Northern Ireland
Assembly

COMMITTEE FOR THE ENVIRONMENT

OFFICIAL REPORT (Hansard)

Planning Bill: Stakeholder Event

27 January 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Danny Kinahan
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Mr John Quinn	)	Arc21
Mr Terry Bunce	)	Ards Airport
Ms Anne Doherty	)	Belfast City Council
Ms Joan Devlin Ms Jonna Monaghan	))	Belfast Healthy Cities
Mr Colm Bradley	)	Community Places
Mr Lewis Porter	)	Craigavon Borough Council
Mr Patrick O'Neill	)	Development Planning Partnership
Ms Sharon O'Connor	)	Down District Council
Mr Roger Pollen	)	Federation of Small Businesses

Mr James Orr	)	Friends of the Earth
Mr Kevin McShane	)	Institution of Civil Engineers
Mr Ian Wilson	)	Lisburn City Council
Ms Carolyn Wilson	)	Mobile Operators Association
Mr David de Casseres	)	Northern Ireland Electricity
Ms Catherine Blease Ms Esther Christie	))	Northern Ireland Housing Executive
Ms Alison McCullagh	)	Omagh District Council
Ms Claire Ferry	)	Royal Society for the Protection of Birds
Mr Brian Sore	)	Royal Town Planning Institute
Mr Patrick Cregg	)	Woodland Trust

The Chairperson (Mr Boylan):

I declare the meeting open to the public. I remind all members and those in the Public Gallery to switch off their mobile phones. Even on silent, they interfere with the recording system. We have received apologies from John Dallat, Thomas Buchanan, George Savage and Willie Clarke.

Today's evidence in the Long Gallery will focus on four areas of the Planning Bill that have been consistently highlighted in public responses as key areas of concern: the independent examination of development plans and appeals, including the proposed balance of control between the Department and local authorities; developer contributions to community infrastructure funding; pre-application community consultation; and third party appeals.

I thank you all for coming to Parliament Buildings to participate in the Committee's evidence event. The Planning Bill is a large Bill that covers a range of areas, and the Committee has little time in which to conduct its scrutiny. The Committee is trying to condense as much evidence as it can into the time available. We have now received 61 written submissions from a range of individuals and organisations keen to make us aware of their thoughts on the Bill. I take this opportunity to thank you for your written submissions and your attendance today.

Yesterday and this morning, the Committee took evidence from 11 organisations that it felt represented the statutory sector, local authorities, social and community needs, technical aspects of planning, and business and industry. Today we will focus on four areas of the Bill that have been raised consistently across this spectrum of interested parties.

The Bill was introduced in the Assembly on 6 December 2010 and passed its Second Stage on 14 December. Committee Stage began on 15 December, just before the Assembly went into recess, and, after a two-week extension was agreed this morning, will now conclude on 1 March, when the Committee will report to the Assembly. It is expected that the remaining plenary stages of the legislative process will take place during March.

Members of staff have microphones. If you wish to speak, please signal to me or to Committee staff. A paper setting out the order in which evidence will be taken has been provided to everyone. There are four main areas for discussion, and I will be strict in confining people to each discussion area because, as frustrating as it may be, we simply do not have the time to run through all of the issues. On that point, we had 61 written submissions. I do not think there is anything to hear that that we have not already heard. The Committee will hold other evidence sessions, but today we want to stick to those four main areas.

I will outline the area for discussion first, then call on the organisations listed against each topic to present their perspective. I will call two representatives, each of whom will have minutes. I will then throw open the discussion to the floor. At the end of all the sessions, we will get departmental officials to respond. Anyone else who wishes to comment should start by stating their name and organisation for the record. There will then be an opportunity for Committee members to ask questions. I will then move onto the next clause as listed. Once all the areas have been dealt with, I will invite departmental officials to make their points.

Without further ado, the first discussion is on the independent examination of development plans and appeals, including the proposed balance of power between the Department and local authorities. Throughout these sessions, I encourage people to indicate how they would like to see the Bill amended to address their concerns. There are two speakers with five minutes each on the

first topic. Colm Bradley from Community Places will be followed by John Quinn of Arc21, after which I will open up the discussion for brief points and suggestions from the floor.

Mr Colm Bradley (Community Places):

Thank you, Chairperson, and thanks to the Committee for organising this event. On the general principle of the balance between the Department and local government, our view is that, wherever possible, if we are handing planning over to local government, decisions should be taken by local government. The Department's primary role should be to ensure consistency across all local government areas, so that regardless of where an applicant or objector lives, or where a community is concerned about an application or a development plan, they know that they will be treated the same as elsewhere. In other words, it should not be a postcode lottery. That should be the Department's primary role — to ensure consistency and good governance across all local government areas. If we are devolving planning, let us devolve decision-making to local government.

On the issue of who should carry out independent examination and the Department's role in it, I should first say that we welcome the move towards independent examinations and the introduction of a soundness test. Although it has yet to be fleshed out in more detail, we like the sound of the soundness test.

The Planning Appeals Commission (PAC) is appointed not by the Department but by the Office of the First Minister and deputy First Minister (OFMDFM). It is so appointed in order to ensure its independence and to ensure that the public will trust it as an independent professional organisation. We feel that that is important to public confidence in the planning system — the whole planning system, the whole process — and we should cherish and protect that independence. Some of the proposals in the Bill suggest that that independence may be undermined in the future. For example, it is proposed that the Department may appoint an independent examiner other than the PAC to examine a development plan. I am sure that, on occasions, having another resource will be helpful; however, we do not feel that that person or persons should be appointed by the Department. They should be appointed by OFMDFM, which appoints the PAC.

The final issue with the independent examination of development plans is the role of the Department. Should it, as proposed in the Bill, have the power to adopt or not adopt a PAC report? If the Department retains that power, that will undermine the independence of the system. Regardless of the soundness of the Department's decisions on those occasions, the public may well feel that it is ultimately the Minister who is deciding what happens with a development plan. The whole system will not have the degree of public confidence that we all hope it will have. The PAC must be an independent body whose only considerations when it looks at a development plan are planning policies. Its independence is extremely important to society and for building public confidence in planning. Let us retain that confidence as far as we can.

There are PAC resource issues. There are also issues associated with its procedures, timescales and delays. Those are operational issues that need and ought to be sorted out, but they are not issues for the Planning Bill at this stage.

Finally, on the issue of appeals, we would all like to think that decisions on planning applications would be taken correctly the first time and be right. Unfortunately, they are not. As with many other decision-making systems, an appeals system is sometimes required. If we improve our systems and get our decisions right the first time there will be less need to use an appeals system. As the success rate of an appeals system falls, people use it less. So, let us get the decisions right the first time and we will then have less use of an appeals system. However, we do need an independent appeals system to build in confidence and ensure consistency across the region.

Mr John Quinn (Arc21):

I cannot disagree with anything that Mr Bradley said. However, I would like to turn to the issue of the balance of power. Arc21 is an umbrella group representing 11 councils in the east of Northern Ireland tasked with delivering mission-critical waste infrastructure. Planning is pivotal to the successful outcome of the programme. I suspect that Arc21's views will not diverge much from the general local government view. Arc21 and local government generally perceive a reticence by the Department to release the shackles and allow local government truly to take decisions in terms of devolving planning functions.

I quote from the Hansard report of the Assembly debate on the Second Stage of the Planning Bill on 14 December 2010, when the Minister said the transformation was fundamental:

"to the development of local accountable democracy. It puts power … in the hands of locally elected representatives accountable to the people." — *[Official Report, Vol 59, No 2, p112, col 2].*

Those are honourable words, but they are not evidenced in the Bill with regard to the balance of power. We are not sure of the motivation for that, but it certainly does not seem to militate in favour of giving power and accountability to local councillors and the people who elected them.

I do not want to be specific, but the whole Bill is peppered with issues such as retention of powers of direction, scrutiny, performance appraisal, monitoring and oversight. Therefore, it appears to local government that a lot of the power is being retained. While the operational function may be devolved, perhaps a lot of the decision-making is being retained in the centre.

Liabilities and financial implications, however, appear to be very much vested now in local government. There is not enough clarity on those financial and operational implications. Perhaps that goes back to the absence of the level of engagement that we would have liked to see in the run-up to implementation with regard to resource implications, financial implications and the amount of compensation that has been paid or will be paid under the future regime. There has been little clarity in respect of the status quo or, indeed, of the implications of the current financial and human resources situation in Planning Service. I want to make that general point.

In terms of what we might want to see, one proposal is that there should be some sort of appeal mechanism on foot of decisions or interventions by the Department. Recourse by local government against decisions or direction from the Department is absent from the Bill. We would like there to be some embodiment of a process by which to appeal those decisions.

