Northern Ireland
Assembly

COMMITTEE FOR THE ENVIRONMENT

OFFICIAL REPORT (Hansard)

Planning Bill

3 February 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 Trevor Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Peter Weir
Mr Brian Wilson

Witnesses:
Mr Stephen Gallagher)
Ms Irene Kennedy) Department of the Environment
Mr Peter Mullaney)
Ms Maggie Smith)

The Chairperson (Mr Boylan):

The Committee welcomes back officials from the Department of the Environment (DOE). We welcome Maggie Smith, Irene Kennedy, Stephen Gallagher and Peter Mullaney. I will start with Part 5 of the Bill, which deals with enforcement. We will begin with clause 130, which concerns expressions that are used in connection with enforcement.

Although the clause was generally welcomed, councils stressed the need for adequate resources. I know that that issue has already raised its head, and we may touch on it later when we discuss general issues. However, could we highlight resources that are specific to the enforcement provisions? Will the Department indicate its intentions on that, please? I know that we are talking about resources in general, but resources for enforcement are a key element of what we have seen has happened on the ground.

Mr Peter Mullaney (Department of the Environment):

We touched on the issue last week. Clearly, enforcement is a demand-led activity, and it is not possible to say just how many breaches of planning control there will be. Therefore, it is always more difficult to allocate an appropriate level of resources, because it depends on the area and the nature of the breaches. Planning Service has a dedicated enforcement team in each of its divisional offices. When powers pass to councils, it will be for each council to determine the level of resource that it chooses to dedicate to enforcement activity.

The Chairperson:

Anyone who has been a councillor will be well aware of the enforcement issues. We want to hand down a piece of legislation that equips councils to deal with all aspects of planning control, and enforcement is one of the key elements of that. I know that there are a lot of retrospective cases at the moment, but we have to draw the line at some point. It is a key element for councils.

Mr Kinahan:

I have a more general point to make about resources. No one knows what resources they will need. I know that you said that the system is market-led, but I think that we need to provide guidance to councils that will allow them to determine the amount of resources that they need, even if an average is suggested. Everyone is working in a vacuum at the moment, and a little bit more detailed guidance is required.

Ms Maggie Smith (Department of the Environment):

That is a useful point, because it underlines the need for an effective relationship between the Department and the councils as we move towards the transfer of powers. As Peter said, resources

are already being put into every section of what will become the area planning offices. Ultimately, the councils will have to decide for themselves how they are going to deploy those resources. Through the pilot projects, from April 2010 until the day of the transfer of functions, the Department and the councils will increasingly be working together. That is when the councils will be able to start thinking in a practical way about first, the demands that will be placed on the new planning service, which is coming to them, and secondly, how they will manage it.

Mr B Wilson:

As far as I am concerned, enforcement is the weak link in planning control. Resources are never given to enforcement. I declare an interest as a north Down councillor. One officer in North Down Borough Council is dealing with 150 cases, but it takes two years for a decision to be made on an individual case. By that time, the issue is long gone, and, in many cases, it has become a fait accompli. The problem in handing over responsibility for enforcement to the councils is that, at present, virtually no one is involved in any enforcement activity. Therefore, if a council makes a conscious decision to implement enforcement, it will have to take on a lot more staff to do it effectively.

Ms Smith:

I cannot comment on what is happening in a particular council area, but I think that you are saying that there may be a situation where a council would put more emphasis on enforcement than it is doing in a particular area at the moment. That point underscores the importance of transferring powers to councils, because it means that they can ensure that resources and powers are deployed in a way that is satisfactory to councils and the local community.

Mr B Wilson:

The point that I am making is that those commitments cannot be met within existing resources. There is a problem with funding from fees, because it determines the number of enforcement officers that councils can afford to employ and the way that those officers are deployed. Enforcement is a Cinderella issue as far as the Planning Service is concerned.

Ms Smith:

When the powers transfer to councils, they will have latitude in how they employ their resources.

Mr Mullaney:

As I mentioned last week, in such situations, irrespective of what level of resource is dedicated to enforcement, priorities have to be considered. As it is an unknown, and as some types of cases are very serious and others less so, it will always be a case of prioritising enforcement activity. The Department, through its planning policy statements (PPS) and enforcement strategy, has already laid out what it considers to be the cases that require most active consideration. Ultimately, the case that is given highest priority will require action. There are two levels. The first is the actual amount of activity, and the second looks at ways that resources can be used most effectively in that activity.

Mr B Wilson:

There is considerable concern among councillors and the public that enforcement does not happen. Councils will be able to allocate extra resources to that when they take over, but there is certainly frustration at the present time.

The Chairperson:

Mr Clarke, did you want to ask a question?

Mr T Clarke:

The point that I wanted to make has been covered.

Mr McGlone:

It would be useful if we were informed about two points. We heard from the Planning Service that staff who were underused because of the drop in planning applications were being shifted to the enforcement division. It may be useful to get a handle on how many were shifted to enforcement.

Secondly, how much do the legal costs and the implications of taking a case further down the line to the courts weigh as a decision-making factor in enforcement? In other words, the Planning Service may accrue fairly substantial bills every year through any legal action that it takes on enforcement. It will win some and lose others, and costs could be awarded one way or the other.

Is there a pattern of increased non-redeemable costs for the Planning Service and the Department? What we were being told about extra resources going into enforcement does not seem to be the case in practice. Are other factors at work that we are not privy to at this stage? I am not asking you for that information now, Maggie. I would not expect you to have it now.

Ms Smith:

I was going to say that I do not have that information now.

The Chairperson:

We will try to acquire that information.

Mr T Clarke:

There is probably always a grey area with enforcement. What is the legal position with the enforcement section? Is it a statutory requirement to have an enforcement department?

Mr Mullaney:

Clearly, the Planning Bill will give enforcement powers to the planning authority. To date, the Department's policy stance has been that it will pursue enforcement; indeed, it is an important way of ensuring that the planning system works as effectively as possible. Therefore, those powers are available. The legislation says that the Department or the council, as will be the case, can pursue enforcement in any case that it considers it expedient to do so. Therefore, an assessment has to be made in every single case of whether to pursue and in what way. It is quite clear that that power exists, and our policy stance has been that we will exercise it.

Mr T Clarke:

I would like to tease out something that Patsy asked about. Peter talked about expediency. Does the Department keep a record of the number of cases that it did not pursue after enforcement action was taken? That information would be useful in giving us a flavour of the number of cases that the Department takes through the process but then decides are either not expedient to pursue or it gives up on.

That would show us how useful or, in some cases, not useful the enforcement has been.

Mr Mullaney:

We do have records. I am not sure whether they are held in precisely that form. We will endeavour to supply whatever information or statistics we have.

The Chairperson:

Before we go on to the next clause, I refer members to the black files on the table, which contain the Department's responses. Mr Weir can help out Mr Clarke when he pays attention.

Mr Weir:

I think that Mr McGlone is in the same boat.

The Chairperson:

Mr McGlone is in the same boat, yes. It is the black files, as opposed to today's papers, that contain the Department's responses to these questions.

On clause 131, several submissions were generally supportive but wanted more detail on the four-year rule for single dwellings and a definition of "substantially completed".

Mr Mullaney:

We are not quite sure about the first issue, because the implication is that the time period should be lengthened. However, that would effectively disadvantage the householder. At present, there is a four-year limit. Therefore, that would seem to be counterproductive, and we are not sure what the purpose of that submission is.

The Chairperson:

OK, just to clarify: the four-year rule and the 10-year rule are in primary legislation and cannot be changed in terms of change of use and in terms of the four years you can enforce; the four-year rule in terms of a building may not be established for four years.

Mr Mullaney:

That is correct.

The Chairperson:

Many councillors know from experience that enforcement depends on whether agreement is reached on the use of that building. After those four years, it could sit idle. Although they mention single dwellings, it is buildings per se.

Mr Mullaney:

On the precise point of the single dwelling, the limitation, basically, if somebody is living in the house is whether it is reasonable, after four years, to take action against that occupier. That is where we were not sure: it seemed counterproductive.

On the "substantially completed" point, it is worth mentioning that, quite clearly, this is a Planning Bill — primary legislation. We have also referred to subordinate legislation, guidance and so on. However, case law is also a key component of planning, whether established through the courts or the appeals mechanism. There have been cases concerning what is "substantially completed". In effect, it is a question of fact and degree. The one thing that emerges is that each case must be judged on its merits, so what is "substantially completed" in one case may not apply in another. It is difficult to give a watertight definition.

The Chairperson:

That is fine, so long as it is consistent across the divisions.

Mr Mullaney:

Yes, absolutely. In case law it often emerges that what appear to be identical cases are not. They may be similar but not identical, and then we have to look at the precise circumstances of each case.

The Chairperson:

If I hear "on its own merits" once again, I may come back and reword that. Are there any questions?

Mr T Clarke:

Clause 131(3) refers to 10 years.

The Chairperson:

That is the 10-year rule for business use; that is in primary legislation.

Mr Mullaney:

Yes, that is for changes of use.

The Chairperson:

The major problem for councils is that six-year gap between four and 10 years. That is always —

Mr T Clarke:

Why not make them both four?

The Chairperson:

I think that we suggested that one other day. However, it is in primary legislation. To change it, we would have to go down a different route.

Mr Mullaney:

It is something that, again, is in the current legislation. There is a history about why there was change originally. However, it allows the Department that additional opportunity after four years. If both were four years, all enforcement activity would have to be effective within that period. In a sense, if you are looking to strengthen the enforcement provision, that would have the opposite effect. It would weaken it by shortening the period in which the planning authority could take enforcement action.

The Chairperson:

Can we change the provision to four years now?

Mr Mullaney:

We do not wish to go down that route.

Mr T Clarke:

The Department's defence is that that would weaken its hand, but it is despicable if it takes the Department to take nine and a half years to detect that somebody has an unlawful business. If enforcement has been successful until now, surely four years would be adequate, particularly for a commercial business as opposed to a residential property. Surely it is a good idea to bring the two in line to prevent any confusion. The Committee should look at four years for both.

Mr Mullaney:

Bear in mind that it is not necessarily from when the Department becomes aware of it.

Mr McGlone:

Can you expand on why the Department does not want to go that way?

Mr Mullaney:

Effectively, it would lead to a diminution or weakening of the enforcement powers that are available to the planning authority, whether the Department or councils. There are cases that take some time to reach a conclusion, plus the fact that we may not be aware of them from the outset. The clock is ticking.

Mr McGlone:

In the cases that I normally deal with, the clock is ticking from the time it is acknowledged to be a breach or non-compliant with planning regulations.

Mr Mullaney:

Yes, when the breach —

Mr McGlone:

It must take you an awful long time.

Mr Mullaney:

When the breach first occurs.

Mr McGlone:

As acknowledged in the evidence that you have accumulated and has been detected. Why, then, are you saying that it takes so long?

Mr Mullaney:

Certain cases take a long time to come to fruition.

Mr McGlone:

It does not matter how long it takes to come to fruition; it is either —

Mr Mullaney:

I should have said conclusion.

Mr McGlone:

Or conclusion, determination or whatever you want to call it. It does not matter; it is from when it is detected, and the evidence is rolled back from the time of detection in any appeals that I have attended or any cases that I have dealt with through the good offices of the Planning Service.

Mr T Clarke:

Clause 131 states:

> "beginning with the date of the breach".

Mr Mullaney:

Yes, it is the breach.

Mr T Clarke:

It is not the conclusion.

Mr Mullaney:

No, it is the breach.

Mr T Clarke:

If you detect the breach within three years and nine months, as opposed to nine years and nine months, it should make you more efficient. You should never wait eight or nine years. Do you agree, Patsy?

Mr McGlone:

Yes.

Mr T Clarke:

If we had successful and useful enforcement at the moment, it would certainly happen within four years. Therefore, provided you start action within four years, should it take three years to bring a case to conclusion in court and get the breach stopped, that breach will have taken place within the four-year period. You are still within your rights. It has not weakened you.

Mr Mullaney:

As with the current legislation, the proposed legislation applies from when the breach occurred.

Mr T Clarke:

Yes.

Mr McGlone:

Yes, but not to bring it to a conclusion. It is retrospective; it is the determination of the evidence retrospectively from when the breach occurs, be that four years or 10 years from the point of detection, if you want to call it that.

Mr Mullaney:

It is from when the breach occurs, but the detection may be some period after that.

Mr McGlone:

Absolutely, but it is for the person to prove how long that application —

Mr Mullaney:

Yes.

Mr McGlone:

In other words, when a person is caught allegedly in breach of planning law, it is for them to prove retrospectively either the four or 10 years.

Mr Mullaney:

That is correct, yes. Well, the onus —

Mr McGlone:

It is not taken into consideration whether they spin it out for two, four or five years from the date of detection. In my experience, that is not the way it works. It is for the person to prove backwards from the date of detection, not the date of determination.

Mr Mullaney:

No, it is not from detection, it is from when the breach occurs.

Mr McGlone:

Or when the breach occurs, as determined by them. It could well be that both are the same.

Mr Mullaney:

It could be, but the point is that a considerable period could elapse between the breach occurring and detection.

Mr McGlone:

Yes. That could be four years or 10 years, depending on whether it is a dwelling or a business. If it is more than that, you are out of the frame anyway.

Mr Mullaney:

Yes. The general point is that if everything were to be limited to four years, there would be instances, particularly for change of use, where that activity would be immune from potential

enforcement.

Mr McGlone:

That goes back to your point, Trevor.

Mr T Clarke:

What have you been doing for the six years prior to that? If you need a safeguard of 10 years, what were you doing for the six years preceding four to 10, or from nought to 10?

Mr Mullaney:

The point is that it is not necessarily from day one. The breach may have occurred some time previously to its becoming apparent.

Mr McGlone:

Absolutely, and if it is some time previously, either four years, in the case of a dwelling, or 10 in the case of a business, then there is nothing you can do about it anyway.

Mr Mullaney:

Absolutely.

Mr T Clarke:

If you line the two up and make it less confusing by giving them both four years, a business could be operating there for almost four years. Surely that would be a reasonable amount of time for the Department to —

Mr McGlone:

It should be more detectable than a house.

Mr T Clarke:

Yes, they should be.

Mr Mullaney:

If we can pass without having a hand to that evidence showing why the 10-year rule was introduced, that is not necessarily the case, and it would be a weakening of the enforcement system. The categories are quite clearly defined in the Bill, whether it be a dwelling or a change of use or whatever, as are the four-year or 10-year rules that apply to each, or vice versa. There is no confusion in the Bill as to what is applicable in each instance, whether it is four years, 10 years or any other period. It is a continuation of the existing legislation.

Mr McGlone:

We know that, but we are the ones who are trying to live with it and some of its shortcomings.

Mr Mullaney:

But the shortcomings could be even greater; there may be cases between the four years and the 10 years that would become immune from enforcement activity. If the purpose of the Bill, or the general wish, is to strengthen the enforcement regime, that would be going in the opposite direction.

