



# Planning Bill, January 2013

*A response from RSPB Northern Ireland, 15 March 2013*

## Executive Summary

The RSPB welcomes the opportunity to comment on the Planning Bill for Northern Ireland. While there are some aspects of the Planning Bill which are to be welcomed (e.g. Clause 5. Pre-application community consultation and Clause 14. Aftercare conditions imposed on revocation or modification of mineral planning permission), the RSPB is concerned that these, along with the primary objective of the Bill to accelerate the implementation of reforms contained within the 2011 Act will be fatally undermined by the additional provisions of **Clause 2. General functions of the Department and the planning appeals commission** and **Clause 6. Determination of planning applications**.

The RSPB recommends that Clause 2. be reworded to include a robust definition of **sustainable development** along with the deletion of the economic development sub-clause. Clause. 6 should be removed in its entirety from the Bill.

## Introduction

The RSPB is UK's lead organisation in the BirdLife International network of conservation bodies. The RSPB is Europe's largest voluntary nature conservation organisation with a membership over 1 million, around 13,000 of which live in Northern Ireland. Staff in Northern Ireland work on a wide range of issues, from education and public awareness to agriculture and land use planning. We have considerable expertise as a user of planning systems across the UK, both as applicant and consultee. In Northern Ireland we show our commitment to promoting good planning through the joint RTPI/RSPB Northern Ireland Sustainable Planning Awards, and by involvement with developers and the public on proposed development from wind farms to housing.

## The RSPB's comments on the Planning Bill, as introduced

Our comments are numbered by clause; we do not comment on all clauses.

### **Clause 2. General functions of the Department and the planning appeals commission**

The purpose of planning must be to achieve sustainable development. It is therefore essential that the Planning Bill contains a robust definition of same. The RSPB is of the view that such a definition should be based on the classic Brundtland definition<sup>1</sup> and the five guiding principles of the UK Sustainable Development Strategy (*Securing the Future*, 2005), including the need to live within environmental limits. An understanding of the high level Brundtland definition and these principles must be reflected within the Planning Bill, and in particular, the definition of sustainable development. (See Scottish Planning Policy reference overleaf).

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<sup>1</sup> Development which meets the needs of the present without comprising the ability of future generations to meet their own needs

Planning is an essential tool for managing the use of our natural resources and for minimising the impacts of development on the environment. To be effective, this means bringing environmental, economic and social objectives together and making sure they are integrated to bring about genuine improvements in wellbeing. Paragraph 8 of the National Planning Policy Framework (NPPF), (March 2012), expresses this balance succinctly “...to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system’.

The balancing of these objectives is further recognised in Paragraph 35 of Scottish Planning Policy which states ‘the Scottish Government supports the five guiding principles of sustainable development set out in the UK shared framework for sustainable development<sup>2</sup>. The five principles are:

- *living within environmental limits,*
- *ensuring a strong, healthy and just society,*
- *achieving a sustainable economy,*
- *promoting good governance, and*
- *using sound science responsibly.*

*...The fundamental principle of sustainable development is that it integrates economic, social and environmental objectives. The aim is to achieve the right development in the right place. The planning system should promote development that supports the move towards a more economically, socially and environmentally sustainable society’.*

The inclusion of a robust definition of sustainable development within Clause 2 would negate the need to include a further economic sub-clause.

Clause 2 in its current format serves only to give economic objectives additional weight above other sustainable development considerations (environmental and social), and to facilitate the double assessment of economic objectives, both within the context of sustainable development and again within the separate economic sub-clause. This primacy is contrary to achieving sustainable development.

While Minister Attwood is keen to point out that it does not give economic considerations determinative weight (Hansard, 22 January 2013, Page 45), this is subjective. Clause 2 clearly places economic development head to head with sustainable development, and could therefore be subject to differing interpretation by subsequent, Ministers, Planning Officials and Local Councils.

The scope for interpretation is further compounded by the use of the wording ‘furthering’, ‘promoting’ and ‘improving’ within the clause. Such scope for interpretation and potential ranking could lead to a rise in the number of challenges, where the nuances of each of these verbs are debated at length, thereby potentially slowing down the planning system – contrary to the objectives of planning reform.

The rewording of Clause 2 to include a robust definition of sustainable development, and deletion of the economic sub-clause would not only remove any future potential ambiguity and confusion with regards to weight or ranking, but create a planning system for the purpose of achieving sustainable development.