Assuming that there is nervousness in the Department about devolving the powers to local government — perhaps understandably, given that there is no recent history of local government's performance in that context — it might be appropriate to consider some sort of a review mechanism within the process, so that those shackles could be loosened progressively over time as capacity is built up in local government. Some sort of review within a timescale of, say, two, three or five years — or, indeed, a periodical review of the process — might be something that the Committee might find appropriate.

I want to deal with the issue of independent examination. We welcome the move from the more litigious public inquiry process to the more informal examination in public. Hopefully, some of the other measures that are proposed will make the process less adversarial.

However, again, in the powers that are proposed to be retained by the Department that relate to the appointment of commissioners, it does not have that power. There is evidence that it seeks to retain the power to appoint commissioners in the new regime, which almost supersedes the functional remit of the PAC. I do not see the rationale for that. I do not even see the justification for it vis-à-vis the consultation process. Certainly, there was no massive head of steam to give the Department those powers in the responses to the consultation. Therefore, we cannot understand the motivation for it. There are other ways to do this that retain the PAC's independence in the process — by giving it that remit. If there were resource issues, the PAC could appoint outsourced commissioners, or OFMDFM could do the same. I cannot see any particular reason why the Department needs to retain that power.

Under clause 29, which deals with call-in provisions, the Department seeks similar powers to appoint beyond the PAC for a public inquiry or hearing. That could create a situation in which the Department itself would be conflicted in that process, having appointed an independent commissioner to oversee a hearing or public inquiry while still having the ultimate remit in the decision-making process. We cannot see the rationale behind that. We believe that there are other ways to deal with that if there is nervousness about resourcing implications for the PAC.

The Chairperson:

OK, John. Thank you. Luckily, Colm finished a little early and we were able to give you an extra minute. I propose to open the meeting up to the floor for 20 minutes. We have talked about development plans and independent examination in general terms, and I will allow sharp and short contributions on that issue for 20 minutes. Following that, I will open it up to Committee members to ask questions.

Ms Anne Doherty (Belfast City Council):

I want to back up some of the comments about power and accountability in local councils. There

are a number of areas in the Bill that duplicate functions between the councils and the Department: joined-up planning agreements; the designation of conservation areas; the making of tree preservation orders; and the issuing of enforcement notices. The council considers that duplication to be unnecessary and a repetition of responsibility and resources that has the potential to cause unnecessary confusion in the planning process.

Belfast City Council also feels that the Department has retained too many powers of oversight of and intervention in the planning process. Again, that will undermine the local accountability of councils and has the potential to cause delays in the planning process.

A hierarchy of planning applications is proposed in the Bill. However, a major planning application in a rural area could be quite different to what would constitute a major application in the Belfast City Council area. The council feels that the Department's call-in arrangements should be limited to plans that are contentious or contrary to local development plans, rather than being based on a hierarchy.

Finally, the council requests that the Planning Appeals Commission be adequately resourced. It would also be more appropriate for independent commissioners to be used for less controversial appeals or specialist issues, rather than being appointed by the Department for the development plan process.

Ms Sharon O'Connor (Down District Council):

I participated in the whole process of the Ards and Down area plan, from genesis to public inquiry. Although it was an extremely interesting and educational experience, it was not one that was characterised by ease of public access or participation. The performance of the PAC was satisfactory, but, ultimately, it was a frustrating exercise for local government participants, as the recommendations made by the PAC — which were based on planning policy — were largely rebuffed by the Department. I hoped that the Bill would contain an improved quality of transacting in the area planning process, not one that would buffer up the retention of the power in the Department or water down the independence of the Planning Appeals Commission. The council feels that the commission is effective, on balance.

Ms Claire Ferry (Royal Society for the Protection of Birds):

I have two points. The Government response discussed the possibility that during the independent examination, the objectors to development plans, as well as the proposers of the plan, would have to show that their proposals were sound. Why is that not mentioned in the Bill?

My second point regards adoption. As Mr Bradley mentioned earlier, the examination report is not binding. That is ameliorated somewhat in that the Department must show that it has considered the recommendations and give reasons for its decision. A non-binding report is connected to a certain amount of democratic accountability, but it has also speed implications for the adoption of reports. A binding report will go through much more quickly. If one of the problems is the speed of plans, that needs to be considered.

Our key concern is that, if an independent examiner makes recommendations to rectify a draft plan which they consider to be unsound, and the Department does not adopt those recommendations, is there any chance of legal challenge? What does the Department think of that?

Mr Roger Pollen (Federation of Small Businesses):

We have made a written submission, and I just want to add three points to what we have heard.

Our members want to see the planning process simplified, speeded up and made less costly and more responsive to the needs of business. In a recent survey of our entire membership, things cited as relevant in the process were the fees, the professional fees that are then involved to do the job well and the time costs to small businesses that are caused by delays. We will certainly welcome anything that leads to a faster and more flexible approach.

We express caution that the powers that are reserved, as referred to by Arc21, allow intervention outwith the normal expected process. Where that is possible, it will lead to delays, challenges and further expense.

Finally, we note the uncertainty over the future status of councils, given the restructuring following the review of public administration, or the lack of it at the moment. We urge caution

that consistency of application should be applied. Obviously, the Department's role in that will be critical.

Mr Ian Wilson (Lisburn City Council):

I have a couple of points to reinforce those made by others and expand on them slightly.

We would like to see some sort of clarity on the circumstances of the intervention of the Department under clause 16. It is not clear in the Bill, and we believe it needs to be. The intervention in substantive checking is also going to cause a major delay in the introduction of a suite of development plans across Northern Ireland. We would like the focus to be rescheduled on that particular element.

Lisburn City Council wants to know what is meant by cost neutrality on the transfer of powers. Is it cost neutral before people have been redeployed in the Department as a whole, or from that time? The whole explanation of cost neutrality, and the resource to be transferred, needs to be clarified.

The other issue is in relation to the role of independent examiners. Lisburn City Council would like a definition of what is meant by "unsatisfactory" in clause 15, in relation to development plan documents. That is not clear, and perhaps enabling legislation is needed to clarify it.

Clause 16(7) states that:

"The council must reimburse the Department for any expenditure"

in relation to call-in for the preparation and revision of a development plan. Local authorities will strongly object to that.

My colleague from Belfast mentioned local development plans. The requirement for enabling legislation to deal with competing interests between neighbouring local development plans needs a little bit more resource and more thinking through.

Mr Brian Sore (Royal Town Planning Institute):

We made a submission yesterday. On behalf of the 500-odd planners who are our members in

Northern Ireland, we have been making a plea on behalf of the professional role. In relation to the Department's role in this, someone expressed surprise that the Institute is in favour of the Department releasing the controls in the Planning Bill. Obviously, some of our members are planners in the Department. There needs to be clarity, from the professional perspectives at local and central level, about how the Department will act as the overseer of planning in Northern Ireland. If we are really going down the route of devolving power to the local councils, free rein should be given to them and to the professional planners who work in them. Planners do not want every decision they make to be second-guessed and sent back to the Department, and they do not want the system to be over-bureaucratised by having to fulfil business plans every year that then go back to the Department to be approved. That seems like a duplication of effort.

I back up what was said by my colleague from Arc21. There needs to be proper resourcing. The Bill is going to cost money, and the current system does not have sufficient resources to provide both the Department and local councils with a fit-for-purpose planning unit. The Committee should urge the Minister to be explicit about the resources that will be available. As Ian Wilson said, it is not just about cost neutrality.

Public confidence in any form of appeals system is paramount. If an independent is appointed, they need to have transparency and the confidence of the public in any decision that is made. What is not wanted is an independent system that ends up with legal challenges going on. The Planning Appeals Commission has been set up and has a fair degree of support in relation to its independence of the system and the Department. The institute supports that. If there is an independent examination, it needs to be done in a way in which the Planning Appeals Commission would carry out that role.

It was remarked to me that a system that gives control to a local level will represent true local level. Although we argued that the Department should not have controls, there clearly needs to be an instance in which the Department will have a right to pull in a plan if it is going completely off the rails. Clause 16 gives some degree of comfort that the Department has that right, without having to repeat it in several other clauses.

Mr Kinahan:

I want to play devil's advocate slightly. Last night, I was with a community group that had no faith in its council's being able to make decisions. It was completely unfair, but I imagine that that is why the Department wants to keep some control. There may not be faith in politicians, local councils or the Civil Service, but we all have to fight that battle together. It is about finding that balance in it all. The Department has taken a lot of battering today on having too much control. As Mr Quinn said, it is peppered all the way through. We need it there until we have all won the confidence in each of our roles.

I was with my council this morning. I am not a member of the council any longer, but it desperately needs information on resources, clarity and the status quo, as John Quinn said earlier, because it needs more information to make a good response to this. The Committee has a long way to go before we get all of the information together.