Mr McGlone:

The reason for that, to be frank, goes back to the problem of enforcement that we highlighted earlier. That is not the fault of the legislation; it is the inadequacies and shortcomings of enforcement and of detection.

Mr Mullaney:

It is clearly a resource issue, but there is also the fact that it is timed from the breach. It does not necessarily follow that it is all about resources. Breaches can have occurred some time before they are detected.

Mr McGlone:

I know that. We could talk in circles about that.

The Chairperson:

To be honest, I think that we have given it a fair wind. It is down to enforcement, but checks are

needed as well in the form of the four-year and 10-year rules. We will discuss that under resource issues. Only for the receipts being down and the situation in planning, we would not have detected as many breaches over the past couple of years.

Mr T Clarke:

Can we consider the four years?

The Chairperson:

It is up to the Committee to decide.

Mr T Clarke:

Can we put that down for consideration?

The Chairperson:

Yes.

No specific issues were raised in relation to clause 132. One council wanted more time to respond, but a lot more councils could have taken more time to respond. Do members have any questions about clause 132? OK.

On clause 133, local government suggested that a level 3 fine is too low for non-compliance with a contravention notice and that it should be set at level 5.

Mr Mullaney:

The Department considers that to be an adequate level. We can agree to differ, but we feel that it was adequate.

Mr T Clarke:

Which one is that?

The Chairperson:

That is clause 133, penalties for non-compliance with planning contravention notices. Local

government views the level 3 fine as too low for non-compliance, and —

Mr Weir:

For clarification, Chairperson, what do level 3 and level 5 fines amount to?

Ms Smith:

A level 3 fine is £400 to £1,000. A level 5 fine is £2,000 to £5,000. Sorry, those are the increased tariffs.

Ms Irene Kennedy (Department of the Environment):

A level 3 fine is £1,000 and a level 5 is £5,000.

Mr Weir:

Are those on the basis of fines not exceeding those amounts? If so, it strikes me that a level 5 fine would not be excessive. I am concerned on a broader level. At times, we have all seen a degree of frustration in planning when someone has more or less just disregarded things. To be brutally honest, even a £5,000 fine may not overly trouble them. The argument for keeping it at level 3 does not seem all that strong.

Mr T Clarke:

The Department may think that level 3 is suitable, but we are considering giving this to local government, which will have to try to fund this, and it is suggesting that it would be more satisfied with level 5. Is that not a good reason anyway? Local government will have to administer the planning system and will have to cover its own costs.

The Chairperson:

To be honest, I think that, in some cases, certainly the level of fine, I mean —

Mr Weir:

The other thing is that developers or people of that nature may sometimes have reasonably deep pockets. By the same token, some people may obtain legal aid, not because they are short of money but what they have put down on paper. In my neck of the woods, we have a notorious

case involving the enforcement of the smoking ban in a situation where we had no alternative other than doing that. Even though we have been completely right and been vindicated every time it has gone to court, it still ended up costing the council a brave bit of money because the person concerned was officially on legal aid. I suspect that he had a lot more resources than he was letting on. If the fine is kept at level 3, we could, broadly, end up with a situation in which people more or less feel that they can flout the thing in the knowledge that it will probably cost the council more than it is worth to pursue it. To act as a wee bit of a deterrent, it needs teeth.

The Chairperson:

It is part of enforcement to ensure that they comply.

Mr Mullaney:

Clause 133 relates to a contravention notice, which requests information, rather than an enforcement notice.

Mr Weir:

I appreciate that, but in terms of pushing this, I suspect that if somebody has failed to do something through a slight oversight, I cannot imagine there being a rush to prosecute anyway. This will be where there is a flagrant breach. Simply having a maximum fine does not prevent the courts from looking at the situation and deciding that there was a technical breach for which it will impose a £50 fine or whatever. However, it at least gives the option of imposing a sanction or penalty on those who are deliberately obstructive.

The Chairperson:

Maybe we will look at the wording of an amendment in relation to that. Are you happy enough?

Mr T Clarke:

Unless the Department itself wants to do that.

Ms Smith:

We will take it back to the Minister for his view.

Mr T Clarke:

That would be easier than us trying to make a lot of amendments.

The Chairperson:

No, I do not think that we will make too many.

Mr T Clarke:

I am just suggesting —

The Chairperson:

No, that is fine. If the Department is willing to —

Mr T Clarke:

If not, then we can do it, Chairman.

The Chairperson:

OK. Are members happy enough with that?

Members indicated assent.

The Chairperson:

Originally, no issues were raised about clauses 134 to 136, but, as members can see, the south Belfast residents have e-mailed today to raise the issue of how we strengthen that, which I think we need to look at. I know that we are giving powers to councils, but how will we get residents involved? They made a point about what is going on and the non-compliance that is taking place in conservation areas.

Mr T Clarke:

I agree with their submission. That would capture a situation where a developer has conditions added to his permission under which he must carry out various functions before he starts his development. Eventually, people in the locality are satisfied, provided that all of the conditions are met, but, invariably, what we see is that the developer goes ahead with his development

anyway, giving a two-fingered salute to the Department, which says that there is not much that it can do. If the Department could invoke a stop notice at that stage, it would prevent such a situation. If we are serious about handing over good legislation to local councils, a stop notice would be a useful tool in those instances.

Mr Mullaney:

The legislation provides for that; it provides for temporary stop notices. I suspect that the issue is with the circumstances in which they are applied — or not applied, as the case may be. Clearly, it is important to have those provisions, and it will be incumbent on each planning authority to determine the circumstances in which a stop notice should be served, if it considers that to be appropriate.

The Chairperson:

How do we strengthen it, Peter? It is all right saying that we are putting it in, but we need to look at it in statute. We have heard complaints about what is going on. That said, it is not a case of someone walking past a development and being selective by picking out certain things. We are saying that we need to get the process right from the start.

Mr Mullaney:

The process is there in the Bill, but it is worth pointing out that, in certain circumstances, there are potential compensation implications to serving a stop notice. Any planning authority will have to look carefully at whether it is appropriate to do so. The point is that the provisions are there and are available, but the concern or the issue is over when they should be applied or not applied.

The Chairperson:

Exactly, and it is all about non-compliance and who checks each phase, as Mr Clarke said, from start to finish. Someone might realise midway through the process or at the end of it that they have not complied. How do we ensure that the legislation covers that? You are saying that it is sufficiently robust.

Mr Mullaney:

Yes, because this is a temporary stop notice. A stop notice has to be served on foot as an enforcement notice, but a temporary stop notice allows it to be served for 28 days to hold the fort, if you like, without recourse to an enforcement notice. It is quite clear that an enforcement notice is a legal process that takes some time, while a temporary stop notice holds the fort, albeit only for a limited period. We contend that we are putting the provisions in place to allow that to happen, and it is for each planning authority to determine when it wants to apply those provisions.

The Chairperson:

That is the problem with the process: how do you go about initiating it? You are saying that it is sufficiently robust.

Mr Mullaney:

Yes. It is for each planning authority to determine whether it wants to invoke those powers.

The Chairperson:

There is inconsistency across the planning divisions at the minute. That is the problem.

Mr Mullaney:

Without wanting to go back to the mantra of each on its merits, each circumstance must be looked at carefully. The temporary stop notice gives the facility to act quickly if it is deemed appropriate to do so.

The Chairperson:

We may look at that again. The south Belfast residents wrote to us, and we may get more information in relation to this. I take your word that the legislation is robust enough, but we may look into it to ensure that.

Mr T Clarke:

Some statistics on how many stop notices have been issued would be useful.

Mr Mullaney:

Statistics on the numbers of stop notices issued are available. I stand open to contradiction, but we should have that information.

The Chairperson:

In relation to clause 137, one submission suggested that provision should be made for an alternative arrangement for service in the event that relevant parties cannot be located. Has the Department any comments on clause 137?

Mr Mullaney:

I am not sure exactly what was intended here, but it is worth bearing in mind that an enforcement notice is a legal document and a legal process that seeks a remedy. If that remedy is not provided, there are potential legal consequences for all the interested parties, and, that being the case, all of those interested parties should be involved. I am not sure what the alternatives are.

The Chairperson:

We need further clarification on that, and then we will get you to respond again.

Mr Mullaney:

We are quite clear about what needs to be done. I am not entirely sure what the alternative arrangements are.

The Chairperson:

It is about how, in the absence of people, a notice will be served.

Mr Mullaney:

That presents a potential difficulty, but the point that I am making is that it is a legal process. Everybody who is involved has a potential legal consequence out of it and needs to be served a notice or involved in the legal process. It is not an optional extra. If you are liable for action, you are liable for action.

The Chairperson:

We are talking about how it will be done in their absence and how long the process will take. Whoever you are serving the notice on might not receive it for a period of time. When we go through that process, we need to tighten up on that. They are asking whether there are other ways of achieving that. I know that it is a difficult issue.

Mr Mullaney:

We have a number of methods. The notice can be served in person or by recorded delivery. We acknowledge that there have been instances when this has been a difficulty; there is no doubt about that. However, I am not sure that there is any feasible alternative.

The Chairperson:

It is a valid issue that has been raised.

Mr Mullaney:

It is a valid issue, but I am not sure whether there is another way of doing it.

The Chairperson:

Any questions, gentlemen? OK, clause 138.

Mr Mullaney:

Again, this is the oversight powers. We have touched on this generally. There may well be occasions when the Department will have to have recourse to legal action, and clause 138 provides for that.

The Chairperson:

Content, gentlemen?

Members indicated assent.

The Chairperson:

No issues were raised in relation to clause 139, so I will move on to clause 140. Respondents wanted clarification on whether a council could vary or withdraw only enforcement notices

issued by that council. It was also suggested that the function should be the responsibility of a single authority.

Mr Mullaney:

Again, it flows on from my previous comments. If the Department is to have the ability and power within the Bill, then it flows that the Department also has the power to vary or withdraw a notice.

The Chairperson:

The problem relates to when we transfer the powers down. There will be a transition period and a trial and error period. We are going by examples of how we operate now, but it will be new to each local authority. They are concerned about how the process will roll out and what obstacles they will meet.

Mr Mullaney:

This is similar to what we have said in terms of the guidance and practice of other areas of planning. It is sensible for there to be discussion between the Department and councils, and whatever guidance is necessary can be issued.

The Chairperson:

We will be relying a lot on guidance and subordinate legislation. Content, gentlemen?

Members indicated assent.

The Chairperson:

Clause 141 was supported, but it was suggested that the function should be a responsibility of a single authority.

Mr Mullaney:

We have just covered that point.

The Chairperson:

Yes. It is the same thing. Are members content?

Members indicated assent.

The Chairperson:

The issue of the third party rights of appeal was raised in relation to clause 142. That will be considered at a later stage.

Mr Mullaney:

Enforcement action — the serving of an enforcement notice — is a legal document and process. There is a right of appeal if the recipient of a notice chooses to exercise it, at present through the Planning Appeals Commission. They advertise enforcement appeals, and, as far as I am aware, third parties are allowed to participate if they give due notice.

Therefore, there is a difference. This is a legal process, and somebody could end up in the courts and be fined. There is a point in saying that the first party in the case has certain rights, but third parties have an opportunity to participate in the process.

Mr T Clarke:

Perhaps I am confused, but is it not more the case that third-party objectors have a right to appeal against a planning approval decision as opposed to against an enforcement notice?

Mr Mullaney:

That is correct.

The Chairperson:

Obviously, that was a personal comment, but it was raised in connection with this clause. We are dealing with that issue, but it is not specific to the clause. That was a valid point, Mr Clarke. Are members content?

Members indicated assent.

The Chairperson:

We move now to clause 143, which deals with general supplementary provisions in appeals against enforcement notices. It was suggested that the involvement of the Department and

councils under this clause was unnecessary and potentially confusing.

Mr Mullaney:

We covered that point about the oversight rule. However, the point is that if the Department chooses to exercise that power, it is required to consult the council before doing so.

The Chairperson:

OK. Thank you very much. Clause 144 deals with supplementary provisions relating to planning permission in appeals against enforcement notices. No issues were raised about the clause.

Clause 145 concerns the execution and cost of works required by enforcement notice. Again, that relates to the confusion.

Mr Mullaney:

Yes, that is the same point about the same issue.

The Chairperson:

No issues, other than the need for more time, were raised about clause 146, which deals with an offence where enforcement notice has not been complied with, or clause 147, which concerns the effect of planning permission and so forth on enforcement or a breach of condition notice.

Mr Dallat:

Is there any protection against people who wilfully report others for breaches of planning laws? That situation usually involves two people who live up a lane falling out over something. As a consequence, claims are made that development has taken place outside the law and so forth. That puts people to enormous inconvenience. Is there anything in the law to ensure that enforcement officers check the facts and do not simply churn out letters pronouncing people guilty before they have even been to the place in question?

Mr Mullaney:

There is nothing in legislation. However, in practice and in common sense, the Department at present, and the planning authority in future, would be required to investigate the circumstances

of each case and satisfy itself on the available evidence, or obtain further evidence if that evidence were not immediately available. It would then determine, first of all, whether there had been a breach of planning control. Mr Dallat is quite right to say that there are instances when matters are reported as alleged breaches when they are not.

That is the first thing that the planning authority would be required to determine, and it would then assess the circumstances from that. Although we may get vexatious or wilful complaints, those are not taken at face value. It is incumbent on the planning authority to investigate them.

The Chairperson:

That is part of the problem. That was a very valid point. Somebody can make a telephone call that creates serious problems. I am by no means defending that. I am not talking about the planning application itself or the building or whatever it may be. However, those people certainly have no rights when it comes to being reported. If we ask the question, even as public representatives, nothing is said. We basically cannot give a response to people.

Mr Mullaney:

The Department, and any planning authority in these jurisdictions, clearly has to satisfy itself about cases. It is incumbent on it as a public authority to investigate cases.

It also has to satisfy itself that there has been a planning breach, and it then has to ascertain the nature of that breach. Clearly, there are cases where complaints are made, but there has been no breach, or planning permission has been granted or whatever the case may be.

Mr Dallat:

I do not want to delay things, because time is valuable to the Committee. We have spent a lot of time going through the Bill. I would like to think that, at the end of the process, there would be some improvements in how planning is handled. This is one issue that puts people to enormous trial and tribulation. People who have never been in trouble with the law and have never been threatened with prosecution in their lives may be affected. Some mad hatter may move in up the lane, and he has not just the Planning Service, but everyone else, upset. He is even saving the worms. If we miss opportunities now to get decent planning that protects everybody, why should

a planning application not just be rubber stamped and sent on, rather than people having to listen to a whole plethora of reasons why the planners cannot act? We should also remember that the planners were recently judged to be not fit for purpose.

Mr Weir:

I do not want to get involved too much in the wider debate, because we obviously have to scrutinise this piece of legislation. However, I understand that we have all come across situations in planning where people make vexatious complaints. My point is that sometimes, in dealing with "mad hatters", as John called them, legislation cannot solve the problem. The issue may be more about administrative processes or whatever, but there may not be an answer in what is down in black and white in legislation. We need to bear that in mind as well.

