

## PLANNING BILL 2013

### SUBMISSION BY ULSTER WILDLIFE TRUST



Ulster Wildlife Trust

#### INTRODUCTION

The **Ulster Wildlife Trust (UWT)** is responding on behalf of over 12,000 members from across Northern Ireland. We are the largest locally based nature conservation charity. We manage nature reserves, engage local communities, and work in partnership with a wide range of stakeholders to deliver holistic land and marine management approaches through our Living Landscapes and Living Seas work for the people and wildlife of Northern Ireland. The UWT welcomes the opportunity to comment to the NI Assembly Environment Committee on the Planning Bill.

At the outset, it is important to note that the UWT supports the Executive's top priority to contribute to and encourage economic growth. However, such growth puts pressure upon the environment and natural resources, and the planning system plays an important role in ensuring that this is balanced with protecting and enhancing the quality and character of our countryside and urban areas through effective policies.

This Submission follows the same sequence as the Bill, however, our main focus is upon Clauses 2 and 6, which propose to amend the legislation in respect of economic considerations. Whilst we support economic growth in our society, it is our view that such growth must be sustainable, and that the proposals set out in the Bill may not be the best way to deliver an effective and efficient planning system which will achieve this. The amendments under consideration increase the complexity of implementation at a time when the function of planning is being transferred to local authorities and significantly increases the potential for legal challenge.

#### CLAUSE 1: STATEMENT OF COMMUNITY INVOLVEMENT

The UWT welcomes this addition. This should ensure that proper attention is paid to community involvement.

#### CLAUSE 2: GENERAL FUNCTIONS OF THE DEPARTMENT AND THE PLANNING APPEALS COMMISSION

The UWT endorses the EC Council of Ministers' Resolution of 8 June 1993, which states that all legislation should be clear, simple, concise and unambiguous.

This principle should apply to any changes which are proposed in planning legislation in Northern Ireland. The challenges which will face the new local authorities in 2015 will be significant, and in this context, any changes to planning legislation should be kept to the minimum necessary to ensure good governance under the new arrangements. The introduction of new and untested provisions, which could lead to increased uncertainty and potential legal challenges, would not be in the best interests of our community.

The UWT also believes that planning policy can more easily adapt and respond to emerging situations than legislation. In essence, the UWT considers that the Department should focus upon the provision of a set of guiding principles for the planning system (which would be subject to public consultation), rather than seeking to add unnecessary and untested complexities into legislation.

### **The requirement to 'promote' economic development**

The UWT has particular concerns about the introduction of a specific legislative requirement to '*promote economic development*' in planning policy and development plans, for the following reasons:

- 1) the requirement to promote economic development through planning legislation is largely untested, particularly as the competent authorities in England and Scotland have not seen the need to introduce similar provisions as statutory requirements;
- 2) the proposed 'three - pronged' objective is cumbersome. It does not read as a single objective, but as three separate objectives, which relate to different considerations and which in some cases may be mutually exclusive. The legislation provides no indication as to how competing aspects of these objectives might be balanced;
- 3) the word '*promote*' implies that the Department will be statutorily obliged to take positive action to deliver economic development. Confusingly, the wording is different from the requirement to '*further*' sustainable development, and the more flexible clause which allows the Department the option to '*promote or improve*' well being;
- 4) it is highly questionable whether it is the role of the planning system to '*promote*' economic development. As PPS 1 states (para 3) '*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 that the planning system is not conflicted in its objectives, and that it is able to adopt a measured and balanced approach to all of the material factors;
- 5) the Planning Bill quite rightly obliges the Department to take account of policies and guidance issued by the Department, DRD, OFMDFM, and any other matter which appears to be relevant. By incorporating this requirement, the Department will have to carry out its functions with regard to agreed strategies and guidance such as the Programme for Government; the Regional Development Strategy, Planning Policy Statements, the NI Biodiversity Strategy, Marine Bill which includes a requirement for a planning framework etc, all of which may have relevance to planning. In such a context there is no necessity to require the promotion of economic development in legislation. Conditions that encourage and facilitate sustainable economic development should be created by policy. Unlike legislation, policy can readily be adapted to suit changing economic and environmental conditions. In this respect it is worth noting that it is government policy in England (the National Planning Policy Framework – See appendix 2) that requires the planning authorities to operate a '*presumption in favour of sustainable development*', not legislation.