The Chairperson:

We talked about capacity in the PAC and whether OFMDFM should appoint an independent challenger if one were needed. The appeal mechanism was mentioned, as were the review period, call-ins, public participation, the soundness, legal challenge and clause 16 in relation to being cost neutral. Clause 15 was also mentioned, as were duplication, resources and confidence within the system. That is a recap for the departmental officials on some of the issues that were raised.

The second discussion is on the community infrastructure levy and developer contributions. I welcome Kevin McShane from the Institution of Civil Engineers and James Orr from Friends of the Earth. Both of you have five minutes, after which we will open up the discussion once again.

Mr Kevin McShane (Institution of Civil Engineers):

Thank you. The institution welcomes the changes in the Bill and thanks members for giving us the opportunity to speak today. As a professional body, we represent a broad spectrum on the professional side, with over 1,800 members in Northern Ireland, some of whom are based in the public sector. In relation to the infrastructure levy and developer contributions, we want to concentrate our comments on quite a lot of the work that we do for the developers.

We have heard from Ms O'Connor and Mr Wilson from Down District Council and Lisburn City Council respectively. I was going to be generic in my references, but, with the people who are here, I might be specific to try to generate some debate and see what sort of a response I get. Over the past few decades, we have seen the area plans develop, and quite a lot of zonings have come forward. The zonings have been associated with requirements for the delivery of new infrastructure. One example of that is the housing that has been zoned to the north of Lisburn; some 2,000 houses were zoned in the last area plan. That required the delivery of the Lisburn north feeder road.

Ballyclare is another good example, where the N31 was proposed as an essential piece of infrastructure to serve a development. The plan for that was first published in 1993, yet it sat through the 2005 expiry date and extended on through to 2010. That is where it currently sits.

We saw the Ards and Down plan recently through the PAC. A lovely piece of infrastructure has been identified in Downpatrick, where there is a large zoning. The area plan makes it quite clear that that infrastructure has to be delivered before those houses can come forward.

In Lisburn, developers came together with the local council and other bodies and entered into an article 40 agreement to deliver the road, which was quite a comprehensive scheme. Unfortunately, all of those negotiations took about five years to reach agreement before any design work could commence. It then took several years to go through environmental legislation and the planning system before we could actually start to build any of the much-needed homes in that area.

I mentioned the introduction of the draft plans in 1993 for Ballyclare highlighting the requirement for the road. However, there were a number of developers who could not come together and reach agreement on how that was going to be delivered. It is only now that one developer has bitten the bullet, purchased all of the land and come forward with a scheme that has commenced on site now. So, you can see the time — from 1993 to 2011 — that it took to deliver that.

To use Downpatrick as an example, my fear and that of the institution is that the market

conditions and the current status mean that the landowners and the developers will never get together to deliver the road. So, we have a large zoning in an area plan that effectively will not be delivered during the life of that plan.

There is, however, a willingness from the developers and from the community to provide contributions to allow that, as an example of infrastructure, to come forward. Yet, in the existing Bill and the previous legislation, there is not really a mechanism that allows funding from separate groups to come forward. Clause 75 of the new Bill allows the possibility to pool separate contributions and developer contributions.

Is that a better way of allowing developments to proceed? You can have a fund in place to allow contributions to be made on either a number of units, if it is a housing scheme, or a square-footage basis, if it is some sort of retail scheme or another form of proposal.

We note that local authorities in the South of this island have used community charges widely. That means that developers know from the start what the charges are going to be, with the result that they can budget and allocate for them. The local authorities also know what funding will come in place. They are the bodies that control the delivery of the infrastructure as it is required. In Britain, such an arrangement was confirmed by the Department for Communities and Local Government. On 18 November last year, Greg Clark confirmed that the community infrastructure levy that the previous Government introduced in April 2010 would be retained. Britain is looking at having better arrangements from article 40s and section 106s.

A similar fund here would allow the smaller applications to pay their fair share. Quite commonly, small schemes for small retail, small development, small schools and small housing projects do not, on their own, generate a requirement to provide a significant element of infrastructure. If we go back to the likes of Downpatrick as an example, it has a hospital, the possibility of new offices and new residential developments, which are all small applications. In their own right, they would not justify anything. However, putting them together as a community infrastructure level allows the local authority to control where that funding is best used and controls the mechanism of pooling those funds together and using them. I am therefore asking members to make sure that the Planning Bill allows the local authorities to control and use some sort of community infrastructure levy.

The Chairperson:

Thank you very much. Downpatrick and Belfast have got a good mention today.

Mr James Orr (Friends of the Earth):

Thank you for giving me the opportunity to speak to you today. I warmly welcome the comments from the Institution of Civil Engineers. It was a bit of a relief to hear that it supports the Bill; we have not been in collusion about that.

I want to try to convince members of three things today. The first is the benefits of a new approach to planning gain, which incorporates things such as the old article 40 agreement, which will now be made under clause 75, and the community structure levy. I want to outline the benefits to all parties, including communities and developers, as well as the benefits to the planners themselves. Finally, the new approach to planning gain is a central pillar to the principles that underpin planning reform.

We have only one major fear to deal with, which is the fear that we have to overcome the myth that we are burdening the private sector. Friends of the Earth fully supports economic development, but a strong economy involves a lot more than short-term private profiteering. A healthy economy is also measured by well-being, green infrastructure, woodlands, open space, convivial spaces and a strong informal economy. It is about balance and reasonableness. Planning exists to serve the public interest. We know that granting planning permission for a site can increase development value tenfold, and sometimes a hundred fold, even in recession. The basic principle is that those who gain financially by the granting of planning permission should share some of that financial gain by investing in relevant infrastructure.

To our mind, the community infrastructure levy has two main benefits. First, it is a legally robust method of collecting funding. Secondly, it requires local authorities to develop an infrastructure plan, either through their local development plans or community planning. It gives transparency and predictability, and it can be set at a rate that does not undermine economic development in an area. We have a huge infrastructure catch-up to play in Northern Ireland, and checks and balances include an examination in public, the exclusion of small developments

within recognised thresholds, and widespread consultation on the levy. Therefore, I think that the burden on particularly small developments is quite a myth. Even during a recession, we must take a long-term view so that we can help planning authorities to plan ahead.

We believe in and welcome clause 75, particularly for social and affordable housing, applications that are accompanied by an environmental statement and one-off complex applications for which a community infrastructure levy is not relevant. The principles of transparency, culture change in the planning system and delivering a plan-led system are all fully supported in the context of that radical and interesting approach to a community infrastructure fund or levy.

In conclusion, meeting our huge infrastructural needs will be one of the biggest challenges that we will face in Northern Ireland over the next 10 years. We need to support sustainable homes, distributed grids and integrated connectivity away from the private car. We also need to invest in and share the burden equally and fairly in matters such as combined heat and power schemes. I believe that we must retain the informality and flexibility of clause 75 while including a more predictable and plan-led approach, which will be provided through the community infrastructure levy or community infrastructure fund.

The Chairperson:

Thank you, James. When I saw you rolling up your sleeves, I thought that the Committee was going to be in trouble. I will now open the session up to other contributors.

Ms Alison McCullagh (Omagh District Council):

Omagh District Council welcomes the transfer of a fit-for-purpose planning service to local government. However, we also feel that such a planning service requires teeth.

It is disappointing that there is no meaningful reference to community planning in clause 75. That is particularly so, because, as other speakers said, this is the framework through which community planning can integrate with land use planning. Omagh District Council is disappointed with clause 75(3), which, on the issue of developer contributions, states that:

"the Department must consult with the council for the district".

Surely the intention should be to seek agreement, particularly if the council is representative of the community. The council is also disappointed that many developer contributions may relate to rezoning at a later stage.

I concur with the previous contributor that there must be absolute clarity on the financial model for determining the infrastructure and the timing that is associated with the payments of the contributions. There must also be flexibility on the definition of the area of benefit, no potential for developer contributions to be minimised or avoided and no possibility that any community infrastructure fund will be reduced.

Ms Esther Christie (Northern Ireland Housing Executive):

The Housing Executive welcomed the reference in the planning reform report to developer contributions. It noted that two methods were outlined in that report: first, a community infrastructure levy; and secondly, article 40 planning agreements. The Housing Executive feels that those methods of delivery are not mutually exclusive and could be operated simultaneously. The approach through the article 40 planning agreements would be preferable for social and affordable housing, as it would directly contribute to the promotion of balanced communities and would ensure a land supply for social and affordable housing. It is also more in line with the way that social housing is programmed and funded in a regional context. We feel that the community infrastructure levy would require legislation, while article 40 planning agreements can be applied through policy. Indeed, if a regional draft policy on developer contribution, that is, PPS22 were brought forward, it would provide a consistent basis on which all the council areas could apply article 40 agreements. The Housing Executive would prefer that social and affordable housing be facilitated through article 40 planning agreements, rather than through the community infrastructure levy approach.

