

Our Ref: MW/PB

11<sup>th</sup> March 2013

Alex McGarel,  
Committee Clerk,  
Room 245,  
Parliament Buildings,  
Stormont Estate,  
Ballymiscaw,  
Belfast.  
BT4 3XX

Dear Sir/Madam,

The Planning Bill

I refer to the above and am pleased to offer some comments and observations on the proposed policy proposals presented by the Department contained in the proposed Planning Bill; the comments have been prepared following discussions within the Supporting Communities NI (S.C.N.I.) staff team, the Housing Community Network and also with our partners in community organisations across NI.

S.C.N.I. is an independent charitable organisation which champions community participation by developing groups, supporting active citizenship and building cohesive communities. At the same time and in partnership with the N.I. Housing Executive, S.C.N.I. supports and facilitates the Housing Community Network which was formed in response to the need for housing and related policies to be developed with and on behalf of local communities. S.C.N.I. works with the N.I. Housing Executive, Housing Associations and other organisations in the monitoring and scrutiny of the delivery of housing and related services.

S.C.N.I. welcomes the opportunity to comment on the Planning Bill, many aspects of which are most welcome in attempting to streamline the N.I. planning system. However, some serious issues arise which we suggest may, despite the intention of the Bill, result in slowing down the planning system and potentially impacting negatively on the environment. We stress that it is a *good* planning system that is needed in N.I. and that does not always mean *fast*.

The goal of streamlining the planning system is to be welcomed, however, some assessments of planning applications suggested in the Bill, particularly around economic considerations, will neither simplify nor streamline planning decisions; to this end the Bill as presented contains a number of serious and potentially damaging flaws.

We believe that there is an opportunity with this Planning Bill and the reorganisation of local government to bring land use planning closer to the communities it is in large part otherwise expected to serve. We are disappointed that the present bill for consultation does not go as far as it should to deliver a responsive and balanced planning system.

S.C.N.I. is particularly interested in the proposal that the Department should prepare and publish a Statement on Community Involvement and we hope that the Department will take the time and the opportunity to engage with S.C.N.I. as we have considerable experience and unique insights on community involvement which would add value to any consideration by the Department.

We would also urge the Department to take the opportunity to update its thinking and approach to sustainable development; S.C.N.I. believes that government in general has failed to reach a full and appropriate understanding of sustainable development either as a principle or as a well-guided and directed process. We would be happy to engage directly with the Department on any of these important matters.

I hope you find these comments helpful and the following observations useful.

Yours faithfully,  
for SUPPORTING COMMUNITIES NI

Murray Watt,  
Policy and Information

## COMMENTS AND OBSERVATIONS ON PERTINENT CLAUSES

### **Clause 2 (General function of the Department and the planning appeals commission)**

The concept of ‘promoting wellbeing’ needs further clarification – there is an absence of clearly defined criteria for measurement of ‘wellbeing’ nor any indication as to how it will be determined how it has been achieved.

A clear definition of ‘sustainable development’ would be preferable to the complications inherent in the additional objective of ‘promoting economic development’.

S.C.N.I. believes that the inclusion of the objective of ‘promoting economic development’ within this clause is unnecessary and unhelpful. We are concerned that the Bill provides a statutory duty to consider the promotion of economic development in the planning process which gives land use planning a function and responsibility it has neither the experience nor the tools to perform; indeed the inclusion of this objective is misguided to the point of folly in that it imposes on the planning systems duties and obligations which are not only alien but will slow down the whole decision making process. While the Minister has stated that this does not give economic considerations determinative weight there is a clear risk that the clause could be interpreted differently by different planners, and subsequent Ministers, as well as creating difficulties which may only find resolution after complex legal actions.

There is a danger in explicitly stating the promotion of economic development as an objective of the planning system because it frames the economy as competing against the environment and against local communities. An understanding of this, along with ‘sustainable development’ should be reflected in the Bill.

Clarification is required on the difference between ‘furthering’ and ‘promoting’; is there a ‘hierarchy’, or what is the difference in emphasis?

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

S.C.N.I. suggests that notice of applications should be placed on site, as well as publication and neighbour notification.

### **Clause 5 (Pre-application community consultation)**

Enhanced community involvement in the planning process is vital to the success of land use planning decisions, particularly with the relocation of those decisions to local Councils under R.P.A. The absence of local community involvement in the setting of planning aims and priorities and the lack of effective community consultation in the planning process has left a legacy of contention within the planning system. We believe that the current bill and local government re-organisation presents us with an opportunity to address that legacy and create a more consensual culture within the planning system. S.C.N.I. would encourage the strengthening of pre-application consultation requirements.

