Consultation Response from Castlereagh Borough Council on the Planning Bill 2013

Introduction

The Council welcomes the opportunity to comment on the Planning Bill 2013. The Council also welcomes the measures which are to be introduced in advance of the transfer of planning functions to local government. This will allow a 'pilot' of these new measures in advance of the radical changes to come. However, there remains a concern that so much still relies on the production of secondary legislation and guidance as the Bill only goes some way towards the implementation of the proposed changes.

This report details the comments of the Members of Castlereagh Borough Council.

Financial implications of the Bill

The 'Explanatory and Financial Memorandum' which was prepared by the Department of the Environment (DOE) in order to assist the reader of the Bill clearly states that *'any potential increase in costs should be offset by the benefits of more efficient processes.'* These observations relate only to the costs of the DOE and do not take into account the costs of others involved in the planning process, more specifically the consultees. No account has been taken of the additional resources that may be required to ensure that consultees respond within the new shorter time frame.

Consultees

The changes to the current Planning Bill provide an opportunity to improve those areas of the planning system which may be considered as deficient. One such area is statutory consultees. Currently only planning and roads issues may be conditioned in planning approvals. Other agencies' comments may become informatives, including comments from Northern Ireland Water (NIW) or Environmental Health, which cannot therefore be enforced by the planning authority, currently DOE Planning. This needs to change in order to prevent situations, for example, where residential developments are inhabited without having functioning sewerage infrastructure.

Comments on each Clause

The comments below follow the Clauses listed in the Bill.

Clause 1: Further regulations will set out how the DOE should go about preparing a Statement of Community Involvement and what it should contain. These regulations are likely to stipulate that community groups and the public should be involved in the preparation of this statement. However, there are no further details of how this will happen. As this is a process that the Councils will have to carry on after the transfer of planning functions, it is incumbent upon the DOE to make sure that the process is fit for purpose. Arguably it is the Council which is better informed regarding the local community whereas the DOE is removed from this local context. Further clarity on this issue is required.

It is noted that the requirement for "*the Department to prepare and publish a statement of community involvement already exists in the Bill the only difference being that it now must be published within a year and from the day of which this paragraph comes into operation."* While this is to be welcomed, a question arises as to whether all Councils will be able to achieve this deadline when Planning is transferred to Councils in 2015, until governance arrangements are agreed, development plans are updated etc. Moreover, it is not clear what 'community involvement' actually means or what resources will be required to ensure it is carried out in a satisfactory manner. Clearly, there will be resource implications which will be dependent on the level of involvement required.

Clause 2: Although this clause looks reasonably innocuous, it represents a fundamental shift in what the planning system has previously represented. It currently balances many material considerations such as environmental, heritage or social issues but this new clause implies that economic considerations may be given greater importance. The provision of the Bill which requires economic advantages and disadvantages to be considered is likely to be unworkable in practice. For example, it is unlikely that any developer will put forward a case illustrating the economic disadvantages of a proposed development. The Bill should be reworded to make it clear how economic benefits will be measured or to provide a list of criteria for local government to ensure regional consistency.

Of some concern is the fact that, following the consultation process in support of draft Planning Policy Statement 24 'Economic Considerations' in January 2011, the Minister determined not to adopt the policy. This clause suggests a change in that stance. This needs to be clarified.

More clarity is also required on how the DOE intends to measure 'good design' as it may be viewed as a subjective opinion. The principles of good design need to be clearly stated in centrally prepared guidance to be implemented by decision makers consistently.

Clause 3: This is to be welcomed.

Clause 4: Provision in this clause is to be welcomed and supports the concept of pre-application consultation.

Clause 5: Pre application consultation will only be carried out for certain types of planning applications. Therefore it is important that the thresholds

that are set to determine which applications will require pre-application consultation and which ones will not are appropriate. For example, pre-application consultation may not be required for large scale developments that are split into smaller phases (which in turn, may present a loophole that developers may exploit).

Whilst the pre-application consultation is welcomed, it is felt that for it to be effective it would have to be carried out within the context of an up to date area plan. However, the attempts to front load the application i.e. for all the issues to be identified at the beginning of the process is to be welcomed. Even so, some clarification is needed on what is "the community." How is the community to be defined? Is it people living within a certain distance of the proposed project or is a wider definition envisaged? These matters need to be clarified.

It is also noted that there is no reference to a third party appeal in the Bill which has been raised by some Elected Members.

