

### 1. Introduction

The National Trust welcomes the opportunity to respond to the Environment Committee as part of its scrutiny of the Planning Bill. In particular, we appreciate the fact that the Committee is facilitating this important opportunity for consultation on the proposed new reforms in the Bill.

As Northern Ireland's largest conservation charity, the National Trust works to look after and protect our precious heritage of buildings and landscapes for everyone's benefit. In doing so, we help care for and provide access to many of the places local people and international visitors value most, e.g. Northern Ireland's only World Heritage Site at the Giant's Causeway, our highest mountain Slieve Donard, the internationally important and ecologically rich Strangford Lough, and mansions and gardens including Mount Stewart and Castle Coole.

As a conservation charity with a Northern Ireland-wide remit, we have responsibilities spread across landscape protection, nature conservation, providing access to the countryside and caring for our built heritage and historic environment. We also play key roles in sustainable tourism, providing local employment, supporting economic opportunity and working with local farming families to ensure environmentally friendly management of the farmland in our care.

### 2. Our interest in the planning system

The National Trust has a keen interest in the planning system in Northern Ireland. A robust effective planning system, understood and respected by all participants, is an essential mechanism to deliver *sustainable* development, which secures social, economic and environmental benefits in a balanced way. Our interest extends beyond the impact planning policies have on the special places in our ownership, to a broader concern for the overall management and wise use of land and resources in Northern Ireland. We are concerned about the need to protect Northern Ireland's natural, built and cultural heritage, while at the same time securing sustainable economic growth. We are also increasingly conscious of the important role the planning system must play in promoting patterns of development and lifestyles which are more efficient and sustainable, in terms of the use of energy, transport, water and other resources and in preparing society to face up to the challenges of climate change. We have these key issues in mind when we consider the potential implications of the Bill. Our comments on the Bill are set out below. These points focus mainly on the new additions to the Bill which have not previously been subject to public consultation.

### 3. Aims

In principle we have no issue with the aims of the Bill: *faster processing of planning applications; simpler and tougher enforcement of planning offences; enhancing the environmental aspects of planning; fairer and faster consideration of planning appeals and enhanced community involvement in the planning process*. However, we believe that the new economic clauses introduced to the Bill will not contribute in any way to these aims. Instead they are likely to slow down the decision making process and have a negative impact on the environment.

We would also caution that ‘faster’ and ‘simpler’ outcomes do not always equate to better outcomes, and we would urge the Committee to ensure that the Bill in its final form focuses on securing the best possible outcomes from the planning system – for people, for the economy and for the environment.

#### 4. Economic issues

##### 4.1 Clause 2 General Functions

Clause 2 amends the general functions of both the DoE and the Planning Appeals Commission by adding the objective of ‘**promoting economic development**’ alongside the objectives of ‘furthering sustainable development and promoting or improving well-being’.

We are strongly opposed to the inclusion of this additional clause. We believe this clause is unnecessary and will have unintended consequences. The introduction of a separate and additional objective of promoting economic development undermines a proper interpretation of sustainable development which is a balanced approach to achieve social, environmental and economic goals for the present and future.

It would be much more appropriate to include in this Bill a clear definition of sustainable development. For example the Bill could reiterate the statement included in PPS1 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.* If the Bill provided a clear definition of sustainable development – which includes economic development alongside social and environmental concerns – there would be no need for a further, separate duty in relation to economic development.

**We therefore recommend that the clause should be dropped.**

An alternative approach would be to expand the wording in the clause to include a fuller and balanced statement of sustainable development, e.g.:

The Department or Planning Appeals Commission ‘...must exercise that function with the objective of furthering sustainable development which secures:

- protection and enhancement of the environment;
- economic prosperity;
- a strong, healthy, just and equal society.’

There are other good reasons to drop this clause:

- It elevates the promotion of economic development to a statutory duty for all aspects of planning which would require the Department to promote economic development as a specific objective of the planning system. We believe this is inappropriate and goes beyond the purpose of planning which is clearly set out in PPS1 General Principles: *‘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.’* Any focus on economic development should be dealt with in planning policy which is more readily reviewed, rather than in legislation.

- Adding an explicit economic clause will increase the weight applied to economic development at plan making and development control stages. While we note that the Minister asserts this is not the intention (Planning Bill Second Stage debate, 22 January 2013), the wording creates this expectation and is clearly open to this interpretation in the future.
- As currently drafted, decision makers will be faced with having to balance and weigh up promoting economic development, promoting well-being and furthering sustainable development (which properly includes the first two, along with environmental concerns). Does this mean that economic considerations should be factored in twice? The complexity and lack of clarity introduced is likely to lead to more appeals and legal challenges.

#### 4.2 Clause 6 Determination of planning applications

(Given the close relationship with Clause 2, it is more appropriate to comment on this clause here.) The proposed additional wording adds as a material consideration '*...consideration relating to any economic advantages or disadvantages likely to result from the granting of, or as the case may be, the refusal of planning permission*'.

