



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

Planning Bill

13 January 2011

NORTHERN IRELAND ASSEMBLY

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ENVIRONMENT**

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Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Thomas Buchanan
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Alastair Ross
Mr George Savage
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Suzie Cave)	Research and Library Services
Dr Ken Sterrett)	Queen's University Belfast
Ms Irene Kennedy)	
Mr Angus Kerr)	Department of the Environment
Ms Catherine McKinney)	
Ms Maggie Smith)	

The Chairperson (Mr Boylan):

I remind members that this evidence session is being recorded. If any member needs to use their mobile phone, I ask that they go outside the room to do so, because mobiles interfere with the system.

I welcome back Suzie Cave from the Assembly Research and Library Services and Dr Ken Sterrett from Queen's University Belfast. They will give us a briefing on Part 1 and Part 2 of the Bill, which deal with planning functions and local development plans.

Ms Suzie Cave (Research and Library Services):

The research paper has been produced on behalf of the Assembly Research and Library Service by the School of Planning, Architecture and Civil Engineering at Queen's University Belfast. I will introduce Dr Ken Sterrett, a senior lecturer at Queen's who specialises in areas of participatory planning, community planning, integrated planning and urban design. He will take you through the paper and respond to any questions that you may have.

Dr Ken Sterrett (Queen's University Belfast):

Thank you very much for inviting me here. This is one of four papers that we have been asked to prepare and deliver to you over the next couple of weeks. As the Chairperson said, this paper deals directly with the functions of the Department of the Environment (DOE) and development planning. Those are covered in Part 1 and Part 2 of the Bill. I will go through some of the key points that we have identified as being important. We will then raise some questions that may help you to investigate and interrogate the legislation a little bit more.

With your indulgence, Chairperson, I will preface my comments by saying something about the shift from land use planning to spatial planning. That will underpin a lot of what I will say today. We are seeing a major shift from traditional land use planning, which we all know and love and have had for a number of years, to a new way of looking at planning that is known as spatial planning.

I should say that we are assuming that that is what the Department is doing with the Bill, and we are making that assumption because a good part of the Bill has been lifted almost directly

from the Planning and Compulsory Purchase Act 2004 that covers England and Wales. That Act effectively introduced spatial planning into those jurisdictions, and it was followed by all sorts of policy and guidance. Therefore, it is in that context that I will identify a number of points.

The first point relates to the planning functions of the DOE. That is dealt with in clause 1, which states that the planning function of the DOE is to:

“formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development.”

That is traditionally what the Department does, and it was part of the old legislation. Therefore, if we are moving to a different sort of system and are looking at a new way of planning that is bringing about a change and whole new culture, the question is: should that not be reflected in what the Department describes as its planning functions? That is the first point.

Secondly, and I think that this is one of the key points, the Bill does not include an explicit reference to the important links between the local development plan and the council’s community plan. That is key, because if you look at the systems in places where spatial planning has been introduced, they have been about keeping strong links between the broader community plan, which is prepared by the local authorities, and the eventual spatial plan, which is the local development plan. That is not in the Bill, so you may want to ask the Department about that, because it has been a key factor in the delivery of spatial planning in other jurisdictions.

Mr Weir:

Are you suggesting that there should be a degree of leverage, with cross-referencing in the Bill?

Dr Sterrett:

Yes.

Mr Weir:

It is not normal to have commitments in legislation to particular timetables.

Dr Sterrett:

I appreciate that. For example, the Planning and Compulsory Purchase Act 2004 in England and Wales has a requirement relating to local development plans, which means that people “must have regard to” the local community plan, for example. Therefore, that linkage is in legislation.

If the new legislation is the beginning of a process to introduce spatial planning to Northern Ireland, as I said earlier, it represents a radical change to the planning system. Of course, it will need a lot of supportive policy and guidance. A lot of additional material will be needed above and beyond what is in the Bill to explain how it might work and how to advise local authorities about that and about the linkages and community involvement and so on. I think that it is important to have a sense of what the timetable for that might be on the back of the Bill, because one will not work effectively without the other.

The new legislation and the overall approach to spatial planning will require substantial training for stakeholders. That is important, because research shows that where similar legislation has been introduced elsewhere, such as happened in England and Wales in the past six years, any problems have been in adapting people to the new system and about addressing the culture change. We have done some research on this at Queen’s University, but on reading other research reports, it has been found that adequate training is the main issue. A colleague of mine refers to a process of learning and, more importantly, unlearning; in other words, unlearning previous processes and learning new ones. Therefore, that is key. It applies not just to professional planners, but to officials and politicians, and, critically, to other stakeholders, given that this is a more integrative process.

The new legislation, together with follow-up policy and guidance, will necessitate the creation of a set of intra-government relationships that should be carefully considered. The proposal is that the councils will be the local planning authority, the Department of the Environment will be the central government body with responsibility for planning, and the Department for Regional Development (DRD) will have responsibility for strategic planning. On top of that, there is the role of the Office of the First Minister and deputy First Minister (OFMDFM), so there is a whole set of relationships. I think it is important that we as a public and you as members give some thought to that.

The relationship of the local development plan to the regional development strategy needs to be carefully considered. Currently, when a local area plan is being prepared, the legislation requires it to be “in general conformity with” the regional development plan. That is being downgraded to “having regard to”. The lawyers among you will know all the little nuances of language in phrases such as “taking account of”, “having regard to” and “must be in conformity with”, but during the planning consultation process, people were concerned about what was effectively a downgrading of the regional development strategy.

