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# **Business Improvement Districts (BIDs) Bill**

**(BILL 9/11-15)**

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**Response on behalf of  
Ballymena Borough Council**

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**September 2012**

## **1. Background to the Response**

Ballymena Borough Council welcomes the opportunity to respond to the Business Improvement Districts Bill as introduced in the Northern Ireland Assembly on 25<sup>th</sup> June 2012. Ballymena Borough Council has been actively engaged in the BID Consultation process to date, submitting a detailed response to the Initial Consultation Paper in February 2011. The Council has also had regular meetings with DSD and other government departments since the first consultation period to actively shape and influence the debate.

Council is working in partnership with Ballymena Town Centre Development Ltd (BTCD) to deliver an Interreg funded project which will support the delivery of a BID in Ballymena town centre. Much of the preparatory work including consultation and viability studies has been completed. A detailed BID Implementation Plan sets a target date for the ballot process to take place in Spring 2014. The BID Implementation Plan is based on the timely conclusion to the legislative and consultation process for the introduction of BID legislation in Northern Ireland and will result in the first formal BID in Northern Ireland. Council is committed to working closely with DSD to deliver this ambition.

## **2. Ballymena Context**

Ballymena has proactively supported the BID concept at a local level and introduced the first voluntary BID (V-BID) in Northern Ireland. Ballymena has also acted as the lead Council in an innovative Interreg IVA funded project which was designed to promote effective partnership working and BID development across 5 towns in Northern Ireland, the Republic of Ireland and Scotland. Council has worked with the key stakeholders in the town to create a partnership company, Ballymena Town Centre Development Ltd (BTCD) which will deliver a BID Implementation Plan, a key output of the Interreg programme. Ballymena was the only town which was assessed by the consultancy team to be BID- ready. The Implementation Plan assumes that legislation will be in place by Autumn 2013, the target date set by DSD at a meeting in April 2012. It is imperative that the legislative and consultation process adheres to this target date, to allow Ballymena to proceed to Ballot in early Spring 2014. Council is working closely with BTCD on this consultation process and additional lobbying activity to advance the BID legislation.

Ballymena's ambition to be the first BID in Northern Ireland is part of a wider strategic priority for the Council and a key strand of the Integrated Economic Development Strategy. This is to secure and grow the Town Centre economy through a Destination Ballymena approach. Destination Ballymena articulates the vital role of the Town Centre as a key economic driver for the Borough and defines its role in relation to the unique villages that make up the Borough. It recognises their co-dependency and collective role in establishing a strong business proposition and promotional platform that will drive footfall and employment opportunities for the Borough. The Ballymena BID will be an integral part of this ambitious process. It will be a crucial source of additional funding, but, even more importantly, it will be a vehicle to develop the key public/private stakeholder relationships that will be crucial to its success.

### **3. Introduction to the Bill**

The proposed Bill introduces provisions to allow for statutory Business Improvement Districts (BIDs) in Northern Ireland and will provide a general legislative framework for a BID scheme. Many of the provisions in the Bill will provide for the later introduction of statutory rules. It is largely through these instruments that the detail of what is required legislatively, to underpin the introduction of BID arrangements, will be put in place. The Department's intention is to allow maximum flexibility within the general framework provided for in primary legislation, in order that the scheme can be adapted to suit local needs. In summary, the Bill will:

- Allow a district Council to define a BID within its council area or in cooperation with a neighbouring council;
- Require a district council to set up a ring-fenced BID Revenue Account to hold funds raised by the local levy;
- Require that BID proposals be formally compiled and put to a vote via an official ballot;
- Specify those entitled to vote in the ballot (non-domestic rate payers within the proposed BID area);
- Specify the conditions for approval of a ballot. The interests of large and small businesses are to be protected by a voting system which requires a simple majority in both votes cast and rateable value of votes cast plus a minimum 25% turnout (by number and rateable value) in order to be successful. BID proposers in a given area may specify that they wish to set a higher threshold;
- Allow a district council to veto BID proposals in certain exceptional circumstances (e.g. if proposals are considered to significantly conflict with existing council policy or if they are likely to impose a disproportionate financial burden). In the event of a council exercising this veto, the BID proposers would be able to appeal to the Department;
- Specify the maximum timeframe (five years) for BID arrangements to operate before needing to be resubmitted to a ballot.

