

Planning Bill Consultation.

Introductory comments.

The Council welcomed the publication of the Planning Bill for Northern Ireland in 2010, and are pleased that this Bill seeks to introduce the new structures for a more effective planning system. However there remains concern that so much still relies on the production of secondary legislation and guidance. This response in no way supersedes or amends any previous submissions to the Bill. It has been prepared as a direct response to the additional provisions introduced by the Bill which seek to underpin the role of planning in promoting economic development.

Some other matters occur:

Financial implications of the Bill. In the memorandum the Department 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 Department and do not take into account the costs of others involved in the planning process and most 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.

It is also noted that in the appeals process, the appellant may recover costs if the Council had made a decision and loses the appeal. As the Councils will be carrying out an entirely new function with no precedent locally, and possibly without robust Area Plans, policies or procedures in place the Councils could, conceivably, lose a significant number of appeals. This in turn would have significant cost implications for Councils and this would require assessment.

The extent of the consultation. It is noted that this consultation exercise was not a public consultation. Whilst it is recognised that this may have extended the time frame in respect of introducing and completing the process, it was felt the nature of the changes proposed ought to have been subject to a public consultation.

Explanatory and financial memorandum. The Planning Bill has been supported by an explanatory and financial memorandum. It was the view of officers that this memorandum was very useful in assisting in the understanding of the intent of the legislation. However the respondents would wish to comment on the following aspects, taking each Clause in turn and commenting as appropriate. Where no comment was made that has also been highlighted for clarity.

Comments on each Clause

Clause 1. 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 issues attendant on this dependant on the level of involvement required.

Clause 2. In this clause the Bill cites *'Promoting economic development'* *'desirability of achieving good design' in the Bill.* The Bill speaks of:

- *'furthering sustainable development'*
- *'promoting or improving well being; and,*
- *'promoting economic development.'*

The comments in respect of this Clause are that *'good design'* needs to be clarified. Is the estimation of good design dependant on the environment or other factors? *'Good design in terms of the building itself or the local setting?'* The judgement of this matter can be subjective and aspirational. Also in the

current economic climate would this provide a constraint on 'good design?' It is not clear what 'promoting economic development' means? It is also not clear as to where economic advantage would take precedent over the environment? All of this would seem to depend on what tests are going to be applied by the Department and what weighting given to the considerations raised. For instance, if the desirable economic development was to attract jobs that would suggest an approval. However, what about issues of displacement that would be attendant on such an approval? In this area, policy guidance would be useful and yet it is understood that the Department is minded to rationalise policies and that would surely lead to less consistency to the application of Planning in the future. It is not clear how consistency will be achieved after the hand over to Councils in the absence of policies. There is also an issue as to whether all these aspects identified in the Bill are considered to be equal? If, for instance, economic development is singled out how will it be assessed and by whom? Will it take precedent over the other matters? There is also the presumption that in order to evaluate design there would be a design ability required by those carrying out the assessment. Have any stipulations been made regarding the qualifications and experience of those who would be making these judgements. Concerns have also been expressed as to whether economic development emphasis would take precedent over issues such as conservation and heritage or benefits to society.

Clause 3. No comment.

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

Clause 5. 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. Across Northern Ireland there are very few plans that are current and up to date with the exception of the Belfast Metropolitan Area Plan (BMAP) and the Banbridge and Newry and Mourne 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. Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

It is understood that these additional provisions which underpin the role of planning in promoting economic development have *'been recently identified as desirable additions to the Planning Bill and will be subject to consultation and scrutiny during the Assembly process'*¹.

Public consultation in respect of these additional provisions, according to DOE Planning officials², has not been possible due to time constraints. It was further stated that the Single Planning Policy Statement would provide more details along with social and environmental considerations. Councils understand the pressures of legislative timings, but believe, because of the importance of this particular amendment, public consultation should have been sought.