Ms Jonna Monaghan (Belfast Healthy Cities):

I welcome what has been said so far. I also want to reinforce the point that even quite modest developer contributions can support local level infrastructures such as play spaces and walking paths. Such activity can contribute significantly to the creation of healthy places that people want

to live in and that are more attractive places for businesses to invest in. It would also generate significant public savings, not least through a reduced need for healthcare.

Ms Ferry:

There are two issues to discuss. First, a developer could reasonably be expected to invest in and pay for one infrastructure need that arises as a result of a development. The second issue, which my colleague from the Institution of Civil Engineers mentioned, is that several developments in an area could each supply a small amount to a pot. They could then deliver something that is beyond what is reasonable to ask one developer to pay for but that has a community benefit because it is linked into the community plan. I want to be clear about whether both those can be delivered under clause 75 or whether we need something else or a slight rewording of the clause.

An issue was raised at this morning's session about the ongoing management of matters such as green infrastructure. In England, I believe that it is possible through the infrastructure levy to allow a commuted sum to be handed over. That is then invested and allows ongoing management costs, so it is not just for the one-off development of one piece of infrastructure.

Ms O'Connor:

Concurrent with this process, we are looking at the regional development strategy and the mechanism for dealing with the failure of the market to provide infrastructure to allow economic growth of sub-regional centres such as Downpatrick and many others in the North of Ireland. That is essential. There is no point trying to grow and develop sub-regional centres in the absence of a mechanism that will cope with particular issues, including those that Mr McShane mentioned, and market failure or the fragmentation of land assembly.

The Chairperson:

Thank you. Do not forget to say your name, please, for recording purposes.

Mr Patrick Cregg (Woodland Trust):

I reiterate what my colleague James Orr from Friends of the Earth said. The Bill provides an opportunity to do something in more than just the immediate vicinity of a proposed development. It also provides an opportunity to create a fund that a borough council could use in a more

strategic way. Therefore, matters that are wider than those in the catchment area of the development could be covered. For example, an inventory of all the significant trees in a borough would be a good use of some of that money. That would mean that we know what is there and what needs to be protected.

The Chairperson:

That is a very good plug.

Ms Doherty:

Our view is that article 40 has probably been underused in the past. It focuses on roads infrastructure and creates uncertainty for developers, because it is negotiated after. We support the community infrastructure levy and further consideration of it. We request that consideration also be given to the definition of the term "infrastructure". The definition needs to be broadened by looking at, for example, the enhancement of open space, civic amenity sites and other community amenities in the area in question.

Mr I Wilson:

I have a couple of points to make about article 40 and the community infrastructure levy approach. It is necessary to look at the scale and type of development, the yield that that will bring and the benefits to the community. That needs further investigation. The levy-type approach takes away many of the individual challenges that are associated with negotiating article 40s site by site. However, it is more complex to establish and administer.

I will leave the following questions with the Committee to consider. How should the levy, especially its scope and scale, be embedded in the development plan? What is the timing of its payments or drawdown? What purposes could it be used for? How will claims to the fund be administrated? Finally, should someone not also deliver on the claw back arrangements?

In these significant and difficult economic climates, that arrangement should not be rushed into. Perhaps the Committee should consider the Scottish model, under which the arrangement has been deferred.

In conclusion, we also expect that many of the applications will be regionally significant. Therefore, local authorities would ask that the Department reflect the local development plans in its consideration of how the negotiation of the community infrastructure levy would be implemented.

Mr Pollen:

I urge some caution. We have reservations about the concept of levying additional taxes and charges on businesses. In this case, the suggestion is that they would be contributions to some form of hypothecated infrastructure fund. Although in many ways, a lot of the arguments here are well made and we would support them, such a fund would need to be hypothecated and should not just be a general taxation on development. Otherwise, it would sound very much like a stealth tax on business. Therefore, we would urge realism and caution in that situation.

I would also like to have better clarity on the definition of a developer. For example, is it scale based? I think that James Orr's points about small developments being set outside that proposal were well made. We are urging caution on that. The number of federation members in the construction industry whose businesses have gone to the wall in the past couple of years is substantial, and there is not a fat margin in a lot of those developments that could just be raided to pay for other things that cannot be afforded through taxation.

Ms Catherine Blease (Northern Ireland Housing Executive):

Housing associations could be considered to be developers, but given that they are non-profit-making organisations, we would like them to be exempt from a tax on social or affordable housing units. I think that clear definitions should be set out of what a developer is if it is non-profit making.

When considering the community infrastructure levy and councils' powers, perhaps a regional levy could be set, meaning that each council would charge the same amount for developers. That would mean consistency across the whole region, with the result that there would be no competition between those areas that were setting lower charges so that they could get more development into their area. I think that that type of cross-council infrastructure should be considered.

The Chairperson:

I will take one more point, and then I will open the Floor to members to see whether they have any points to make. Go on, Claire; it has been a good day, so I will let you go on.

Ms Ferry:

I have one quick point to make. Section 210 of the Planning Act 2008 in England and Wales allows for an exemption for development by charities, so that might be something to consider.

Mr McGlone:

Again, I am picking up threads of the discussion, which I thank people for. The issue boils down to the community infrastructure levy or fund, or whatever it is called; Roger just referred to it. A lot more detail needs to be put into precisely what that is. Those of us who deal with planning applications are aware that, floating around the edges in the ether, there is also the notion of the developer contribution to consider. We need to have absolute clarity as to precisely what is being sought by those processes, because I am already confused about the precise distinction between them.

The community infrastructure levy seems to be fine in principle, but when we overlap that with a developer contribution, I think that we could hit problems and glitches, not least for the new councils that will be landed with the system. A lot more thought has to go into precisely what is being achieved, certainly by the community infrastructure levy, and what is being thought about the developer contribution in other policy areas or Departments. If those roles are not very clearly defined, it could lead to serious problems, not least in inhibiting development of the economy. Again, Roger referred to that, and we will be talking to a lot of people later today about that. I am sure that that will come up time and time again in my constituency. People will ask what the politicians are doing to encourage and support development.

We have to bear that strongly in mind. I do not entirely take the Housing Executive's point that housing associations are stand-alone organisations. Many have considerable assets at their disposal, so although they are non-profit-making, they have a considerable asset base. It might be worth giving more thought as to how that asset base can contribute to the levy or fund.

I am anxious to know whether anyone in the Hall knows the formula that would give me a clear understanding of the distinction between the developer contribution and the community infrastructure levy. I would be delighted to hear it.

The Chairperson:

Obviously, the Department will have an opportunity to respond to that valid question.

Professor S Christie:

I understand that the developer contribution is for the development of things that are intimately and totally required in the development. For example, if a larger road is needed to access the development, that would come from the developer contribution. The community levy is for greater benefit that has been accrued as a result of the increase in value to the site by the granting of planning permission. That would go into a fund that may not be directly used on or required by the site. Therefore, it is much more general. The developer contribution is very specific and is for things that have to be in the site.

Mr McGlone:

I can see this leading to complications on the ground, for example, where there are multiple developers on one site. I am not entirely clear about the outworkings of this and where it is supposed to take us. The principle seems to be fine, but there is quite a bit of overlap in how each is to be defined and kept separate, while making sure that they are both are of mutual benefit. I envisage some complications with it, and I need it clarified. I would rather have one process run well than two run poorly.

The Chairperson:

I can let another speaker ask a teeny-weeny supplementary question.

Mr Pollen:

I echo what Patsy said. The other issue in teasing this out is to ask when any contribution must be made. It is an upfront cost that has to be borne before any profit is shown. However, the current financial climate illustrates how that could be an issue.

The Chairperson:

I want to recap on some of the points that have been made.

Let me remind everyone here that many of those issues have been teased out in Committee Stage, and there is another opportunity to do that again today. Once we have taken on board and compiled all the points that have been made, we will liaise with the people who are most concerned, including those who think that it is a good idea and those who have reservations about it.

I want to touch on some points so that the Department can respond. There was talk about community charges, and references were made to the Southern model. Other issues include article 40; checks and balances; a financial model and a fit-for-purpose Planning Service; the notion of community planning, which is an idea that has raised its head on a number of occasions in the Committee; and the developer contribution or levy. A valid point was also made about the fragmentation of land and the whole idea of land use. The Scottish model was mentioned, and Professor Lloyd talked to the Committee this morning about that. The issue of housing associations was also raised. Mr McGlone and Catherine Blease responded to that. That is all food for thought for the departmental officials.

The third element for discussion is the pre-application discussion or community consultation.

Mr David de Casseres (Northern Ireland Electricity):

I want to make some high-level comments on the important subject of community consultation. Northern Ireland Electricity is involved in the development and design of major strategic infrastructure projects that will have consequences for all Northern Ireland and, perhaps, the wider island as a whole. Planning is central to that process, so I am pleased to be able to speak about it briefly today.