Mr Mullaney:

The point is that people cannot be prevented from complaining if they choose to do so.

The Chairperson:

I understand that.

Mr Weir:

They can always ring 'The Stephen Nolan Show'.

The Chairperson:

The biggest show in the country.

Mr Dallat:

Can we incorporate that?

Mr Weir:

If there is an amendment.

The Chairperson:

It is an issue and a valid point. Unfortunately, we have all experienced that situation, with people making phone calls and so on. Perhaps the Committee will look at that again.

We will move on to clause 148, which concerns enforcement notices having effect against subsequent development.

Mr Mullaney:

This is a point that we discussed previously about the level of fines. We consider them to be adequate, although we note that it was requested that further consideration be given to them.

The Chairperson:

We have dealt with clause 148; we have only another 100 left to consider.

Mr T Clarke:

Could levels of fines not come under clause 147 as well? Does it not come under the clause that we discussed earlier, where a developer goes ahead without meeting the conditions? Is there adequate provision in the Bill to make it less attractive to do that? As John said, we want a piece of legislation that is going to be good. Although I agree with Peter on that point, developers have flouted the law, because they know that there are so many loopholes and they can go ahead and do things. There has been a problem with larger developers not meeting the conditions and coming along at the end to tidy those things up. It is clear in the conditions that they should be met before the start of the development. Surely that would be a breach of a condition notice.

Mr Mullaney:

As I understand, that is a level 5 fine, which is £5,000. Previously, it was a level 3 fine, so it was only £1,000.

Mr T Clarke:

Is a level 5 fine sufficient deterrent for someone who is building 60 or 70 houses?

The Chairperson:

We are going to raise the other issue of consideration to a level 5 fine. It is up to the Committee.

Mr T Clarke:

We want a deterrent. When a developer gets approval, we want him to meet the conditions. I

would like to give Patsy an example. I got a letter today about a small development from the enforcement people. The developer got permission to build three houses, albeit that it was only three houses in someone's back garden. The condition was that he remove the wall. It is not expedient for the Planning Service to enforce such conditions. Therefore, the developer got his three houses passed and sold, yet it is not expedient for the Planning Service to enforce the condition for removal of the wall. That is a breach of a planning condition. If there had been a reasonable fine, however, the developer might have decided that it would be cheaper for him to have the wall taken down.

In such a case, where a developer has flouted the rules, a fine of even £2,000 or £3,000 would have been pretty cheap, given the size of that wall. I think that there has to be a punishment that fits the crime.

I know that you do not want us to be specific, Chairperson, but planning permission would not have been granted in that case if the wall could not have been removed. However, the developer said that he would build and sell his houses, and three people are coming to us complaining that they cannot even get visibility to get out. The Planning Service says that it is not expedient to enforce the condition. However, that was a breach of a condition, and there should be a fine to fit the crime.

The Chairperson:

Will you take that to the Minister so that he can have a look at it?

Ms Smith:

Yes.

Mr Dallat:

I had a case recently when a developer was to plant trees on a bit of open space. Not only did he not plant the trees, but, thanks to a later change in planning policy, he has built more houses on the open space. That is a serious point.

Mr McGlone:

I have been told on occasion that when the Planning Service first becomes aware of someone having gone ahead with a development in breach of the conditions of the existing planning approval, it notifies the Council of Mortgage Lenders. However, there is clearly an issue about the competence of the solicitor who was acting on behalf of the person purchasing the house.

Mr T Clarke:

The problem, Patsy, is that it takes the Planning Service nearly 10 years to get a list of businesses in the countryside. That is how developers can get developments up and running after a couple of years and houses all sold off before the Planning Service realises what has happened. Do you know about that wee loophole that they have always used?

The Chairperson:

In the absence of anybody checking exactly whether they have complied, a fine would act as a deterrent. We are asking whether the amount of the fine can be increased. Once the plans are approved, that is it, it is out the door, but who checks it? Obviously, the building regulations are checked, but there are no checks or balances on whether the development complied with the approval certificate or the conditions.

Mr Mullaney:

Again, that obviously comes down to resources. Once councils assume planning powers, however, they will also have the powers of building control, environmental health and so on. Therefore, they would have an opportunity to co-ordinate their inspection regime. If a council chose to put more staff into enforcement to look at potential breach of conditions or the implementation of conditions, they would also have the resource of building control and other departments that they may wish to use to co-ordinate their inspection regime.

The Chairperson:

That sounds fine on paper. In reality, however, there are no checks, although you mentioned building control. I heard of a case in a conservation area when a conservation officer indicated that a certain design for a development should not be allowed. He was overruled by the Planning Service. How much weight will you put on that?

Generally speaking, the planning approval is stamped and out the door, but we are asking about who ensures that the conditions are complied with. A reasonable fine will act as a deterrent to ensure that the conditions are complied with. That is all we are asking. It is all right saying that it is on paper and that the council's building control should do this or that, but that generally does not happen.

Mr Mullaney:

I am not saying that that measure is a panacea. However, I am saying that that is one mechanism that could result in earlier detection, which is a point that Mr McGlone made.

Mr T Clarke:

I agree with the point about marrying those together. What that does not prevent is the situation where a developer unlawfully starts a development and has the majority of his houses sold off.

If we think back to the example I gave, it has been brought to Planning Service's attention. The fine is inadequate as it is. Even if the fine is applied in this case, it will still be cheaper for the developer to pay the fine and not meet the condition. He would just move on and ask how much the Planning Service wants, give it a few thousand and say "There you are. Thank you very much."

The Chairperson:

Do you have a note of this issue?

Ms Smith:

Yes, we have made a note, and we will take it back to the Department.

The Chairperson:

We will move on to clause 149, which deals with service of stop notices by councils, and clause 150, which is about service of stop notices by the Department. It was thought that there was a duplication of responsibility for stop notices between councils and the Department. There was confusion. We are back to the stop notice issue.

Mr Mullaney:

The general point in that is duplication against the oversight powers that were referred to previously.

The Chairperson:

We might want to look at that again and see whether there is anything else to consider. I know that you are saying that it is robust on temporary and stop notices in general. Perhaps you would have a look and come back to us if you have anything to add or if you can find any examples. It is not only about giving powers to councils; it is about participation, communities and everything else. The issue has been raised.

Let us move on to clause 151, which is about the enforcement of conditions. It was suggested that the level of call-in of planning applications by the Department may result in councils carrying out enforcement action where they may not agree with the proposal or condition. Would you like to respond?

Mr Mullaney:

For accuracy, the submission should read clause 151(2), not 151(20). Our apologies for that. The point is that the council may serve a notice, rather than there being a requirement on it to do so. If the Department makes conditions that the relevant council disagrees with, the concern is about what its position on a subsequent notice will be. Clause 151(2) will give the Department a discretionary power to pursue it if it chooses to do so. The power is not mandatory.

Mr T Clarke:

What is the purpose of this clause?

The Chairperson:

Could you expand on it, please, Peter?

Mr Mullaney:

The clause will call in enforcement of conditions. It gives power to allow notices to be served

when there has been a breach of conditions. The point that is made in the submission is about what happens in a situation where the Department has imposed those conditions. That is the concern, rather than the service of notices. There may be a divergence of view as to the relevance or need for those conditions. Therefore, if there is any subsequent action, it will fall to the council, rather than to the Department, to take that action. That is the point of concern.

Mr T Clarke:

Are you saying that the Department can apply the condition, but it expects the council to follow it up on its behalf? Have I got that right?

Ms Smith:

No. Clause 151(2) says that the council may serve a notice. That means that the council has a choice. It does not have to serve a notice, but it may do so.

Mr Mullaney:

Clearly, that situation could arise where the Department has determined an application and the council disagrees with it. There is always that potential, but it is "may" rather than "shall". It is not a mandatory power.

The Chairperson:

There goes those words again Maggie.

Do members have any other comments?

Clause 152 is about fixed penalty notice where an enforcement notice has not been complied with. One council welcomed the fixed penalty option, and others felt that councils should be able to set penalties on a sliding scale. It was stressed that the fines needed to be significant to be effective. Do you have any comments on that?

Ms I Kennedy:

Perhaps I can respond to those comments, Chairperson. The ability to issue fixed penalty notices where an enforcement notice or a breach of condition notice has not been complied with is a new

tool in the enforcement toolbox. The Department's view is that, at this stage and for consistency, it should set the fixed penalty at the one level. That will be set in subordinate legislation.

Mr T Clarke:

Where would we use this power? Can we have an example?

Ms I Kennedy:

It is an alternative to prosecuting someone who has not complied with an enforcement notice or a breach of condition notice.

Mr T Clarke:

At what level would the fixed penalty be set?

Ms I Kennedy:

We have not decided that. The level of a fixed penalty will be indicated in subordinate legislation. You will note that the Examiner of Statutory Rules has supported our suggestion that it should be subject to draft affirmative resolution.

Mr Weir:

Fixed penalty notices could be useful in dealing with relatively minor breaches. At one level, the expense that is involved in taking a case to court may lead a developer to believe that he will not be prosecuted for a minor offence. Notices give the council at least the option of imposing a fine in such instances. It may depend on the level of the fine, but in general the council will have some options.

The Chairperson:

The option is there if the council wishes to use it.

We will move on to clause 153, which is concerned with fixed penalty notice where a breach of condition notice has not been complied with. Stakeholders raised no issues with that. Members should note that the Examiner of Statutory Rules was content that the amount of fixed penalty payments be set by regulations subject to draft affirmative procedure. Do members have

any comments to make?

We will move on to clause 154, which is about the use of fixed penalty receipts. Although one submission welcomed councils' ability to use receipts from fixed penalties for enforcement, another suggested that they should be able to use income from receipts to discharge any of its functions.

Ms I Kennedy:

Regulations will be prepared under clause 154 that will allow a council to use fixed penalty notices for the purposes of any of its functions. The ability to make regulations is there.

The Chairperson:

Do members have any questions or comments?

We will move on to clause 155, which is about injunctions. The only issue raised in connection with clause 155 was to do with resources. We will talk in general about resources.

Clause 156 is about councils issuing listed building enforcement notices. Although the clause was generally supported, there was a request that consideration be given to the additional technical expertise and resources that are needed to carry out that function. Do you wish to comment on that?

Ms I Kennedy:

It is a resourcing issue.

The Chairperson:

OK. Clause 157 is about the Department issuing listed buildings enforcement notices. Again, there is an issue about the duplication of resources. Do you wish to comment on that clause on behalf of the Department?

Ms I Kennedy:

Again, that goes back to the Department's oversight role and its retention of the power to issue a

listed building enforcement notice in those rare cases where it is deemed necessary to do so.

The Chairperson:

Do members wish to make any comments?

Clause 158 is about an appeal against listed building enforcement notice, and clause 159 deals with the effect of listed building consent on listed building enforcement notice. No issues were raised about those clauses. If members have no comments to make, we will move on to the next clause.

Clause 160 deals with urgent works to preserve building. It was suggested that consideration be given to the additional expertise and resources that are required to carry out that function and that the remit should lie with a single authority.

Mr Mullaney:

There are two issues in that, one of which is resources, which again, we have covered. We touched on the issue of technical expertise in other areas where councils may choose to combine expertise, or a council may wish to take the lead if there is a particular issue in a particular council area. That is a resources issue, but it is also an organisational issue and is not really for the Bill.

Mr McGlone:

I was just wondering where the two councils that made those suggestions are coming from. What technical expertise and resources are needed to tidy up a building? A brickie can be brought in to do it up or whatever. Therefore, I am not too sure where they are coming from.

There is one question riding on from that, and I am not too sure whether it is dealt with here or in another part of the Bill. For example, buildings are left vacant, and ownership of that building becomes a big issue. I suppose that if someone were to go and do something with the building, such as cowp it or something like that for a sightline, they would very quickly find out who the owner was.

I had occasion to deal with a case of ownership that became complicated and convoluted. Is there provision in the Bill for redemption of costs to a council when that happens? When an owner dies or moves to another country and they just cannot be got hold of, a building becomes quite dangerous, aside from being an eyesore.

Mr T Clarke:

A charge could just be put on it.

Mr McGlone:

I mean the legalities of that.

Ms Smith:

We will perhaps come back to you on that. It is a quite complicated issue.

The Chairperson:

I remind members that we are talking about listed buildings as well. Not everybody can just go in and carry out works. It is not a case of just sticking up a few acrow props and putting a plank against the wall.

Mr McGlone:

I know a few, if you are looking a few.

The Chairperson:

No, we have plenty down our way; we are OK.

Clause 161 is concerned with hazardous substances contravention notices. It was suggested that consideration be given to the additional technical expertise and resources that are needed to carry out that function. It was also pointed out that the roles of the Health and Safety Executive and environmental health are not defined in the Bill.

Mr Mullaney:

We just touched on the issue of expertise, and we refer you to the Department's response to

clause 156. The Health and Safety Executive and environmental health are important consultees in their own right on occasions. Again, it is a question of practice and guidelines. That is not something that we need to specify in the legislation.

The Chairperson:

Guidelines are important, though.

Mr Mullaney:

In the determination of any planning application or when looking at any enforcement action, the planning authority has to have regard to every material planning consideration, and, to do so, it calls on whatever expertise it requires, whether that is the Health and Safety Executive, environmental health or anybody else.

The Chairperson:

Are you content with clause 161, gentlemen?

Members indicated assent.

The Chairperson:

Other than, once again, the need for technical expertise and advice, no other issues were raised about clause 162, which is about the variation of hazardous substances contravention notices; clause 163, which is concerned with enforcement of duties as to replacement of trees; clause 164, which is appeals against section 163 notices; clause 165, which is about the execution and cost of works required by section 163 notice, or about clause 166, which is about enforcement of controls on trees in conservation areas. If members have no other questions, I propose to move on.

Mr T Clarke:

For accuracy, I notice that clause 163(2) states that:

"A notice under subsection (1) may only be served within 4 years from the date".

That period of four years is a consistent theme as opposed to 10.

The Chairperson:

Mr Clarke has the number four in his head today, so he might need four cups of tea, four dinners and four desserts.

Clause 167 concerns the enforcement of orders under section 72. There was a suggestion that the remit under the clause should lie with a single authority.

Mr Mullaney:

Again, it is the oversight role.

The Chairperson:

OK. Are members content?

Members indicated assent.

The Chairperson:

No issues were raised in respect of clauses 168 and 169, so, if members are content, I will move on to the next clause.

Mr McGlone:

There is no change to this?

Mr Mullaney:

It is a continuation.

Mr McGlone:

That is fine.

The Chairperson:

Content?

Members indicated assent.

The Chairperson:

Clause 170 concerns certificates under sections 168 and 169. There was a suggestion that there should be public consultation for certificates.

Ms I Kennedy:

This is very much about when someone applies to the Department for a certificate. I am not sure what the benefits of having wider publication would be.

The Chairperson:

That was suggested by the RSPB. Do members have any comments?

Mr Mullaney:

The planning authority would have to establish the facts before it could issue such a certificate.

The Chairperson:

OK, thank you. Apart from one council's suggestion that there should be further consideration, no issues were raised about clause 171. Providing that members have no further comments, I propose to move on. Agreed?

