Committee for the Environment

Report on the Planning Bill (NIA 7/10)

Written Submissions, List of Witnesses and Research Papers

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Third Report

Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquires and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2007 has been as follows:

Mr Cathal Boylan (Chairperson) 9
Mr Thomas Buchanan 7, 8, 13
Mr Trevor Clarke 15
Mr Willie Clarke 14
Mr John Dallat 5
Mr Danny Kinahan 3, 4
Mr Patsy McGlone (Deputy Chairperson) 6, 9, 10, 12
Mr Alastair Ross 1
Mr George Savage 2, 16
Mr Peter Weir
Mr Brian Wilson 11

1 On 21 January 2008, Alastair Ross was appointed as a Member and Mr Alex Maskey ceased to be a Member.

2 On 15 September 2008 Mr Roy Beggs replaced Mr Sam Gardiner.

3 On 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong.

4 On 22 June 2009 Mr Danny Kinahan replaced Mr David McClarty.

5 On 29 June 2009 Mr John Dallat replaced Mr Tommy Gallagher.

6 On 3 July 2009 Mrs Dolores Kelly replaced Mr Patsy McGlone as Chairperson.

7 On 14 September 2009 Mr Adrian McQuillan replaced Mr Trevor Clarke.

8 On 1 February 2010 Jonathan Bell replaced Mr Adrian McQuillan.

9 On 12 April 2010 Mr Cathal Boylan was appointed as Chairperson and Mrs Dolores Kelly ceased to be a Member.

10 On 12 April 2010 Mr Dominic Bradley was appointed as Deputy Chairperson.

11 On 13 April 2010 Mr Brian Wilson was appointed as a Member and Mr David Ford ceased to be a Member.

12 On 21 May 2010 Mr Patsy McGlone replaced Mr Dominic Bradley as Deputy Chairperson

13 On 13th September 2010 Mr Thomas Buchanan replaced Mr Jonathan Bell

14 On 13th September 2010 Mr Willie Clarke replaced Mr Daithi McKay

15 On 13th September 2010 Mr Trevor Clarke replaced Mr Ian McCrea

16 On 1 November 2010 Mr George Savage replaced Mr Roy Beggs

Table of Contents

Written Submissions

Relating to the Report

Ancient Tree Forum Submission

to the Planning Bill

Ancient Tree Forum response to the Planning Bill NI

The introduction of a Planning Bill to the Northern Ireland Assembly offers opportunity to strengthen the protection for trees of special interest as individuals, groups or areas and woodland protection across the province.

The Ancient Tree Forum (ATF) has pioneered the conservation of ancient trees and is the main UK organisation concerned solely with their conservation. The ATF seeks to secure the long-term future of ancient trees through advocacy of no further avoidable loss of ancient trees, good management of ancient trees, the development of a succession of future ancient trees, and seeking to raise awareness and understanding of the value and importance of ancient trees. In particular we campaign to achieve national recognition of their importance through creation of national registers and protection by specific designation and amendment to existing legal and policy instruments where these have proved ineffective. We would welcome an opportunity to provide more detailed reasons and evidence for the need for the proposals we have made in this responses.

Summary of points

- The concept of Conservation Areas should be broadened so that areas rich in important trees can be designated and protected on special tree interest alone. A Tree Conservation Area designation would provide local councils with an additional mechanism through which to protect trees.
- A statutory National Register of Trees of Special Interest - ancient, veteran, champion and other special heritage trees - should be created to highlight the value of the most important trees in Northern Ireland and could be administered by the Historic Buildings Council (HBC) in a similar way to Listed Buildings.
- Certain exemptions in the Tree Preservation Order (TPO) system should be removed or amended.

- The provision for compensation should be removed from the legislation.
- There should be one offence for any contravention of TPO or Conservation Area provisions.

Tree Conservation Areas

Conservation Areas provide an effective means of affording provisional protection to important trees as a consequence of their designation as areas of historic and architectural interest. Broadening the Conservation Area designation to specifically allow areas of valuable trees to be designated and controlled in a similar way would add an important tool for proactive tree protection and management.