#### **Clause 4. Publicity, etc., in relation to applications**

We request that site notices are included within the suite of publicity methods.

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<sup>2</sup> One Future - Different Path: The UK’s Shared Framework for Sustainable Development (2005)

## **Clause 5. Pre application community consultation**

The RSPB supports the introduction of pre-application community consultation, but the reliance on persons specified "*as may be prescribed*" and under later Regulations means that there is little detail. Clause 102 in the English Localism Bill amends English legislation to give more detail on pre-application community consultation. In particular 61W(2) specifies more particularly the people who should be consulted ("*a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land*").

**Pre-application consultation is a key stage for communities and their NGO representatives**, and for the RSPB particularly with regard to ensuring an appropriate evidence base for environmental assessment. This proposal will help to resolve problematic issues early and, should there be a public inquiry, save inquiry time.

While we welcome the duty to decline to determine applications where Article 22A (pre-application community consultation) is not complied with, it is however no substitute for third party right of appeal (TPRA), and as such we strongly urge the Department to bring forward a limited third party right of appeal.

## **Clause 6. Determination of planning applications**

At present, where an application is made to the Department for planning permission, the Department, in dealing with the application, shall have regard to the development plan, so far as is material to the application, and to any other material considerations (Article 25 of the Planning Order (NI) 1991, as amended).

There is no particular reference to matters which are considered to be a material consideration, (though they must be planning matters). This allows for each application to be treated on its individual merits, and allows a balancing exercise in the consideration of other factors which are judged to be material. The weight to be attributed to one or more material considerations in the assessment of individual planning applications is a matter for DOE Planning, and is on a case by case basis (planning case law supports this).

The specific naming of economic matters as a consideration, over and above the existing provision of 'any other material considerations' serves only for greater weight to be attached to it in the assessment of development proposals.

By introducing the requirement to consider any economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission, there is a danger that this clause could be used as a tool to use the planning system for a purpose for which it is not legally designed to do (for rejuvenating the wider Northern Ireland economy). A key principle of planning is that it should only relate to the use and development of the land<sup>3</sup>, consideration of matters beyond this scope could result in increased legal challenges and a further slowing down of the planning system, contrary to the objectives of planning reform.

Furthermore, Clause 6 provides optimum conditions for developers of competing schemes, to become embroiled in lengthy battles regarding the economic advantages and disadvantages of each of their schemes leading to a slowing down of the planning system and increased legal challenge – all contrary to the objectives of planning reform.

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<sup>3</sup> *Stringer v Minister of Housing and Local Government* (1971)

More worrying however from an RSPB perspective, is the situation where economic advantages will time after time take precedence over the unnamed material consideration of the environment. The balancing of any other material considerations will be lost. Clause 2 and Clause 6 collectively threaten sustainable development.

It could also create conditions where some private interests/personal circumstances, which are not currently material considerations could legitimately submit evidence regarding loss of profit, decrease in value of land, or loss of rental income. It could also result in the routine consideration of personal circumstances, which at present are the exception.

Other concerns relate to the fact that there are presently no economists in DOE. In the absence of such experts, DOE will not be qualified to assess the economic advantage or disadvantage presented. Furthermore, the RSPB would welcome clarity on how the Department actually proposes to legally enforce such economic claims (e.g. job creation, or revenue generation for an area). As far as the RSPB is aware there is no legal mechanism to secure such benefits through planning conditions as they lie outwith the scope of planning.

Clause 6 is not required to assist developers in identifying the economic advantages of their development proposals. Private developers will not bring forward proposals that are not going to generate economic value. It can be assumed that any private development will be expected to generate economic value, Clause 6 is therefore unnecessary and will only serve to confuse what the market is surely better placed to decide.

For all these reasons, the RSPB believes that Clause 6 should be deleted.

#### **Article 7. Power to decline to determine subsequent application**

We support these powers as it avoids nugatory use of resources and assists with the streamlining of the planning system.

#### **Article 8. Power to decline to determine overlapping applications**

We support these powers as it avoids nugatory use of resources and assists with the streamlining of the planning system.

#### **Clause 9. Aftercare conditions for ecological purposes on grant of mineral planning permission**

While the RSPB welcomes this addition, we would nevertheless recommend the inclusion of 'nature conservation' as a use for closed mineral works.

