conditions imposed on revocation or modification of mineral planning permission.</p> <p><i>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.</i></p>	<p>The Council has previously stated their support for this clause.</p>
<p>Clause 15: Planning agreements: payments to departments</p> <p><i>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.</i></p>	<p>Clause 15 relates to payments under Article 40 Agreements to be made to any Government Department not just the DoE. This should be extended to Local Councils. On a related issue it should be noted that the Department receives £10,000 for every Environmental Statement (ES) requiring consideration as part of the application process. Whilst the Department receives the ES it is usually forwarded on to consultees, including the Council, for consideration without any consideration of the re-distribution of fees to reflect the additional work required. It may be appropriate to consider this matter as part of the payments by to departments in the context of the widened scope to include Local Councils.</p>
<p>Clause 16: Increase in Certain Penalties</p> <p><i>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</i></p>	<p>The Council would have no comment on this clause.</p>

<p><i>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.</i></p> <p><i>This Clause increases the level of fine that can be handed out by the courts for damage to listed buildings or failing to prevent further damage to a listed building; hazardous substances offences; failure to comply with stop notices and other enforcement offences.</i></p> <p><i>Clause 16 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.</i></p>	
<p>Clause 17: Conservation areas</p> <p><i>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.</i></p>	<p>The Council would have no comment on this clause.</p>
<p>Clause 18: Control of demolition in conservation areas</p> <p><i>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.</i></p>	<p>The Council would have no comment on this clause.</p>
<p>Clause 19: Tree preservation orders: dying trees</p> <p><i>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.</i></p>	<p>The Council would have no comment on this clause.</p>

<p>Clause 20: Fixed Penalties</p> <p><i>This clause inserts 2 articles into the Planning (Northern Ireland) Order 1991.</i></p> <p><i>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.</i></p>	<p>The Council would have no comment on this clause.</p>
<p>Clause 21: Power of planning appeals commission to award costs</p> <p><i>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.</i></p> <p><i>Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.</i></p>	<p>The Council would have no comment on this clause.</p>
<p>Clause 22: Grants</p> <p><i>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.</i></p>	<p>The Council would have no comment on this clause.</p>
<p>Clause 23: Duty to respond to consultation</p> <p><i>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.</i></p>	<p>The Council requests early engagement in the formulation of future development orders and subordinate legislation. This clause will have initial implications for the Council's current role as a statutory consultee and longer term impacts in terms of decision times. The Council would want to be closely involved in the formulation of the Development Order outlined in Clause 23 which will set-out consultation response procedures. This will be a critical element of the potential to improve performance the ability to enforce compliance with consultation requests or the ability to progress determination in the absence of responses from other Government</p>

	Departments will be critical. It may be appropriate where no adequate responses are received by the agreed dates there is provision for this to be considered as a non-objection (at the risk of the consultee).
Clause 24: Fees and Charges <i>Clause 24 amends Article 127 of the 1991 Order to enable the Department to charge multiple fees for retrospective planning applications.</i>	Previously the Council requested that consideration is given to the introduction of a premium fee for retrospective planning applications to act as a deterrent that focuses on the obligation to seek approval for proposals of clarification prior to the commencement of development. The fee should be proportionate to the level of the development and the level of uncertainty surrounding the form of development and associated provision for permitted development
Clause 25: Duration <i>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.</i>	The Council would have no comment on this clause.
Clause 26: Interpretation <i>This clause contains interpretation provisions and defines a number of terms used throughout the Bill.</i>	The Council would have no comment on this clause.
Clause 27: Commencement <i>This clause contains interpretation provisions and defines a number of terms used throughout the Bill.</i>	The Council recognises the benefits of the Department retaining the capacity to commence selected elements of this Planning Bill at suitable times. In this context the Council suggests including provision in this Planning Bill for strategic elements of the planning system to be carried out by Local Councils prior to full transfer of functions, for example, area planning functions prior to 2015.
Clause 28: Short title <i>This clause provides a short title for the Bill.</i>	The Council would have no comment on this clause.