We are strongly opposed to this clause which poses many challenges:

- It puts an unwarranted additional focus on economic factors;
- The range of factors to be assessed (economic advantage and disadvantage against both approval and refusal of an application) is complex, yet it is unclear what level of assessment would be required. This could range from detailed economic appraisal to unsubstantiated assertions about jobs and investment;
- Currently there is limited expertise available in economic assessment and financial appraisal to assess such factors; a great deal of additional resources and expertise would need to be added into the planning system, particularly after the RPA. This will require additional staff at local council and departmental level.
- There is no framework or assessment criteria and therefore the clause will be open to vastly different interpretations.
- The clause shifts the focus of the planning system from its core purpose of the orderly and appropriate development of land in the public interest, and expects the planning system to deliver something it is not designed to do;
- While economic development brings public benefits, the issues of economic advantage or disadvantage are often focussed on private interest and the potential for this clause to prompt more objections and counter objections, appeals and legal challenges is very high;
- The clause focuses only on economic advantage/disadvantage and does not provide any requirement to also weigh social and environmental factors in the balance;
- Economic advantage/disadvantage is usually measured in the short term, while environmental and social factors need to be assessed over much longer time frames. Thus decisions weighted towards current economic advantage may fail to take into account longer term environmental costs or benefits.
- In the event that this clause is applied and economic advantage is given determinative weights, there is no mechanism within the planning system to ensure the purported benefits are delivered. For example, there is no means of redress if the promised jobs are not delivered or sustained in the long term.

For all of these reasons, **we recommend that this clause should be dropped.**

4.3 Comparisons with PPS 24

It is worth reiterating the strength of opposition to proposed PPS 24 Economic Considerations. In rejecting PPS 24 in September 2011, the Environment Minister noted that 75% of those who responded to the consultation opposed the policy and he 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.’* Those who opposed or expressed concerns about PPS 24 included environmental NGOs, residents and community groups, some non-departmental public bodies and some local councils.

We believe that the same arguments put forward and accepted by the Minister then are equally valid in relation to the economic clauses in the Planning Bill and they should also be set aside.

5. Good design

In Clause 2, we also note the addition of the clause that the Department or PAC *‘must (in particular) have regard to the desirability of achieving good design.’* We certainly support the importance of good design. However, the wording of this clause lacks clarity, and some explanation of how terms like ‘in particular’, ‘desirability’ and even ‘good design’ are to be interpreted would be necessary. Greater clarity would enhance the inclusion of this clause in the Bill.

6. Clause 5 Pre-application community consultation

We welcome and support enhanced community involvement in the planning process. We believe this is an area in which all participants – developers, communities and local authorities – will need capacity building and support to ensure the process works as effectively as possible.

However, we would urge that **third party rights of appeal** should also be introduced as an additional safeguard. This provision would build confidence in a system which will face many challenges as the reform process takes place and responsibilities are devolved.

7. Clause 10 Public Inquiries

We do not support the provision to allow persons other than the PAC to undertake planning inquiries. In order to allay any concerns about independence or perceived independence of individuals appointed outwith the PAC, we would much prefer to see a facility to increase the resources available to the PAC and increase the number of its commissioners, even if on a temporary basis.

8. Clause 17 Conservation Areas – suggested additional clause.

We fully support the provisions of this clause and we would recommend the inclusion of an additional separate clause in relation to the protection of World Heritage Sites. In light of the recent judgement in the National Trust’s application for judicial review of the decision to grant planning permission for a major golf resort development within the buffer zone of the Giant’s Causeway World Heritage Site, we are very concerned that the protection afforded to the WHS and its distinctive landscape setting (as defined in the draft Northern Area Plan) is not

sufficient. We would therefore urge that this should be addressed in an additional clause in this Bill. For example, wording could be included as follows:

‘Where any area is for the time being designated as a World Heritage Site, any development within the World Heritage Site or its buffer zone/setting must comply with the development plan and any other material considerations. Furthermore, special regard must be had in the exercise of any powers under this Order, with respect to any buildings or other land in that area, or in the agreed buffer zone surrounding that area, to the desirability of –

- Preserving the character or appearance of that area; and
- Protecting the Outstanding Universal Values for which the WHS was inscribed.

9. Clause 20 Fixed penalties

This clause needs clarification. While a fixed penalty notice has the benefit of allowing swift action against those who fail to comply with enforcement, this should not lead to immunity from prosecution if there is an ongoing failure to address a breach.

10. Clause 22 Grants

We welcome these proposals to allow DoE to grant aid no-profit organisations for the purposes of furthering understanding of planning policy. This will be especially important during the forthcoming transition period when there needs to be a significant focus on capacity building, to change the culture of planning in Northern Ireland.

11. Conclusion

We support the principle of bringing forward this Planning Bill to give effect to elements of the 2011 Act, with the intention of handing a ‘tried and tested’ system over to new local authorities in 2015.

However, we strongly object to the proposed introduction of economic development clauses at Clause 2 and Clause 6. They are inappropriate for the planning system, they are unworkable and unenforceable, and will lead to an increase in the number of appeals and legal challenges. Far from creating a fit for purpose, streamlined and efficient planning system, these clauses will mean that the new local authorities, grappling with the new role of planning decision maker, will be handed a more complex, more confusing, and more contested planning system than ever before.

We hope that through the Environment Committee’s scrutiny stage, these clauses will be removed and the Bill will be revised to focus on the key priority for planning: to encourage development where it can do the most good, and discourage it where it can do the most harm. This is what society expects of a planning system which is fit for purpose.

We look forward to the opportunity to discuss our comments with the Committee, and we would be happy to provide any further information on request.

For further information, please contact:

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