

14 March 2013

by email to NI Assembly Environment Committee

RESPONSE TO PLANNING BILL CONSULTATION

Introduction

Donaldson Planning is an independent planning consultancy which was set up by David Donaldson in 2010. David is a chartered town planner with many years experience in both DOE Planning and the private sector. He was previously a Director in one of Europe's largest multi-disciplinary consultancies and has worked with many leading developers, lending institutions, individuals, statutory agencies and government departments.

Donaldson Planning welcomes the opportunity to comment to the Environment Committee on the Planning Bill.

This Submission follows the same sequence as the Bill.

Clause 2- General Functions of Department and planning appeals commission

Donaldson Planning fully supports the Executive's priority to deliver economic growth. However we are concerned that the proposals set out Clause 2 of the Bill may not be the best way to achieve this.

Donaldson Planning believes that the Department should focus upon the provision of clear planning policy to encourage growth, rather than seeking to add unnecessary and untested complexities into the legislation.

The proposed 'three - pronged' objective in Clause 2 is complex and confusing. It is not a single objective, but three separate objectives. The tension between the phrases used will inevitably result in legal challenge in relation to the emphasis which plans and policies must give to the varying legislative provisions.

In particular, it is questionable whether it is the role of the planning system to '*promote*' economic development. Certainly it can be used to help facilitate development, but requiring it to '*promote*' development implies a whole new range of responsibilities. As PPS 1 states (para 3) '*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*'. The planning system must remain able to adopt a measured and balanced approach to all material factors.

The Planning Bill obliges the Department to take account of policies and guidance issued by the Department, DRD, OFMDFM, and any other matter which appears to be relevant. In such a context there is no necessity to require the promotion of economic development in legislation. Conditions that encourage and facilitate economic development can be created by policy. For example the National Planning Policy Framework requires the planning authorities in England to operate a '*presumption in favour of sustainable development.*'

Donaldson Planning notes the requirement to '*have regard to the desirability of achieving good design*'. Whilst a similar provision is included within the 2008 Planning Act in England, good design is a matter which ought to be guided by policy, not enforced by legislation.

Clause 6: Determination of planning applications

Economic development is, and should remain, at the forefront of the Executive's priorities. However Donaldson Planning can see no reason why planning legislation needs to be amended to make specific reference to economic advantages or disadvantages as material considerations in planning applications. Economic considerations are already material considerations in the planning process.

Instead of improving the planning system, such a provision could actually result in increased bureaucracy, slower decisions, greater expense, and a rise in legal challenges.

Clause 10: Public Inquiries

Donaldson Planning considers that there is no need to make provision for public inquiries to be conducted by persons other than the Planning Appeals Commission. The Commission has proven over many years that it is professional and impartial. Appointment of any other person by the Department could undermine public confidence in the inquiry process.

Clause 17: Conservation areas

Whilst few could disagree that conservation areas deserve legislative protection, this is a poorly worded and ill conceived provision. The concept of requiring 'enhancement' of anything through planning proposals is a difficult one, especially as the planning system is founded upon the principle that development should be approved unless harm will be caused. The existing 'no harm' test in conservation areas is well established in UK law.

If this provision is included then investors are likely to strenuously avoid conservation areas, with the result that they will stagnate, with a consequent increase in dereliction and decay. There is also a strong likelihood that any development proposals which do come forward could become mired in legal challenges in relation to whether or not an opportunity exists to 'enhance' the area.

Donaldson Planning advises that this clause should not be included in the Bill.

Conclusions

Donaldson Planning requests that the Committee consider carefully whether the proposed legislative amendments will improve the planning system in Northern Ireland. Our view is that the legislation should be simple and straightforward and that economic development should be encouraged through effective government policy rather than legislation.

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