

NORTHERN IRELAND PLANNING BILL 2012

Submission to the Northern Ireland Assembly Environment Committee

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March 2013

Introduction

Context is, as ever, all important. There is a wider canvas to the Northern Ireland case and it is important to be cognisant of this. Ideas flow across territories and this has proven to be (and continues as such) important in the context of land use planning. Devolution in the UK has resulted in a number of divergences in public policy, and institutional and organisational practices across England, Wales, Scotland and Northern Ireland. Reform and modernisation of the statutory land use planning system is a case in point.

Each devolved state has (and continues to be) engaged in a process of modernisation and change in its land use planning arrangements with a view of meeting specific challenges, opportunities and circumstances. The differences in approach between the devolved administrations are becoming more marked – and have continued to evolve through recent times. The variations offer telling insights into how land use planning is perceived in the processes of government/ governance and policy implementation. At one end of the ideological spectrum, England, for

example, has gone further in articulating a market infused approach - streamlining local planning arrangements and creating what is in effect a non-strategic approach by devolving planning responsibilities to local communities. The national press documents the sensitive issues involved in this step in England and raise clear concerns about the changes in local planning. In contrast, and (possibly) at the other end of the ideological spectrum, Scotland and Wales have both promoted relatively stronger strategic and hierarchical planning frameworks to guide planning decision making at local levels and to encourage greater certainty and consistency in land and property development.

It is important to reflect on the political and ideological drivers to the varied iterations of land use planning arrangements. In England there is a relatively stronger articulation of neo-liberal ideas – casting the state/ government intervention as a problem in the modern market economy. Moves to streamline, minimise or remove state interventions such as conventional land use planning controls reflect this. What such an extreme position misses is the positive role of planning in modern economic decision making – creating stability and certainty for decision making. Moreover, strong planning protects private property rights and investments – yet this is overlooked in the rush to assert the power of the market .In Scotland and Wales, whilst there is a strong assertion of business values there remains a relatively strong vestige of social democracy which views the planning system as a core element of government as a delivery mechanism for policy, expenditure and decision making. This reveals an acknowledgement that land use planning plays a pivotal part in promoting development, protecting community well-being and ensuring sound environmental heritage and values. There are different emphases evident between the different

states but there would appear to be a more realistic understanding of the nature and needs of modern economies. This point is important for deliberations in Northern Ireland.

Viewing the land use planning system in these contexts raises important questions for the type of land use planning intended for Northern Ireland. What is the real underlying ideology of governance in Northern Ireland? This is essential to understanding the spirit and purpose of the Planning Bill 2012. It is important that the deliberations around the Planning Bill 2012 include this wider conversation about economic values and metrics – as it determines the drivers of the statutory land use planning system.

Planning reform in Northern Ireland

Planning reform and modernisation in Northern Ireland has lagged behind developments elsewhere in the devolved UK – reflecting the very specific political circumstances prevailing in Northern Ireland. This refers in particular to the nature of central-local relations in planning decision making, the administrative fragmentation with respect to planning (which spans a number of government departments), the specific strategic separation between regional planning and land use planning (and regeneration and land use planning), and the very real disconnect between local government and land use planning. Essentially for some considerable time, local government in Northern Ireland has not been engaged at the front line of planning decision making. This position is further complicated by the extensive range of other reforms and reviews taking place in the same political space.

Nonetheless, and notwithstanding this congested space, the Planning Act (Northern Ireland) 2011 represents a deliberate attempt to provide a

more proportionate, measured and effective set of planning regulations in Northern Ireland. The legislation represents an attempt not simply to consolidate the legal provisions for the regulation of land use and development in Northern Ireland but represents a potentially much more transformative initiative. Indeed the planning proposals (and the associated governance arrangements) will have to be truly transformative if they are to work effectively and efficiently in Northern Ireland.

There is no doubt that Northern Ireland requires a first class land use planning system – to contribute to its economic renaissance and well-being, its social and community cohesion and stability, and to address the environmental vulnerabilities which face Northern Ireland – including coastal erosion, coastal management, food security, and flooding. This is a point that needs to be ventilated widely across Northern Ireland – through the media and government led conversations. It requires a culture change of some magnitude – in effect civic formation. The purpose of this is to create a civil environment in which land use planning is given opportunities to reflect on the public interest and to work to the better quality of life in Northern Ireland.