As many of you may be aware, there is a very significant need for major infrastructure to be built in to the electricity system over the next few years to allow for the integration of renewable generation across the island. That is extremely important. We are in the early stages of

engagement in community consultation on proposals to strengthen and reinforce the transmission system by, perhaps, using 400 km-plus of new circuits over the next few years to handle that challenge. That is a significant development that will have to bring with it significant community consultation. Therefore, the matter under discussion is very important to us.

When we look at the planning that all that will require in the future, we see a need for a strong and efficient planning system that will actually perform against the challenges that that will bring. We see a need for government to stream policy into the planning process, and we also see the importance of central control of significant major infrastructure. I know that the Bill provides for article 31 projects to be retained under central control, and I propose that we consider having an upper tier of such projects, of which there are a great many. However, it could not be claimed that all of them are of strategic significance to Northern Ireland as a whole.

The final issue that I want to raise on the planning process before I talk specifically about pre-application consultation is the need for a process that sticks when decisions are made. Many people here will have concerns about that.

NIE believes that pre-application community consultation is extremely important. Indeed, a better word than "consultation" might be "participation". We believe that it is extremely important to engage and discuss with communities so that they feel that they are participants in developments that take place.

We believe that provisions for that are already enshrined in legislation such as that that deals with environmental impact. Given the need to demonstrate that alternatives have been examined and that they have been discussed and consulted on with communities at large, such provisions are already a fundamental part of the planning process for major infrastructure projects. Therefore, we do not think that compulsory pre-application consultation is particularly helpful, especially when it comes to major linear infrastructure, which may cross several council boundaries. We think that it will introduce rules and bureaucracy, which will create further delays. It will introduce uncertainties and costs. All those issues will be significant in the future.

Another issue that I want to mention on community consultation concerns who exactly is the

community. That is a significant issue. Although it may seem trite, it is actually a difficult question to answer. Recently, we have engaged as many people as possible on proposals for a major interconnector between Northern Ireland and the Republic —

The Chairperson:

Thanks for bringing that up, David. I was going to mention that.

Mr de Casseres:

I will not mention it any further. The reality is that, when in discussions with communities, it must be clear who the community is. It might comprise public representatives, council bodies and statutory consultees. People who live close to a development and who may be affected by it could be considered to be a community, and others who live quite some distance away and can see the development from their homes could also be thought of as the community.

Therefore, setting rules of engagement, compulsory ones in particular, to require consultation introduces all sorts of potential complexities, pitfalls and areas of challenge whereby people who are regarded as communities — or, perhaps, who regard themselves as a community — do not feel that they have been adequately consulted. That needs to be carefully considered and the consequences need to be recognised. If we make things more complicated and more costly we will most certainly not be able to deliver the infrastructure that this country needs in the future.

The Chairperson:

I can answer the question about the North/South interconnector and community consultation, if you want, because it runs through my constituency.

Mr Patrick O'Neill (Development Planning Partnership):

First and foremost, we welcome the introduction of pre-application community consultation and the ultimate submission of community consultation statements, which is much needed in Northern Ireland. However, we do not think that the legislation should prescribe how that should take place. It should be within the gift of the applicant to determine the most appropriate mechanism for encouraging local communities to get involved, because it is not the case that one size fits all.

We have talked a lot about the Scottish model today, and I am going to mention it again. Similar legislative provision was introduced in Scotland, which highlighted an issue that has not been dealt with in the Planning Bill — the differentiation between major planning applications and subsequent amendments to such applications. It may be prudent to amend the Bill to ensure that pre-application consultation is not required for applications for amendments to conditions or minor changes to applications. That will reduce the time spent and cost incurred by the applicant.

We have no issues with pre-application notification, and we welcome that. However, we believe that it is unnecessary that a council should decide who should be consulted within the 12-week period. Depending on the number of consultees suggested, that could delay schemes needlessly. Alternatively, to avoid delay, there could be a facility to carry over some consultation processes once the application has been validated and is at the assessment stage.

Ultimately, the requirement should be for effective engagement where it can be demonstrated that efforts have been made to inform and seek feedback from the community, as opposed to persuading and satisfying the community, because that is not always going to be possible.

Mr C Bradley:

I want to pick up on a few of the issues that have been mentioned. On the point that developers should be allowed to determine the form and nature of consultation, that is the situation that we have at the minute. Some of them are not terribly good at it, and that is why they often get into trouble. The proposal in the Bill, if it is properly implemented and if guidance is produced by the Department and by councils, will ensure consistency and clarity not just for communities but for developers. That is the point. We will all have more certainty about the form and nature of consultation, when and how it should happen and how it should be reported on. We will all know that, and, if that is so, we will all be working to the same rules.

There is no duplication of consultation required for environmental impact consultation. We are not talking about a second consultation process. We are talking about a standardised, clear and transparent consultation process, which, once it is carried out, can be used to inform the environmental impact assessment and the planning application. It will serve both purposes. The

Bill proposes simply that we have that transparency and consistency across a broader range of major and regional applications.

Mr Orr:

I absolutely share David's concern about how consultation and participation get confused in Northern Ireland and about the huge challenge that faces us in trying to rejig the grid infrastructure to move us towards a more sustainable low-carbon electricity production system. I totally sympathise. However, my colleague made the point that this is very much in the interests of two groups, one of which is the developers. I completely share the frustration that, in many cases, consultation tends to be obfuscation. However, it is also in the interests of the planners.

We need a renewal and a reinvigoration of the planning system and the role of the planner. This planning reform can set the planner in the middle of a facilitation debate between a whole range of different stakeholders. That is why it is absolutely crucial that it be led by the planners. I have no doubt that if the pre-application consultations are engaged with positively and courageously — not reactively, as happens at the minute, or from a defensive posture — and with the intention of getting people round the table, it will absolutely help bodies such as NIE to improve grid infrastructure in Northern Ireland.

Ms Joan Devlin (Belfast Healthy Cities):

Community participation is one of the core values on which the Healthy Cities movement was founded, and I very much agree with what Colm, particularly, has been saying. We support the introduction of pre-application consultation, and we see it as an important way to inform and involve relevant people and other sectors. I know that we have the debate about how to define "community" and community participation, but it is important that other sectors are involved in shaping development proposals. Pre-application consultation can help to ensure that development supports needs in relevant local areas.

We want to stress that the Localism Bill currently going through the Westminster Parliament includes a significant level of detail on requirements for pre-application consultation, including format, content and acceptable publicity. For example, the Bill incorporates clauses where applicants must be able to contact the majority of people in an area and must provide a statement

of how they have responded to consultation. Those can provide a ready-made and helpful model for Northern Ireland. Incorporating that detail creates both clarity and confidence for the public and can help to create an empowering, inclusive, high-quality and timely process and contribute to the wider impacts of planning.

For example, we have recently been approached in an area in Belfast — an area of high deprivation — where planning permission has been given for a high number of fast food bars where there is already a high level of obesity. From our point of view, we try to make the links between planning and the impact on health and emerging public health issues. As was said earlier, consultation does not have to be costly. There are lots of very strong organisations locally or regionally that are very capable of carrying out consultation at a very low cost.

My final point is that it is important to include a duty on the person conducting the consultation to take the responses and to demonstrate that the responses have been listened to and included in the final documentation.

Mr Sore:

I welcome the comments made by Friends of the Earth on the role of the professional planner who will be in the local council area. One of the functions of that planner is to advise the members of the council on the professional way to approach the community and the development potential. If there is to be a new type of planner at local level, which we do not have at present, that will really be a new form of planning. We, as an institute, are thinking about whether we will need to retrain planners in the way that they operate and work with the council members as their immediate boss.

There is also a role for council members, because, at the end of the day, they are elected by the public to represent certain views. Therefore, the consultation needs to take place within councils, with councillors representing their electorate. This is about new ways of working. We have got to try to get out of the current system and think about the system that will be in place in 2015.

Mention was made of definitions. One of the things that we have said in our submission is that there needs to be clarity. What is meant by “community”? What is meant by “developer

contributions"? What scale should this be at? When is something regional and when is it local? There is an awful lot that needs to be clarified.

In relation to some of the other legislation that has been coming forward and some of the PPS information, we have said that it may not be right to specify absolutely everything in the main body of the document. However, it is right that that be followed up with guidelines that give clarity on what is meant by "community" and "developer contributions". Good examples could be used in those guidelines, so we urge the Committee to ensure that work on clarity follows the Bill.