Members indicated assent.

The Chairperson:

On clause 172, again, there were no issues, barring one council's suggestion that there should be further consideration. If members have no comments to make, I propose to move on.

Clause 173 concerns further provisions as to appeals under section 172. Apart from one council's suggestion — *[Inaudible due to mobile phone interference.]*

Ms I Kennedy:

The submission is content that there is a right to be heard.

The Chairperson:

Do members have any comments?

No issues were raised in relation to clause 174. Do members want any more clarity, or are you content to move on?

Members indicated assent.

The Chairperson:

Clarification was sought on the role of the Department in relation to clauses 175 to 177.

Mr Mullaney:

Quite clearly, there will be occasions when the planning authority, whether councils or the Department, will be required to enter land, and these clauses afford that facility.

The Chairperson:

OK. Any comments?

Mr McGlone:

Belfast City Council wanted clarification of the role of the Department to avoid confusion and the duplication of resources. What precisely did it envisage by that duplication? Did it envisage — *[Inaudible due to mobile phone interference.]*

Ms I Kennedy:

I would not have thought so. The clauses deal with the right to enter. We are continuing the Department's right to enter for those cases in which it needs it and we are providing for rights of entry for councils. Belfast City Council has included a common phrase.

Mr McGlone:

Does that allow for a situation in which two sets of officers could turn up on one case?

The Chairperson:

No, it will be specific.

Ms I Kennedy:

In the vast majority of cases, it will be councils.

The Chairperson:

Council, yes, and it will be specific.

Ms I Kennedy:

It will be the council that takes action and will require to enter a site to gather information and establish the position. There may be rare cases in which the Department will also be involved. However, that will be separately and the Department will normally have consulted the councils, which will have decided not to take action.

Mr Mullaney:

In practice, one authority or the other will take the action.

Mr McGlone:

That is OK, thank you.

The Chairperson:

That will be clearly defined as best as possible. In specific cases —

Ms I Kennedy:

It is important to remember that these are remote cases that are being provided for.

The Chairperson:

OK, thank you very much. I advise members that that concludes Part 5 of the Bill. Part 6 starts with clause 178. Several concerns were raised in relation to this clause, including the potential costs, the inability of councils to appeal the Department's decisions, who takes responsibility for decisions made before the transfer of functions, the circumstances under which compensation must be paid and the source of funding for compensation.

Ms I Kennedy:

I will start trying to work through this. It is not surprising that there are queries, because this is an area that councils may not have had an opportunity to think about or be aware of. The transfer to councils of the power to carry out a range of functions will come with responsibilities and liability for the payment of compensation, which currently rests with the Department. We will want to provide in transitional arrangements that the Department retains liability for decisions prior to the transfer of powers to councils. That would be reasonable. Once those powers transfer, councils will become liable for their actions, just as they will for other duties and responsibilities.

The Chairperson:

Not retrospectively?

Ms I Kennedy:

Certainly, transitional arrangements will be put in place for departmental decisions prior to the transfer of functions. It would be unreasonable to transfer that liability to councils.

Mr T Clarke:

That is a good explanation, with which I am happy enough. Looking at the figures over the years, I am curious: why do you revoke planning permission?

Ms I Kennedy:

We touched on that the other day. Planning permission can be revoked for a number of reasons. It may well be that an applicant wants to revoke one permission to substitute it with another. In that case, there is no compensation. However, there can be circumstances that emerge which were unforeseen when planning permission was granted. Mr Weir gave a useful example of that the other day. Circumstances may make it necessary to revoke, to take away that planning permission or to discontinue planning permission if works or use are in place.

Mr T Clarke:

I appreciate that there will be a transition period during which the Department will be responsible, but once local government takes on the role, will there ever be an occasion on which the

Department may ask for permission to be revoked? If so, will the Department pay compensation in such a case?

Ms I Kennedy:

The Department would consult councils before revoking any permission. However, yes, there may be situations in which the Department may do so, having consulted with the council. We expect those to be very rare, but the provision is there. In that case, the council would be liable for compensation.

Mr T Clarke:

I am not happy with that. I was pleased up to transition, but not if the Department is to play Big Brother and the council is to pick up the fine. There must be something to make the Department liable for compensation applied in cases where it has revoked an application, as opposed to putting pressure on local government.

The Chairperson:

Can you outline a situation where that might arise?

Ms I Kennedy:

That is quite difficult, because —

The Chairperson:

Bear in mind that we are going down through a plan-led system. I know that you want to put something in the Bill to ensure that the proper checks and balances are there in case such a situation arises. To be fair, it may be that, having gone through the process, whatever the development is, a problem is identified. If the Department decides to challenge it, we are saying that we should follow the process properly and identify areas, or whatever the case may be. I know that you are putting that power in the Bill and that it may be used rarely, but we need to look at the compensation issue.

Ms I Kennedy:

It will be part of the Department's oversight role to become involved when a council has not

fulfilled its duty. It is similar to the development plan process that we discussed, in which there is an intervention where there is a default in the preparation of a development plan. There is a reimbursement of costs in that case. There could be instances when the Department uses the power to revoke in a much wider interest. There is a facility for the Department to make a payment to the council to cover a compensation liability in such a case.

The Chairperson:

I support Mr Clarke; we need to look at that point. If it is correct from the start and the process has been properly followed, and there is certainly a mechanism to challenge, as you say, or the oversight issue, we need to look at how the Department decides to step in at any point. If the Department decides to overturn a council's decision, it has to be responsible for the compensation. I am not saying that it will happen regularly; that is why I asked you for an example, because it is hard to foresee.

Ms I Kennedy:

It is; we have looked at arrangements in other jurisdictions and this is how they operate. It is very hard to get examples of cases where it has happened. The facility is a characteristic of arrangements in other jurisdictions.

The Chairperson:

This is an opportunity for us to put in something new. We are obviously following best practice from other areas.

Ms Smith:

It is important that we distinguish between the situations in which the council has not been able to fulfil its duties and those very rare occasions when, in extreme circumstances, the council has not fulfilled its duty and the Department has to step in and act on the council's behalf. Those are the circumstances in which the compensation liability would fall to the council.

The Chairperson:

You are saying that you are putting something in the Bill that you do not foresee ever having to use.

Ms Smith:

Yes. It goes back to the point that we made earlier about building in safeguards. As members have said, this would be highly unusual, but there is the possibility that, some day, a council will be unable to fulfil its responsibilities. What happens then? What happens, as in other cases, is that the Department will step in and act on the council's behalf, but only after consultation with the council. It could be that, even during the consultation, the council may be able to fulfil its duty having received advice from the Department.

The Chairperson:

OK, but that brings us back to the question of front-loading the system and about getting it right from the start. I will not go down that route, so there is no need to respond.

Mr McGlone:

I have been involved in a couple of situations where revocations occurred, but it was at the request of the applicant. In both cases it was beneficial and suited the applicants to revoke one and substitute another planning application that was much more amenable to their needs and, indeed, to planning policy. It takes a wee while, but it got there. I can understand the need for that to be in there, but I can also understand what Maggie is saying. It is conceivable that there will be occasions when councils overstep the mark and the facility is required. However, say for example there is a planning application that is, shall we say, revocable, because of a slip made by, for example, the NIEA — contaminated land has not been properly found, or whatever.

In that sort of situation, there is a duty of care to make sure that a site is not approved because of contamination latterly discovered and not initially known about. That sort of case will be the most contentious type, if it ever occurs. If a statutory agency did not fulfil its duties properly, lumbering the compensation for that onto a local authority would be very unfair.

Ms I Kennedy:

That would have to be teased out in those cases. That is where the facility for the Department to make a contribution to a council's compensation costs would kick in, if that were ultimately the outcome.

Mr T Clarke:

Chairman, I have just realised that we are a long way into this and I have forgotten to declare that I am a member of Antrim Borough Council. We are talking about council issues.

The Chairperson:

Can you please put that back on the first page? Do not record that. Would any other members like to declare interests?

Mr Weir:

I am a member of North Down Borough Council.

The Chairperson:

Would any other members like to declare while we are at it? Thank you.

Are members content? Did we cover all the issues, Irene? We will come back to this issue. There are, obviously, potential costs to local authorities. However, you have clarified those points. Thank you very much.

Mr T Clarke:

In the statistics, we have compensation amounts. Just for clarity, compensation amounts paid in some years were larger than in others. Can we get the total number of applications that have been revoked as well? I am sure that compensation was not paid in all cases. Can we get the number?

Ms I Kennedy:

Certainly, I will see if we have that information. It is easier to get information on the ones with compensation. There will be a lot of other cases where there was no compensation issue. I will get that.

The Chairperson:

Can we have the breakdown of it, so that we have an idea what was involved?

Ms I Kennedy:

Some of that will cover discontinuance as well as revocation.

The Chairperson:

On clauses 179 to 181, other than the issue of the time to consider the clauses, no issues were raised. If you are content, gentlemen, I will move on to clause 182. Are members content?

Members indicated assent.

The Chairperson:

On clause 182, respondents requested clarity on the limiting of compensation to the timber value for — is that TPO5? It could be TPOs or TPO5. Will the Department please clarify that? The responses sought the inclusion of compensation in the legislation and also proposals for funding support in return for good stewardship. Is it TPOs or is it TPO5?

Ms I Kennedy:

I think it is TPOs. It is just a typo.

The Chairperson:

Yes. It looks like a 5.

Ms I Kennedy:

It was in a column that we received and I assume that it is TPOs.

The Chairperson:

Thank you for that.

Ms I Kennedy:

I refer members to the Planning (Trees) (Amendment) Regulations (Northern Ireland) 2007, and specifically to regulation 8, which states that:

"No compensation shall be payable … for loss of development value".

Thus, compensation can be paid for the loss of timber, but not for the loss of the development value of the land.

The Chairperson:

Have members any points in relation to that? No? Members are content. Thank you.

Other than the time issue, no issues were raised in relation to clauses 183 to 186. This is why we are asking for the review of capacity-building training and how the process rolls out. Gaining knowledge of that is vital. Obviously, we are taking — *[Inaudible due to mobile phone interference.]* The Department has many years' experience in dealing with these issues, or perhaps they have not arisen at any point. It is important that we keep that, along with whatever guidelines are there for local councils or local authorities.

On clause 187, the issue of funding mechanisms to support the councils' financial liabilities — *[Inaudible due to mobile phone interference.]*

The Chairperson:

No issues were raised about clause 188, so I propose to move on. That concludes Part 6 of the Bill. I turn members' attention now to the paper for Part 7. We are now at clause 189 of 248 clauses, 15 parts and 7 schedules. I am just taking a wee break from the clauses for a minute. Do not record that.

There were concerns about the burden that clause 189 would place on councils. Some suggested that it was unnecessary, some wanted clarification of the term "reasonable use", and others suggested clarification was needed that it would only be operative in respect of decisions made following the devolution of planning functions to councils. Would the Department like to respond to that?

Ms I Kennedy:

[Inaudible due to mobile phone interference.]

Councils will be responsible for decisions made once those responsibilities transfer. Purchases of estates of land are very rarely used. I think we have come across two cases in the past five years, but it is part of the planning regime and is something that we would wish to carry forward. *[Inaudible due to mobile phone interference.]*

It allows someone to apply to the council if they have, as a result of a planning decision, been left with a piece of land that is not of reasonable beneficial use. The term "reasonable beneficial use", however, is not defined in this or in any equivalent legislation. I hesitate to say it, but each particular case will be very much considered on its own merits.

The Chairperson:

I suppose that this is not about purchase notices, but there was a case in my constituency — and correct me if I am bringing this up under the wrong point — where a road has cut through the land and has left a piece of land, say, a quarter of an acre in size, that is basically of no use to the owner. Now, in some cases there might be an alternative use for the site, possibly a business use. How do you perceive dealing with that?

Ms I Kennedy:

You are quite right; this clause would deal with that. The owner would have to demonstrate that the land had been left without reasonably beneficial use. You would have to make an assessment of what the land was currently used for, what the impact of the development was and what could be done with the remaining land.

The Chairperson:

And in terms of the existing planning policy statements, be it urban, rural or whatever the case? This would be specific to that?

Ms I Kennedy:

You would have to make an assessment: what can the land be used for, and is it reasonably beneficial?

The Chairperson:

Thank you. I was reading through this last night, and that is a prime example.

Ms I Kennedy:

That is the type of example that we would use.

The Chairperson:

OK. Thank you very much. Do members have any other comments to make?

Mr T Clarke:

I am still confused. In the example that you gave, why would anybody want to purchase that land? How could the Department or a council be forced to purchase that land?

The Chairperson:

The road has cut through land that could have been agricultural or anything and has left it practically valueless, because the person cannot do anything with it.

Mr T Clarke:

The Department for Regional Development (DRD) would compensate them for that.

The Chairperson:

Yes, but it is possible that there is an alternative use for it, other than sowing a bit of seed. There are examples of that happening.

Ms I Kennedy:

If there is a reasonably beneficial use, it is unlikely that someone would — *[Inaudible due to mobile phone interference.]*

Mr T Clarke:

If a purchase notice is applied for, must the Department buy it?

Ms I Kennedy:

No. There is an opportunity and a mechanism to respond to that. The Department can issue a counter-notice. Ultimately, that is one of the cases that could go to the Lands Tribunal.

The Chairperson:

I was dealing with that. You are certainly correct about DRD, but —

Mr T Clarke:

It is not even so much that, Chairman. I have never known of — *[Inaudible due to mobile phone interference.]*

The Chairperson:

In this case, it is a positive thing as far as what I am talking about.

Ms I Kennedy:

It is an established part of the planning system. Similar provisions apply in other jurisdictions — *[Inaudible due to mobile phone interference.]*

Mr Mullaney:

The practice is usually to issue a counter-notice. There may be circumstances in which a purchase notice would be accepted, but looking at the statistics — *[Inaudible due to mobile phone interference.]*

The Chairperson:

Thank you for that clarification. I will be talking to a gentleman tonight. However, moving on, no specific issues have been raised in relation to clauses 190 to 195. Unless the Department has anything else to add, we are content to move on. That concludes Part 7 of the Bill — *[Inaudible due to mobile phone interference.]*

On clause 196, several submissions requested clear guidance on the role of different bodies in relation to listed buildings. Concern was also raised about the level of technical expertise required to carry out this function, the role of the Historic Buildings Council and the length of time a member may sit on that council. I refer members to schedule 5. A query was raised about a national register — *[Inaudible due to mobile phone interference.]*

Ms I Kennedy:

It would probably be helpful, as in other areas, that we would set out in guidance the different roles of the parties in relation to historic buildings. We have indicated the role of the Historic

Buildings Council and that of the Department, which is to designate listed buildings. There are further provisions in the Bill that allow the Department to provide grant aid, to consider urgent works and to issue repair notices. Councils will have powers to issue building preservation notices, determine listed building consent applications and pursue enforcement and prosecution. In effect, the current powers, which are under the Northern Ireland Environment Agency, will remain with the Department while the current powers of the Planning Service will devolve to the district councils.