The Planning Act (Northern Ireland) 2011 set out important and appropriate ambitions for a new planning regulatory framework in Northern Ireland which reflects the broader thinking around land use planning elsewhere. This is to be welcomed. Reference to the future economic and social development needs of Northern Ireland and the management of development in a sustainable way is important and significant. It will require strategic forward thinking and strategic planning. The specific focus on the need for positive planning and

thinking around large, complex or strategic developments would also suggest a real awareness that there is a broader Northern Ireland public interest – and this will require specific planning processes. Work would still be needed to tease that understanding out, however, as a consequence of the different interests and expectations across Northern Ireland.

It must be said, however, that there is a pressing case for action on these fronts. There is certainly a need for a new statutory planning framework; there is a need for a different approach to land use planning by all interests; there is a need for a fundamental culture change and understanding across all of Northern Ireland; there is a case to understand the necessity for planning enabling an effective and efficient society and balanced community; there is a need to recognise the Northern Ireland is not simply a group of 1.8 million private individuals but it is also a collective entity. In these circumstances land use planning is the sine qua non of a civilised, ordered community. Yet there remains a list of mammoth challenges to creating the community environment in which there is generic respect for land use planning and what it seeks to offer Northern Ireland. These points have been made elsewhere.

Moving on - the translation of the modernised land use planning system into action in Northern Ireland, however, is intimately bound up with the imminent Review of Public Administration whereby the proposed 11 new councils in Northern Ireland will replace the existing 26 bodies and become the appropriate locus as planning authorities. In light of Northern Ireland's political history this will represent a considerable technocratic and democratic advance for governance in Northern Ireland.

The Review of Public Administration will potentially radically transform land use planning in Northern Ireland by moving away from the current centrist model (with relatively limited statutory consultation) to a more balanced planning infrastructure based on local government acting within strategic and central control and exercising its local perspectives on the public interest. The latter will require considerable attention – as land use planning is about the mediation of the use and development of space and place. It involves deliberate conversations in seeking to identify what is best for communities, neighbourhoods and localities. It is a highly contested and politicised process and one that needs to be dealt with appropriately.

Significantly, the step to enabling devolved administrative arrangements (and with a more balanced and holistic suite of local interventionist responsibilities) will bring Northern Ireland into line with the remainder of local government/ governance in the UK – and create new rights and responsibilities for local communities. There are major questions associated with this in terms of the required cultures, capacities and convictions to exercise deliberate action in the local community interests. Reconciling these whilst managing expectations and mediating to agreed positions will be a demanding task.

On top of that challenge, it is important to acknowledge that land use planning is not the only responsibility being transferred – the agenda includes regeneration (and the different ways in which that is defined and interpreted) and the new (and untested) responsibilities around community planning. That is another big ask for the Review of Public Administration.

The timing of these changes has created an inter-regnum which has precipitated a number of (what may be described as) un-intended uncertainties to the overall process of modernisation. Effectively, the various elements of change across Northern Ireland, its constituent government departments, and the relationship with the different communities of interest, identity and place are completely out of synch. To address this, an interim measure - a Planning Reform Bill 2012 was introduced to the Northern Ireland Assembly on the 14th January 2013. The primary objective of the 2012 Bill is to speed up the implementation of a number of reforms contained within the 2011 legislation. This is to be broadly welcomed – yet whilst, on the one hand, it is important that a planning framework is in place to expedite Northern Ireland’s priorities, on the other hand, the case for a culture change and its acceptance by the community at large in Northern Ireland remains an imperative. The aims of the Bill and its 28 clauses include: to further sustainable development and enhance the environment; enable faster processing of planning applications and secure a faster and fairer planning appeals system; ensure enhanced community involvement; and provide for simpler and tougher enforcement. This articulates the intentions of the parent legislation – and these are to be welcomed – as articulated in evidence to the earlier scrutiny of the legislation.