The third issue is how to engage with the community. In England, the institute is debating the role of Planning Aid. Planning Aid was always seen to be the halfway measure, almost independent of the actual statutory planning regime. Communities could engage with Planning Aid, and Planning Aid would act as the interface between the statutory agencies and the local community. The Committee may want to consider something, not necessarily a copy of Planning Aid but something along those lines, where both a developer and the local community can go to an agency that will facilitate a community consultation. Let us face it; in Northern Ireland, we do not have a very good history of that. While there have been very good examples of big developers who carried out consultation very well and of local community and voluntary groups that assisted the communities in putting forward very good contributions, they have been piecemeal. We are looking for a system that can be applied across the Province.

The Chairperson:

I liked that wee dig at councils and councillors. Thanks very much.

Mr Lewis Porter (Craigavon Borough Council):

While welcoming the pre-application community consultation in general, we have concerns about the definition of "community" and the definition of the area impacted. We are concerned, because it is not necessarily just the area that is being impacted on by a development; communities on the other side of the town or borough in question will be impacted on. So, there is a wider community issue.

There is also the cost of community consultation, both in terms of council resources and for the community groups themselves, which can suffer from "consultationitis". If people feel that their views are not being taken cognisance of, there is a danger of genuine community concerns dropping off and groups that are being consulted within the community relying on particular agendas that can give a negative slant on development in response to that community consultation.

Mr Terry Bunce (Ards Airport):

Licensed airports in the Province have a specific interest in the consultation process. Airports have a statutory requirement to maintain the integrity of the protected surfaces that surround them and their air traffic zones. To ensure that that process continues, licensed airports must continue to be consulted on all proposals within their air traffic zones. Consultation in that area should therefore be compulsory. We have no option but to retain that.

Mr I Wilson:

Lisburn City Council welcomes the pre-application community consultation. Anywhere where you front-load the process and shorten it at the back end will bring a little bit of certainty to the outcome. Our council is keen on clause 28(2), but we seek clarification on who is responsible for prescribing the form of the pre-application community consultation. That is not clear.

The Chairperson:

David, I am glad that you mentioned the interconnector and the consultation. Unfortunately, there was a lack of consultation at the start of the process, and different people have talked about it being reactive rather than proactive. Through this planning process we will see a more proactive approach to consultation. We have to strike a balance between proper economic drive and development and giving people an opportunity to participate in how land should be developed and land use in itself.

The Scottish model was mentioned again. Perhaps it is not a case of one size fits all; we are not saying that. However, perhaps the Committee needs to go to Scotland to see exactly how the Scottish model is working. There was talk about developers and the idea of who should be consulted. I prefer to call it participation rather than engagement. It should be about

participation; people should be given their say.

Health was mentioned. It should not be just about land use; it should also be about place. Professional planners were also mentioned. Council capacity building and training are key elements. We talked about the wider community basis, which is correct. There is a specific issue about consultation being compulsory — was it fly zones in particular?

Mr Bunce:

[Inaudible.]

Mr McGlone:

I think that Mr O'Neill first suggested that we leave it in the gift of the applicant to determine the method of consultation. Most of us are here today because the current method of consultation has major shortcomings. Unfortunately, over the past month I have been involved in a couple of cases in which that was exactly the case: it was left to the applicant to determine, through an agent — who probably should have known better — the method of neighbour notification. That method was to not notify the next-door neighbour that a planning application was coming. That led to emotional distress. The best conclusion that we can have today is that the method needs to be improved.

Mr Wilson from Lisburn City Council asked a valid question: who defines what the consultation should be? There will be certain strictures, but, as I listened carefully to what he said, that could conceivably vary from area to another. The Department could lay down guidelines, which could be developed by a council, but they will have to be adaptable to allow a wee bit of elbow room. The difference between urban and rural, for example — I envisage those types of situations.

The Chairperson:

I am delighted that you mentioned that, Mr McGlone.

Mr McGlone:

I need to mention it, because, as we heard earlier, we could be dealing with two different

communities of place. I wanted to mention that one qualifier about the method of consultation by the applicant.

Mr P O'Neill:

Do not get me wrong: we are not against guidance being published on how consultation should be done. We welcome that, but we do not see a way of writing into legislation how it should be done. If there is guidance, the developers will follow it, but we do not see how it can be included in legislation.

The Chairperson:

We will now discuss the wee matter of third party right of appeal.

Ms Carolyn Wilson (Mobile Operators Association):

I thank the Committee for allowing us to come along and speak. The Mobile Operators Association represents the collective interests of the four UK mobile operators: 02, Vodafone, 3 and Everything Everywhere, which trades as Orange and T-Mobile. We represent them on health and planning issues.

We all know that planning in the UK operates in the wider public interest and generally presumes in favour of development. The Planning Bill is based on that premise, and it proposes significant changes to the current planning system. A number of the Bill's proposals are similar to provisions that operate in Scotland and in England and Wales.

Third party right of appeal is not a new consideration. In 2003 and 2004, it was consulted on in Scotland as part of what became the Planning etc. (Scotland) Act 2006, so there was a lot of consultation, discussion and research. More recently, prior to the general election, the Conservative Party included it as an issue, but the recently published Localism Bill has dropped it from planning system reform in England.

We operate in a plan-led system, and, generally, development is undertaken in accordance with needs that are identified in development plans. It is noticed that the Bill proposes a system that is based on local development plans, similar to the system in Scotland and the local

development frameworks in England. The Bill proposes that the local development plan itself will be pre-empted by a statement of community involvement, which will be subject to stakeholder engagement. That system seems to work well in local development frameworks in England, which have been on the go since 2004 or 2005.

All of that results ultimately in a democratic, agreed outcome for a local plan. Consideration of introducing third party rights of appeal could be seen as a way of delaying and derailing a community need that has been accepted through the local development plan process. Research in countries that have such rights shows that, quite often, it is the design element of a development that is subject to appeal rather than the principle, which is usually enshrined in the development plan itself. Therefore, linking back to the previous subject, it is clearly preferable to engage a community at an early stage.

Front-loading of the system has been mentioned a lot, and the Scottish model has gone down that route. A lot of work has been put into Planning Advice Note (PAN) 81, 'Community Engagement', and people have spoken about clear policy guidance on how community engagement should be carried out and what it should be. PAN 81 is a good document to have a look at for that.

The gentleman from the Royal Town Planning Institute mentioned Planning Aid. I am a volunteer for Planning Aid, which does good work with communities in informing and advising them on the background on which to engage with the local development plan process and in development management. So, again, that may be a route to think about.

Before the legislation changed in England, Wales and Scotland in 2001, the Mobile Operators Association's experience was that the system was not very transparent. That changed in 2001, with the operators' voluntary adherence to the 'Ten Commitments to Best Siting Practice'. As part of that, and to make the process more accountable and transparent, the association agreed to carry out extensive consultation on proposals for base stations.

One way in which we do that is through the annual roll-out plan, which is submitted electronically and jointly each year to every UK planning authority. At the moment, it goes to

regional DOE bodies. Obviously, following devolution, it will go to local councils. Basically, it gives a heads-up on operators' proposals for the following 12 months, together with existing base stations and those that have planning consent. Roll-out plans can be shared with the public and with elected members.

As part of this commitment, the operators agreed to carry out wider consultation when site-specific base station developments are identified. Again, there has been a lot of talk about how to identify "the community". We do it through pre-application discussions with the community and local planning authorities, in the form of a consultation plan drawn up by our agents that is then, hopefully, agreed with the planning authority and local key stakeholders. We are quite happy to carry out further consultation when it is identified. Over the past eight or nine years, we have found that that method of front-loading consultation is a preferable way to engage with communities and take their concerns on board.

Often, concerns are raised that are not necessarily to do with planning matters, so the consultation process provides an opportunity to address those matters and to inform people better. Where there are obvious planning matters, open discussion often leads to different siting and design proposals for base stations. In the past, I have certainly been involved in a few cases in Northern Ireland where that happened. Consequently, based on our experience, we do not think that third party appeal rights would give communities or people the basis on which to inform development proposals.

We must recognise that, sometimes, the planning process can be hijacked by individuals or specific interest groups who do not necessarily have the wider community's backing or interest. I have been a planner for 20 years, in local authorities and in the private sector, and it is evident to me that if a community, or people within a community, are indifferent to a proposal or support it, they tend not to get involved in the process. It tends to be those groups or individuals who object to the proposal. The concern with third party appeals is that development might be slowed down and delays in the system might be incurred because of possible self-interest by individuals, rather than people who have the wider community interest behind them.

With particular reference to mobile telecommunications, we must bear in mind what is

enshrined in the current planning policy statement, PPS 10, namely that the telecommunications infrastructure must develop in a way that continues to provide Northern Ireland with world-class telecom services that allow it to compete. At the same time, the environmental impact must be kept to a minimum. PPS 10 recognises that modern telecom systems have a vital role to play in everyday life, both socially and economically. Our members' concern is that third party appeal rights would significantly slow the process down and add additional cost.