When councils prepare local area plans in the future, it will probably be very important that, for all those plans, there is that regional coherence that the regional development strategy provides so that there will be a framework within which they are set. You may want to consider the specific language that is to be used about the relationship between the local development plan and the regional development strategy.

When looking at the package of legislation and at what is proposed by way of the development plans, another important point to note is that we have the plan strategy for each area, which is the broad, strategic ambition of the plan. Moving on from that, there is the local policies plan, which is the more site-specific part of that process. In England, there is a facility known as an area action plan. In other words, if specific actions need to be taken in some areas, such as a

regeneration area or a town centre or just somewhere where change is going on, those can be identified in a broad strategy plan. If the focus is on the delivery of development in those areas, area action plans are used, and they have been quite effective.

The Bill does not provide that facility, and I suggest that, if we are thinking ahead to getting a better marriage between planning and regeneration, which are activities that for years here have been separated here, this might be one facility that you might want to think about having included in the Bill.

The next point is that the Department is not bound by the recommendations of the independent examination. I put that in, because when I read through the consultation responses, the report on planning reform and the Department's response to that, there was some concern that the Department of the Environment would retain overall control over most things, meaning that whenever a local authority prepared its local development plan and it went to independent examination, the outcome would be controlled by the Department, rather than the local authority simply being bound by the outcome. Some people asked during the consultation whether that dilutes the devolved powers of local authorities.

The next point is about the Department having the power to direct councils to produce joint development plans. Elsewhere, that is largely voluntary. However, in this case, the Bill says that the Department will have the power to direct councils to work together. Many of you will see the benefit of that, particularly in semi-strategic areas and so on. It has all sorts of other implications that the Committee might want to explore. For example, in the case of greater Belfast, a number of local authorities were asked to come together to produce a plan for that area. Is that just a strategy plan? Could each local authority go ahead after that and build up the detail of that plan through the local policies plan? There might also be an issue with who becomes the planning authority: having prepared a plan for a number of different council areas, do we assume that each council will effectively be the planning authority in charge of development management from

thereon in? What way will that work out? You may want to get a better understanding of that.

The last point is about implementation and delivery. The literature and the research over the past number of years about the move from land use planning to spatial planning has, centrally, been about delivery. We can look back at the origins of spatial planning in the UK and even in the rest of Europe. In the UK, that has been driven by the Treasury. Therefore, the move has not been some grand scheme by planners. It has been driven by the Treasury, because it saw planning as potentially the vehicle through which it could deliver infrastructure on the ground and create place at a local level. Delivery is at the heart of the matter, and the concern that I think we all have about the new planning system is whether that delivery system will be centrally attached to the new planning functions at a local level.

Those are some of the key points. We only have five minutes, so we should perhaps take some questions. Is that what you want to do?

The Chairperson:

Do you have anything to add, Suzie?

Ms Cave:

No.

The Chairperson:

As we have only five minutes, we will finish the rest of the business when we move to room 21. Anybody who has a contribution to make can return to room 21 at 2.00 pm, and we will continue.

The meeting was suspended at 1.32 pm.

On resuming —

The Chairperson:

We are restarting, and I thank Ken for his presentation, which I enjoyed; there was a lot in it. I have a few questions to ask, and then I will open the session up to members.

Ken, you mentioned spatial planning, which I want to touch on. The fact that it looks as though the Bill makes provision for the involvement of the community is obviously great, as is the idea of giving local councils more power, because they will then be more accountable. As you know, there has been a lot of criticism through the years of the way that the council system implements planning.

Do you think that a spatial planning element, which you mentioned, is underlying in the Bill? Is that the notion and idea that the Bill proposes? If that is the case, I want you to talk about the implementation and roll-out of that planning. When do you think that will happen? If we go down the route of spatial planning, how long will the process take, including the training and support that local councils will need, and how long will it take to roll out the subordinate and complementary legislation that will need to follow?

Dr Sterrett:

When we were asked to do this work, we looked at the Bill, the background papers, the consultation on planning reform and so on. More specifically, after looking at the Bill, we thought that it was introducing spatial planning into Northern Ireland, given that a good part of it has been lifted from the 2004 English and Welsh legislation, which effectively introduced spatial planning into England and Wales. A lot of research has been done in England and Wales about how effective the introduction of spatial planning has been. For example, was it right to move away from regulatory land use planning to spatial planning? What were its origins? Where did it come from? How effective has it been? What have been the problems? A lot of work has been

done on all that. We might come back to that at some stage, because it may be useful for the Committee to hear about it from someone else.

At heart, introducing that planning was about delivering on the ground. For all its good points in Northern Ireland, planning has not necessarily been about delivery. As a colleague of mine once said, it is about proposing, not disposing. In other words, we propose and set up a development plan, and we then leave it to the market or whoever else is responsible to implement it. Spatial planning is very different. It is about putting together a plan for an area, creating a place, which is also a very important concept, and then setting in place its delivery. The community plan has to be connected to that, because it provides the context. For example, a community plan prepared for a local authority will look at what the broad vision of that area might be in all its dimensions by drawing in health, education, environment, transport and so on. In effect, a good development plan is the spatial expression of that plan. However, there are other parts to that community plan that are not spatially expressed. Therefore, the development plan is the spatial expression, meaning that development planning is knitted into a wider process and into service delivery.