A national register of trees of special interest

A national register of trees would enable the Executive, local government and other interested parties such as community groups and environmental NGOs to determine which trees in Northern Ireland are of special wildlife, heritage, cultural, historic and landscape importance. The trees on such a register should be monitored in a manner similar to the monitoring of Listed Buildings by the HBC.

Exemptions

The exemptions in regard to TPOs should be amended as follows:

- Exemptions for dangerous trees should be modified in line with the principles outlined by the National Tree Safety Group's[1] guidance to reduce avoidable loss of special ancient and veteran trees.
- Exemptions for dead and dying [2] trees should be removed as they would have a detrimental impact on the control of those trees that are valuable for biodiversity.
- The exemption for work to prevent or abate a nuisance should be removed as it undermines the controls on managing trees where they overhand property boundaries.

Penalties

There should be one offence. The proposed two tier system has proven disadvantages and has no other parallels in planning law.

Compensation

The potential for claims for compensation can unduly influence decisions by councils rendering the TPO mechanism ineffective.

Commentary on the clauses in the Bill

Clause 103 - Conservation Areas

We welcome the inclusion of procedures whereby a district council can designate areas as Conservation Areas. Landscape features such as trees contribute significantly to the character and appearance of Conservation Areas and are rightly afforded provisional protection by designation.

We would, however, like to see the concept extended so that a district council can designate a Tree Conservation Area for the quality and importance of trees alone within a specific area unrelated to buildings. This designation would be particularly valuable where there are many significant trees of special interest in an area of multiple ownership. However, the designation of a Tree Conservation Area would not include controls on the built environment.

It would apply to areas of special tree interest that take into account:

(a) the age, appearance, historic and cultural interest and rarity value of the trees,

(b) any respect in which the trees contribute towards the landscape character and quality or appearance of the area; and

(c) any respect in which the trees provide habitat associated with veteran trees;

or other criteria that the NI Ministers decide should be taken into account by a district council.

Clause 103 (5) The Ancient Tree Forum would wish to be statutory consultees should Tree Conservation Areas be enacted.

Clause 105 - Grants in relation to conservation areas

We welcome the provision of grants or loans for the purpose of the preservation and enhancement of Conservation Areas and would wish to see this provision apply to trees of special interest within Conservation Areas and also in Tree Conservation Areas if enacted.

Clause 120 - Planning permission to include appropriate provision for trees

We welcome this provision for the protection of trees and also for the planting of trees. Such a duty provides district councils with an opportunity to influence the preservation of important trees and mitigate the impact of development. The potential of every development site to retain and plant trees should be maximised.

Clause 121 - Tree preservation orders: councils

We would like to see the specific provision for areas of trees to be protected by TPOs as this gives legitimacy to its use. The specific provision of an area category is valuable in situations where urgent action is needed to protect trees under immediate threat and where there is not time to do a comprehensive tree survey. This power would also provide an opportunity to protect scattered, vulnerable trees within a defined boundary where threats are evident.

As in Scotland it would be beneficial that in making an order for any trees, groups[or areas] of trees or woodland that the requirements are (either or both):

- expedient in the interests of amenity or
- the trees are of cultural, historical or biodiversity significance.

This permits the making of orders on trees on the basis of their cultural, historical and biodiversity significance in the absence of any apparent or perceived threat.

Clause 121 paragraph 5 Exemptions

Some exemptions preclude the making of TPOs or remove controls on works to trees that are in a particular condition which may impact trees of special interest, exposing them to avoidable loss or damage. Set out below are the modifications that we believe are needed to ensure that the tree protection provisions provide for appropriate stewardship of Northern Ireland's most valuable trees.

Trees that have become dangerous:

There is only a need for an exemption for trees that 'have become dangerous'(as revised-see below) and not for dead or dying.