The Environment Agency will continue to provide expert advice to planning authorities about listed building consent. Planning applications affecting listed buildings currently go to the Planning Service. The Historic Buildings Council's role will not be changed by our proposals. The national register of trees was referred to on Tuesday in a discussion of another clause.

The Chairperson:

The point about the Historic Buildings Council answered the query on schedule 5. Do members have any comments to make on clause 196?

Mr Dallat:

Perhaps we could return to some issues. A typical experience for me has been that the law has been pretty poor in protecting historic buildings; in fact, it has been incredibly poor. It seems that the Bill is an opportunity to do something meaningful. If transferring these powers means that local councils will have the same success as the Planning Service, our local heritage will continue to be plundered. A lot of it has already disappeared, and it will continue to disappear because *[inaudible due to mobile phone interference.]*. Somebody could burn it; that is one way to deal with it. Another way would be to bring a digger in early in the morning to demolish it, or a building could be downgraded to a stage when it is no longer considered viable enough to be listed. This Bill has been thrust upon us without our having the time to consider all the important issues that many around this Table have experience of and could contribute to improving. We do not have the opportunity to do that. It seems *[Inaudible due to mobile phone interference.]*

The Chairperson:

The issue about time has been raised on a number of occasions. However, we have to look at

what is in the Bill and try to improve on it, while learning from the mistakes that were made. Mistakes have been made. One example is the digger and taking down the gable wall — the swing of a bucket, as they say. We need to try to protect those buildings. We saw an example of that in Newcastle last year when a building came down.

Mr Dallat:

Are we simply transferring existing laws to councils, or are we involved in a process of enhancing something?

The Chairperson:

This is our opportunity to enhance the Bill. There are new powers in Part 1 and Part 2, but we can amend any clause. You made a valid point. We need to look now to see whether we can do anything to enhance the legislation on listed buildings, because we have an opportunity to do that.

Mr Dallat:

I am amazed that more organisations and bodies did not express their opinions; they are always fairly vocal whenever the digger comes in. Perhaps that is not a valid criticism. Is it possible to come back to this clause?

The Chairperson:

The Committee certainly wants to look at this issue. We want to try to enhance the clause. Irene, you answered the point about the Historic Buildings Council. Am I right to say that it has a time frame for its period of membership?

Ms Smith:

Yes. You kindly shared with us the letter that you got from the Historic Buildings Council that referred to issues on the length of membership. Members are ministerial appointees. They are experts and are appointed for three years. The chairperson of the council made the point that the term of membership should be longer. At present, it is a three-year term, with a further three-year term. He would like it to be a five-year term, with a further five-year term.

The Department wrote to the Committee in the past couple of days to tell it that we are starting

to review the Historic Buildings Council along with the Historic Monuments Council and the Council for Nature Conservation and the Countryside. That review will consider the issues that the Historic Buildings Council raised in its submission to the Committee. We are very much aware of those issues.

The Chairperson:

Will the Department continue to assign those posts?

Ms Smith:

Those are external advisory bodies, so the people who are appointed to them have expertise in relevant areas and act as advisers to the Department.

The Chairperson:

How does that affect the Historic Buildings Council?

Ms Smith:

The Historic Buildings Council is constituted in the legislation to be an adviser to the Department of the Environment.

The Chairperson:

How will that body be married to local councils when the powers are transferred?

Ms Smith:

I cannot predict the outcome of the review, but, as things stand, we envisage that the Historic Buildings Council will remain as an adviser to the Department. It advises principally on the listing and de-listing of buildings. It is involved in cases that are concerned with listing or de-listing, and it provides expert advice from a range of perspectives.

The Chairperson:

It will remain in place, but whenever such a situation arises in a local council, will the case be passed on to the Department? What scope will councils have to get advice?

Ms Smith:

The built heritage division of the NIEA will continue to advise councils. They can take other advice as they see fit, but the NIEA will be there for them.

Mr Dallat:

I would have thought that there is a golden opportunity for local councils to have some responsibility for updating and maintaining an inventory of listed buildings. Is there any provision in the Bill for that? Is there any onus on councils to do that, or do they just do the usual and churn out a press statement?

Ms I Kennedy:

There is a power in the Bill that allows councils to issue building preservation notices, which are temporary listings.

Mr Dallat:

That is not what I asked. I asked whether there is an onus or an obligation on councils to maintain a record of buildings and identify those that could be added to a list.

Ms I Kennedy:

There is no specific requirement in the Bill for that.

The Chairperson:

Obviously, the Committee feels strongly about that. I know that you explained the point about responsibility, but we need to ensure that mistakes that were made in the past are not repeated. Listing and de-listing is an ongoing process, so we need to be careful.

Ms Smith:

Yes, it is. It is a statutory process that the Department carries out. The Historic Buildings Council has been involved in that process. It is envisaged that, as things are drafted, that power will stay with the Department.

Mr Dallat:

The argument remains that it would be better to have a lot of that responsibility transferred to local councils. We have to put responsibility on them to do the job better at a local level, yet we are told that there is nothing in the Bill to allow that.

Mr Kinahan:

My question might relate to a point that will come up later. John said that we should be looking after our historic buildings more, yet we are talking about councils having limited resources. If councils take responsibility for historic buildings, their costs will rise. We need to ensure that the Bill has a clear mechanism for looking at the cost of maintenance. Nevertheless, I want all those buildings to be preserved.

Mr McGlone:

I have just a wee question about all this. I am glad to hear of the role that the NIEA plays in dealing with historic buildings and the use that is being made of its expertise in that field. Is that likely to come at a charge to local authorities?

Ms I Kennedy:

Not at the moment.

Mr McGlone:

I know that you said "Not at the moment."

Ms I Kennedy:

Not at the moment, no.

Mr McGlone:

However, "not at the moment" is where we are at this present stage. Is there any anticipated mechanism, whereby —

Ms I Kennedy:

Not that we know of, no.

Mr McGlone:

Not that you know of? That is fine, because I am a bit concerned lest, in the transition, local government will start to be charged for the powers that remain at the centre. Can the Committee cover that contingency through what it is doing with the Bill? I know about all the discussion on full cost recovery. It is a wee bit like beauty; it is in the eye of the beholder, and it depends on who we talk to. The one thing about full cost recovery is that it does not go down. We need to get a bit of clarity on that, because when it comes to cost neutrality, the transition and the handover of powers, the more that we look at it, the more we see the potential for charging from regional to local.

The Chairperson:

To be fair, we can bring that point up again when we talk about resources. We will be talking about all the resources. However, you are right, and that matter has raised its head previously. I propose that we come back to this issue. The proposal is that it remain with NIEA for advice, but, if the Committee agrees with that, as Mr Dallat said, we need clearer guidelines and better co-operation and co-ordination if we do not propose to give those powers to local government. Clearly, that is not the issue.

It is not about having a list or a booklet of listed buildings. We know about those, and I have seen them in my council area, which is fine. However, we need to learn from the experience of seeing buildings knocked down and people taking shortcuts and so forth. We need a better connection between local councils and the NIEA on listed buildings.

Ms Smith:

It may be helpful for me to clarify the powers that will stay with NIEA. They are the powers of listing and de-listing, which it has at the moment. That is the very expert, highly specialised work that is done to identify buildings that are to be conserved or preserved. The enforcement powers that apply to listed buildings would be transferred to councils, so they will be in a much stronger position.

The Chairperson:

That is 100%; that is fine. However, although you are correct in saying that the issue is down to enforcement, the connection between the NIEA and the local councils has raised its head. Honestly, in my experience, there has not been a great connection between the NIEA and the Planning Service in dealing with applications on a normal basis. Therefore, we need to ask how we tie all that in. Those bodies need to work more closely. A better way to do it might be to raise the enforcement element for listed buildings in the relevant Part of the Bill. However, you are right to say that enforcement is an issue. It is just the way it was raised that has made people ask questions, and the argument has come through in a different way.

Ms Smith:

The councils will be able to enforce on listed buildings.

Mr McGlone:

Chairperson, you are right to raise the fact that there is a wider issue to consider. This matter does not apply to just one agency, the NIEA, which is internal to the Department. There are past examples of issues with the Rivers Agency and consultations on planning applications. Therefore, we do not want to be sold a pup or to sell anybody else a pup on the issue of cost neutrality or anything else. When we go to their doors in the run-up to May, ratepayers will ask us where we stand on those issues. Those who are knowledgeable may even read the Hansard report of this meeting and ask specific questions about that.

Therefore, you are quite right, Chairperson. It would be useful if we could explore that resource issue and any intentions, or the avoidance of any intentions, to charge for issues that are not currently charged for.

Ms Smith:

All I can say is that I am not aware of any intention to charge.

I cannot comment on any of the specifics that you mentioned when you talked about the NIEA and the Rivers Agency. However, in the Bill — *[Inaudible due to mobile phone interference.]* — one of the previous sessions, there is provision to make regulations that will list statutory

consultees. At the moment, the NIEA is not a statutory consultee, and the intention is that it would be for councils. *[Inaudible due to mobile phone interference.]* The relationship will change because some of the organisations will be statutory consultees and because there will be regulations on the time within which they should respond.

The Chairperson:

I know that it is an enforcement issue, but, through the guidance and subordinate legislation, can we look at how the statutory bodies and the link with councils will work?

Ms Smith:

Those organisations were set up with the purpose of advising the Department, and now they are under review. However, there is nothing to stop a council from setting up its own advisory panel if it wished.

The Chairperson:

Let us be straight about this point. What you are saying is that we are transferring 98% of the powers to councils and retaining some. We should forget about all the other bits and pieces of oversight in some clauses. We are saying that when we are dealing with councils, the NIEA should be in some way connected to giving advice to local councils. That is OK if they want it, but it is an extra cost. If they set up advisory councils, they will not be voluntary, which means that there will be a cost. We need to ensure that the bodies that will remain in the Department, which are still statutory consultees in the normal planning route, are connected to the councils in some way.

Ms Smith:

If we separate the role of the NIEA, the intention is that it will be added to the list of statutory consultees. *[Inaudible due to mobile phone interference.]*

The Chairperson:

Listing and de-listing are separate — *[Inaudible due to mobile phone interference.]*

Ms Smith:

The intention is that because it is such a specialised area, listing and de-listing would stay with the Department. *[Inaudible due to mobile phone interference.]*

The Chairperson:

I understand, but we are just trying to marry the roles together to make sure that we get it right. I am speaking from experience of trying to get answers and time frames and so forth. We want to better the process. *[Inaudible due to mobile phone interference.]*

Ms Smith:

We talked another day about the fact that regulations will be made that will specify the time in which statutory consultees should respond to councils. *[Inaudible due to mobile phone interference.]*

Mr Kinahan:

[Inaudible due to mobile phone interference.]

Ms Smith:

I have to keep saying that it is under review, because I clearly cannot predict what we will do in the future. The Historic Buildings Council is essentially made up of a group of volunteers that assists the Department by giving advice from their various perspectives on specific listing and de-listing cases. The councils have been specifically set up to advise the Department, and it only advises *[Inaudible due to mobile phone interference.]*

Mr Kinahan:

[Inaudible due to mobile phone interference.]

Ms Smith:

As I said, the Historic Buildings Council is under review. *[Inaudible due to mobile phone interference.]*

Mr Kinahan:

[Inaudible due to mobile phone interference.]

Ms Smith:

[Inaudible due to mobile phone interference.]

The Chairperson:

[Inaudible due to mobile phone interference.]

Thank you very much. Let us move on. I remind gentlemen that we have nearly 50 clauses to get through *[Inaudible due to mobile phone interference.]* We will have to move to another room later, because I do not think that we will get through all the clauses.

Clause 197 deals with grants and loans for preservation or acquisition of listed buildings. The inclusion of grants and loans associated with listed buildings was generally welcomed, although clear guidance on the role of different bodies was requested. That will be handled in the guidance. Is there any word of when we will see that guidance?

Ms I Kennedy:

We are actively working on some parts of the subordinate legislation and guidance. *[Inaudible due to mobile phone interference.]*

Mr Dallat:

Who is responsible for the national register of trees? Is the Department of Agriculture and Rural Development (DARD) responsible for it?

Ms Smith:

There is no national register of trees at the moment.

Mr Dallat:

I just needed — *[Inaudible due to mobile phone interference.]*

The Chairperson:

The responsibility lies with —

Mr Weir

Are you saying that there should be one?

The Chairperson:

Yes, that is what is being asked.

Ms Smith:

A national register of trees is outwith the ambit of the Bill. It is a much wider issue. We are not sure whether it is an agriculture issue.

Mr Dallat:

The only reason I ask is because about two miles from where I live, there is a unique collection of oak trees that were planted in the 1930s. *[Inaudible due to mobile phone interference.]*

Mr T Clarke:

[Inaudible due to mobile phone interference.]

The Chairperson:

They are soaked in a bucket of water overnight. However, we will not get into that. Do not record that, please.

We will ask about a register. It is a valid and important point. Disregard the remarks that Mr Clarke and I made about that.

Clause 198 is about the acquisition of listed buildings by agreement. No issues were raised on that. If we are content, we will move on.

Clause 199 is concerned with the Department's acceptance of endowments for listed buildings, and clause 200 is about the compulsory acquisition of listed buildings. The submission requested clear guidance on the role of local councils in endowments and compulsory acquisition.

Will that be covered in guidance, or do you wish to comment?

Ms I Kennedy:

It is important to point out that Bill proposes that the Department retain these powers where endowments for listing buildings are concerned.

Mr Dallat:

That is probably a very good idea. *[Inaudible due to mobile phone interference.]*

The Chairperson:

That concludes our consideration of Part 8 of the Bill.

We will now move on to Part 9, which concerns the Planning Appeals Commission. It begins with clause 201. One response suggested that the complexity of the Bill increased the chances of legal challenge where procedures and clauses have not been adhered to, and another called for clear guidance and rules for regulating procedures.

Ms I Kennedy:

We have noted those comments. Good guidance is essential. A lot of that guidance will be the responsibility of the Planning Appeals Commission, which already provides useful guidance on its website. *[Inaudible due to mobile phone interference.]*

The Chairperson:

Clause 202 deals with the procedure of the appeals commission. Several responses called for the inclusion of provision for the awarding of costs, as endorsed by the Government following the consultation on the policy proposals. *[Inaudible due to mobile phone interference.]* It also questioned whether that would be a function of the PAC.

Another response was concerned that the Bill did not prevent the introduction of new material related to an application following the making of an appeal, thereby leaving the process open to frivolous appeals or means of allowing a decision to be made on the basis of information that was not available to the decision-making body at the time. *[Inaudible due to mobile phone*

interference.]

The Examiner of Statutory Rules advised the Committee that Planning Appeals Commission rules made by the Office of the First Minister and deputy First Minister (OFMDFM) are subject to no Assembly procedure, and he suggests that they should be subject to negative resolution.

Mr T Clarke:

Can the gap with new evidence not being available to the PAC not be closed now? There is an opportunity in the Bill to close that gap.

