

**COUNCIL FOR NATURE CONSERVATION  
AND THE COUNTRYSIDE**  
**An Advisory Council to the Department of the Environment**

Room G-07, Waterman House, 5 – 33 Hill Street,  
Belfast, BT1 2LA

Telephone: 028905 43184/43050

[secretariat-hillst@doeni.gov.uk](mailto:secretariat-hillst@doeni.gov.uk)

[www.cncni.gov.uk](http://www.cncni.gov.uk)

Alex McGarel  
Room 245,  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

15 March 2013

## **PLANNING BILL 2013**

CNCC welcomes the opportunity to provide comment on the Planning Bill 2013 to the Environment Committee of the Northern Ireland Assembly. We appreciate that much of this Bill is intended to introduce reforms already set out in the Planning Act (Northern Ireland) 2011 before planning powers are transferred to local councils, and therefore do not intend to comment in detail on most of the provisions. However the Bill also includes additional measures apparently intended to underpin the role of planning in 'promoting economic development'. Much of our response relates to these measures.

**Clause 2: The general functions of the Department of the Environment and the Planning Appeals Commission - Economic development.**

**Clause 6: The issues to be taken into account when determining planning applications – Economic advantages or disadvantages likely to result from the granting of or refusal of planning permission.**

CNCC has serious concerns about these two clauses for a number of reasons:

### 1. Planning Principles

The purpose of the planning system is clearly set out in PPS1 General Principles, which states:

*The town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance. It is important to distinguish those matters which planning can influence from those which are outside its control. The central concerns of the planning system are to determine what kind of development is appropriate, how much is desirable, where it should best be located, and what it looks like.*

To use the planning system for purposes that are outside of this remit, such as economic development, leaves it increasingly open to legal challenge. It will also negate a great deal of case law with regard to planning which has been built up over the past forty years or so.

## 2. Redundancy

These issues are already very well covered by other parts of planning law and guidelines, particularly PPS 4 Planning and Economic Development which clearly states:

*This Planning Policy Statement, PPS 4, sets out the Department's planning policies for economic development uses and indicates how growth associated with such uses can be accommodated and promoted in development plans. It seeks to facilitate and accommodate economic growth in ways compatible with social and environmental objectives and sustainable development.*

In addition it is clear that economic development is already an important factor in the planning system, enshrined by case history. This is exemplified by the recent granting of planning permission for a golf resort adjacent to the Giant's Causeway 'on economic grounds' in spite of the proposed development running counter to the Draft Northern Area Plan, PPS 1, PPS 6, Draft PPS 16, the Regional Development Strategy and the Planning Strategy for Rural Northern Ireland.

## 3. Sustainable development

Clause 2 includes the duty of furthering sustainable development, which is again clearly set out in PPS 1 General Principles:

*Sustainable development seeks to deliver the objective of achieving, now and in the future, economic development to secure higher living standards while protecting and enhancing the environment.*

This is generally recognised as giving equal consideration to economic, environmental and social factors, and therefore selecting one of these components for special emphasis essentially contradicts the overall principle. The proposed wording of Clause 2 is therefore at odds with itself and with most other planning guidance that is already in existence. This contradiction will inevitably lead to increased legal challenges to planning decisions that could prove extremely difficult and costly to determine.

We believe that the lessons of the past few years, both here and in the neighbouring Republic of Ireland, where economic factors were allowed to outweigh other considerations in the appraisal of development, has clearly not been learned, with the result that we are now paying financially as well as environmentally for unsustainable practices.

## 4. Appraisal of economic data

The inclusion of economic factors in Clauses 2 and 6 raises a number of questions around how these factors will be determined and measured against environmental and social factors. These include

- ⤴ What level of economic data will be required? Will a very detailed economic assessment along the lines of an Environmental Impact Assessment be demanded, or will it merely be some very crude figures that are difficult to assess? Without detailed information it is not clear how the planning system can make decisions that give weight to economic factors.
- ⤴ Who will assess the figures put forward? Planning Service does not employ economists or accountants to carry out due diligence procedures, and it is unlikely that Councils will do so in the future. Without rigorous assessment it is unclear how the planning system can make decisions based on economic arguments.
- ⤴ How will economic data be judged against environmental and social data? While social and environmental factors can increasingly be given some monetary value they inevitably also include intangible benefits which are harder to assess. Some system of determining these values needs to be developed to deal with this problem.
- ⤴ What time scales will be considered? Most economic figures are calculated for

relatively short time scales, and become progressively less accurate and useful over longer periods. In contrast environmental factors need to be considered over very long time scales.