Economic development and land use planning in Northern Ireland

Controversially, however, there is an additional provision in the 2012 Bill which seeks to strengthen the land use planning system in promoting economic development. Even with the checks and balances of due diligence in introducing this aspect to the land use planning framework in

Northern Ireland this is potentially a contested aspect of the reforms being put into place for a number of reasons.

First, there are on-going debates about the role of land use planning in the economy. In part these reflect broad ideological arguments– but there remains disagreement about the purpose of land use planning in a modern economy. One line of reasoning sees it as inhibiting economic activity and land and property development. Another sees it as a way of securing the optimal allocation of property rights – which drives economic activity. The latter view has broadly prevailed ever since the introduction of comprehensive land use planning in 1947 – it is predicated on the notion of market failure. Ideological changes to neo-liberal market values now point to government failure – the inefficiency and ineffectiveness of land use planning – and argue for the simplification even removal of planning controls.

Second, there are different understandings and interpretations of (macro-) economic development in current policy and political debates. On the one hand, there is the cyclical view that whilst the Northern Ireland economy is in the downturn it will recover and move into a growth trajectory. This viewpoint would suggest that the role of government in general, and specifically for activities such as land use planning, is to remove all obstacles from any grounds for recovery. This might be interpreted as advocating the primacy of economic development over other considerations, such as specific localities, social and community metrics and the environment. This would create schisms across various communities of interest, place and identity in Northern Ireland.

On the other hand, there is an alternative perspective – one that argues that the current recession is very different to any experienced before – evidenced in part by the observation that the present recovery period is the longest ever experienced by the UK – and which suggests that the future may be an economic environment characterised by low growth or even zero growth. Indeed there is a body of opinion that advocates planning and managing communities for deliberate de-growth – in other words managing a world in which resources are deliberately reduced. This viewpoint would suggest there is a case for very strong role for land use planning in ordering the use of land (food, biomass, energy) and its development (social and community agendas), the re-use of existing property, the provision of facilities and infrastructure over space in order to ensure the well-being of communities facing food and energy shortages, breakdowns in critical infrastructure and seeking to find alternatives ways of subsistence.

Third, there is the possibility of the capture of the economic regime by communities of interest – here there needs to be a solid culture of understanding as to the spirit and purpose of land use planning. The future well-being of Northern Ireland has to rest on a collective sense of the public interest. This is no easy ambition – and requires considerable resources of persuasion, negotiation, mediation and debate – which fall to the democratic underpinnings in Northern Ireland. Yet it is essential that any such possible capture be resisted – and here the due diligence for societal priorities offered by the land use planning system is all important.

Finally, there is the potential perception that the inclusion of economic development in the interim legislation pre-empts or over-rides environmental considerations. Here there is need for particular clarity –

and there needs to be a full debate about the relationship between economic and environment. The tendency is to a reductionist perspective – to polarise and present the relationship as a trade-off. There is an alternative – the ecosystem approach which represents a paradigm shift in the management of the natural environment and those of its constituent resources that derive from the functioning of component ecosystems. This shift is based on premises which recognise that (1) sustainability of economic systems and quality of human life depend inevitably on healthy ecosystems, (2) humans are an integral rather than a separate part of ecosystems and (3) a sectoral approach to management is generally insufficient to deal with the complex interrelationships and diverse priorities of the real world. This presents a holistic set of ideas, values and assumptions about the natural environment, state-market-civil relations, institutional capacities and the appropriate forms of intervention necessary for enabling a rounded view of the value of the natural environment to society as whole.

The significance of the ecosystem approach rests on it establishing an alternative to more conventional approaches to the management of the natural environment. These tend to be driven by a set of capitalist market values based on exploitation and development for material production of goods and services. The driving forces have been a focus on economic growth, profit and based on short term perspectives. In general, this has led to the over-exploitation of the natural environment, the exhaustion of its natural resources, and issues associated with pollution, climate change and waste. This conventional market exploitative approach to the management of the natural environment imposes wider social, community and territorial costs on society and,

inevitably, longer term economic costs associated with unsustainable development. It results in an effective dysfunctional relationship between prices and values in the natural environment, and leads to dysfunctional state-market-civil relations as conflicts and tensions arise over the misuse of the natural environment, its ecosystem and associated assets. In contrast, then, the ecosystem approach is held to offer an alternative framework for achieving sustainable development and the utilisation of marine resources in ways that ensure that people and economic systems are integral parts of the solution as well as the sources of environmental challenges and vulnerabilities.