The Bill has been developed in consultation with DOE, DFP and DOJ in recognition of the overlap with their areas of policy responsibility. DSD first consulted on proposals for Business Improvement Districts in early 2011. From the responses received it is clear that there is an overwhelming support for the introduction of BIDs in Northern Ireland. 95% of responses were very supportive, feeling that the BID model would facilitate local businesses to work in partnership with local government in addressing issues impacting on the viability and vitality of town centres. The main area of concern raised in the consultation related to responsibility for the billing, collection and enforcement of the BID levy. The Department had proposed in its consultation paper that this should be handled at local council level. However, a significant percentage of respondents suggested that this responsibility would be better placed with Land and Property Services (LPS) which currently carries out a similar role in its collection of the annual rates. Following discussions with the Department of Finance and Personnel (DFP), it has been agreed that LPS will take on a role in the administration of the

BID levy, the details of which will be set out in secondary legislation and guidance from the Department.

Three options were considered.

**Option 1** was to do nothing and allow BIDs in Northern Ireland to continue based on voluntary contributions with no mechanism to require payment or enforcement of a levy.

**Option 2** was to develop legislation which would enable the introduction of statutory BIDs and provide a framework for regulation. Legislation would be flexible and the Department would leave questions such as the rate of the levy and relative contributions of different businesses to local discretion while providing a framework of advice and guidance.

**Option 3** was to develop more prescriptive legislation that would attempt to regulate more aspects of BIDs operation and place more emphasis on standardisation and central control rather than local discretion.

**Option 2** was chosen as the preferred option as it was considered that it offered the best balance between a statutory framework and local discretion for the local business community to determine appropriate costs.

## **4. Responses to the Clauses of the Bill**

### **Clause 1: Arrangements with respect to business improvement districts**

Council supports the proposed arrangements which allow a BID to be created in a defined area which need not involve businesses that are within a discrete geographic area, but can consist of businesses that are linked thematically, or that are near to one another without being wholly adjacent to each other. This will allow Councils more scope and flexibility in two ways. One, to create BIDs under a specific theme, such as tourism, will allow Council to firmly align the BID within the Council's wider strategic context and key corporate priorities. Secondly, it provides more scope to maximise the potential BID revenue stream, which will be a crucial issue for many towns across Northern Ireland, given their size and total rateable value.

### **Clause 2: Joint arrangements**

Council supports this Clause which allows the Department to make regulations outlining the procedure for when a BID proposal covers an area lying within the boundaries of two or more district councils. This again will maximise the potential BID revenue stream, and will allow for swift and smooth integration of BID schemes in a post RPA environment.

### **Clause 3: Additional contributions and action**

This Clause allows district councils, and any other person identified in the "BID arrangements", to make voluntary financial contributions towards funding a BID project. This

will be an essential prerequisite to many BIDs becoming a viable proposition and will introduce a key element of financial flexibility and the ability to tailor budgets to suit individual locations.

#### **Clause 4: Duty to comply with arrangements**

This Clause places a duty on a district council to comply with the BID arrangements, once these are in force. This will require detailed discussions and a close working relationship with the local Councils for the remainder of the BID legislative process. There is a huge onus and corporate responsibility placed on Councils in the legislative details agreed to date and within this consultation process, without a lot of detail on the practical delivery or potential liability. There is a delicate balancing act to ensure that BIDs are enshrined in a legislative framework that is robust enough to ensure that is viewed by the key stakeholders as a sustainable, legal funding entity and allowing the BID the flexibility to respond to the environment that is operating in. It is essential that these discussions are transparent and inclusive.

#### **Clause 5: BID proposals**

In the main, Council supports the proposed BID proposals which are closely aligned to the Scottish legislation. The proposals will ensure that BIDs are developed within a recognised, agreed legislative framework and operate in a professional, uniform manner across the province. This will be essential to gaining the early and continued support of the wider business community. BID proposals must identify ratepayers that are eligible to take part in the ballot. The Department will set out in regulations the persons who can draw up BID proposals; the procedures for consultation, including who can be consulted on the proposals; the procedures which a person taking forward a BID arrangement should follow when drawing up BID proposals; what should be outlined in the BID proposals; when the BID arrangements would commence; the circumstances in which disclosure of relevant information must be made by DFP; the purpose(s) for which this information may be used; and provides for the creation of offences and penalties in relation to the unauthorised disclosure of any data provided by DFP.

As discussed in Clause 4 above, this will require detailed discussions and a close working relationship with the local Councils for the remainder of the BID legislative process to agree the detail of the BID proposals and ensure they are fit for purpose.