Ms I Kennedy:

Following the 2009 policy consultation, the Executive agreed that we would not take forward the provision *[Inaudible due to mobile phone interference.]*.

Mr T Clarke:

I think that that is unfair, especially as there is no right of third-party appeal. We go to the PAC on the grounds of a decision made by the Planning Service, and its determination is based on the evidence with which it was supplied. Most of us have been in rooms to which, at the last minute, clever architects bring more clever people with new evidence that was not supplied to the Planning Service when it was making its judgement on the original application. The PAC then overturns the application based on that new evidence. That is also unfair to the community, because it has not had the opportunity to scrutinise the new evidence, except when a reasonable commissioner gives people 15 minutes to study it. However, there is not enough time to consult the wider public or to have an expert scrutinise it. We need to put something in the Bill to prevent that from happening. *[Inaudible due to mobile phone interference.]*

Ms I Kennedy:

That issue was consulted on and considered by the Minister, the Department and the Executive. The decision was that it would remain as it is and *[Inaudible due to mobile phone interference.]*. Obviously, I cannot speak for the Planning Appeals Commission, but I know that it always endeavours to ensure that, if new information is available, it is made public and distributed.

Mr T Clarke:

New information can vary from cutting a development down from 12 apartments to eight. Chairman, can the Committee look at drafting an amendment of its own for clause 202?

The Chairperson:

We will definitely have to come back to clause 202.

We will call a halt to proceedings, and then we will move to another room.

Committee suspended.

On resuming —

The Chairperson:

We will resume with clause 202, which is concerned with the procedure of the appeals commission. The Examiner of Statutory Rules advised the Committee that Planning Appeals Commission rules made by OFMDFM are subject to no Assembly procedure, and he suggested that they should be subject to negative resolution. Do you have any comments to make on that?

Ms I Kennedy:

We would bring that to the attention of the relevant Department, which is OFMDFM, or to whatever the relevant Department is in that particular case.

The Chairperson:

A lot of councils deal with appeals. Is there anything that we can do to ensure that this is not just another tick-box exercise by making it up to the appeals mechanism to challenge whether the Planning Service assesses an application properly? On the face of it, it seems as though it is just a tick-box exercise and that no one stands over it. I have an issue with that aspect of the PAC.

Ms I Kennedy:

I suggest that you may wish to direct that to the Planning Appeals Commission.

The Chairperson:

It is OK to put this on to an independent group; that is fine. However, it is about how it assesses

and looks at the appeals mechanism itself.

Ms I Kennedy:

The Planning Appeals Commission is an independent tribunal organisation.

The Chairperson:

It was part of DOE at one time.

Ms I Kennedy:

It currently has a sponsorship role in OFMDFM.

The Chairperson:

Are you saying that you will refer the issue of the Assembly procedure back to OFMDFM for us?

Ms I Kennedy:

Yes, if it is appropriate for us to do so. Clause 202 is an OFMDFM responsibility.

The Chairperson:

As there are no other matters, that concludes Part 9.

We will move on to Part 10, which is on the assessment of council performance or decision-making. Clause 203 is about the assessment of a council's performance. Several councils expressed concern at the high level of scrutiny proposed by the Department throughout the Bill and suggested that the emphasis should be on helping, rather than exposing, poor-performing councils. Councils also sought clarification on how the Department would investigate councils that were collaborating. The councils wanted benchmarks in advance. Do you want to comment on that?

Ms I Kennedy:

I think that that is reasonable. It is important to point out that the Department's approach will be, first and foremost, to provide assistance and to disseminate good practice and guidance to councils. The powers in Part 10 are needed as part of the Department's oversight role. However,

as I said, first and foremost, we want to work with councils to promote good practice. Additional guidance and performance standards will be issued in advance of the transfer of powers.

Mr Weir:

Obviously, RPA did not happen, but one aspect of it looked at the performance management regime, and, in the broader sense, one of the problems has been that not everybody has necessarily bought in to things and any comparisons have not always been done on the same basis. On a broader level, whether we are talking about governance or speaking generally, there is some degree of a better performance management side of it. Is the intention to try to marry this with the wider element, or do you see this standing as separate to that performance management framework?

Ms I Kennedy:

There will definitely be links across to the local government proposals, which are currently out to consultation. There will also be specific performance measurements for planning functions. *[Interruption.]*

Mr Weir:

We cannot even blame John Dallat on this occasion for that interruption. For once, he is an innocent man.

The Chairperson:

I apologise for that. I have been talking to some councils about the matter, and they were talking about the Department's performance, but the idea now is to measure councils' performance.

Ms I Kennedy:

Obviously, the Department has to attempt to meet its own performance targets as part of the Programme for Government.

The Chairperson:

I think that "attempt" was a good word, but we will leave it at that. There needs to be a lot of communication between councils when the guidance is being issued.

Are members content with clause 203?

Members indicated assent.

The Chairperson:

Clause 204 is about assessment, and councils suggested that assistance, rather than criticism, should be focused on in this clause. Again, that is about the link-up between councils and the parameters and criteria that are set. If there are no comments, we will move on.

Clause 205 deals with further provision in the assessment of performance or decision-making. There was a call for arrangements made under the clause to be drawn up in close consultation with local councils. I think that that is the way that we propose to go.

Clause 206 deals with the report of an assessment. One organisation called for the word "may" in clause 206(7) to be replaced with the word "will". Councils also had concerns about the resource implications.

Ms I Kennedy:

We appreciate that the resource issues relating to that clause will be addressed as part of a wider discussion.

The use of the word "may" provides flexibility to the Department's approach, because it takes all circumstances into consideration. It is very much line with legislation elsewhere. Our preference is to keep the word "may" to allow the approach to be dictated or influenced by the circumstances.

The Chairperson:

Do members have any questions about that issue? Irene, I know that you said that as long as a system follows good practice in other jurisdictions and is proven to work, it is OK to follow them in using that system.

Ms I Kennedy:

It is in line with what happens elsewhere.

The Chairperson:

As long as it is robust and stands up.

That concludes Part 10 of the Bill. I refer members to Part 11, which is about the application of the Act to Crown Land. Clause 207 deals with application to the Crown. No issues were raised about that clause. If members have no further questions, I will move on.

Mr McGlone:

I cannot remember precisely when it was, but did we not ask for clarification on the issue of Crown land?

The Chairperson:

We asked for clarification when we were doing the Clean Neighbourhoods and Environment Bill.

Mr McGlone:

Did we get clarification on that?

The Committee Clerk:

We did.

Mr McGlone:

I did not see it.

Mr Weir:

[Inaudible]. It could be opposite to what it was on the Clean Neighbourhoods and Environment Bill.

Mr McGlone:

I will pick up on it again.

The Committee Clerk:

We will get that response back.

The Chairperson:

Clause 208 is the interpretation of Part 11. Stakeholders raised no issues about the clause. The Examiner of Statutory Rules advised the Committee that the power to alter the definition of "Crown Estate" in clause 208(1) is subject to affirmative resolution and that he had no comment to make on that matter. Are members happy enough?

Clause 209 deals with urgent Crown development. Issues raised in connection with this clause related to the lack of requirement for consultation and a definition of what constitutes a public authority.

Ms I Kennedy:

The Bill does not contain a reference to a public authority. We checked through it, and there is a reference in clause 208 to "the appropriate authority". Public consultation will be available under clause 41(1), which provides that:

"A development order may make provision requiring"

the publication of such applications. Under clause 56(1)(d), the Department may be required to consult with a council before either "granting or refusing planning permission".

The Chairperson:

Do members have any questions?

Clause 210 deals with urgent works relating to listed buildings on Crown land. No issues were raised about that clause. If members have no further questions, we will move on.

Clause 211 is concerned with enforcement in relation to Crown land. There was concern that clause 211 exempted any act or omission that was done on behalf of the Crown.

Ms I Kennedy:

I understand that clause 211(1) reflects the constitutional position, which is that the Crown cannot prosecute itself.

The Chairperson:

I am saying nothing as Chairperson. *[Laughter.]* Do not record that, please. Do members have any questions?

Clauses 212 to 214 deal with references to an estate in land; applications for planning permission and so forth by the Crown; and service of notices on the Crown. I remind members that no issues were raised on those clauses. If members have no questions, we will move on.

That concludes Part 11 of the Bill. I refer members to Part 12, which is on correction of errors. Clauses 215 to 218 deal with correction of errors in decision documents; correction notices; effect of corrections; and supplementary matters. No issues were raised on those clauses, so unless any members wish to raise questions, we will move on.

Clause 219 deals with fees and charges. Several issues were raised on that clause, including the requirement for details of when the Department may require a council to contribute to expenses; clarification of compensation arrangements between councils in the event that support is not given to a proposal; the need for a review of fees and staffing of the existing Planning Service; the need for protocols; the suggestion that the devolution of planning functions to councils will be a cost-neutral process; the definition of multiple fees; and a requirement for commitment to subordinate legislation.

Ms I Kennedy:

There are a number of issues to consider, so we will run through them. Subordinate legislation will be needed, and subordinate legislation, which will be subject to regular review, currently covers the issue of fees. We touched on the costing issue and cost neutrality earlier, and I assume that you will wish to come back to that, perhaps when you discuss the issue of resourcing.

You will be aware that a review of fees is under way, and we will come back to the

Committee shortly with the outcome of the consultation on that. A wider review and restructuring of staffing in the Planning Service agency is also under way.

A number of councils made comments about compensation. We probably covered those comments when we went through Part 6, which deals with compensation. If there is anything on which you particularly want me to elaborate, I will certainly come back to that.

On the issue of expenses associated with another council, I refer you back to clause 222. There are likely to be few instances when one council is required to contribute to the expenses of another. It is expected that those occasions will be rare. They could relate to a case where there has been compensation following revocation or discontinuance of planning permission for development that perhaps straddles two council areas and from which both councils benefited. There are also likely to be voluntary agreements between councils, and the Department may require some reasonable contribution to that. There may also be situations where councils work jointly to prepare development plans, but those are likely to be voluntary agreements that councils arrange between themselves to cover expenses. Statutory undertakers can also make contributions when looking at the matters that have to be kept under review when local plans are being prepared.

The Chairperson:

Do members have any questions to ask? We will mention subordinate legislation again and the issue of whether the process will be cost neutral. Is draft affirmative resolution needed for the setting of fees across the board? Will there be a fee structure for local councils in setting fees?

Ms Smith:

The intention is that the Department will continue to set the fees for the first three years, and the situation will then be reviewed.

The Chairperson:

Are there any other questions, gentlemen?

Mr McGlone:

Will that review be with a view to allowing councils some independence to charge?

Ms Smith:

The intention is for fees to be set centrally by the Department for the first three years. It is the point about who makes the decision that will be reviewed after three years. The Bill will allow councils to set their own fees, but the intention is that that will not be commenced until we are three years into the new arrangements. So if things have settled down a bit —

Mr McGlone:

Does that mean that the review will not be commenced, or the actual process?

Ms Smith:

The process of councils setting their own fees will not start until three years in. That will be as a result of the review, so people will be able to take a view of how things are going.

Mr McGlone:

Are you saying that councils will be empowered three years after the Bill to set their own fees?

Ms Smith:

If that is the outcome of the review, yes.

Mr McGlone:

If that is the outcome of the review post-three years?

Ms Smith:

Yes.

Mr McGlone:

OK. Thank you.

Mr Weir:

We are talking about a review that has not happened. If we are talking about councils having the power to set their own fees, will that be on the basis that they will collectively set a rate, or will there be variations between them?

Ms I Kennedy:

Individual councils could set their own fee, if that is the outcome of the review.

Mr Weir:

There are ways to give the power to councils so that it is not variable. There could be discussions with the Northern Ireland Local Government Association (NILGA). Alternatively, one idea of the Innovation for Competitive Enterprises (ICE) programme is to have a collaborative model so that a collective decision can be reached. There could be some problems if one council tried to undercut its neighbours. Obviously, that is a matter for the review, rather than for the legislation.

Ms Smith:

Absolutely. The legislation clearly allows each council to have that power. Councils could choose to set one fee that suits them all, or they could set fees individually. However, that is a long way down the road from where we are now.

The Chairperson:

It is, but that is important. It is all about value for money. It is all right setting a rate, but rural areas are rural areas. This matter is particularly important for those areas that have bordering council peripheries. We need to be quite careful about that.

Ms Smith:

That underlines the importance of having a review and thinking through the implications.

The Chairperson:

I want to clarify one point before we move on. Armagh City and District Council wanted clarification on the circumstances in which the Department may require a council to contribute to expenses that are associated with the functions of another council. Did you respond to that?

Ms I Kennedy:

Yes. That could, for example, relate to a compensation payment for the revocation or discontinuance of a permission that perhaps straddled two or more council districts and where both councils benefited as a result. There will more likely be voluntary agreements between councils to work together on joint plans and associated expenses.

The Chairperson:

Are you happy enough, gentlemen?

Members indicated assent.

The Chairperson:

Clause 220 is about grants for research and bursaries. Councils sought clarification on the role of councils in the grant process.

Ms I Kennedy:

The grants under clause 220 are provided by the Department. They are grants for research and bursaries.

The Chairperson:

Thank you very much. Clause 221 deals with grants to bodies providing assistance for certain development proposals. There was a suggestion to amend clause 221(1)(a) by inserting the words "of planning policy proposals and" after the word "understanding" and by removing references to the consent and approval of the Department of Finance and Personnel (DFP).

Ms I Kennedy:

The insertion of the words "planning policy proposals" would strengthen clause 221(1)(a). The approval of the Department of Finance and Personnel given in clause 221(3) is an oversight role, if you like.

The Chairperson:

Did you say that the Department of Finance and Personnel needs to consider some grants?

Ms I Kennedy:

Yes.

The Chairperson:

Could you take that back to DFP on the Committee's behalf?

Mr Weir:

You could take it back to DFP, but, by the look of it, you could be talking to the wall.

The Chairperson:

I understand, but we need that done from a Committee of view. That Minister is not here, but you could be 100% right. What about the first suggested amendment, Irene?

Ms I Kennedy:

There seems to be merit in that suggestion. I think that it would strengthen clause 221.

The Chairperson:

Do you have any points to make, gentlemen?

Clause 222 concerns contributions by councils and statutory undertakers. Several concerns were raised about the clause, including the definition of matters affecting development, notwithstanding the areas designated in clause 222; the requirement of relevant government agencies to work with local councils; and clarity on the provisions of the clause that require a council to contribute to another council's expenses or compensation costs.

Ms I Kennedy:

We have already spoken about the latter point. We talked earlier about the role that statutory consultees play in the preparation of local development plans, in many cases. It is very much in their interests to work with the councils to deliver their own statutory functions.