Unless these important questions are considered and answered it is probable that there will be increasing challenges to the planning process based on the accuracy and assessment of economic data put forward in support of planning applications. If detailed figures are required, which in turn need careful scrutiny and examination, the planning process will inevitably be slowed even further.

## 5. Definitions

The terms used in Clause 2 and Clause 6, including 'promoting', 'sustainable development', 'well-being', economic advantages' and 'economic disadvantages' are not clearly defined, and as such are open to a wide range of different interpretations. The last two are particularly contentious, since the advantage or disadvantage will generally be to individuals or organisations, and the planning system is intended to operate in the public interest rather than the interest of the private sector. This will inevitably lead to increased legal challenges, and a slower and more expensive system.

## 6. Precautionary Principle

Paragraph 13 of PPS 1 states:

*In formulating policies and plans and in determining planning applications the Department will be guided by the precautionary principle that, where there are significant risks of damage to the environment, its protection will generally be paramount, unless there are imperative reasons of overriding public interest.*

If economic factors are to be given particular emphasis, and hence more weight, this important principle is likely to be ignored. It is important to appreciate that the over-riding public interest argument can only really be used convincingly with regard to state-backed infrastructure or defence developments and cannot normally apply to commercial activities which are primarily in the interest of the person or company promoting them. Failure to comply with the precautionary principle as set out in PPS 1 could lead to legal challenges.

## 7. Strategic Environmental Assessment

CNCC believes that, while the changes brought in by this Planning Bill do not constitute a plan or a programme, the EU guidelines make it clear that a proposal which sets the framework for development consent of projects within the EIA Directive does require a Strategic Environmental Assessment. We believe that the changes proposed in Clauses 2 and 6 set a very different framework for the consideration of planning consents for major developments that would require an Environmental Impact Assessment. At the very least we consider that there should be a screening process to assess any likely effects, as was carried out with the Regional Development Strategy, and that such a process should take place before any change is introduced.

## 8. Marine Planning

A framework for planning in the marine environment is being introduced in the Marine Bill which is currently making its way through the Assembly. We have regularly recommended that terrestrial and marine planning regimes should be as seamless and consistent as possible but these clauses in the Planning Bill presents a significant difference between them. We are concerned that this will lead to confusion and difficulty when considering coastal developments that involve approval from both planning regimes.

## 9. Costs

We believe that the provisions of Clauses 2 and 6 could result in significant additional

costs to both the planning authorities and to developers which have clearly not been considered in the preparation of this Bill. These include the employment of economic experts to assess applications, training of staff, a whole suite of new forms for planning applications, and the preparation of detailed economic assessments by developers. In addition the contradictions and ambiguities that these two clauses introduce will inevitably lead to their being tested through the planning appeals system and in the courts, with even more significant costs. Remarkably the Partial Regulatory Assessment which accompanies the Bill fails to consider these potential costs. We would recommend that a complete PRA is completed before this Bill progresses any further if these clauses are to be included in the legislation.

#### 10. Consultation

The contents of the Planning (Northern Ireland) Act of 2011, and the rest of this Planning Bill were subject to a major consultation exercise under the heading of Planning Reform, between July and October 2009. The Department has not held any public consultation exercise on the additional provisions, particularly Clauses 2 and 6, but apparently believes that the scrutiny and consultation that they are subject to through the Assembly process will be adequate. CNCC does not agree with this view, particularly because of the response to the consultation in March to May 2011 on the very similar Draft PPS 24 Economic Considerations, in which 75% of respondents strongly opposed the proposed policy. This led to the outright rejection of the Draft PPS in September 2011 by the Minister, who stated: 'Many rightly argued that economic considerations are already a factor in planning decisions and are already dealt with in a balanced way alongside other material considerations, including social and environmental factors'. We believe that this gives a clear signal of public views of this approach which the Committee and Assembly should take into careful consideration in discussing this Bill.

In addition it is extraordinary that the Bill's Equality Impact Assessment overlooks these provisions in the Bill, suggesting that they were a hasty afterthought. We believe that this is not a sensible or transparent way in which to introduce important legislation.