#### **Clause 6: Entitlement to vote in Ballot**

Council supports this Clause which sets out how entitlement to vote is determined. The Clause mirrors that of the Scottish, Welsh and English Bills. It requires the BID proposer to provide a statement to the district council that lists all those who will be eligible to vote in the BID ballot. The choice of who can vote is ultimately determined by the names appearing in the statement prepared by the BID proposers and the decision of who appears on the list is vested in the BID proposers. A person will be eligible to vote if he is chargeable to rates in respect of a property on the Net Annual Valuation (NAV) list within the BID area.

#### **Clause 7: Approval in ballot**

Council supports this Clause which sets out how approval of the ballot is determined as, similar to Clause 6 above it adopts tried and tested legislation across the other UK jurisdictions and represents international best practice. This Clause sets out the conditions that must be met before a BID ballot can be regarded as approved. The conditions are:

- A majority of the votes cast are in favour of the BID proposal;
- At least 25% of those entitled to vote have done so;
- Those who vote in favour represent a greater aggregate of net annual value than those who vote against;
- At least 25% of the aggregate of the net annual values of all hereditaments, in respect of which an eligible ratepayer is entitled to vote, have done so.

Council agrees with the proposal to frame the voting system in terms of votes cast as the only equitable and manageable way forward. This is similar to the legislation in Scotland, England and Wales and most other jurisdictions where BIDs exist. Council are in favour of the same ballot approval procedure of a majority (over 50%) in both number of votes cast and rateable value, to protect the interests of both small and large businesses. Council believe that the minimum turnout should be set at 25%, to ensure a credible voting face, and note the issues in the Republic of Ireland where this level has not been set and BIDs are set up without a strong mandate.

### **Clause 8: Approval in ballot – alternative conditions**

To avoid confusion, particularly in the early stages of introducing BIDs across NI and also given the relatively small size of NI towns and cities, Council does not feel it is necessary to introduce alternative conditions for approval of a ballot, such as introduction of a higher margin of either net annual values, or numbers of votes cast, or both, before a BID ballot can be taken as approved.

### **Clause 9: Power of veto**

This Clause confers the right to veto BID proposals on a district council. It requires the district council to notify the BID proposers whether or not it will use its veto, and to provide reasons for that decision, including where the veto has not been applied. Clause 9 also provides that the circumstances in which the district council may veto a BID proposal may be prescribed by the Department and that the Department may also prescribe the matters which the district council must consider before it may veto a BID proposal. Where the veto is applied, the ballot will not take place. District councils are also required to inform the person drawing up the BID proposals that he has a right of appeal against the veto to the Department. The district council must also notify the BID proposer of the details of that right of appeal. Councils do need to have the power of Veto in exceptional circumstances to provide adequate protection for the rate payer.

### **Clause 10: Appeal against veto**

This Clause allows any person who was entitled to vote in the BID ballot to appeal to the Department against a district council's decision to veto BID proposals. The Department will be able to make further provision via regulations as to the process behind an appeal. Council agrees that there also need to be a regulatory requirement to appeal against the veto, exercised by the Department to ensure transparency, but, as before, careful and detailed consultation will be required to agree the details of the regulations going forward.

### **Clause 11: Commencement of BID arrangements**

This Clause provides for the BID arrangements to come into force on the day detailed in the BID proposals. It also places a duty on the district council to ensure the BID arrangements commence on the relevant day. While Council agrees with the need for the BID arrangements to come into force on the day detailed in the BID proposals, which is in keeping with the nature of the commercial agreement that is being entered into, it should be the responsibility of the BID company or team to ensure that this is the case, not the Council.

### **Clause 12: Imposition and amount of BID levy**

This Clause provides that a BID levy can only be raised while BID arrangements are in force, and provides that the levy is to be calculated in accordance with the arrangements. The BID levy is not limited to being calculated on the basis of rateable value. It could for example be a flat rate levy. This clause also allows a BID levy to be different for different classes of ratepayer, which means relief(s) could be provided from the BID levy. Subsection (5) requires BID proposals to state whether the costs of developing the BID proposals and holding of the ballot are to be recovered through the BID levy.