We stress, however, that this should not be considered to be *in lieu* of third party right of appeal, which should be in place as a safeguard if community consultation breaks down.

### **Clause 6 (Determination of planning applications)**

A key principle of planning is that it considers issues related to the use and development of land. In introducing the assessment of economic advantages and disadvantages, the planning system could be used for a purpose for which it was not legally designed. Clause 6 seeks to expand the issues that planners need to take into account and as a consequence, we agree with other commentators who believe that the N.I. planning system will no longer be able to rely on the stability of 40 years

of case law that have determined the boundaries of planning considerations - this will have to be redefined, through a series of legal challenges, to establish case law. This will inevitably introduce a great deal of instability and delay into the planning system in NI, potentially making it unworkable.

The inclusion of considerations relating to economic advantages and disadvantages creates significant scope for litigation and escalating challenges between competing developers. It gives objectors considerable weight, where any person who thinks they may be personally economically disadvantaged as a result of a planning decision (for example, one developer losing out to another) may make a valid objection to an application. We believe that adding in such considerations would create the potential for greater contention within the planning system and subsequently this clause could seriously slow down the planning system.

For the reasons stated above, and in the interests of streamlining the planning system, S.C.N.I. believes that this clause should be removed from the Bill.

**Clause 10 (Public inquiries: major planning applications)**

S.C.N.I. believes that the independence and the perception of independence, of those undertaking public inquiries is crucial to maintaining the credibility of the planning system. Any direct appointments by the D.o.E. may cast doubt on this, given that this is the role for which the P.A.C. was established. The P.A.C. could itself appoint temporary commissioners if in-house capacity was not available for a particular inquiry. Whatever procedure is established must ensure that there is no actual or perceived conflict of interest between the appointed commissioner and the parties involved.

**Clause 11 (Appeals: time limits)**

S.C.N.I. welcomes this clause as contributing to streamlining the planning system.

**Clause 12 (Matters which may be raised in an appeal)**

S.C.N.I. welcomes the restriction of new materials raised during appeals as contributing to streamlining the planning system.

**Clause 13 (Power to make non-material changes to planning permission)**

Guidance is needed as to what constitutes material/non-material change and who determines that distinction. Ostensibly contributes to the streamlining of the planning system, but may have deleterious effects on environment (depending on definitions).

**Clause 16 (increase in penalties)**

S.C.N.I. welcomes an increase in penalties as reflecting the seriousness of breaching planning conditions.

**Clause 17 (Conservation areas)**

S.C.N.I. welcomes this clause which actively gives special regard to the preservation and enhancement of conservation areas.

**Clause 19 (Tree preservation orders: dying trees)**

S.C.N.I. welcomes this clause promoting the preservation of biodiversity.

**Clause 22 (Grants)**

S.C.N.I. welcomes proposals allowing D.o.E. to grant-aid non-profit organisations for the purposes of furthering an understanding of planning policy.

**Clause 24 (Fees and charges)**

S.C.N.I. welcomes multiple fees for retrospective planning applications, as a deterrent for breaches in the planning system.

**Concluding comments**

S.C.N.I. would like to express disappointment that the Planning Bill did not follow the normal process of public consultation that would be expected to accompany changes with such far-reaching implications. We appreciate that there are time constraints with the transfer of planning powers to local Councils looming, however, fast law does not necessarily mean good law.

We again highlight that the objective of ‘promoting economic development’ in Clause 2 gives a statutory duty to economic considerations - this has never been the case before and is much stronger than, for example, guidance as part of a P.P.S. We feel that this is wholly unnecessary, given a full and proper understanding of the term ‘sustainable development’.

S.C.N.I. would like to take this opportunity to stress the importance of ensuring that the transfer of planning powers to new Councils and community planning are properly resourced. Capacity building must be a crucial part of this process, and S.C.N.I. wishes to play a significant role in this.

We would also like to raise the importance of third party right of appeal as part of a healthy and robust planning system. The Minister has voiced his desire to bring forward third party right of appeal (Hansard, Planning Bill: Second Stage) and we would fully support this. This is particularly important in a situation in flux, as will be the system over the next few years due to transfer of powers to local authorities.

Finally, in light of the need for streamlining in the N.I. planning system, we support many of the elements of the Planning Bill. However, we strongly believe that Clauses 2 and 6 undermine this overarching goal and will result in over-complication and serious scope for legal challenge, resulting in a slowing rather than speeding of the planning process.