Telecommunications technology is fast moving. The infrastructure has evolved very quickly from 2G to 3G, and it is evolving all the time. If the planning system is not fit for purpose or efficient and it does not take account of that, or if there is unnecessary delay, that infrastructure may not be deployed in Northern Ireland and may deployed by our members in other parts of the UK where third-party appeal rights have been resisted.

Our development industry has certain locational and technological requirements, and those are given good development control advice by PPS 14 and PPS 10. What concerns us about telecommunications infrastructure and other development is that any additional costs due to third-party appeal rights and, more importantly, significant delays in the system would direct investment elsewhere in the UK. With such economic uncertainty at the moment, it may not be the best time to think about introducing third-party appeal rights. The social and economic benefits of development and, in particular, communications infrastructure are important, and we do not want to direct that elsewhere.

The Chairperson:

I gave you some leeway because you made it all the way from Scotland. I am sure that the other witnesses will not mind.

Ms Monaghan:

Belfast Healthy Cities welcomes the opportunity to speak to the Committee today. For those who might not know us, Belfast Healthy Cities is a partnership that works to improve health and well-being for people in Belfast and beyond. We do that through intersectoral collaboration to improve the wider physical and social living conditions. Belfast is a World Health Organization designated European healthy city. Among the core teams' work that the World Health Organization has designated for its 90 member cities are equity and healthy urban environments.

First, third-party rights of appeal are an important part of a comprehensive planning system, and we support their introduction in Northern Ireland. Third-party rights of appeal complement the general focus on community engagement in the Bill and provide a safeguard for communities to make sure that any material and relevant concerns are heard, and they provide a measure of natural justice. They also provide a way of making absolutely sure that development is in the public interest and is focused on what people in Northern Ireland need. In doing that, they strengthen trust in the planning system, which is important for a timely and effective system and process.

Secondly, with reference to the previous witness, we think that third-party rights of appeal can act as an incentive to invest in pre-application consultation. They can make sure that people have a more open platform for debate, and, more importantly, they can ensure that all relevant and sound evidence is presented at that stage. It might be worth noting that the Republic of Ireland has had liberal third-party rights of appeal for some time, and it is clear that that has not acted as a deterrent to development there.

Thirdly, third-party rights of appeal can improve the quality of decision-making and can contribute to developing prosperous, healthy and sustainable communities because they add an extra layer of scrutiny. That aspect would be particularly important in the transition period when planning powers are transferred and capacity and experience are being built. It might be appropriate to consider introducing third-party rights of appeal as a transitionary measure to be reviewed at a later date. There might be other ways of limiting the rights. You could consider including award of costs for frivolous or vexatious appeals as a deterrent.

There might be a role for planning mediation, which is currently not mentioned in the Bill, in offering a way for parties to look at a conflict before a decision is made. Again, that would be a way of supporting better decision-making.

In summary, third-party rights of appeal are a way of strengthening transparency and accountability in a comprehensive, modern planning system and are in keeping with the ethos of community planning. Such appeals would also enable all stakeholders to participate in the

process with greater confidence. Having the confidence to believe that they can have a say in decisions helps people to be engaged, proactive and responsible, which reduces the risk of vexatious processes and conflicts that are quite tangible.

That feeling of being involved supports a sense of well-being, which is really important for enabling people and communities to look forward with confidence. It might not be immediately obvious, but planning has a fundamental impact on people's health and well-being. A simple example is the impact that it might have on the job opportunities open to people, because planning determines where homes are in relation to jobs. In the same way, planning determines how dependent people are on cars and what access they have to physical activity and to green spaces by deciding where to set aside those spaces and how big they should be.

We think that identifying well-being as a desired outcome of planning would help to make all those issues more visible and would create a good opportunity to steer development in such a way that is in the public interest and supports quality of life, health and well-being for people in Northern Ireland. Third-party rights of appeal are by no means the only of way doing that, but they would make an important contribution to it.

The Chairperson:

Planning Service is well aware of my views on third-party appeals. If you look up the Hansard report of debates in the Assembly Chamber, you will see exactly how I feel about it.

Mr I Wilson:

Lisburn City Council has always been consistent in its approach to third-party rights of appeal. In response to question 67 of the 2009 consultation on planning reform, the council stated its resistance to the introduction of third-party appeals. The front-loading of the community consultation process allows for an additional opportunity to deal with any uncertainty that might exist. However, if anyone is thinking of bringing in third-party appeals, they should perhaps consider that the examiner or the PAC would need to consider awarding damages for third-party interventions so as not to open the floodgates to delays to the decision-making process.

Ms Clare McGrath (Community Places):

I wish to make a few points on this topic. First, the majority of respondents to the 2009

consultation on planning reform supported the right to third-party appeals. We support a limited third-party right of appeal, because it would ensure that developers conduct genuine participation and a meaningful pre-application consultation. It would also enable communities to feel that their comments would be given more weight in pre-application consultations.

Third-party appeals should be introduced in a two-stage process. First, there should be a soundness test to determine whether an appeal has sound enough grounds to go ahead. Secondly, the process should happen over a five-year period as a confidence-building measure during the change in local government, and it should then be reviewed.

Evidence from An Bord Pleanála in the Republic of Ireland demonstrates that 46% of formerly decided appeals in 2008 were by third parties only. Of those, 99·3% were wholly or partially changed — 39·5% were refused planning permission and 59·8% were granted with revised conditions. That evidence supports the need for and the impact of third-party rights of appeal in better decision-making. It also refutes claims that they are frivolous.

Developers, through their right of appeal, have the unfair advantage of having the opportunity to influence how policy is made through establishing precedents. Consequently, that informs subsequent decision-making in favour of developers. The public, who have no third-party rights of appeal, have no such opportunity.

Mr Cregg:

I have been talking about third-party rights of appeal for as long as I have been on this planet. I find it unbelievable that, in a democracy, we should stack the cards in favour of one player. It is like a person entering a poker game in which they agree to give their opponent all the coloured cards while they take the lesser cards. If we are to accept the arguments from our Scottish friend and Lisburn Borough Council that the pre-consultation is sufficient for everybody to air their fears and get their points across, would we then consequently say that, rather than just removing a third-party right of appeal, we should remove all rights of appeal if the developer has been part of that consultation in the first place?

Mr Orr:

I share those comments. I have read all 200 and whatever clauses of the Planning Bill, and there is very little that is innovative, visionary or different. A lot of the provisions are cut and pasted from previous legislation or borrowed from other jurisdictions. If the Committee and the Assembly want to make one fundamental difference to planning reform in Northern Ireland, they can do what is right for natural justice and give us limited third-party appeals. We are not opening floodgates or inviting vexatious applications. We do not need to borrow from Southern Ireland and learn from some of its mistakes; we can invent something that is courageous and innovative for Northern Ireland. I commend that to the Committee.

Mr McShane:

Having agreed with Friends of the Earth earlier, I now have to oppose its view. The Institution of Civil Engineers sees the judicial review process being used by retailers purely as an excuse for delaying the implementation of approvals. Our fear is that opening up the floodgates to third-party appeals would simply allow that process to be extended and would delay the implementation of much-needed facilities. However, if the Assembly decides that third-party appeals are to be introduced, they should be introduced with a very short time frame so that they do not delay the implementation of facilities.

Ms Blease:

As regards the point that was made earlier, an appeal would be far quicker and far less costly than taking a judicial review through the courts. Contentious decisions would be resolved a lot quicker.

Councillor Michael Carr (Newry and Mourne District Council):

I endorse the comments from the Woodland Trust and Friends of the Earth. If it is right for one side to have an appeal, it is equally right that the other side should have an appeal. Planning Service makes recommendations to either approve or refuse, and 100% of the refusals can be appealed. None of the applications that are approved can be appealed by the people who are affected. I have seen numerous occasions on which they should have had that right. People have suffered and are still suffering from poor or inappropriate planning decisions.

I had promised myself that I would not speak today, but I feel strongly that third-party appeals should be included in the Bill and that there should be discussion about them. I also have confidence in the delivery of the Planning Bill. The Bill cannot be taken in isolation without looking at governance legislation and at how councillors behave with regard to the Planning Service. We are not yet in a position to do that; it is a bit like putting the cart before the horse.

We need to know where we stand as councillors and, more importantly, how it will be funded. The Planning Service looks as though it is being run down. We in Newry and Banbridge are waiting for a development plan that is 11 years late. If it is ever passed, it will have two or three years to operate. We are involved with the electronic planning information for citizens (e-PIC) project, which is four years late and has cost twice as much as was first planned. It needs to be made clear what councils will inherit.

I enjoyed today's presentation. Councils do good things, and they could contribute to much better planning. Planning responsibility should be transferred, but it has to be done in the right order.