That was at the heart of the new system in England and Wales. There is no doubt that they have had problems with it, but it seems to be working reasonably well. Until now, because of the way that government is structured here, we did not have the opportunity to introduce such planning. However, with the new local government structures and a new set of responsibilities at local government level, there is the potential to introduce such planning in a way that has not been the case in the past.

The Committee will probably hear the Department say that one of the advantages of the system is that community consultation is front-loaded, meaning that people are involved in shaping the plan in the first place. That reduces the amount of objection and problems involved in implementation and in making planning applications for specific sites and so on. The idea is to

get a broad agreement about the vision for the area right at the beginning of the process and then to set in place the set of strategic principles that will guide development thereafter.

Therefore, it is a very different process. The one point of reflective criticism that I heard from across the water is that they did not prepare themselves enough for the new system. I did some work a few years ago in a couple of local authorities in England, and I asked them plainly how the system was working. They said that their greatest difficulty is the culture change, that is, getting people who have traditionally worked with mainstream planning to change the way that they look at the planning system. That is much easier for younger people coming in and so on, as it always is. However, for people who operated the system for years, making that change has been very difficult. Therefore, we know that about that system, and if we are introducing it here, we could perhaps factor that in at this stage.

The Chairperson:

That leads me to a couple of points. On the face of it, front-loading is a good way to go. However, you have heard the talk — I have to throw this in — about the third-party appeals issue. Some people may say that front-loading and back-loading at the same time gives everybody an opportunity, but, that at the end of the day, there is a mechanism to allow somebody to stop the whole process. We all understand that. You talked about a culture change and so forth, but, until the system is properly rolled out and is fit for purpose, there needs to be a mechanism to make sure that the right result, that is, economic benefits, is achieved. We will go through a transition period in which we try to roll out the system through all the necessary training and so forth. You talked about joint plans and councils. That is the way it is and the way it will be for a time. Will you now touch on the third-party appeals issue, without necessarily giving your personal views?

Dr Sterrett:

We have a paper coming up next Tuesday, I think, on third-party appeals.

The Chairperson:

OK; we will leave it at that. You mentioned the front-loading of the system, but we will get to that again.

I have another point to make before I let members in. The whole idea behind area plans, gathering information and spatial planning is to include everybody, including those from the private sector and everywhere else. Is the experience in England that there have been private sector contributions and so forth, and is it working?

Dr Sterrett:

Do you mean the levy?

The Chairperson:

Yes. There needs to be buy-in. Land should be zoned not just for certain purposes; consideration should be given to economic benefits as the system is rolled out. That is what we want to try to get to.

Dr Sterrett:

I cannot remember the name of the levy, but there is a process in England for collecting levies from developers to feed in to their infrastructure budget and so on. I will be honest and say I do not know too much about it, but it would be interesting to ask the Department about that.

An important point is that there could be a new spatial planning system that operates through the new local authorities where there is responsibility for areas such as regeneration and where other sectors buy in to that through the community plan. There used to be a joke doing the rounds about development plans — I hope that I am representing this in the right way in front of the

departmental officials — that they were where you put the houses, but that was about all. In a sense, those plans were very narrowly defined. However, if you were employing a spatial planning system to develop, say, Newcastle, you would look at the place in the round. You would ask what is distinctive about the place. What does it need? How well structured is it? What about its educational and health needs?

Good examples of local development frameworks across the water are those where the area plans have factored in and addressed issues such as obesity through a network of pedestrian paths. Therefore, it is about joining all those things together in a way that we have not done previously.

A few years back, I did some work for the Welsh Assembly Government, which introduced spatial planning as a new concept in their national spatial plan. To launch the plan, the Minister at the time purposely brought in the Ministers responsible for education and health and another Minister to demonstrate to the public that what they were doing was an entirely new way of looking at overall planning in Wales. In future, we want to look at the spatial implications of a whole range of policies in a way that we do not at present. Therefore, it is about drawing all that together. However, I know that that will be difficult, because the Department has limited resources to take it forward. Nevertheless, it is potentially a very exciting way of taking planning forward.

The Chairperson:

It is just a pity that you talked about Newcastle; that was a bad example.

I am glad that you mentioned the resource element. That issue obviously came up this morning when members discussed the budget and the transfer of this whole process. A lot of ongoing work on area plans is ongoing. I know that you have worked on that, and, certainly, a lot of that work can be used. There is no point in saying that we need to totally start again. That is something that we need to look at as part of the resource issue.

Dr Sterrett:

Again, I think that the work that has been done on service delivery, for example, in England and Wales shows that some savings have been made there. However, I am saying that without having the figures in front of me. Nevertheless, it would appear that the new model is delivering a better product, as it were, and that there have certainly been some savings for the public and private sectors.

Mr Savage:

It was interesting to hear you talk about planning in Wales. I sit on Craigavon Borough Council, and the village beside mine has taken on a new image altogether. Anybody who came back to it after being away for 10 years would not recognise it. A big development will be taking place. However, the big issue is that the schools have not moved with any of the developments, and that is a major problem. I know of people who live not 20 yds away from a school but cannot get their kids into that school. One area has not developed with the other. Those major issues have to be addressed.