We struggled to work out the point that the Belfast Harbour Commissioners raised, but Stephen has been able to —

Mr Stephen Gallagher (Department of the Environment):

The commissioners are talking about clause 3, which is in the Part of the Bill that deals with local development plans. Councils are required to "keep under review" certain elements that would affect development in their area. That would involve a survey. Clause 222 would allow statutory undertakers or other councils to contribute to a council's costs, including survey costs. Therefore, the Belfast Harbour Commissioners comment is slightly out of context. It makes a little more sense if you go back to their original letter, which states:

"It is unclear within this Part as to the definition of 'matters affecting development notwithstanding the areas designated within Clause 222. Belfast Harbour would only wish to contribute to any such review if it was likely to facilitate an easing of constraints with the Harbour Estate."

They are laying down a marker as to when they would wish to contribute to one of those surveys and when they would not. In other words, the commissioners are saying that they would contribute only to those areas that would facilitate an easing of constraints in the estate.

The Chairperson:

Gentlemen, are you happy enough with that clarification?

Members indicated assent.

The Chairperson:

Clause 223 concerns contributions by Departments towards compensation paid by councils. No issues were raised about the clause, so, if you are content, we will move on. Are we agreed?

Members indicated assent.

The Chairperson:

That concludes Part 13. We now move on to Part 14, which deals with miscellaneous and general

provisions. Clause 224 concerns the duty to respond to consultation. Several issues were raised about the clause, including the need for quick responses to consultation; who would pay for a local public inquiry; clarification on the intended obligations being placed on consultees; the status of a holding response; a response time to be identified on the face of the Bill; the status of a consultation if consultees have not responded in time; and a recommendation that the clause include the submission of performance data to councils. There are four or five issues to look through.

Ms I Kennedy:

Clearly, consultees' response times are a key part of the planning process. If I go through those queries, I will point out that if a Department calls a public inquiry, it will cover the costs.

On the consultees' duty to respond, they will be required to do it within a given period, which will be set down in subordinate legislation. It is likely to be in the region of 21 to 28 days, or such period as may be agreed in writing for certain specific applications. That is because certain applications may raise certain issues and it may, justifiably, take the consultee longer to come back.

The Chairperson:

So long as we are not creating a loophole. "Specific" needs to be defined. It is all right to say that 21 to 28 days is a reasonable request for anybody, but to ask, in writing, again, to look at —

Ms I Kennedy:

Yes, and that has to be agreed.

Ms Smith:

Yes.

The Chairperson:

OK, it is an agreed time.

Ms Smith:

It is also important to relate that back to the idea of the development hierarchy, because the 21 to 28 days will be for small developments.

The Chairperson:

Yes, certainly.

Ms Smith:

If it is of major or regional significance, the period will have to be agreed and indicated.

The Chairperson:

I totally agree, so long as that is clearly identified, yes.

What is the status of a "holding" response?

Ms I Kennedy:

That is not a substantive response. It will not fulfil the duty that we are putting in place. Consultees will be required to provide a substantive response within that time frame. As currently, councils can make a determination in the absence of a consultee response, but they will have to weigh up how material a response may be in any particular case and decide whether proceeding in the absence of such a response might result in challenge.

The Chairperson:

You say that consultees have not responded in time. How will that be dealt with? It is all right putting that in, but what are we saying will be done if they have not dealt with it in time?

Ms I Kennedy:

They will certainly be required to report on their performance. Those reports will be published, so people will be able to assess and see how different consultees are responding.

The Chairperson:

Yes, but I am saying move on another step. I know it is not in their best interests not to respond,

but what will be done if it keeps recurring? If there is no mechanism, how do you deal with that? How do you make sure that they comply? It may be all right once or twice, but what are the outworkings of that?

Ms I Kennedy:

There will obviously be dialogue between the council, the planning authority and the consultee. There may well be a reason for the delay, and it is important to investigate why responses are not coming back within that time.

The Chairperson:

It is just that it is clearly not happening now, in some cases, no matter how long people are given. This whole process needs to be more efficient and effective. Councils certainly do not want to be in the position that we are in now.

Ms Smith:

Absolutely.

The Chairperson:

It will come down to the ratepayers' pockets.

Ms Smith:

That is why these provisions are being introduced. At the moment, a lot of organisations that we are talking about as consultees are not statutory consultees, so these powers will make a difference.

The Chairperson:

And obviously supply performance data as well. Those are most of the points. Do members have any comments? No?

There were no issues in relation to clause 225. Are members content to move on?

Members indicated assent.

The Chairperson:

Responses to clause 226 called for decisions on local public inquiries to be made in close consultation with local councils, and for clarity on responsibility for the costs of a local inquiry.

Ms I Kennedy:

The Department will cover the cost of any inquiry that it causes under that provision.

The Chairperson:

OK. Thank you. Content, gentlemen?

Mr Kinahan:

Will councils be able to have local inquiries if they pay for them?

Ms I Kennedy:

The Bill does not provide for councils to hold local inquiries.

Mr Kinahan:

I just thought that I should ask, because it was definitely one way. However, it is the Department.

The Chairperson:

OK. There was a suggestion that the powers in clause 227 are excessive as they prohibit people from becoming involved with issues that affect their local community. It was also suggested that the circumstances when an inquiry could be held in private should be narrowed.

Ms I Kennedy:

It is important to reflect that the clause carries forward existing arrangements for dealing with applications containing sensitive security information that it is not in the national or public interest to disclose. Those provisions originated in the Planning Reform (Northern Ireland) Order 2006 and were accompanied by the removal of Crown immunity from planning control. They provide a balanced approach, although I have to say that, to date, they have not been used.

The Chairperson:

OK. Do members have any questions? I take it that the Crown will be an exception.

We are getting into your realm now, Peter. No issues of concern were expressed in relation to clause 228, and I do not propose to ask any questions about it. Are members content?

Members indicated assent.

The Chairperson:

No issues were raised by stakeholders in relation to clause 229. However, the Examiner of Statutory Rules drew the Committee's attention to the proposal to give the functions under this clause to the Advocate General rather than the Attorney General, and suggested that it was out of place.

Ms I Kennedy:

We are discussing that with the Department of Justice.

The Chairperson:

OK. Any questions, gentlemen?

The Chairperson:

Clauses 230 to 236 relate to national security, rights of entry and estates in land. I wonder why no issues were raised on those clauses. However, no issues were raised, and, unless members would like to ask questions about clauses 230 to 236, I am content to move on.

Members indicated assent.

The Chairperson:

Under clause 237, it was suggested that the Department underwrite potential costs of future developments or alteration to the software required by councils. There was also a query about whether councils would be bound to existing systems or be able to develop their own.

Ms I Kennedy:

The Department wishes to engage further with councils in this area to discuss IT needs.

The Chairperson:

I think that it is a big area for discussion, to be honest.

Ms I Kennedy:

It is.

Mr McGlone:

The last I heard, there was supposed to be some assessment of compatibility between computers and software being conducted by the Department. In fact, I submitted a question for written answer to see whether there were any additional costs associated with that. It would be useful to have an update on that.

Ms Smith:

We will get you an update.

The Chairperson:

We are not going to comment any further on the system that is in at the minute.

Mr McGlone:

No, we heard enough about that earlier.

The Chairperson:

I am sure that there is a lot of such discussion. I am sure that there are good companies out there, if we can get this right. OK, gentlemen; any other comments to make?

On clause 238, it was suggested that councils should have input into the decision to appoint bodies to assist in the functions of this Bill.

Ms I Kennedy:

This clause relates to a discretionary power for the Minister to make appointments in relation to the Department's functions under the Bill. I am not sure what the —

The Chairperson:

Obviously, councils have said that they want an input. On one hand, we are handing down the powers. I am caught between the issue of looking at how we will fund this model — the effect on ratepayers and everything else. At the minute, we may certainly need advisory bodies. Time will tell in relation to that. However, councils are saying that they should have an input, whereas there is going to be no input from them whatsoever.

Ms Smith:

Maybe I should say something about ministerial appointments. What would normally happen is a process that is laid down for such appointments that includes clearly set out criteria, open advertising, the constitution of an interview panel and a recommendation to the Minister. That process is clearly set down and is in line with the guidance provided by the Commissioner for Public Appointments. It is a process of advertising and selection. It is not a process in which people just sort of give views. Does that make sense? It is like a job interview.

The Chairperson:

No, I agree with you. However, the point is that as long as that is correct, the councils have to have a proper say. We are looking at transferring powers to the councils. There is a fear of the unknown; there is the question of what lies outside the councils' control. How will that interaction work?

Ms Smith:

If the Minister was appointing a panel, it would be in terms of the Department's responsibility.

The Chairperson:

Can you give us an example of that?

Ms Smith:

I am not sure to what extent we have used that power. I do not know whether it is in use at the moment.

Ms I Kennedy:

I am not sure. The only example that comes to mind is perhaps that of the Historic Buildings Council, which we were talking about earlier.

Ms Smith:

That would be an example. It is exactly the same process. These people are appointed as ministerial appointees. The process of appointing them follows exactly the guidance laid down by the Commissioner for Public Appointments.

The Chairperson:

OK. Do members have any questions?

No issues were raised in connection with clauses 239-242. Are members content?

Members indicated assent.

The Chairperson:

That concludes Part 14 of the Bill. I refer members to Part 15.

On clause 243, concern was raised about the inclusion of the phrase "outline planning permission" and the exclusion of the phrase "reserved matters". It was suggested that the phrase "nature conservation" should also be included.

Ms I Kennedy:

The phrase "reserved matters" is defined in subordinate legislation: the Planning (General Development) Order (Northern Ireland) 1993. We will wish to seek legal advice on the definition of "nature conservation" if an amendment is tabled to clause 243.

The Chairperson:

Are members content with the explanation?

Members indicated assent.

The Chairperson:

The need for close consultation with councils on the development of subordinate legislation was raised under clauses 244 to 246. Obviously we would like to see the subordinate legislation. What are your views on consultation with councils?

Ms I Kennedy:

Obviously, councils will be key consultees on the subordinate legislation.

The Chairperson:

On clause 247, there was a call for the commencement of the Bill to be carried out in close consultation with councils. In addition, the Committee has discussed the possibility of including in this clause a provision that would prevent the Bill from being commenced until local government reform has been implemented. Maggie, would you like to reiterate what you said to me at the start?

Ms Smith:

Yes.

The Chairperson:

OK, thank you. It is important to have the governance. We are well aware of that. Do you feel that we do not need to include that in clause 247?

Ms Smith:

We have talked to the Office of the Legislative Council about that. It is going to advise us.

The Chairperson:

Clause 248 — does that say clause 248? I cannot believe it — is the short title. No issues were raised in connection with it.

We will go through the schedules. With the exception of schedule 5, no issues were raised. We talked about the minimum three-year membership of the Historic Buildings Council. We will look again at schedule 5.

Ms I Kennedy:

Yes.

The Chairperson:

A range of other issues that are general in nature apply to several Parts of the Bill or have been excluded from the Bill, and were brought to the Committee's attention in written responses. I will raise each issue in turn, ask the Committee to reach agreement on them and get a response from the Department.

A major, overarching concern is resources. Apart from what we are trying to do with the Bill, we need to send the right message back to councils about exactly what way we propose to resource the whole process.

Ms Smith:

When the planning powers move to councils, the planners move to councils as well. We keep talking about the transfer of powers, but what we are really doing is transferring the bulk of the planning system from the Department to councils. We are very conscious, as we know councils are, of the need to make sure that what we transfer to the councils is going to provide an excellent service but also be affordable.

We are looking at that from two angles. First, we are looking at the angle of making sure that the planning system that we hand over to the councils is the right size and shape. You have heard in previous discussions, not on the Planning Bill but on resourcing issues, a lot about what the Department is doing to make the Planning Service the right size in the wider context of making the Department the right size. The situation we are facing is that because of the downturn and the economic situation we are having to reduce the size of the Planning Service. That is one aspect.

We are also making sure not just that we have the right number of people but that we have people in the right places. So we are looking at restructuring the Planning Service. At the moment, we are looking at the future shape of local planning offices. When the powers transfer to the councils, each council will have to have the resource to do its development plan work and its development management work. At the moment, as you know, all area offices deal with development management, but development plan work is dealt with in a different way. So, work is ongoing to start to reorganise the Planning Service so that each office has the capacity to do the development management work and the development plan work.

That is not going to happen all of a sudden. A process has to be gone through to organise all of that and make sure that it is in place in time for the transfer to councils. That is about getting Planning Service the right size and shape, but we are also looking at the income. The fee structure does not reflect the amount of work that is involved in processing the applications. In particular, the fees for the very big applications do not cover the costs. As regards housing, for example, if someone applies for a single house in the countryside —

The Chairperson:

I am well used to that. It is a good example.

Ms Smith:

They could be faced with quite a substantial fee of, I think, up to about £8,000. However, a quite large housing development, in our terms, of 49 houses can be built for a fee of just under £12,000, so there is a clear disparity. If someone builds more than 49 houses, their planning fee does not go up; just under £12,000 is the cap. We have consulted on making the fees much more realistic by, rather than capping them at £12,000, extending the maximum fee upwards to take account of the realities of the sorts of planning applications that we could face. The proposal is for the maximum fee for housing, commercial and plant to rise from just under £12,000 to £250,000. That gives scope, when you get up to these very big regionally significant applications, or even the major applications that councils will have to process, to make sure that the amount of work that is involved in processing the application is met through the fees.

Clearly, there will not be an even spread; very few applications will be at that very high end.

As for people who put forward the small applications, such as the person who has the single house, the fee that is charged for a single house is on a scale, but the scale relates to the size of the site. It is proposed that a flat fee be introduced, which, for a single house, would be £800.

The Chairperson:

Are you listening, Mr Wilson? Rural communities are being picked on again.

Mr B Wilson:

Sure.

The Chairperson:

I think that £800 is not to be sniffed at.

Ms Smith:

It is about matching the fee to the reality of the cost of the work.

The Chairperson:

I totally agree.

Ms Smith:

It will also make it fairer, so that people are paying what is realistic and affordable in relation to the amount of investment, and, in lots of cases, the amount of profit that will come from a development proposal.

The Chairperson:

Mr Wilson, would you like to comment on the fact that Bangor has built 5,000 houses for £12,000 over the past five years?

Mr B Wilson:

It depends on the servicing — septic tanks and all those sorts of things — which are involved in single dwellings in the countryside. You have to have special roads and driveways and that sort of thing. I am not sure of exactly where the planning ends, but they should certainly pay a bigger

whack.

The Chairperson:

A fee of £800 sounds about right. That said, that is obviously one element. The other element is the development plans and how those are paid for. Will that funding be transferred from central government, or will it be looked at through rates?

Ms Smith:

There will be a transfer.

The Chairperson:

OK. Other issues raised included lack of time for proper consideration of the legislation and the timing of the local government reform agenda; and, on governance, the degree of departmental responsibility and lack of discussion. We will tie those two issues together. There is obviously a commitment that this will go nowhere until local government reorganisation is in place. I am only going through the agenda.

Ms Smith:

Yes, the timing issue is really a matter for the Executive, because they agreed the timing. Last time that we met, you asked me about the Minister writing. I have spoken to the Minister about writing to you about the timing, the governance and the commencements, so that will come through to you.

The Chairperson:

OK. The lack of discussion with councils on governance — was some work done on that? I am just reading through here.