6) Planning Policy Statement 4 - 'Planning and Economic Development' already stresses the importance of economic development. Notably however, the introduction comments that it *'seeks to promote sustainable economic development through supportive planning policies, zoning land for development etc'*. Helpfully, it also notes that economic development can be facilitated *'in ways consistent with protection of the environment and the principles of sustainable development'*. In the view of UWT, this is a balanced approach which already ensures that economic development will be properly balanced with environmental considerations;

7) the NI Biodiversity Strategy also advocates a balanced approach to development. Its comment that *'sustainable development means social progress for everyone; high and stable levels of economic growth and employment; effective protection of the environment and prudent use of natural resources'* continues to provide an effective long term objective which can guide the Department in the exercise of its planning functions; and

8) Regulation 3(4) of The Conservation (Nature Habitats etc) Regulations (Northern Ireland) 1995 (the Habitats Directive) provides that *'every competent authority in the exercise of any of its functions shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions'*. The issue is simple. In a context where the statutory requirement is to *'promote'* economic development, but only to *'have regard'* to the Habitats Directive, which will be given greater weight? It is important to ensure that there will be no diminution in the status of the Habitats Directive. Indeed any such diminution could be regarded as contrary to European and domestic law. This could result in infractions fines for the NI Government.

The purpose of the planning system must be to balance competing interests. To state that it must *'promote'* economic development but simply *'have regard'* to other considerations could potentially result in long-term and irreversible environmental damage. The inevitable tension between such phrases is also likely to result in legal challenges in relation to the emphasis which plans and policies should place upon the varying legislative requirements. Such a situation would not be in the interests of our community.

**The UWT believes that the answer lies in continuing to place the principles of sustainable development (which are already enshrined in the 2011 Act), at the heart of the planning system.**

The UWT suggests that Clause 2 should be reworded as follows:

**Clause 2 (1)(a)(1):**

**" Where the Department or the planning appeals commission exercises any function under Part 2 or this part, the Department or as the case may be the commission, must exercise that function with the objective of furthering sustainable development."**

The inclusion of a definition based upon the NI Biodiversity Strategy, which states that *'sustainable development will embrace social progress, economic growth and employment, effective protection of the environment, and prudent use of resources'* would ensure that there is clarity and balance in the implementation of such an objective.

## International Obligations

The Northern Ireland planning system does not exist in a vacuum. There are a raft of international obligations to which the UK (and therefore NI) government is a signatory. Examples include UNESCO obligations, the Ramsar Convention etc.

The recent judicial review of the Bushmills Dunes development has highlighted the fact that the requirements of UNESCO in respect of the World Heritage Site at the Giant's Causeway are not enshrined in local law or planning policy. The WHS is one of the most important economic assets in NI, and it is important to have the legislative tools to ensure that it retains its international status for the economic and environmental benefit of future generations. For this reason, it is considered that the need to have regard to international conventions should be incorporated into legislation moving forward.

**Clause 2(1) (b)(2) should be amended as follows:**

**"(b) any other matter which appears to the Department, or as the case may be the Commission to be relevant, including international conventions to which the UK/NI Government is obligated".**

## The desirability of achieving good design

The UWT welcomes the need to include the requirement to *'have regard to the desirability of achieving good design'*. A similar provision is included within the 2008 Planning Act in England. However good design involves much more than just the appearance of buildings or places. Good design should incorporate sustainable building techniques, materials, energy efficiency measures etc to assist adaptation to climate change.

If this provision is to remain in the Bill, the UWT advocates that policy guidance should be prepared as a matter of urgency to set out how sustainable design principles must be incorporated into development proposals.

## CLAUSE 3: MEANING OF DEVELOPMENT

The UWT welcomes this, as it will ensure planning control over demolition, which might potentially impact upon protected species such as bats.

## CLAUSE 5: PRE-APPLICATION COMMUNITY CONSULTATION

The UWT welcomes enhanced pre-application community consultation requirements. However the UWT believes that clear guidelines for this (especially in relation to the bodies to be consulted) will be essential.