Change is very important, and I welcome it. I spend half my time working with planners, and I must say that I appreciate the work that they do, and I have a good working relationship with them. I cannot see who is sitting behind me, but I am sure that I know some of them. Over the years, this has gone on, but change has to come about. Since the boom time, massive houses have been left derelict right around the country, because people cannot afford to take them to the next stage. However, I mean no disrespect to anybody.

You said that new planners would have different ideas about how to do things. I totally agree with that. However, those changes need to come about, because it is all very nice having big houses, but, to me, they are just big square concrete slabs. There is nothing imaginative about them. It is all very well if people built them for purpose in the boom time, but that has not happened.

A person who wants to build — I am talking about a first-time buyer — has a job getting on to that ladder and getting permission for a house. Planning Policy Statement (PPS) 21 is a very useful paper, but a lot of our planners have to read into it a wee bit more. It was good, but there needs to be changes. I am not talking about massive changes and letting things go the way they used to. To give an example, a small farm was handed down to a chap, and, all of a sudden, there was a bit of a feud between the family and there were legal matters to deal with. The neighbour had to get the drains cleaned out. As the fella was going in with the digger, the side slipped out of the old house. The digger man would not leave and the insurance would not cover him until he demolished the whole thing, because there was a housing development just up the road a bit. When the fella came to get planning permission for a replacement, the planner said that there was nothing to replace. I can see their point of view and his, but he is left in limbo now. Therefore, there are issues to be dealt with. I am glad to see a change coming about, but I do not want to see change just for the sake of it; it has to be change that will be sustainable. The days have passed when an architect simply threw a plan in to the planners in the hope that it would be approved. He has to do something more about it. I welcome the change. I hope that it comes about, and I will be watching very carefully.

The Chairperson:

Can you see how we do not get parochial in this Committee? Mr Kinahan, do you want to comment?

Mr Kinahan:

Yes. I have one or two comments to make.

The Chairperson:

I will let you in, but I have a point to make before we go off the matter of spatial planning. At the minute, we have the regional development strategy, area plans and a suite of PPSs. Mr Savage reminded me about this when he mentioned PPS 21. That is the system that is in place, and that is how it works at the minute. As regards the connection with the spatial plan and how all that is

complemented, do we need to move away from part of the approach? If we go down the line of spatial planning, could you touch on what needs to be amended to roll out the legislation?

Dr Sterrett:

In England and Wales, spatial planning is manifested at local authority level with the local development framework (LDF). That is a loose-leaf approach that has a number of components, some of which are compulsory, while others are optional. The compulsory components are the core strategy and the adopted proposals map, which is the equivalent of our local policies plan. There are also the area action plans, which I talked about earlier and which are very important.

There is also a facility at local authority level to produce other supplementary material, some of which does not have to go through that process. In addition, there is all the supportive policy and direction that comes from central government. There is a proposal to review all that. The Department will talk today about how it intends to put in place all the policy and guidance that is needed to support the Bill. That is key, and it is important that that comes as soon as the resources will allow.

Where the sequencing is concerned, one would almost want to see that material before the legislation. That is not the way, but it gives the broader explanation of what people are trying to do, and the Bill will put that on statute. We hope to see that soon.

All that supportive policy and guidance would be at central government level, presumably largely with the Department of the Environment. However, I assume that the Department for Regional Development will retain its strategic regional responsibility; in fact, it is legally obliged to. Therefore, that is also in place. We need to get the balance right between the two.

The Chairperson:

You do not have to answer today, but perhaps you could look at possible amendments to the Bill to ensure that, if we go down the line of spatial planning, we know how to make amendments. Perhaps you could come back to us on that.

Dr Sterrett:

We could certainly do that. I am sure that the Department is quite open-minded about this.

The Chairperson:

It will get an opportunity to speak on that later. However, I ask you to bear my point in mind.

Mr Kinahan:

I will be as quick as I can. I am intrigued. Two or three times you mentioned the English and Welsh model, on which ours is based. I would love to know more about the lessons that we have learned about how they put their system in place. We need to get those types of amendments into the Bill so that it will work at another stage.

You also said that training is a key element. We are rushing the Bill through. Although we will scrutinise it as thoroughly as we can, councils will need to know how much time they need to get everyone on board. Will they need a year, six months or whatever?

My final query is about how England and Wales dealt with the definition of “community”. In one way that is easy, because there are community groups, but there are all sorts of other elements as well. How will you get that broad message out to everyone?

Mr B Wilson:

We have a situation where the culture of individual planning applications will change. How will an individual planning application be different? For example, if someone wants to build 10 town houses, what difference will the plans make between how we look at that now and how we will look at it in a new culture?

Dr Sterrett:

That is a very interesting question. Sometimes it is good to ask how changes will affect matters on the ground. Most people in Northern Ireland understand planning to be planning applications for a site, be it an extension to their house or some new development down the road. Thankfully, the Bill will deal with that in a much broader and more strategic way. However, when it comes to a development for a set of new town houses on a brownfield site in an urban area, if the process is working well, a local development plan would be in place. That would include the strategy plan and the local policies plan. If that came through a process that bought in to the whole community plan, there would be, if you like, public endorsement for shaping that place.