We consider that this exemption should be in line with the principles set out in the draft National Tree Safety Group guidance on the appropriate management of tree related risk. We would therefore propose the exemption relating to dangerous trees should be replaced with the following:

'no such order shall apply to the cutting down, uprooting, topping or lopping of those parts of a tree t that pose a real and present risk of serious harm and the works are urgently necessary.'

The term 'dangerous' is capable of multiple interpretations and has been exploited by those intent on destroying trees or given apparent sanction to extreme and damaging but unjustified works. The wording 'that pose a real and present risk of serious harm' is

- more precisely proscribed and avoids the use of the word 'dangerous'.
- more closely reflects the way the courts have considered the scope of this exemption as referred to in the guidance in England and
- makes the limitations of the exemption clearer for the tree owner.

The phrase 'urgently necessary' limits the extent of works to those risks of serious harm that are imminent.

As in Scottish legislation, the following stipulation should be added to this exemption: 'So long as notice in writing of the proposed operations is given to the planning authority as soon as is practicable after the operations become necessary.'

Guidance in England also advises owners to give five days notice to local authorities prior to carrying out work on trees that is exempt. Advance notice gives the district council an opportunity to assess the condition of the tree and to make a judgement on the necessity and extent of the intended work before it takes place. As work to trees is irreversible, if the work is considered not to be exempt, the owner can be informed that they might render themselves open to prosecution if they proceed.

A system of notification is also necessary in relation to the replacement of protected trees that have been felled. Without notifications the district council has no method of tracking the state and condition of protected trees and their replacements.

Dead trees

We do not believe the exemption for dead trees is appropriate as these types of tree are often as beautiful as and more ecologically diverse than a living tree and there should be scope to

protect dead trees that are of particular, special interest. The Ancient Tree Hunt has records to date of 103 dead trees that have been identified in NI and verified of great significance to local communities and 3 of these trees are recorded as ancient. Should this exception remain, even these special ancient trees as individuals or in woodlands and wood pastures cannot be protected by a TPO.

There is no justification to provide a specific exemption for dead trees on grounds of safety. We consider that the 'dangerous' exemption (reworded) is the only one that is needed. As with living trees, the extent of work that might be urgently necessary to provide for reasonable safety and stability is a matter of judgement and in the case of dead trees of special interest should be controlled.

As we have argued in relation to the dangerous exemption, it is a requirement that, where appropriate, a replacement tree is established to provide continuity of value. It is therefore in the community's interest that the district councils are aware that a tree has died in order to engage with the owner to secure replacement trees.

In recent reviews and changes to the TPO legislation in Scotland, the Scottish Government has not deemed it necessary to have an exemption for dead trees.

Although removal of the exemption would mean that consent would be required to remove or manage a dead tree, it should be possible in guidance, and by examples, to indicate that the information provided by the applicant and the procedure for consideration should be proportionate to the proposed works and to the value of the tree. It is however important even with small diameter dead trees, including replacement trees for previously removed protected trees, to ensure that a viable replacement is established.

Dying trees:

In England it is proposed to remove the exemption for dying trees. This exemption was open to considerable interpretation and has no doubt led to the untimely loss of some very valuable trees. We believe it should be removed from legislation in Northern Ireland so that ancient and veteran trees can be protected by a TPO where there have been misunderstandings in the past about the condition of the tree.

The time over which a tree progresses from dying to dead may be long or sudden. It can result in the reduction of some aspects of visual amenity but potentially increasing wildlife values, however none of these values disappear on death. A district council should be able to protect a tree that is valuable (i.e old, culturally significant or important for biodiversity) even if it is dying and advise the owner on the best practice in its management.

Exemption for nuisance:

The exemption for work to prevent or abate a nuisance should be removed.

As with the terms dying and dangerous, nuisance is capable of multiple interpretations and is unclear and confusing for those affected by and those administrating TPOs, despite being the subject of numerous court cases. The situation is further complicated by the common law right of neighbours to cut encroaching branches and roots. What is clear is that the exemption to act without consent does not apply to situations, which might in everyday language, be described as a 'nuisance', although this might be the meaning that many people might think it has.