## **CLAUSE 6: DETERMINATION OF PLANNING APPLICATIONS**

The UWT recognises that sustainable economic development should be at the forefront of the Executive's priorities. However it cannot see any reason why our planning legislation needs to be amended to make specific reference to economic advantages or disadvantages as material considerations in planning applications. Economic considerations are already material considerations in the planning process, and have consistently been demonstrated to be so. The recent High Court judgement in the Bushmills Dunes Golf Resort application has confirmed that the Department is entitled to place significant weight on perceived economic benefits.

Again, the statutory authorities in England and Scotland have not seen any need to introduce such a provision into their legislation. Policy in support of sustainable economic development is delivered through their National Planning Frameworks.

The UWT considers that a specific reference to economic advantages and disadvantages should not be inserted into legislation, for the following reasons:

- 1) economic considerations are already material to the decision making process. Case Law has demonstrated this;
- 2) this provision could potentially elevate economic considerations to a primary consideration, above all others. The Bill could lead to a system where the party with the greatest resources (in proving/disproving economic advantages to an application) is successful in achieving their desired outcome.
- 3) it could lead to less weight or attention being given to environmental considerations such as landscape impact, habitat, impacts of climate change etc;
- 4) the planning authority may be obligated to specifically incorporate economic assessments into their determinations across the full spectrum of development projects; and
- 5) it could lead to increased pressure on staff resources, increase the need for external consultancy advice, and encourage a situation whereby applicants or objectors feel obliged to submit detailed economic appraisals in support of their case.

Rather than improving the planning system, the UWT believes that such a provision could actually result in an increase in bureaucracy, slower decisions, greater expense, and a rise in legal challenges. In short, there is simply no justification for the inclusion of this provision in legislation.

## **CLAUSE 9: AFTERCARE CONDITIONS FOR ECOLOGICAL PURPOSES ON GRANT OF MINERAL PLANNING PERMISSION**

The UWT welcomes the addition of ecological purposes to the range of acceptable uses following cessation of mineral extraction.

## **CLAUSE 14: AFTERCARE CONDITIONS IMPOSED ON REVOCATION OR MODIFICATION OF MINERAL PLANNING PERMISSIONS**

The UWT welcomes this provision. Although it is likely to be invoked on only rare occasions, it may be a useful tool which could place the aftercare onus on landowners or developers, rather than NGOs or voluntary organisations.

#### **CLAUSE 16: INCREASE IN PENALTIES**

The UWT welcomes the proposed increase in fines as a deterrent to breaches of planning control.

#### **CLAUSE 17: CONSERVATION AREAS**

UWT has no comment to offer on this provision, other than to note that it does not seem to accord with the principles of clarity, simplicity and lack of ambiguity.

#### **CLAUSE 18: CONTROL OF DEMOLITION IN CONSERVATION AREAS**

The UWT welcomes the requirement to obtain consent for partial demolition of buildings in conservation areas.

#### **CLAUSE 19: TREE PRESERVATION ORDERS: DYING TREES**

UWT welcomes the introduction of a clause in respect of dying trees as this will provide improved clarity and help to preserve biodiversity.

#### **CLAUSE 20: FIXED PENALTIES**

The UWT welcomes this provision. However, it should be made clear that the Department will also have the option of pursuing an offence through the Courts as appropriate.

#### **CLAUSE 22: GRANTS**

The UWT welcomes the provision of grants for the purposes of improving understanding and engagement with the planning system.

#### **CONCLUSIONS**

The proposed amendments to the Planning Bill have been introduced at a very late stage, and without public consultation. Whilst the UWT welcomes the opportunity to make its views known to the Committee, it must express some reservations that a wider consultation exercise has not been undertaken in relation to such significant amendments. Draft PPS24 was strongly rejected following public consultation. This Bill relies on similar objectives but the decision has been taken that it does not require public consultation.

In essence, the UWT would request that the Committee consider carefully whether the proposed amendments will help to secure the objective of a more effective and efficient planning system in Northern Ireland. We must reiterate our view that the legislation should be as simple and

straightforward as possible, and that the key to the encouragement and delivery of sustainable economic growth in our community lies not in changes to legislation, but in effective government policy.