In your case, the example would be Bangor. We would need to identify the key characteristics of Bangor, what we want it to look like, how we want it to function and what sort of place we want it to be. If that is sorted out in strategic terms and manifested through certain proposals, and if certain policies are put in place, when it comes to dealing with that sort of development on the ground, it could be said that that is what the community wants for that place. Therefore, the decision on a particular site would be made on the criteria that come out of that. That means that there is a link with good, strong community involvement in shaping a place through a process that ends up being tested at a very local site-specific level whereas, at the moment, everyone is detached from the policy. Somebody makes a policy here, somebody makes a policy there, and they are interpreted in different ways. The process could be more community owned. It is owned by the local authority anyway, but it is also owned by the local community. It was asked what the local community is, and that is a good point. It is about not just a series of community groups, but a range of communities, one of which is the business community.

Mr B Wilson:

The planners tell us all the time that every case should be considered on its own merits.

Dr Sterrett:

That is the difference, if you do not mind me saying.

Mr B Wilson:

We now have a situation where four new change-of-use planning applications have been made for coffee houses on Main Street, even though we already have a dozen. Each application is considered on its merits. However, if we had an overall strategy, we could say that we do not want any more coffee shops.

Dr Sterrett:

Absolutely; that is the difference. One point that is often made about the difference between land use planning and spatial planning is that land use planning is really just a collection of individual decisions about a place; it does not think about the place itself. The old mantra of planning, which I used to be part of, is that each decision about a particular site should be made on its merits. Under the new system, planners do not do that, because they are looking at the place. They ask how that fits with their vision for the place in question. If that vision is about Main Street in Bangor not coming down with coffee shops, they could refuse an application on those grounds.

The Chairperson:

Are you finished, Mr Wilson?

Mr B Wilson:

Yes.

The Chairperson:

Mr Clarke, you are next. Let us try to keep South Down and Newcastle out of this.

Mr W Clarke:

I could think of worse things than coffee shops.

First, I thank you and your team for your excellent paper. Most of the issues have been covered; however, my points are about community participation and getting that kind of agreement. A lot of the time there is the situation where retired people, who are well educated, able and vocal about what they would like to see in a community plan, perhaps do not want to see any sort of change and do not take into account the needs of young people, such as leisure facilities. How would you ensure that everybody had an equal and balanced input and that that was valued? Who would decide its value?

Dr Sterrett:

That is a good point, Mr Clarke. We actually have a paper coming up next Tuesday that is almost entirely devoted to that issue. It is one of the central themes in planning literature. It is about how to get consensus on key decisions in public consultation. A theory known as collaborative planning is about getting everybody together in the one room until some consensus eventually emerges. That sounds great, but it does not happen that often in practice, because you cannot get everybody to agree to the same thing. However, you can certainly give everybody a sense of being involved, and people then have to compromise to some degree. Not to bore you with academic literature, but that is known as agonistic planning, because of the agony that is involved.

At the end of the day, the process is about trying to draw groups in to plan-making and about making sure that those groups that are normally excluded from such situations, in fact, included.

You pointed out that there are some very articulate groups that turn up at everything and get their views heard, but there are other groups that do not have the facility. Therefore, it is about making sure that all those groups are involved, that their views are heard and the relevance of those ideas is seen.

Quite often, in some of the work that we have done in the past, we have been able to achieve a consensus. If we want to move the project forward, at some stage, we have to say that everyone's views have been heard and that the matter now rests with the local authority. It is no longer with the DOE, the planners or anyone else, so that is the way that we intend to take it forward. That might compromise some people's views a bit, but, at the very least, something would have been reached that can be broadly signed up to. That is important.

Mr McGlone:

Thank you for your work and research. I came in at the tail end of your discourse. You were talking about including people in the planning process. One thing that I noted is absent from the paper is the fact that exclusivity kicks in as a consequence of the decision-making process in planning. I did not see any reference to the importance of that in the research paper, particularly in the context of the North and of where we have come from with planning, housing and local government. Do you have any views on that?

Dr Sterrett:

What do you mean by "exclusivity"?

Mr McGlone:

I mean discrimination.

I will explain where we are coming from. We have a history of housing powers being stripped

from local government, and given our history and where we come from, that was done for good and valid reasons. I thought that that would have been at least touched on in the paper.

Dr Sterrett:

A paper that we will discuss on Tuesday will deal with that. Is that right, Suzie?

Ms Cave:

Yes. It deals with community involvement.

Dr Sterrett:

It deals with what you are talking about.

Mr McGlone:

That is good.

Dr Sterrett:

We tried to separate the issues so that each paper would have a number of themes. That one comes up on Tuesday.

Mr McGlone:

Will you expand on the concepts of spatial planning and development planning that you discussed? How do you see that in comparison with what the Department proposes?

Dr Sterrett:

I think that that is what the Department is proposing, but we will hear in due course. I tried to

distinguish between what we call land use planning and spatial planning, which is what now underpins the Bill and, hopefully, the policy and guidance that is to follow.