Owners of protected trees may not do works without consent, but a neighbour may, by citing nuisance. Not only does this seem illogical and inequitable, in extreme cases it could result in large proportions of a protected tree (branches and roots) that encroach into a neighbour's property being lawfully removed. This could have the result of destabilising or destroying the health and amenity of the tree, and so undermining the purpose of the TPO.

Many important, historic and veteran trees stand on boundaries and are vulnerable to loss or damage from such work, even if subject to a TPO or within a conservation area, if this exemption remains. A neighbour would still have the right to do urgently necessary works without consent as provided in the 'dangerous' exemption in clause 121 (as revised).

Clause 125 - Penalties for contravention

There are currently two categories of offence. The first is felling etc. or other work which leads to destruction of a tree and the second lesser offence is for any other contravention. We consider that these should be replaced with one offence (triable either way) for any breach of tree preservation regulations

As structured, a district council has to prove, to the criminal standard of proof, that a tree has been destroyed to prosecute under offence in 125(1). A tree can be destroyed indirectly by numerous means such as by cutting or damaging roots, or by interfering with their functioning, or by removing so much of the branch structure that it is killed or otherwise destroyed as an amenity. However, even if severely damaged in such ways trees do not always die quickly and may even recover to some extent. These factors provide scope for unhelpful technical argument as to the effect of the works in question. Such arguments cause prosecutions to fail, or be taken on the lesser offence which carries a maximum fine of level 4 (£2,500) as opposed to the maximum fine allowed for the greater offence of £30,000. This undermines the deterrence value of the fine and enables intentional destruction to be affordable.

To have a single offence (triable either way) would strengthen and rationalise the law and bring the law relating to protected trees into line with that applying to unauthorised works to protected buildings and other planning law. It does not constrain the freedom of courts to impose such sentence as is appropriate in all the circumstances.

Clause 182 - Compensation in respect of TPOs

We believe that the provision for compensation should be removed from the legislation. There is evidence from across the UK that typically in situations where there are safety issues district councils may decline to make TPOs or refuse consent. District Councils can be fearful that compensation might be claimed if applications to fell or undertake works to trees are refused, even if the works are not justified by the condition of the tree and other work would reasonably address the safety issue. This can impact on some of the oldest, ie most important, trees which may be perceived as being a higher risk.

Instead, we recommend that, as with Listed Buildings (Clause 197), owners of trees of special interest protected by a TPO or in a Conservation Area, should be supported by funding from the district council, (or a national fund in the case of trees of national special interest), in return for good stewardship.

Clause 196 - Historic Buildings Council (HBC)

The Historic Buildings Council is required to review and report on the general state of preservation of listed buildings and to advise on the preservation of buildings of special architectural or historic interest.

It is our view that there should be a statutory national register of trees of special interest and that an organisation like the HBC such as the Tree Council of Ireland should be responsible for keeping the register, monitoring and advising on the preservation of such trees. This is especially important as tree protection is a responsibility devolved to district council, yet there is no national organisation to ensure that Northern Ireland's tree heritage is appropriately protected, recognised and conserved.

Ancient trees which are the rarest and most valuable trees in Europe are often the least protected. A national register of trees of special interest would highlight the exceptional value of these trees and through it ensure appropriate care and protection is given to these valuable assets. Moreover, there is evidence of public enthusiasm for such a project. Across the UK, communities have identified the trees that they believe need attention. Already, 80,000 trees of special interest (ancient, veteran and notable trees) have been recorded by individuals through the Ancient Tree Hunt. Of these 3,231 were trees in Northern Ireland that had special interest.

For more information please contact: enquiries@ancient-tree-forum.org.uk

[1] National Tree Safety Group http://www.forestry.gov.uk/forestry/INFD-7T6BPP

[2] The Department of Communities and Local Government in England have proposed the removal of the exemption for dying trees in the regulations.