The RSPB and the quarry industry amongst others have shown how important after use for nature conservation can be in achieving biodiversity targets and we believe this should be facilitated wherever possible. This would be inline with sustainable development and biodiversity duties, and builds on good practice already in place<sup>4</sup>. In addition, the steps in Article 53(5) of the Planning Order (NI) 1991, as amended, do not include all steps that might be needed for nature conservation after use, we therefore recommend that the wording is changed to "The steps....may consist of *but are not limited to*...."

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<sup>4</sup> For example [www.afterminerals.com](http://www.afterminerals.com)

#### **Clause 10. Public inquiries: major planning applications**

The RSPB strongly resists the amendment of Article 31 to include 'a person appointed by the Department for that purpose', in the interests of independence, openness, fairness and impartiality.

The status of the Planning Appeals Commission (PAC) as an independent appellate body free from influence by the Department or any other body is widely recognised and respected, to open up such a position to any person appointed by the Department could seriously compromise the credibility of the planning system in dealing with public inquiries. The further impartiality of a Planning Appeals Commissioner is embedded in Article 110 (3) of the Planning (NI) Order 1991, as amended. There is no such provision for a direct appointment by the DOE.

Notably there is already a recruitment facility within the PAC, including the appointment of panel commissioners.

#### **Clause 11. Time Limits**

The RSPB supports these provisions.

#### **Clause 12. Matters which may be raised in an appeal**

The RSPB supports these provisions.

#### **Clause 14. Aftercare conditions imposed on revocation or modification of mineral planning permission**

The RSPB welcomes this clause, as it has great potential to ensure that mineral sites are restored to the best after use, and we would like to see more sites being returned to nature conservation after use (see Clause 9).

#### **Clause 16. Increase in Penalties**

The RSPB supports the increase in penalties reflecting the seriousness of breaching planning controls.

#### **Clause 19. Tree preservation orders: dying trees**

The RSPB supports this clause as dying trees which do not pose a public safety risk provide important wildlife habitat and should not be removed.

#### **Clause 20. Fixed penalties**

The RSPB is concerned that Clause 20 could be interpreted in such a way that, following the payment of a fine, no further action can be taken against the offender. Further clarity is required in this Clause to communicate that fixed penalties should not be seen as an alternative to remedial action, and that the offender could be liable to further action if the breach in planning control is not rectified. Payment of a fine should not absolve the offender of remedying the breach of planning control.

#### **Clause 21. Power of planning appeals commission to award costs**

The RSPB supports the provision of power to the Planning Appeals Commission (PAC) to award costs as it is likely to reduce the likelihood of vexatious or poorly justified appeals. However, its effect is somewhat weakened by the fact that a Third Party Right of Appeal has not yet been introduced.

## **Clause 22. Grants**

The RSPB welcomes the provision of grant assistance to non- profit organisations in providing assistance in relation to certain development proposals.

## **Clause 23. Duty to respond to consultation**

The RSPB supports the duty to respond to consultation.

## **Clause 24. Fees and Charges**

The RSPB supports increased fees for retrospective planning applications.

## **Concluding remarks**

While the RSPB welcomes the opportunity to comment on the Planning Bill (January 2013), it nevertheless is disappointed that the additional provisions (Clauses 2 and 6) have been made outwith the normal round of public consultation. The RSPB understands the pressures of legislative timing, but believes that in light of the importance of these particular amendments, normal public consultation should have been sought.

The RSPB welcomes many elements of the Bill, but believes that the fundamental purpose of planning which should be to achieve sustainable development is seriously prejudiced by Clauses 2 and 6.

The retention of these Clauses will inevitably lead to a further slowing down of our planning system, increased challenge in the high court and PAC, and of greatest concern to the RSPB the potential for greater negative impact on the environment and threat to sustainable development.

In the circumstance, the RSPB is of the opinion that Clause 2 should be reworded to include a robust definition of sustainable development, including the deletion of the economic sub-clause. Clause 6 should be removed from the Bill.

Other recommendations have been made in respect of Clauses 4, 5, 9, 10, and 20 relating to inclusion of site notices, specification of those people who should be consulted, the inclusion of 'nature conservation' as a use for closed mineral workings, the Planning Appeals Commission should remain the sole body/person to conduct public inquiries into major planning applications, and a fixed penalty should not be an alternative to remedying a breach in planning control, respectively.

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March 2013*

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