Traditionally, Northern Ireland and, indeed, everywhere else had land use planning, which is centrally about the regulation of land. It has a narrow focus, in that it is about the orderly development of land. Arguably, the move to spatial planning kicked off with the European spatial development perspective in 1999, which was when the European Union decided that it needed to look at the delivery of some of its programmes in a different and more integrated spatial way. In turn, that led the EU to look at how planning could be developed around the same principles. Therefore, spatial planning, as such, was introduced to England and Wales in the Planning and Compulsory Purchase Act 2004, from which, as the Committee will see, a good part of the Bill before us is lifted. In effect, that Act introduced spatial planning to England and Wales. We assume that, because that legislation is being used here, spatial planning will be introduced here.

Where do we start with spatial planning? Books have been written on the subject —

Mr McGlone:

I know.

Dr Sterrett:

Let us narrow it down to a few key points, one of which is that it is centrally about delivery. In the past, planning has been about simply setting out a plan and leaving it to the market or whoever to deliver and then regulating it through development control. Spatial planning starts with what we want to deliver on the ground. We want to bring the service providers together, and we want the private sector brought in. We want that to be central to the planning process and to the development plan process. Therefore, delivery is right at the heart of it.

The second difference between spatial planning and land use planning is that spatial planning is about creating place. I made the point earlier that if we take any given place, for example, some town or area of Northern Ireland, and say that we are preparing a plan for it, we need to ask what sort of vision we have for it and what sort of place we want it to be. Planning is then used to deliver that, instead of having the situation that Mr Wilson described, where individual decisions are made on the merits of individual applications for individual sites that do not make up a collective good place, because we have not started with objectives for a place.

The Chairperson:

You talked about the independent examination. Will you tell me a wee bit more about that?

Dr Sterrett:

The Bill proposes that the local development plans go to independent examination. That is more or less the case now. The recommendations from that independent examination would then go to the Department. Therefore, the Department would decide whether to accept those recommendations before it directs the council. There were some objections to that in the consultation. People thought that a process that involved the Department meant that there was already guidance for local councils on what they could do. If the local council were to meet its requirements and a plan were to go to independent examination, people were asking why it should go back through the Department rather than the council. I raised that matter because it was brought up in the public consultation. However, that may be something about nothing.

The Chairperson:

I was listening; I just wanted clarification. Thanks very much. There are no other questions. The Committee looks forward to working with you over the coming weeks.

For our final evidence session today, I welcome Maggie Smith, Irene Kennedy, Angus Kerr and Catherine McKinney from the Department of the Environment. They will brief us on Parts 1

and 2 of the Planning Bill.

It is a big subject, but we will try to stick to Parts 1 and 2 if we can. We may veer off the point now and again, but we do not need to worry about that. I will hand over to Maggie to make a presentation, after which I will open the session up for questions. I should point out that we will not be able to make any decisions until we are quorate.

Ms Maggie Smith (Department of the Environment):

Thank you very much for inviting us today to give a presentation. As you said, with me are Irene Kennedy, who, in a few minutes, will take the Committee through Parts 1 and 2 of the Planning Bill. Angus Kerr and Catherine McKinney are also here. Before I pass over to Irene, it is probably worth reminding ourselves that the Bill has come through a long process and that the Committee has had a lot of involvement in that. Therefore, this is the final stage of the development of the framework, and a lot of research and consultation has gone into developing that policy framework. However, there is more to come in secondary legislation, and I think that the Committee already has the memorandum of delegated powers, which sets out all the secondary legislation that we will bring forward. The Committee also has the timetable within which we will consult on that secondary legislation. We can refer to secondary legislation, if you need clarification on any points on our way through the discussion.

Ms Irene Kennedy (Department of the Environment):

We have talked about a lot of the issues already, so I will briefly take members through Parts 1 and 2 of the Bill.

Part 1 maintains the Department's role in formulating and co-ordinating planning policy. Clause 1 remains mostly unchanged from the Planning (Northern Ireland) Order 1991 and includes the provision that any of the Department's policies must be:

“in general conformity with the regional development strategy”.

Planning policy statements, together with the regional development strategy, will continue to provide the robust planning framework within which the new councils will be able to prepare their local development plans and manage development.

Clause 1(2)(b) will carry forward the duty in the 1991 Order for the Department to contribute to the achievement of sustainable development. That will ensure that the Department fulfils its policy formulation and co-ordinating role with the objective of contributing to the achievement of sustainable development. The Department considers it necessary to retain its ability to undertake surveys or studies to gather evidence on any planning issue. Members should note that the matters that the Department may survey at clause 1(4) have been expanded to include social and environmental characteristics, as well as physical and economic ones. Part 1 will also re-enact a duty on the Department to prepare a statement of community involvement that sets out the Department’s policy for involving the community in the planning process. That duty concerns Part 3 of the Bill, and we will, of course, come to the detail of that later in the scrutiny process.

Part 2 will introduce a new local development plan system. District councils will prepare local development plans for their council areas. Those plans will replace the current Department of the Environment development plans. I should say at the outset that the Minister is confident that councils will carry out all their development plan duties. However, the Bill needs to cater for the unlikely event that a council is unable to fulfil its responsibilities. As a safeguard, it therefore provides for the Department to intervene at various points in the development plan process, should it need to. However, we will come back to that later.