Clause 6: The key issue is how much weight, relative to other factors, is to be given to economic considerations. More guidance is needed from the DOE on how this will be assessed.

Clause 7: This is to be welcomed as it will prevent developers from submitting repeat applications on the same site.

Clause 8: The suggestion in this Clause, if approved, would stop multiple applications for the same site. This also would allow the process of planning to be more efficient. Indeed there is a view that here and elsewhere in the document the use of the word 'may' could be strengthened to the word 'shall'. The use of the word 'may' could lead to inconsistency in approach. (For comparison, in the Building Regulations, the District Council "shall" enforce the Building Regulations in its district.)

Clause 9: The Council welcomes this Clause.

Clause 10: 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. The power to appoint "persons other than the PAC" should lie with OFMDFM rather that the DOE to maintain the independence of these persons from the DOE.

It also raises issues of consistency of decision making when other bodies are involved that may be constrained by different arrangements. It is noted that others selected to carry out the work instead of the Planning Appeals Commission are nominated by the Department. This could lead to governance issues where it would be conceivable for bodies or individuals to be selected to consider an appeal who may have a track record of a potential bias in certain matters. The Government's arrangements are not clear and should be more robust.

Clause 11: The reduction of time to carry out an appeal from six months to four months is to be welcomed and allows for a more efficient process. However, the English experience is that whilst the reduction was from six to four months it has reverted back to six months because of the inability of the system to deal with the shorter time frame.

Clause 12: This is to be welcomed as developers often bring revised or very different schemes to an appeal which may even have been approved in the first instance. This wastes time at an unnecessary appeal and may disadvantage the objectors as they have not had an opportunity to properly review the material newly presented.

Clause 13: The Council has no objection to this Clause.

Clause 14: The Council has no objection to this Clause.

Clause 15: This is to be welcomed and may result in monies becoming available for other uses. It is suggested that these payments should also be available to Councils in appropriate circumstances and not just government departments. The English model of the Community Infrastructure Levy (CIL) may offer another avenue to investigate.

Clause 16: The Council has no objection to this Clause

Clause 17: The Council has no objection to this Clause.

Clause 18: The Council has no objection to this Clause. Where demolition is approved in conservation areas it is considered the timescale for the rebuilding should be included to ensure the preservation of the overall amenity of the area, and be rigorously enforced.

Clause 19: In this clause it is noted that trees that are dying are now going to be included in tree preservation orders. This then raises an issue of where some trees have diseases, such as the recent *ash die back* situation. The application of this clause would mean that those trees could not be felled. This would be contrary to policies in other Departments that would be seeking to preserve the integrity of the healthy trees in the locality. It would appear that this scenario has not been taken into account and there are practicalities in the application of such legislation that would require further consideration. It may be helpful to have clarification and possibly some exemptions listed that would cover the situation already mentioned.

Clause 20: Council agrees with the general principle of more robust enforcement. However, the proposal to provide for discounted fines has been found in the experience of officers in Local Government to pose problems administratively and attract additional cost which cannot be recovered. It would be much simpler and more efficient to set a fine that is paid for in full by a particular date. This clause states that *'the Appeals Commission may make an order as to the costs of the parties to an appeal under any of the provisions mentioned under paragraph 2 and as for the parties as to who the costs are to be paid.'* It is not clear if these powers are available to the alternative mechanisms for dealing with appeals referenced in Clause 10. Moreover it is not clear where the monies raised in the fines are accruing to.

Clause 21: The Council has no objection to this Clause.

Clause 22: The offer of grants to bodies providing assistance in relation to development proposals is to be welcomed. However criteria and clarification should be provided on who can avail of this support. Looking beyond May 2015 a question arises, if having established a principle where monies are paid to such bodies, would there be an expectation that Councils would continue such funding arrangements? It is not clear from the Bill as to what the level of funding and those obligations may be.

Clause 23: The processing of planning applications is sometimes delayed due to the late response of statutory consultees. This clause therefore removes the uncertainty and delay associated with late responses. However, there is also a question over who will have the authority to enforce this in different Government Departments.

Clause 24: This is to be welcomed.

Clauses 25-28: The Council has no objection to these Clauses.

Conclusion

The Members of Castlereagh Borough Council welcome the introduction of this Planning Bill however have a number of queries regarding the implementation or detail of the individual Clauses. The Council awaits the outcome of this consultation with interest.

Catharine McWhirter

March 2013