



Response to Consultation on the Planning Bill March 2013

Community Places Response to Consultation on the Planning Bill December 2010

Introduction

Community Places is the only regional voluntary organisation which provides planning advice to individuals and communities. We also facilitate community participation in planning and support community development by assisting groups to develop the skills, knowledge and infrastructure needed to regenerate disadvantaged areas.

We were invited by the Assembly Environment Committee to submit our views on the Planning Bill 2013. In doing so we have drawn on our experience of supporting and consulting with communities on planning issues. Our comments are intended to enhance the overall package of planning reforms and ensure that the aims are realised in practice in the years ahead.

Community Places supports the current reform of the planning system and welcomes many of the proposals particularly those that aim to improve community involvement. Whilst we are supportive of many of the provisions set out in this Bill, we are concerned that some of these will not contribute to the overall aims of Planning Reform, in particular clauses 2, 6, 10 and 20 of the Bill. We are disappointed that the proposals in relation to economic development contained in clauses 2 and 6 have been made without the prior public consultation such far reaching proposals merit.

Our specific comments on clauses contained in the Bill are set out below.

Clause 1

We welcome the requirement set out in the Bill for the DoE to prepare and publish its Statement of Community Involvement (SCI) within 1 year of the Bill receiving Royal Assent. We have sought action on this for many years and have drawn attention to the good practice in community involvement developed in other jurisdictions. This Statement will be a milestone in the development of community involvement in planning and will set a benchmark for the new councils in 2015. It is thus essential that the development of the Statement is through a meaningful and adequately resourced process and that the Department draw on all available community expertise in preparing the Statement.

Recommendations:

We recommend that the Committee recommend to the Department that it ensure meaningful and adequately resourced community engagement in the preparation of a draft SCI and a pro-active community and public consultation thereafter.

Clause 2

Clause 2 introduces a new requirement for the DoE and the Planning Appeals Commission, and local councils when they take on planning responsibilities, to carry out their functions with the objective of:

- Furthering sustainable development;
- Promoting or improving well being; and
- Promoting economic development.

They must also “have regard to the desirability of promoting good design.”

Whilst we recognise the importance of economic development it is important that this is balanced against other elements of sustainable development i.e. social and environmental concerns. Listing economic development separately from sustainable development appears to give it more weight and creates the risk that it could be interpreted in this way by planners and subsequent DoE Ministers in the future. This creates uncertainty which could lead to legal challenges, slowing down the planning system. A number of terms in this clause are unclear, furthering this uncertainty. For example, it is not clear how the terms “furthering” and “promoting” are different (if indeed they are).

Recommendations:

We recommend that Clause 2 be amended read:

“Where the Department or the Planning Appeals Commission exercises any function under Part 2 or this Part, the Department or, as the case may be, the Commission must exercise that function with the objective of furthering sustainable development which secures:

- protection and enhancement of the environment;
- promotion of economic development;
- promotion of social development; and
- promotion or improving well-being;

and which balances current needs with those that may arise in the future.”

Clause 4, Publicity etc. in relation to applications

The Bill allows the DoE to make regulations about how planning applications are publicised and to require the applicant to provide evidence that these requirements have been met. It allows the DoE to refuse to consider an application if these requirements are not met. Further regulations may set out new requirements for advertising planning applications but no details are provided. We welcome the introduction of the power to refuse to consider an application if advertising requirements are not met.

Recommendations:

We recommend that subordinate legislation/regulation ensures that local people are fully informed about development proposals in their area.

Clause 5

We welcome the requirement for pre-application consultation and the power for the Department to decline to determine an application where the requirements for pre-application consultation have not been met. We have discussed the proposal with community groups and reflect their views in the following recommendations.

Recommendations:

We recommend that further regulations are issued as soon as possible specifying the thresholds for pre application consultation and detailing the standards of consultation which will be required. It is important that there is consistency, transparency, fairness and similar standards across the whole region.