The rate of levy has been the subject of much debate in other parts of the UK. It is recommended to be between 1 and 2.5% of the rateable value, although, recently, in their publication "Industry Criteria and Guidance Notes for BIDs", the British Retail Consortium (BRC) and the Interbank Rating Forum (IBRF) as guide for their membership base, which, collectively makes up a significant proportion of the rateable base of most larger towns and cities, have put forward a strong recommendation for levies of up to and including 1%. This, it is argued, may discriminate against smaller locations and prevent them from achieving a worthwhile annual budget. This issue will be particularly relevant in Northern Ireland and is worthy of further discussion and debate, particularly with the BRC. There is also an issue about the uniformity of the levy to be considered. Participants noted the example of Bathgate in Scotland where businesses with a rateable value of less than £10k were liable for a one-off payment of £100, and that larger businesses operated on the more common %age of rateable value calculation. The ability of the BID to pull in additional funding resources may also be a significant factor in the Northern Ireland context, as the total levy amount achievable may be quite small in the majority of cases. It would be considered important that this flexibility to pull in other funding sources was upheld within the regulatory framework. The issue of "cost neutral" BIDs i.e. the ability of the BID to offer significant cost savings through collective buying power or procurement is another important factor in the established UK BIDs is another issue which must not be overlooked and considered in more detail within the NI context.

### **Clause 13: Liability and accounting for BID levy**

This Clause provides that BID proposals must specify who is liable for the BID levy, and that a person's liability is to be determined in accordance with the BID arrangements. It further specifies that all levy monies be paid directly to the district council which made the BID arrangements in question.

Ballymena Borough Council believes that this Clause is too prescriptive and does not reflect the flexibility and ability to adapt to local needs that is apparent in other clauses. Councils who have put in place a strong partnership structure with strong governance and financial operating framework and operate as a limited company or other suitable legal structure should have the flexibility to transfer this accounting and liability for the BID levy to the local legal entity. This would again facilitate the notion that this is a commercial arrangement of which Council is a key partner and not the enforcer. Council does accept that in many cases, particularly in smaller towns, the Council will need to assume this role.

### **Clause 14: BID Revenue Account**

This Clause requires a district council to open an account which is exclusively used to hold all revenues pertaining to a particular BID arrangement. This clause also gives the Department powers to make further provision relating to the BID account by regulations. The same comments apply as in Clause 13 above.

### **Clause 15: Administration of BID levy etc.**

This Clause provides that the Department may make regulations governing the imposition, administration, collection, recovery and application of the BID levy. Again, the need to ensure that there is careful and detailed consultation with the Councils on the details of the regulations going forward will be required. Again Council would reiterate the need to ensure that the careful balance between a sound legislative framework and the position of Council as a partner rather than simply an enforcer needs to be achieved. Research in to best practice and the experiences of other jurisdictions will be essential here.

### **Clause 16: Duration of BID arrangements etc.**

This Clause sets a maximum time limit for BID projects of 5 years. It also provides for BID arrangements to be renewed, but only where a further ballot is approved under the same conditions as outlined in clause 7 or clause 8, if alternative conditions used. This clause also allows the Department to make regulations setting out the procedure for alteration and termination of BID arrangements. Ballymena Borough Council believes that a timeframe of 5 years is considered appropriate to ensure that BIDs have an appropriate timeframe to demonstrate tangible benefits and yet cannot run on indefinitely if it is not seen to be delivering, which is the case in the Canadian model.

### **Clause 17: Regulations about ballots**



This Clause allows the Department to make regulations governing the ballot process, particularly, but not exclusively, in relation to:

- (a) The timing of ballots;
- (b) The persons entitled to vote;
- (c) The question to be asked in a ballot;
- (d) The allocation of votes to those eligible ratepayers entitled to vote in a ballot;
- (e) The form that ballots may take;
- (f) The persons who are to hold ballots;
- (g) The conduct of ballots;
- (h) Allowing the Department to declare ballots void in cases of material irregularity;
- (i) Enabling a district council to recover the costs of a ballot.

As above, the need to ensure that there is careful and detailed consultation with the Councils on the details of the regulations going forward will be required. The comments in Clause 15 also apply in this case.

### **Clause 18: Power to make further provision**

This Clause allows the Department to make consequential and transitional provisions where necessary. Council accepts the need for this clause in the interest of flexibility and adaptability to local need within a sound legislative framework, but again would request close consultation on their practical delivery.

### **Clause 19: Further provision as to regulations**

This Clause provides that any regulations made in the Bill are subject to negative resolution procedures in the Assembly, other than regulations under clause 9. Draft affirmative procedure is required for regulations under clause 2(1) (where they contain provision which modifies other legislation), clause 5(2)(f)(iii) (the creation of offences and penalties in connection with any unauthorised disclosure of such information), clause 9(3) (circumstances in which the district council veto may be exercised) and clause 18(1) (where they contain provision amending any other statutory provision). Council agrees with this requirement subject to the consultation referred to above.

## **Clause 20: Crown application**

This Clause provides that the Bill applies to the Crown. Agreed.