#### Conclusions

CNCC firmly believes that these clauses in the Planning Bill are redundant. In their current form they potentially run counter to the principles of Sustainable Development. The importance of economic development is clearly recognised in full context within PPS4 backed by case history. We consider that their introduction will lead to increased legal challenge which will slow up the process, as will real due diligence assessment of economic data provided to accompany any planning application. The production of this data will provide an additional onus on developers, while the data will be subject to increased scrutiny and subsequent objections by third parties, which will provide a further brake on the process. We consider that it introduces ambiguities and contradictions into the planning system that will create further complications. Finally we believe that it undermines the widely-welcomed moves towards a genuine plan-led planning system, with community involvement.

Finally CNCC is concerned that inclusion of these clauses in the Planning Bill will fail to address the problems that lie broadly at the heart of the Northern Ireland economy and more narrowly within the planning system. These clauses are blunt and unsophisticated mechanisms that will cause long-term irreversible damage to our environment while at best producing short term gains in terms of some precarious jobs. There is an urgent need to recognise and fully value the contribution that the environment makes to our economy through the provision of vital services that we currently take for granted. At the same time

we need to address how we are to address in a strategic way the difficult question of how we make the best use of our land and environment in a sustainable manner for an uncertain future. We firmly believe that this cannot be achieved without the development of a clear Land Use Strategy along the lines adopted in Scotland.

This sets out as its vision:

*A Scotland where we fully recognise, understand and value the importance of our land resources, and where our plans and decisions about land use deliver improved and enduring benefits, enhancing the wellbeing of our nation.*

It goes on to establish three Objectives relating to the economy, environment and communities - the three pillars of sustainability. It also provides a set of Principles for Sustainable Land Use to guide policy and decision making by Government and across the public sector:

- ⤴ Delivering multiple benefits
- ⤴ Partnerships with nature
- ⤴ Linking people with the land

This is a model that we should be seeking to learn from to provide a sustainable future for Northern Ireland.

### **Clause 5: Enhanced Community involvement**

CNCC welcomes this clause generally, supporting the concept of greater involvement of local communities in planning in their area. We would however wish to see some safeguards to ensure that any group representing a community is genuinely representative of that community, with a mechanism whereby interests are declared. Without this it is possible that single-issue groups could dominate discussions and give false impressions of community feelings.

We would also like to see the planning system working with local communities to maximise the opportunities for biodiversity and ecosystem services in the planning and design of their local environments. We would commend the approach taken by the Town and Country Planning Association in Britain in its guide *Biodiversity by Design*, which sets out important principles relating to green infrastructure, landscape character and local distinctiveness.

### **Clause 9: Extending the range of uses for which mineral sites may be reclaimed.**

CNCC welcomes the addition of 'ecological purposes' to the potential uses for mineral sites. We have approved the designation of a number of former mineral workings as ASSIs, for both their geological and biological importance which has resulted by accident rather than design. We believe that many more sites could become valuable habitats for wildlife with a proactive approach to their management.

### **Clause 10: Public Inquiries for Major Planning Applications.**

This clause allows the appointment of persons other than the Planning Appeals Commission to oversee planning inquiries. CNCC is opposed to this because it believes

that the independence of Planning Appeals Commissioners is critical in the planning process. The appointment of other people to fulfil this role would lead to doubts about independence since it is not clear who is making the appointment and how they are they are selecting the person. It could also lead to a lack of consistency in making decisions that affect us all.

**Clause 16: Raising the penalties for a range of planning offences.**

CNCC welcomes the increases in penalties to levels that indicate that planning crime does not pay.

**Clause 22: Grant aid for non-profit organisations to further an understanding of planning policy.**

CNCC welcomes this approach which should help to widen public interest and participation in the planning process.

**Clause 23: A duty for statutory consultees to respond to consultations within a prescribed timescale.**

CNCC is broadly in favour of a faster processing of planning, but we believe that there needs to be a recognition of the size, complexity and volume of detailed Environmental Impact Assessments that accompany many larger planning applications, and which require careful and detailed scrutiny by consultees such as NIEA. We believe that it will be unreasonable to demand a very quick response to more complex applications, and doing so will put consultees in an impossible position. NIEA for example has a duty to protect the environment which could be severely compromised by a duty to respond very rapidly to a planning application. At best this will lead to damage to valuable habitats, while at worst it could result in infraction proceedings from the European Commission. We therefore recommend that response times are set to reflect the scale of the proposed development rather than the adoption of a 'one size fits all' policy.

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CNCC looks forward to the opportunity to discuss these issues further with the Committee next month.



Patrick Casement  
Chairman