¹ N.I. Assembly – Planning Bill Explanatory & Financial Memorandum as Introduced

² DOE Planning briefing to Environmental Committee - 10 January 2013

Clause 7. In this clause in the future, if the Bill is accepted, it will not be possible for someone to withdraw an appeal when they feel that an appeal may be refused, only then to submit a slight variation on the application and to go through the process again. From an administrative and practical point of view this is a satisfactory proposal as the process can become bogged down in a series of slightly similar applications being made for basically the same proposal that was subject to refusal.

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. No comment.

Clause 10. In this clause there is a suggestion that persons, other than the Planning Appeals Commission can determine appeals. It is not clear who would do this and whether this would provide an opportunity for the Planning Appeals Commission to sidestep its responsibility. 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, it would seem, and should be more robust.

Clause 11. The reduction of time to carry out an appeal from 6 months to 4 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 incapacity of the system to deal with the shorter time frame. It is also welcomed that the person who has appealed cannot introduce new information into the process. Under the new system someone cannot provide new information whereas an appeal ought to consider information that has already been provided and the Appeal Commission make a determination as to whether the right decision was arrived at initially in considering the planning application. There is also a concern that if more policies are removed there will be scope for inconsistency and this will give rise to an increased number of appeals and this in itself would require funding sources to administer.

Clause 12. The idea of an appeal is reinforced in this clause in that it should be a process that allows review of the design with information that was available to the Department at the time. This will stop the process being used as the equivalent of a plan checking for Agents provided using Planning resources.

Clause 13. It would appear from this clause that it is only possible to make a nonmaterial change to planning permission if the applicant is an owner of the lands. Clarifications as to why an interest of this type is required as it is possible it could lead to difficulties were the person who has an interest in the building is not the land owner. A question arises where the applicant/developer is developing by way of a Development Brief in which legal interest may only transfer upon completion. It is also felt that there should be some constraint imposed on the department where it wishes to impose new nonmaterial conditions and it is conceivable that some conditions if applied could be impractical if a cut off date is not established from the outset in the Legislation. This would assist developers in providing clarity and setting a parameter around what the Department can and cannot do under certain circumstances. Moreover, it is not clear if the request comes from the Department or the developers in respect of who initiates the application for the non-material change to planning permission.

Clause 14. The clause refers to *'aftercare conditions imposed on replication or modification of mineral planning permission'* which introduces general environmental conditions and this is to be welcomed.

Clause 15. No comment

Clause 16. No comment

Clause 17. When dealing with planning applications in conservation areas the Department should consider including these application in a streamlined process, particularly due to the nature of the building in question, the Council may be obliged to issue a Dangerous Structures Notice. A streamlined process would allow applicants who wish to comply with the notice to obtain the necessary planning permissions quickly.

Clause 18. Where demolition takes place 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 surely 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. No comment.

Clause 22. The offer of grants to bodies providing assistance in relation to development proposals is to be welcomed. However there should be criteria required and clarification of 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. Currently there are a number of statutory consultees who liaise with Planning. These consultees are the Council, as a body, and the Environmental Health Department in Local Government. In Central Government statutory consultees include the Roads Service and the Northern Ireland Environment Agency. Whereas Local Government tend to respond quickly to the consultation requests, it is not clear as to how speedily the other Departments will respond. However Clause 23 as proposed will place a responsibility on consultees to provide their responses within a specific time frame. In order for consultees to do this, they would need to be adequately resourced to ensure that appropriate responses could be made within the specific time frame. The problem is compounded if the quality of the plans is not up to standard and that makes it more difficult to properly assess the proposals and extends the time to complete the response. The concept of a 21 day turn round for consultations to be completed is welcomed in principle and it observes the principle of a slicker system. However the ability of consultees to respond in the appropriate time frames will require appropriate resources and it is not clear as to how those resources would be provided to consultees to ensure that they could meet their statutory obligations. This will have specific implications for Environmental Health in Local Government and clarification is required on this point.