## **Clause 21: Interpretation**

This Clause provides definitions of terms used in the Bill. Agreed.

## **Clause 22: Short title**

This Clause provides that the new legislation shall be known as the Business Improvement Districts Act (Northern Ireland) 2012. Agreed.

# **5. Additional Issues pertinent to Ballymena**

## **a) Government Support**

Ballymena Borough Council do not agree with the statement in the Bill that the proposals should not have any significant financial implications for the Department and that the operation of BIDs will require the Department to fulfil a central guidance and support role which can be met from within existing resources. It does not satisfactorily address the additional funding issue which will be a major factor for many locations across the province considering a BID. The Bill alludes to the provision of the additional funding being considered at a later date but does not make any firm commitments. The provision for Land and Property Service (LPS) and district councils to have the option of recovering from the revenue raised by the levy, any costs incurred from the BID levy administration, data sharing and ballot arrangements could damage the commercial viability of many BIDs, as a large percentage of the revenue raised will have to be re-directed to funding the BID process. This will be a divisive Ballot issue.

Ballymena Borough Council would advocate strongly that the Scottish government support model be followed. BIDs Scotland is a properly resourced body set up to give guidance on the development of BIDs in Scotland. As well as staff expertise and contact, training provision and capacity building, web-based support services in the form of legal templates, publications and research updates have proved extremely useful.

The provision of a BIDs Development grant of £20k has been instrumental to the success and quality of Bids in Scotland, and has allowed smaller locations that may not have otherwise been able to afford the initial set up costs, estimated to be between £30k - £70k.

The provision of strong central government support and guidance is vital to ensure that BIDs are developed in the correct commercial and environmental context and have been subjected to a rigorous and thorough Feasibility Study which demonstrates that a BID is the best option and other alternatives have been considered. The existence of BIDs Scotland has been a key driver in the creation of properly managed, resourced BIDs with sound business planning and sustainable funding mechanisms in place. It also ensures that the BID development process is strategically and financially separated from the BID Business Plan.

## **b) Base-lining Current Services**

Council has a key role in providing baseline service information to alleviate concerns that the BID will replace existing Council services, rather than supplement them. Research by British BIDs and UK BIDs Advisory Service, operated by the Association of Town Centre Management, have demonstrated that a strong baseline agreement is essential to demonstrate to local businesses where and how their money is being spent. It is also vital to the future sustainability of the BID. Research has also demonstrated that this exercise has been useful in assisting Councils to evaluate and add-value to existing service provision. It is clear that Council will initially need support and expert assistance in this exercise.

## **c) The accuracy of Rateable Value data**

Council will need to work in close partnership with LPS to provide the up-to-date ratings information that will be crucial to the preparation of a BIDs Business Plan. Ballymena, given our recent experiences in the preparation of an initial BID Viability Assessment would have grave concerns over the accuracy and validity of the NI ratings information, despite the previous Rates Review. This issue will have to be addressed as a matter of urgency otherwise it will jeopardise the viability and indeed the credibility of many BIDs across the province.

## **d) Feasibility Exercise**

Ballymena Borough Council are of the opinion that regulatory powers should be applied to ensure that any proposed new BID goes through a preliminary feasibility exercise before embarking on a formalised BID process, similar to the process that Ballymena has just gone through. This should include an initial financial viability assessment. These should address the following issues:

- Assess need and why need has arisen?
- Is a BID the best solution, have alternatives been considered?
- Measure the business interest and commitment
- What partnerships are currently in place?
- Does existing partnership provide a strong base?
- Is there an indicative boundary?
- Basic levy calculations?
- Is it worth it?

Ballymena found this process very worthwhile and addressed a lot of issues which had not been considered in the past. It has put the town in a very strong position to take forward a viable BID that will receive strong support at the ballot stage and has informed all partners of the timescales and work involved in the BID development process.

## **e) Property Owners**

Ballymena Borough Council would request further discussion on the issue of whether or not to formally involve property owners in the BID process through the legislative process. This is a contentious issue across all jurisdictions currently operating BIDs and there is no one-size-fits-all solution. Council has noted the inclusion in the Scottish legislation of a more formal regulatory process to involve property owners, but enabling final decisions to rest within the local BID Partnership. The American model also allows for the property owner to become involved. We would propose further consideration and discussion be given to this issue within a NI context as the ramifications of excluding this important sector could be considerable for some BIDs, as it may severely limit the overall income generation potential of the BID. For example, there may be merit in some form of legislation to ensure that the landlord is liable for the levy payment if the property is vacant for a period of over 6 months, similar to the rating system.