Antrim borough council

Antrim Borough Council

Submission to the Planning Bill

Our Ref: DMCC/AL/KS

Mr Cathal Boylan
Chairperson, Committee for the Environment
Room 247, Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST
BT4 3XX 20 January 2011

By Email to - sean.mccann@niassembly.gov.uk

Dear Mr Boylan

Draft Planning Bill - Local Authority Consultation (January 2011)

In regard to the current consultation paper Council gives a general welcome to the Draft Planning Bill and the intention of transferring Planning to local government. However, Council has serious concerns about significant sections of the proposed Bill and we cannot definitively comment on the substance of the proposed legislation particularly given an insufficient consultation period. Large parts of the new Planning regime require much further detailed consideration especially those aspects which potentially impose a new burden on local ratepayers. As it is understood by Council, this is the largest piece of legislation to be considered by the Assembly, extending to over 200 pages and 15 Parts / 248 clauses and is being proposed for adoption with circa 4 weeks consultation. Council believes that the consultation on this Bill should not be concluded until a full and proper dialogue has been conducted with local government.

At this initial stage council is prepared to submit a number of generally high level comments about the Bill and these are outlined overleaf.

General:

- The Bill is the first phase of a two-stage legislative programme to transfer planning functions to local authorities - it is to be supplemented by the proposed Local Government (Reorganisation) Bill, the policy basis of which is only currently at consultation. Adoption of both Bills is required to implement the proposals and as they work in tandem it is considered that both should be consulted on simultaneously so that the relationship with one another can be better understood. It would be preferable to have dealt with the Reorganisation Bill arrangements first.

Key Issues Arising:

- Timing & sequencing: Council is concerned that detailed (and necessary) scrutiny has not been possible given the truncated consultation period, and would question the wisdom of a disjointed legislative approach on such important proposals separated by elections and without an operational timetable.
- Code of Conduct: Clarity is needed on the nature and status of development for the Code of Conduct for Elected Members and officers, supported by tailored training support.
- Governance: After April 1 and following absorption into the Department, Planning Service is to be streamlined into 5 Divisional offices, along with Local Planning & Strategic Planning Operations divisions which have been determined by the Department. Governance arrangements and decision making structures have not been adequately discussed with Local Government and as the Service is to transfer to Local government it would be unfortunate if future delivery arrangements are prejudiced by interim decisions being made at the present time.
- Resources & Cost Implications: A key priority with a minimum stipulation that a ‘fit for purpose’ and cost-neutral system should be transferred with no financial ramifications to ratepayer. New proposals e.g. new local development plan system, preparation of community statements, pre-determination hearings, annual audits/monitoring are likely to have significant resource and capacity implications for councils upon transfer. Parts of the Bill (Parts 2, 3, 5-7,10,13) raise concerns with possible exposure to compensation and enforcement liabilities, community consultation costs, performance monitoring and reviews as these will all involve new and unknown implications. There are also queries about the functionality for the e-PIC system and liabilities going forward.

Sufficient information and resources must be made known to inform and support a transfer of functions - this needs to account for staff downsizing, re-locations, and fee income shortfall.

- Capacity Building & Training: Sufficient capacity must be available within both central and local government sectors to ensure an emerging new service is delivered in a cost effective/efficient manner. Substantial investment to develop capacity and skills is necessary. There appears to be potential for duplication resulting in inefficiencies e.g. planning agreements, designation of conservation areas, TPOs and issuing enforcement notices, this should be addressed now.
- Local Accountability & Role of Department: Concern prevails regarding the proliferation of checks and balances to be retained by the Department throughout the Bill (esp. Part 2), providing an apparently unchecked power of veto in many instances. Council acknowledges the role of the Department in maintaining coherence and balance regionally, but the proposed scope for intervention e.g. reserve powers, monitoring, call-in, scrutiny, performance assessment may be excessive and appears to do little to promote local accountability. Crucially, no reciprocal appeal mechanism is provided for local authorities in regard to such interventions.
- Councils as Equal Partner: Council is concerned that local authorities have had only a minimal role to date in shaping the proposed planning system. If the sector is to assume responsibility for a new system, it must have confidence that it will be a workable arrangement. Only by embracing the sector will the Department help engender the necessary trust to ensure the future success of the system.