Ms Ferry:

Miss Wilson from the Mobile Operators Association said that, if we have a plan-led system, developments should be fine if applications go ahead in line with the plan. That is exactly our point. Everybody here who argued against third-party appeals talked about floodgates and said that everyone would appeal. As I understand it, many of my colleagues in environment and community non-governmental organisations asked for a limited third-party right of appeal. To prevent vexatious appeals, there are ways of limiting who can come forward, and we have outlined those ways in our responses.

One example is a planning application that is contrary to a development plan. It is for exactly that reason that we need to have a limited right of appeal. Other examples might be when a local authority has an interest in a planning application; or when a professional planning officer has recommended that planning permission be refused but has been overruled by the local council. There are elements that we all understand and that we know can be included to limit third-party appeals to avoid huge delays in the planning system.

We have to remember that judicial review is costly and beyond the ability of many groups to undertake, even when they have a valid reason to do so. As many people said, the proposal would allow much greater access to justice and equity across the system.

Mr I Wilson:

Lisburn City Council supports the current planning appeals procedure where it gives the opportunity to a third party that has been actively involved in the process under consideration to appear at the PAC to put their case across. In that case, the PAC is an independent arbitrator. I would not like anyone to think that Lisburn City Council does not support the current system.

The Chairperson:

Your position has been clarified and recorded, Ian; you are safe.

I thank everyone for their contributions. We now move to answers to all of them. *[Laughter.]* By the time we leave the room we will have everything sorted out.

Before I give the Department an opportunity to respond, do Members wish to speak? I am sure that Mr Wilson is not keen on mobile phones; I do not think that he uses one at all. Do you want to say anything about that issue?

Mr B Wilson:

No. We are here to listen rather than to speak.

The Chairperson:

That is OK. I was just giving you the opportunity.

Mr McGlone:

Although supporting in principle the third-party right of appeal, we have to consider the soundness test. Some of us have experience of inordinate delays in planning applications, of an appeal being brought to a conclusion one way or another — whether that be approval or refusal — or when a third party uses an appeal to negotiate for a bit of extra money for a ransom strip or

sight line. A soundness determinant, a wee bit like in social security where you have the right of appeal to a social security commissioner but only on certain grounds, would be useful if a wee bit more meat on its bones could be portrayed.

Mr Wilson mentioned the award of damages. I understand third-party appeals when they arrive at the point of costs being determined; however, damages could lead to something quite different. If the proposal was for a factory or housing development, by the time the appeal came in two to three years' time damages could be considerable and are usually a matter for determination in the courts. The distinction between costs and damages is something that we need to factor in if we go down the route of third-party appeals. However, there is certainly much food for thought here today.

The Chairperson:

I invite the team from the Department to respond. We picked out four broad topics, although many issues came up. I ask the Department to comment on as many of the issues raised as possible.

Ms Maggie Smith (Department of the Environment):

It has been an extremely interesting afternoon. We appreciate the time that everybody is putting in to commenting on the Bill.

Points such as guidance and secondary legislation came up consistently. People said that there was not enough detail in the Bill about the practicalities of what needs to be done. In parallel with our work on the Bill, we are finalising proposals for subordinate legislation. It is useful to do the two in parallel because is it interesting and useful to hear reactions to the provisions in the Bill. There is a great deal of subordinate legislation, and our aim is to get it out for consultation as soon as possible after the legislation has been finalised.

The preparations that councils need to make were touched on several times. We are working on pilot projects that will involve the Department, councils and all those who will be involved in the transfer of functions, whenever that may occur. As we know, the date has not yet been set for the transfer, although it will be set by the Executive in due course. The pilot projects will test the

arrangements that will apply when powers eventually devolve to councils and they will involve councillors, council employees and those Planning Service employees who will transfer to councils working closely together until powers transfer. They will examine capacity building and all the arrangements that are involved in the transition.

The first issue that was discussed today is the independent examination of development plans and appeals. Various issues were raised: whether OFMDFM should pay for additional commissioners; planning appeals; the call-in and soundness of plans; and issues about clauses 15 and 16. I will ask Angus to pick up on those points and to clarify the issues that surround them.

Mr Angus Kerr (Department of the Environment):

Thank you very much. The independent examination of plans and the use of the PAC and independent examiners is not meant to cast doubt on the impartiality or independence of the Planning Appeals Commission; the Department wants to use the commission as the first port of call in development plan examinations or appeals. However, in the past when there was a huge backlog or a large number of plans arrived at the same time, the Planning Appeals Commission had difficulties in dealing with them. We anticipate that that may also be the case when powers transfer, because, for example, development plan functions will transfer to 11 new councils, all of which will want to hit the ground running with their new plans. The Minister wants to be able to step in and ensure that, if there is a problem, there is another way of ensuring that the independent examination of plans will move forward.

The approach will be based on the normal approach that government takes to appointing independent people, with applicants being examined to ensure that they are properly qualified and independent. The approach will mirror that taken during the regional development strategy in which some of you may have been involved and which used independent people, rather than the PAC, to conduct an examination in public. That approach, which is also used by DRD when examining major road proposals, would be used only as a last resort, and the Department will ensure that all proper procedures are in place so that those appointed are independent and appropriately qualified. The process of the independent examination of plans that those individuals would be expected to undertake would be the same as is undertaken by the PAC and would be set out in guidance.

Related to that is the issue of balance between the power of councils and that of the Department in the Bill, and, specifically, on the independent examination in the binding report.

The approach in the Bill, which the Minister wants to take, is that the Planning Appeals Commission or independent examiner will undertake the independent examination and will report to the Minister. There will then be an opportunity for the Minister to issue the binding or final report for councils to adopt. That is born out of the unique circumstances of Northern Ireland, where it is deemed that the appropriate person or system within which that should be done is the democratically accountable system in the Assembly and the Minister himself as opposed to its being left to independent examiners or the Planning Appeals Commission, which is not accountable in that way. It is not envisaged that the Minister will be involved in changing the report to a significant extent. It will be well bounded in his role to ensure the consistency and good planning of the region. Those are the Minister's regional objectives.

Other issues cropped up, including soundness. The requirement for objectors to demonstrate the soundness of their proposals will be brought through in subordinate legislation and guidance but not in the Bill. The approach is likely to focus on the procedural tests undertaken by the team preparing the plan: its consistency with central government's plans, policy and guidance; the coherence or effectiveness of a plan; and how it is justified.

One of the other issues mentioned was broader intervention and intervention powers. Powers are peppered throughout the Bill allowing the Department to intervene. They are there as a safeguard. They are similar in many ways to powers in other jurisdictions where a similar planning system has been in place. They are not viewed as powers that the Department will use daily; they are availed of in a limited sense and are rarely used in other jurisdictions. That will be the likely outcome in Northern Ireland as well. It is envisaged that councils will take up the responsibilities given them and move forward with them.

I probably missed one or two things, but I hope that you will come back to me if I did. That is an overview.

Ms Smith:

I appreciate that it looks as though a huge amount of power is retained by the Department. That is because a great deal of space in the Bill has to be devoted to safeguards. As Angus said, it is only in extreme circumstances that the Department will step in to do the job of a council. Our clear expectation is that councils will do a very good job; it is unlikely that the Department will ever have to step in and use those powers.

The Chairperson:

Are there any other comments? Some members have to leave. If anyone needs clarification, now is the time to ask. Be brief; I will allow only five minutes.

Mr John Walsh (Belfast City Council):

Will the Department prescribe the circumstances in which the Department or the Minister will, in any of those cases, step in and utilise the powers of intervention that they will have under the Bill?

Ms L Jackson:

I will deal with the query about the calling-in of a planning application for a major development, for example, from a council. The Department will take over the planning application side.

Mr Walsh:

Or a local plan.

Ms L Jackson:

It is the same principle. We are preparing a direction on call-in, which will be consulted on as well as the subordinate legislation. We will stipulate criteria whereby a council will have to notify the Department of a particular type of application. We envisage that that would happen where there is a significant departure from a local development plan or where there is a significant objection from a statutory consultee. The process is limited and prescriptive. In that way, attention is focused on those important applications that will be referred.

The Chairperson:

OK. I thank the officials for their responses. Normally, the Committee is stuck in room 144 when it takes formal presentations; today, however, was very productive, and I thank all those who participated. I know that many of you have presented written submissions, and if you need to contact the Committee we will respond to you. The Committee Stage of the Bill will continue and a transcript of this event will be circulated to all participants in the next few days for comment. The finalised transcript will be made available on the Committee's Planning Bill web page. The content of that transcript will feed into the Committee's report on the Planning Bill, which will be laid before the Assembly later this month.

I thank the Assembly officials and reporters who transcribed the event, Assembly broadcasting for providing the recording service and the catering and support staff for their help today. Thank you all for coming.