In addition, the committee will be aware of the marine spatial planning framework which will form part of the out workings of the Marine Bill once enacted. UWT would urge that consideration is given to how these two planning systems develop in tandem and look for consistency between marine and terrestrial planning approaches. The two systems need to integrate effectively to avoid confusion and potential lack of consistency of approach when coastal developments are under consideration (as often these can require permission through both systems). We would also like to see that coastal management is considered within the context of climate change and the predicted impacts and potential need for managed retreat in certain areas.

The UWT looks forward to further discussion on the matters raised with the Committee.

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## APPENDIX 1

**The European Council of Ministers' Resolution of 8 June 1993** on the quality of drafting of Community legislation states that the general objective of making Community legislation more accessible should be pursued by making systematic use of consolidation and also by implementing certain guidelines.

The criteria against which Council texts should be checked as they are drafted are that—

1. the **wording of the act should be clear, simple, concise and unambiguous**; unnecessary abbreviations, 'Community jargon' and excessively long sentences should be avoided;
2. imprecise references to other texts should be avoided as should too many cross-references which make the text difficult to understand;
3. the various provisions of the acts should be consistent with each other; the same term should be used throughout to express a given concept;
4. the rights and obligations of those to whom the act is to apply should be clearly defined;
5. the act should be laid out according to the standard structure (chapters, sections, articles, paragraphs);
6. the preamble should justify the enacting provisions in simple terms;
7. provisions without legislative character should be avoided (wishes, political statements);
8. inconsistency with existing legislation should be avoided as should pointless repetition of existing provisions. Any amendment, extension or repeal of an act should be clearly set out;
9. an act amending an earlier act should not contain autonomous substantive provisions but only provisions to be directly incorporated into the act to be amended;
10. the date of entry into force of the act and any transitional provisions which might be necessary should be clearly stated.

The inter-institutional agreement on common guidelines for the quality of drafting of Community legislation builds on these drafting guidelines. It adopts general principles covering both the drafting techniques to be used within Community legislation and the structure of Community acts. Many of the principles coincide with those of the plain language movement. The first three state that—

- **Community legislative acts shall be drafted clearly, simply and precisely,**
- the drafting of Community acts shall be appropriate to the type of act concerned, and
- the drafting of acts shall take account of the persons to whom they are intended to apply, with a view to enabling them to identify their rights and obligations unambiguously, and of the persons responsible for putting the acts into effect.





# National Planning Policy Framework

## Ministerial foreword



The purpose of planning is to help achieve sustainable development.

*Sustainable* means ensuring that better lives for ourselves don't mean worse lives for future generations.

*Development* means growth. We must accommodate the new ways by which we will earn our living in a competitive world. We must house a rising population, which is living longer and wants to make new choices. We must respond to the changes that new technologies offer us. Our lives, and the places in which we live them, can be better, but they will certainly be worse if things stagnate.

Sustainable development is about change for the better, and not only in our built environment.

Our natural environment is essential to our wellbeing, and it can be better looked after than it has been. Habitats that have been degraded can be restored. Species that have been isolated can be reconnected. Green Belt land that has been depleted of diversity can be refilled by nature – and opened to people to experience it, to the benefit of body and soul.

Our historic environment – buildings, landscapes, towns and villages – can better be cherished if their spirit of place thrives, rather than withers.

Our standards of design can be so much higher. We are a nation renowned worldwide for creative excellence, yet, at home, confidence in development itself has been eroded by the too frequent experience of mediocrity.

So sustainable development is about positive growth – making economic, environmental and social progress for this and future generations.

The planning system is about helping to make this happen.

Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision. This framework sets out clearly what could make a proposed plan or development unsustainable.

In order to fulfil its purpose of helping achieve sustainable development, planning must not simply be about scrutiny. Planning must be a creative exercise in finding ways to enhance and improve the places in which we live our lives.

This should be a collective enterprise. Yet, in recent years, planning has tended to exclude, rather than to include, people and communities. In part, this has been a result of targets being imposed, and decisions taken, by bodies remote from them. Dismantling the unaccountable regional apparatus and introducing neighbourhood planning addresses this.

In part, people have been put off from getting involved because planning policy itself has become so elaborate and forbidding – the preserve of specialists, rather than people in communities.

This National Planning Policy Framework changes that. By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning.

A handwritten signature in black ink that reads "Greg Clark". The signature is written in a cursive, slightly stylized font.

Rt Hon Greg Clark MP  
Minister for Planning