Consideration of the potential of the ecosystem approach to the natural environment and its assertion of the need to accommodate wider, more broadly-based and socially-constructed values and potentials in the marine context does not take place in a vacuum. It is important to acknowledge at the outset that any discussion about the nature of intervention involves a complex of state, market and civil interests. Here the context established by the market economy needs to be considered and the extension of market economic thinking and policy. Based on the pursuit of profit, the reliance on the pricing signals and values, and the assertion of private property rights and market economics form the intellectual, political and practical context to any discussions about the natural terrestrial and marine environments. In essence, a market economic context prescribes the social construction of the natural environment – it places specific values and invokes assumptions about its use, exploitation and management.

The rethinking of the fundamental values in society was addressed in the recent deliberations of the Foresight Group in the Government Office for Science (2010) which considered the future of the land resource in the UK. This was intended to produce an evidence base which would help government and other policy makers understand whether existing land use patterns, policies and practice were fit for the future. The project's findings recognise the importance of land as a key asset in society's collective well being. It argues that pervasive effects of changes in land use and its management underline the need to take the broadest possible perspective in developing future policies and strategies on land. The findings point out that under our market based regime, the value of land reflects the private interests involved and regulation and management arrangements nest within this paradigm.

The Foresight Group's report stresses the wider social and community value of land in the UK which reflects the real politik of land's 'multifunctionality'.¹ It argues that a critical pre-requisite is to identify how the various demands on land made by different sectors interact and to evaluate the consequences of those interactions; and the importance of taking a broad and overarching perspective across sectors and different levels of governance. Whilst the report suggests that progress has been made, it asserts that there remains more to do in securing a more coherent and consistent approach to guiding land use and management; that more sustainable and valued outcomes are delivered is a recurrent theme throughout this report. This is a lengthy and layered document. It examines the evidence of pressures and conflicts and

¹ Foresight Land Use Futures Project (2010) *Final Project Report*. The Government Office for Science, London. <http://www.foresight.gov.uk/OurWork/ActiveProjects/LandUse/lufoutputs.asp>

provides points to the challenges to be addressed. An example is making the better use of the land across the UK for climate change mitigation and for supporting the transition to a low-carbon economy, as well as managing the impacts of changing climatic conditions. The report is keen to promote an understanding of the appropriate governance of land at different scales. This clearly positions land use planning at centre stage but also shows that it is but one element of that governance. The report offers a constructive critique of the existing governance system which it argues:

- involves decisions taken at different spatial scales that do not always reflect the scale at which impacts are felt, or reflect how natural systems operate as with water resource management;
- fails to properly account for the many external benefits and costs associated with land use with consequences for overall social welfare;
- combines market mechanisms and regulation in ways that can conflict, generating severe pressures in some sectors such as housing;
- is in some respects a legacy of historical priorities which may not reflect the value of the land in different uses, influenced by new and future aspirations and priorities;
- has different governance arrangements for urban and rural domains;
- faces growing pressures as population and demands for goods and services from land rise, and as climate change poses greater challenges relating to both adaptation and mitigation.

The report argues that there is a need for an overarching perspective to assert a strategic perspective on land use and development. More effective incentives are required with respect to the delivery of public goods and ecosystem services from land and have to be better aligned with policy objectives. The tensions between different parts and scales of the land use governance system also need to be addressed.

It follows then that discussions around the inclusion of economic development considerations in the interim planning legislation must not fail to respect the preconditions required for an appropriate economic development dimension to planning. Metrics and values are changing and Northern Ireland cannot turn away from these wider pivotal considerations.

Conclusions

By way of conclusion, the interim Bill is an appropriate response to the delay created by the lax progress of local government reform. There is an unquestionable need for an appropriate engagement across Northern Ireland for a culture change with respect to land use planning. This must involve informed conversations about the spirit and purpose of land use planning in a modern Northern Ireland. The politics of resistance to innovation and change in local planning and governance must stop – and Northern Ireland move to a more informed position about the appropriate relations between economic and land use planning.