As we discussed, local development plans will comprise two documents: a plan strategy and a local policies plan. Those must be prepared, examined and adopted separately. Preparation of both must take account of the regional development strategy, of policy or advice containing guidance issued by the Department, and of any other matter that the Department may prescribe in

subordinate legislation. The plan strategy will be prepared and adopted first. It sets the council's strategic vision for the future of the area, along with strategic objectives and policies and a strategy for growth. The local policies plan will then be prepared. It has to be consistent with the plan strategy, and it will set out the details. It will incorporate the detailed site-specific plan policies and the proposals for various topic areas, such as housing, commercial or industrial growth, as well as probit maps to show where the various activities may be developed.

That approach has three key benefits. First, it allows the plan strategy document to be adopted quickly, that is, within approximately two years. That will ensure that there is a very early strategic direction in place for an area, and it will provide a level of certainty on which to base development decisions. Secondly, the adopted plan strategy will provide an agreed framework within which the local policies plan can be prepared. That will make the preparation of the local policies plan document easier and faster. Thirdly, the approach will ensure that representations are more focused by being submitted and examined at the appropriate stage in the plan process.

Under clause 3, councils will be required to keep under review issues that may affect development and planning in district council areas. Those issues include: key physical, economic, social and environmental characteristics of the district; how land is used; population distribution; and communications and transport. Those are matters that will inform the production of the local development plan.

Engagement with the public is integral to the development plan process. Before the district council commences public consultation on its plan strategy, it must set out in a statement of community involvement when and how it will involve the community in the plan process. That allows community groups, the voluntary sector, businesses and the public to understand how they can contribute to the formulation of the plan. The council will also have to prepare a timetable setting out the key milestones, ranging from the preparation to adoption of its local development plan, as well as a time for when each will be achieved. The timetable will assist in programme

management and will help to ensure faster plan production. It will help the public, stakeholders and consultees to plan their involvement with the process.

The council must attempt to agree the statement of community involvement and the timetable with the Department. As a safeguard in the event of disagreement, the Department can specify the terms of either document. Once agreed, the statement of community involvement and the timetable together set the framework for the local development plan preparation.

Clause 5 will require the council and others involved in the development plan process to exercise those functions with the objective of contributing to the achievement of sustainable development. Clauses 8 and 9 will require a sustainability appraisal to assess the environmental, social and economic effects of development plans. That will run throughout the plan preparation process.

Clause 10 will require the council to submit the plan document to the Department when it is complete. The Department must then arrange for an independent examination to be carried out by the Planning Appeals Commission (PAC) or by independent persons appointed by the Department. The flexibility to appoint independent external examiners will be invaluable should a number of plans be submitted for independent examination at the same time.

The examination process will test the soundness of the plan. The criteria for soundness will relate to how the development plan document has been produced; the alignment of the plan document with departmental plans, policies and guidance; and the coherence, consistency and effectiveness of the plan document. The assumption will be that a plan document is sound unless it is shown to be otherwise as a result of evidence considered through the independent examination. Those who make representations to the examination will need to demonstrate how the plan does not meet the criteria for soundness and should suggest what needs to be done to

make it sound.

Any person who makes representations seeking to change a development plan document must, if they so request, be given the opportunity to appear before, and be heard by, the person carrying out the examination. The independent examiner will submit their report to the Department, which will then issue a direction to the council to adopt the development plan document.

At present in Northern Ireland, there is nothing in legislation that requires the monitoring and review of development plans. Better monitoring and regular reviews of local plans will enable district councils to keep plans up to date by readily reflecting and adapting to changing circumstances. It will serve a useful purpose in improving the transparency of the planning process and will help keep the council, the community and business groups informed of development plan issues facing the area. Therefore, clauses 13 and 21 will ensure that local development plans will be reviewed at five-yearly intervals and will be monitored annually. District councils will be required to report annually to the Department on the degree to which the objectives in their plans are being achieved. The monitoring and review of plans are seen as essential elements in establishing how plans are being implemented and whether any changes are required.

Clause 17 will introduce powers for councils to work jointly in preparing local development plans if they so wish. That means that two adjacent councils can combine resources and prepare either a plan strategy or both plan documents jointly.

Clause 18 will give the Department the power to direct two or more councils to prepare a joint plan. That power is required in the event that councils may be so closely linked functionally and spatially that it will be necessary for them to work together. The Department will consult the affected district councils on such a course of action before issuing the direction. As was

mentioned earlier, the Department also proposes powers of intervention, which are an important safeguard as part of the new local development plan regime. Similar to our counterparts in other jurisdictions, ensuring that central government has an appropriate oversight role means that policies and objectives that the Executive and the Department set for the region as a whole will be effectively delivered at a local level.

Clause 15 will allow the Department, if it thinks that a plan, strategy or local policies plan is unsatisfactory, to direct a district council to modify the plan, strategy or local policies plan at any time before it is adopted. The district council must comply with the direction.

The default powers in clause 16 will also allow the Department to intervene by taking over the preparation or revision of a district council's strategy or local policies plan if it thinks that the district council is failing to properly carry out those functions. The district council must reimburse the Department for any expenditure that it incurs in exercising those powers.

Overall, the Bill will deliver a faster development plan system with more effective public engagement. Councils will be able to use the new local development plans to provide a clear and realistic vision of how places should change and what they will be like in the future. The plan will support that vision by clearly indicating where development, including regeneration, should take place and what form it should take. In addition, it will be possible to link the development plan with the council's new community planning responsibilities.

That completes our presentation, which is aimed at familiarising members with the key aspects of Part 1 and Part 2 of the Planning Bill. We welcome any questions that members may have.