Ms Smith:

We are not aware that there was a lack of discussion.

The Chairperson:

The degree of departmental responsibility and lack of discussion. Are you saying that some work

has been done? Are you happy enough with the Department's role in consulting with local councils?

Ms Smith:

As far as we are concerned, we are not aware of any lack of discussion.

The Chairperson:

OK. We come to the issue of capacity building and the training of staff and councillors.

Ms Smith:

That brings us back to the pilot projects; it is exactly what they are designed to do.

The Chairperson:

OK. Thank you. Members, feel free to ask questions.

It is suggested that the pre-application consultations, which I take to be the community consultations or pre-application discussions, should be compulsory.

Ms Smith:

They are compulsory.

The Chairperson:

I think it is both.

Ms Smith:

The comment there is not correct. The Bill will make pre-application consultation a requirement, in so far as the planning authority, when dealing with major or regionally significant applications, must decline to determine the application if the pre-application consultation has not been done or has not been done properly.

The Chairperson:

The concern is from the Housing Executive, which states that the Bill does not make pre-

consultation a statutory requirement, nor does it include regionally significant applications. Will you assure us that that is going to be the case or clarify that point?

Ms Smith:

It is the case. Pre-application consultation is for major applications and regionally significant applications. The Bill states that unless pre-application consultation as required under clauses 27 and 28 is done by the applicant, the planning authority "must decline to determine" the application when it is received.

The Chairperson:

We are talking about "regionally significant" and then about "other" applications, whether deemed major or not. Are you saying that the statute will treat the pre-application discussion as community consultation as well?

Ms Smith:

Ah, we are slightly at cross purposes here.

The PADs process, which is the pre-application discussion —

The Chairperson:

I know. I think that that is the problem.

Ms Smith:

It is not covered in the Bill.

The Chairperson:

Do you have any questions, gentlemen?

The Housing Executive stated that it would:

"like to highlight that an agreement was made with Planning Service that planning applications for social housing would be defined as a major development and therefore Pre Application Discussions and Performance Agreements would be made available."

Would you like to comment on that point, please?

Ms Smith:

That is covered in subordinate legislation.

The Chairperson:

Is it a requirement?

Ms Smith:

Yes.

The Chairperson:

Will councils be consulted on guidance and regulations?

Ms Smith:

Absolutely.

The Chairperson:

Will area and local development plans be the primary basis for decision-making?

Ms Smith:

Yes.

The Chairperson:

We talked previously about RPA and the link to timing, so we have covered that point.

Mr Kinahan:

Greg Lloyd commented that everything should match the regional development strategy and fit in to the local plans. Is there a statutory link between those plans and the regional development strategy?

Ms Smith:

Yes. Development plans have to "take account" of the RDS.

The Chairperson:

Will NIW be included as a statutory consultee?

Ms I Kennedy:

Northern Ireland Water?

The Chairperson:

Yes.

Ms I Kennedy:

It is likely to be a statutory consultee. The list of statutory consultees will be in subordinate legislation.

Mr Kinahan:

I am always being pushed by anglers. Will angling associations be statutory consultees, or will their inclusion be optional?

The Chairperson:

They are a vital part of the community, so I second that.

Ms I Kennedy:

The approach will be to look at the types of applications and who should be required to be consulted. We have started some work on that. It is for further discussion, as well as for consultation.

The Chairperson:

Who will select all those consultees? Will councils have a say in that? Will the list of consultees include more than it does now?

Ms I Kennedy:

Yes. The current list of statutory consultees is very small.

The Chairperson:

That is why I am asking. Who will take over that process? Will the Department take it over?

Ms I Kennedy:

The Department will prepare a list of who should be consulted on what type of application. That will probably be in a general development order. It will expand on the current list.

The Chairperson:

Is there an option to include others if need be, depending on the type of —

Ms I Kennedy:

Yes. There may be a certain number of statutory consultees —

The Chairperson:

Is there an option to include others?

Ms I Kennedy:

Absolutely.

The Chairperson:

We will now move on to that small matter of third-party rights of appeal. Most respondents called for the inclusion of limited rights of third-party appeal. Who would like to respond to that?

Ms Smith:

We wrote to you about this matter and set out its history, but I will quickly go through it now. The decision in question was taken prior to 2009 and was made public in the consultation document that went out in March 2009. At that stage, it was clear that there were no proposals to include third-party rights of appeal in the Bill. However, because there was an interest in the matter, it was decided to ask some general questions to gather views. The Executive approved

the document before it went out, and they looked at it again after responses came back from the consultation. The Executive concluded:

"that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and implementation of the RPA have settled down and are working effectively."

Basically, they were saying that third-party appeals should be considered after powers have been transferred to councils and the councils were working effectively with them.

The Chairperson:

Are you saying that, although they are not ruling it out, they are waiting to see? Is the idea not being ruled out?

Ms Smith:

That is the Executive's wording. It was published in July 2010 in the Government's response to the planning reform consultation. They are saying that further consideration will be given to the matter after powers have been transferred to councils and are working effectively.

The Chairperson:

Do members have any questions on that?

Mr Kinahan:

They could keep being pushed on that.

Mr Weir:

To be fair, I suspect that a number of the parties and individuals have different views on the issue. It sounds a little bit as though the Executive are trying to some extent to keep everybody on board, which is a bit of a fudge, but not entirely unsurprising.

Mr B Wilson:

Obviously, like the vast majority of respondents, I am supportive of third-party appeals. However, I am disappointed, although not surprised, by the Executive's trying to put the thing on the long finger because they do not want to make a decision. I think that there will eventually be

an amendment to the Bill to deal with it.

The Chairperson:

I will try to get a Committee position on the matter. Can I go and sit elsewhere? We have to look seriously at what the majority of respondents said. It would be fine, if you are saying that, after two years, once the whole process beds in and is operating properly, there will be a mechanism for third-party appeals. However, there are genuine concerns about the matter, so, regardless of whether the Committee agrees to table an amendment, people outside the Committee will certainly be looking at doing so in the Chamber.

Ms Smith:

I quoted the Executive. It is also worth thinking about the fact that one of the very important things that the Bill will do is introduce what we were talking about a couple of minutes ago, that is, pre-application consultation. That can be an extremely useful and powerful tool and is part of front-loading. Therefore, the community will be given an opportunity to influence developers as they draw up applications and decide what is going to be proposed. It is clear that that process must be complete. Reports on pre-application consultation must be provided with applications, so there will be a big opportunity for third parties to have an influence at that stage.

The Chairperson:

Do members wish to make any other points on that?

Mr Kinahan:

I am just nervous that we are going to have a huge debate on this in the Chamber, and, given that, we may need to look at options in case things do not work well in the early years.

The Chairperson:

I do not think that it is going to leave the Committee.

Mr Weir:

Irrespective of the various views, it is clear that it will be a major issue in the Chamber when it comes to debate.

The Chairperson:

There is no doubt about that. I was going to say that it has not gone away, you know, but we will leave it at that. Do not, under any circumstances, record that.

We talked about sustainable development safeguards and codes of conduct, and we discussed e-PIC. Indeed, we could spend the whole day talking about that. I want to move on to PPS 1. We discussed that the other day, and we said that we are moving away from the issue of presumption in favour of or presumption against development to a plan-led system that will look at community needs. Can you comment on PPS 1, please?

Ms Smith:

We started a review of PPS 1, but it is clear that it has to follow the Bill, because it will set out the general principles that flow from that. Different pieces will slot together, including the framework, which is the Bill, and some of the details in the subordinate legislation, on which we will have to be precise and directive. There will also be the guidance, and, sitting alongside the subordinate legislation, will be PPS 1, which sets out the general principles. That is where we get to talk properly about sustainability, climate change and all those sorts of issues. As with PPSs in general, there will clearly be a lot of consultation and involvement on the way through, and it will be subject to full consultation and to the Committee's views.

The Chairperson:

Clause 1(1), which is on the general functions of the Department, states that:

"The Department must formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development."

That has to be outlined clearly in PPS 1, and more than just "orderly" development is needed. The problem is with the way that it reads. Although there is best practice and better models out there, we need to look at the matter ourselves and the size of the area that we are talking about so that we can decide what we want. In the absence of doing that for clause 1, we can certainly look at strengthening PPS 1.

The Committee will need to look at the issue of developer contributions and the community infrastructure levy. Unfortunately, however, some of the members who raised the issue are not here. We need clearer lines on what we are talking about. Some members have a fair understanding of what we are trying to do, but we still need a clear guideline on that. Obviously, you are not proposing the community infrastructure levy, but the developer contribution has been discussed.

Ms Smith:

What we once knew as article 40 is being taken forward as clause 75. It will give broader scope to how developer contributions will be used or can be used when they are part of a planning agreement. That in itself is very important, and our Minister has been working with the Minister for Social Development at looking at how developer contributions can be used to help fund social housing, for example. That will depend entirely on the change that will be made through the Bill, which will allow the contribution to go from a developer to a Northern Ireland Department. That simply does not happen at the moment, so that will be an important change.

We do not have the community infrastructure levy in Northern Ireland. The difference between that and a developer contribution is that the contribution comes under the terms of an agreement or a condition on planning permission. It is tied to that development and is relevant to it in some way.

The levy, which has been nicknamed a roof tax, is a sum of money, and it really has to do with the general funding of the infrastructure. It is a form of taxation, for want of a better word. Therefore, it is not really about planning; it is just that it happens to use the planning system as a way to collect money. It is much more about the general funding of the infrastructure. A levy would, therefore, be a debate for a different day.

The Chairperson:

I agree. Perhaps not all members would support this, but we are looking at something that will benefit the community, regardless of whether that is done through the levy or the contribution. You mentioned article 40, which is fine. However, we could look at different ways that the community could benefit. My understanding from what I have seen is that developer

contributions are generally written into an agreement. That contribution could be a road structure, for example. However, we are talking about community-based places, which, in the context of article 40, means social housing for a lot of people. However, we need to think about the community benefit, and that is why the issue was raised.

Ms Smith:

The interesting point about the proposed changes is that there will clearly be community benefits, depending on how the planning agreement is written and what it is designed to do. At the moment, the money can come to only the Department of the Environment, so not a lot can be done with it. The Bill proposes to broaden that out, so that will create wider opportunities for planning agreements.

The Chairperson:

I agree. However, are you basically saying that there is a development right through a developer contribution under article 40?

Ms Smith:

Yes.

The Chairperson:

Does that restrict it to social housing?

Ms Smith:

No; I am using social housing as a real example of the greater flexibility that the Bill will create for planning agreements and developer contributions. It is not restricted to social housing. The key issue is that, if we are to bring forward proposals that will allow money from housing developments to be used to help fund social housing, we need a combination of planning policy and social housing policy. We also need the transfer opportunity that is set out in the Bill. So the planning part can take in the developer contribution and make sure that it reaches another Department, but it is really up to that Department to provide the policy on how the developer contribution could be used.

The Chairperson:

Yes, I can see that. It is then up to the Department to decide what it wants to do, which depends on who is in control of that Department. Do members have any views on the community infrastructure levy? I cannot speak for the Committee, but I think that this issue will come back. We will return to it on a day when we have a full quota of members.

We talked a lot about the duplication of functions. We need to define those roles to ensure that councils understand what could happen with overlapping. That is because the matter of the functions of the Department and those of councils keeps raising its head. We need proper, clear guidelines and definitions.

Do we need basic planning to be in the Bill, or are we content?

Ms Smith:

No. In fact, it could be limiting.

The Chairperson:

Do members have any views on that? The three-year review that has been built in will let us know whether it is limiting and what is or is not working.

Where the regional development strategy is concerned, the Department was asked to provide an amendment to tighten the words for councils. That is OK; we talked about that.

That brings us to infrastructural development, which includes linear development projects and cross-boundary considerations. Would you like to comment on that? I think that we discussed it.

Other issues that were raised include retrospective claims and the fact that there is no liability on councils for decisions that were made prior to devolution of planning functions; departmental controls, which, again, is an issue under governance that we talked about; the need for better co-ordination and co-operation between the Department, agency and local government. We dealt with the clarification of roles, and we covered climate change. Do you have any comments to make on strategic oversight?

Ms I Kennedy:

I think that we covered that throughout the deliberations.

The Chairperson:

OK. We come to the issue of the ongoing relevance of open space, sport and outdoor recreation beyond what is in planning policy statements and so forth. That will be one of the major points that communities will ask about.

Ms Smith:

That is the sort of thing that councils will, for the first time, be able to have in their development plans.

The Chairperson:

What about addressing the cumulative impacts of all the proposals?

Ms I Kennedy:

We discussed that when we addressed the categorisation of applications.

The Chairperson:

Members, feel free to ask any questions. We discussed completion notices.

Ms I Kennedy:

Yes, we discussed those early on.

The Chairperson:

I know that we discussed this today, but we are back to benchmarking council performance. That is OK as long as we do not point the finger at any council. Are there any comments on councils' right of appeal?

Ms I Kennedy:

There are opportunities for councils to request hearings. That depends on their particular point or

query.

The Chairperson:

Can we amend how clause 75 provides for the awarding of costs?

Ms I Kennedy:

It was not intended to relate to —

The Chairperson:

Has any consideration been given to that?

Ms I Kennedy:

For the award of costs?

The Chairperson:

Yes.

Ms I Kennedy:

Yes, we intend to bring that forward as an amendment.

The Chairperson:

Have you considered whether there is a need for a chief planner?

Ms Smith:

Yes. We talked a lot about the powers going to councils and about getting everything lined up for that. However, the Department will also retain a planning division that will have oversight and advice roles. It will work on marine planning, strategic projects and so on. The director of that division will be the head of profession for planners.

The Chairperson:

Are you sure about that? Is there still a need for a chief planner? Are there any comments on that?

Finally, do we need simplified planning zones?

Ms I Kennedy:

There is an opportunity —

The Chairperson:

There will be a plan-led system, community involvement, spatial planning, planning policy statements, the regional development strategy and area plans. Do you still feel that we need simplified planning zones?

Ms I Kennedy:

Yes. It is a different tool and approach.

The Chairperson:

All things being equal, and beyond setting down your plan, if an area develops a proper plan, would you still feel that there is a need for simplified planning zones?

Ms I Kennedy:

I think that it is important that they are currently available and are made available for councils if they wish to use them.

The Chairperson:

If we were to request that simplified planning zones be removed from the Bill, would the Department not be in favour of removing clauses 132 to 138, I think it is? I forget the clause numbers.

Ms I Kennedy:

I think that that is in clauses 33 to 38.

Ms Smith:

Simplified planning zones are an opportunity that exists, and, the way that the Bill is drafted, they are an opportunity that councils will have in the future. Careful thought would need to be given

to any plans to remove that opportunity.

The Chairperson:

Let us be honest and say we have taken a lot of views on simplified planning zones. We had a chat with Professor Greg Lloyd, who, even though he is just one person, is very knowledgeable in that field. He has studied how such zones have and have not worked. That is something for the Committee to consider.

Unless members have any other questions, that brings our session to a close. Thank you very much.