We recommend that this guidance should provide a requirement for the pre-application consultation report to include: the extent of community support and objection; a list of objections and how these have been addressed; and any written submissions from the community. Additionally evidence of how the application has changed as a result of the consultation process should be included. The pre application community consultation report should be made publicly available at no charge and a short period of time provided for the community to comment on the report prior to the Department accepting or rejecting it.

To ensure consistent quality and secure a measure of community confidence in pre-application consultation we recommend that the Department identify and maintain a list of approved consultants to undertake this work and require applicants to use one of these consultants.

Clause 6

Clause 6 states that, “any economic advantages or disadvantages likely to result from the granting, or as the case may be, the refusal of planning permission” are a material consideration in the determination of a proposal.”

This clause is unlikely to be workable in practice for a number of reasons. The granting of planning permission generally increases the value of a site. Therefore it could be argued that refusal of planning permission will always create an economic disadvantage. It is unclear how the economic advantages and disadvantages of a proposal would be assessed. In order to address these issues it is likely that an economic impact assessment will be required, placing a greater burden on applicants, objectors and on the planning system including planners and consultees. The requirement to assess economic advantages and disadvantages is untested in case law and therefore open to legal challenge. In combination with the lack of clarity about the assessment of economic advantages and disadvantages, the introduction of this clause is likely to result in instability and delay.

Recommendations:

For the reasons set out above, we recommend that this clause is removed and that guidance on the assessment of economic considerations be addressed through the planning policy development process and following public consultation.

Clauses 7 and 8 Powers to decline to determine applications

The Bill allows the DoE to decline to determine applications which are similar to applications that have already been determined by the DoE or Planning Appeals Commission. This will be welcomed by communities who have had to respond to repeat applications from developers in the past.

Clause 10

This clause states that persons other than the PAC can be appointed by the DoE to carry out public inquiries and conduct appeals. The Planning Appeals Commission currently falls under the remit of OFMDFM and we would have concerns about the perceived independence of persons appointed by the DoE itself. It also seems unwise to (in effect) have two departments responsible for appointing people to hear appeals or conduct inquiries.

Recommendations:

The power to appoint “persons other than the PAC” should lie with OFMDFM rather than DoE to maintain the independence of these persons from DoE.

Clause 11, Appeals: time limits

This clause proposes that where a planning application is refused the time limit to appeal be reduced from six to four months. We welcome this clause which will contribute to streamlining the planning system.

Clause 16, Increase in penalties

This clause increases the level of fine that can be imposed 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. We welcome an increase in these penalties.

Clause 17

We welcome this clause which gives special regard to the preservation and enhancement of conservation areas.

Clause 20

This clause suggests that where a planning condition has not been complied with the offender may be given the option of paying a fine rather than complying with the condition. Although we recognise the benefits of fixed penalty notices to allow swift action in enforcement cases, we have concerns with the suggestion of “offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the Department.” Any condition that is attached to a planning application should be both necessary and enforceable. Therefore, it is

difficult to imagine in what circumstances it would be appropriate to allow a breach of condition to continue without taking enforcement action.

Recommendations:

If this clause is to remain in the Bill we recommend that guidance is produced which strictly limits the circumstances in which it can be used.

Clause 22

We welcome this proposal which allows DoE to grant aid non-profit organisations for the purposes of furthering understanding of planning policy.

Clause 24

We welcome multiple fees for retrospective planning applications.

Third Party Right of Appeal

The majority of respondents to the 2009 consultation on Planning Reform supported the right for Third Party Appeals. In its 2010 report which responded to the consultation findings the Department stated that further consultation on the issue would be required after the implementation of RPA. The delays in RPA implementation were not anticipated when this commitment was made. In light of this it is our view that the Department should progress work on the issue and publish a consultation paper.

Recommendations:

- We recommend that the Environment Committee recommend to the Department that it provide details within the next three months of its work on preparing for consultation on Third Party Right of Appeal and a target date for issuing a consultation paper.

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