The Chairperson:

Thank you, Irene, for your presentation. That is the first 22 clauses out of the road. Before we lose our quorum, I have to ask a question. Members have been provided with a paper on the delegated powers of the Bill. Are members are content to forward that paper to the Examiner of Statutory Rules for comment?

Members indicated assent.

The Chairperson:

Are members content for the research paper to be made publicly available on the Assembly website?

Members indicated assent.

The Chairperson:

You heard the previous presentation, which was about spatial planning. The key element of that is land use, which is what we are looking at. Would you like to comment on that? Planning seems to be going down the route of spatial planning. When the Bill rolls out, there will be subsequent subordinate legislation to deal with most of that. Do you have any comments to make on spatial planning?

Mr Angus Kerr (Department of the Environment):

The spatial planning approach is the direction in which the Department wants to move. We feel that it is very much facilitated in any case by the transfer of those and other functions, such as regeneration and community planning, enabling the achievement of the broader spatial planning approach that Ken Sterrett outlined. Subordinate legislation and the ongoing development of

policy and guidance is the direction in which we will encourage councils to move so that they have an ability at local level to shape how places develop. They can also have the vision for how those places move forward, and they can then incorporate that into the plan to allow it to become a delivery document that incorporates the wider elements that community planning has enabled councils to get involved in.

The Chairperson:

Thanks very much for that clarification. That is the right way to go. The valid question was asked earlier about the definition of “community” and who is included in it. It is important that that definition be totally inclusive. I mentioned the private sector and so forth when I gave the example of contribution. Overall, however, everyone should be included, and I welcome that.

There are a couple of elements to consider. For example, training is a key element. Hopefully, we will get through this Bill in the time frame that is available in this mandate. We need to look seriously at the transition period, the training period and the roll-out of all that. It is all right to say that we have this wonderful document, but, as we all know, there is the question of its practical implementation to consider. When you next come back, the Committee will perhaps need to see something on how that will roll out. I know that that is resource bound as well, but it is a key element of the process.

I am trying not to stray into Part 3 or Part 4. If we propose to roll out the implementation, for example, from the summer, and assuming that we get the legislation through, how long will it take to get the subordinate legislation through? Do you have a time frame in mind for all that?

Ms Smith:

We do. We are working on the preparation of the subordinate legislation in parallel. The Committee has the delegated powers memorandum, which sets out all the subordinate legislation

that will flow from the Bill. We are preparing that in parallel with a view to going out to consultation as soon as the Bill is passed. Some of it is far advanced, and, in fact, we have sent you some excerpts of the secondary legislation for your next meeting. Other pieces are also in preparation.

The Chairperson:

Will you clarify one point? I am trying to get my head around the training approach. Is there a suggestion that, apart from whatever training is required for individual members, there will be an adviser to councils? Is that the road that we are going down? Has anything been set in train already, or do you have any ideas on where to go after that?

Ms Smith:

We have. In his statement of 30 November 2010, the Minister talked about the pilot projects that he intends to involve councils in. That will be a major part of the preparation and capacity-building elements. Those projects will begin early in the new financial year, and they will be rolled out to all councils by April 2012. In addition, the Northern Ireland Local Government Association (NILGA) and the Royal Town Planning Institute (RTPI) are talking about more specific training.

The Chairperson:

Thank you for reminding me about the pilot programmes. I want to move to the question of independent examination. We will be handing down powers, and we want councils to look seriously at what they want to develop in their own areas. However, there will be independent examination of that. It then comes back to the Department. It is all very well to hand down powers and tell the councils to go ahead and develop whatever they want and bring back strategies and plans to the Department, but the next thing that the Department may do is look at them and say that they are not right and that they have to be tweaked. It is a mechanism to check those strategies and plans. Do you see where I am going with this? It is OK to say that the

process is independent, but that independence leads back to the Department itself.

Mr Kerr:

It is, I suppose, a check and balance or a safeguard to ensure that the direction set at regional level by the Department will be carried through to where it can be implemented at local level. The examination itself and the report will be independent of the Department. In practice, given the way that such things operate, it is unlikely that the Department would get involved in anything at local level in a local development plan. The concern is really with the alignment with central government direction on policies.

The Chairperson:

It could go back to the PAC for examination. However, you have heard about some of the problems that have come up with that issue over the past 12 to 18 months. The independence of that body has moved from the DOE to the Office of the First Minister and deputy First Minister. The issue is about the independence of those challenges. If, for example, it goes to an appeal, the policy and guidelines will simply be followed. When we are proposing amendments, we will need to look seriously at whether that is the right way to go and at whether the process is independent, regardless of whether the PAC is involved, because that is open to question. I will come back to that point again.

I am mindful that Mr Savage has to leave. Mr Savage, would you like to ask a question before you go?

Mr Savage:

I have one question to ask. Do you hope to get the Bill through in the lifetime of this Assembly?

Ms Smith:

The Bill will go through the Assembly in this mandate.

Mr Savage:

That is fine. I am sorry that I have to leave.

The Chairperson:

I do not think that we have any more decisions to make today.

Mr McGlone:

I have a couple of questions to ask. The political context, through the local government review

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The Chairperson:

Excuse me for one minute. We are now inquorate, so we have to stop recording. The hearing will now be informal.