Conclusion

Council welcomes the Bill, but highlights the above points as only a number of early concerns. It also feels that the consultation period is unnecessarily short and disjointed, given the working relationship to be established between the Bill and the Local Government (Reorganisation) Bill before the powers can be implemented and would suggest the timeframe is revised to provide for a more integrated approach to legislating for the new planning regime.

Council is disappointed that the Department has not engaged more fully with the sector to date, as this may have addressed more of those concerns at an earlier opportunity.

Yours sincerely

David McCammick

Chief Executive

arc21 Submission to the Planning Bill

arc

FAO Cathal Boylan
Chairperson, Committee for the Environment
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST
BT4 3XX

14th January 2011

Dear Mr Boylan

Re Committee for the Environment - Call for Evidence on the Planning Bill

I refer to your letter of the 16th ult regarding the above.

As indicated the timing and scope of the Bill present some difficulty to the Committee - as they do to arc21. Unfortunately, while we would like to comment in detail on the Bill, these factors, together with our governance arrangements, do not give us enough time to prepare and agree an authoritative response on behalf of the arc21 Joint Committee by 14th January. However, in order to be helpful I have included for your information the original arc21 response to the Planning Reform consultation as I feel that a number of these comments remain pertinent in the context of the Bill. I would also take the opportunity to make a number of other high level points (without prejudice to any final consideration by our Joint Committee):

1. Process - It appears that the scope of the Bill goes far beyond that of the original consultation including as it does the provisions of previous planning legislation viz. elements of the 1972 and 1991 Orders (inter alia) as well as provisions which replicate recent developments in GB. While our Committee has not discussed this I would anticipate that there would be concern expressed that these areas, perceived to be beyond the scope of the Planning Reform consultation last year, have not been the subject of a similar consultation process. Apart from the obvious issues regarding stakeholder engagement as a matter of best practice, this may give rise to questions about the procedural robustness of the methodology adopted.

2. Central Government Intervention - I would expect that one of the issues for the arc21 Joint Committee will be the extent to which the Department will continue to vest control in the process given the provisions for default powers, monitoring, call-in, scrutiny, intervention, performance assessment, reporting and direction. These appear at first reading to militate against local decision-making and accountability.

arc21
Walsh House
Fortwilliam Business Park
35 Dargan Road
Belfast BT3 9LZ

Tel: + 44 (0) 28 90 726 333
Fax: + 44 (0) 28 90 726 332
Web: www.arc21.org.uk

arc

3. Integration - While we are aware of the separate associated consultation on Local Government Reform which includes issues associated to Planning it still appears to us that the Planning Reform Agenda has been considered almost in isolation from these other matters. This reinforces the comments we made in our original response in respect to the need for issues such as Place Shaping, Community Planning and Well-Being to be mainstreamed in the Planning Reform process.

4. Technical - There are many technical areas which are new to us and would require further consideration. We would be keen to undertake this as soon as possible.

5. Financial – The prognosis of cost neutrality is not supported by evidence. I would expect this to be a major issue for local government generally and arc21 specifically, particularly in respect of the need to provide clarity on the resource and financial impact for local government under the new regime.

6. NILGA - As you may be aware NILGA is holding a consultation event on the 18th January which post-dates your deadline. However, it would be hoped that there will be a collective local government response emerging from the process initiated on that date.

I am sorry I can't be of any further help at this point. However, it may be that there will be an opportunity during the Committee's consideration for further engagement on the matter.

Yours sincerely

JOHN QUINN
Chief Executive

Encl./

arc21
Walsh House
Fortwilliam Business Park
35 Dargan Road
Belfast BT3 9LZ

Tel: + 44 (0) 28 90 726 333
Fax: + 44 (0) 28 90 726 332
Web: www.arc21.org.uk

arc21 Response to Planning Reform Consultation

Response to the Consultation:

"Reform of the Planning System in Northern Ireland"

2nd October 2009

Executive Summary

As an organisation involved in waste infrastructure, we have focused our comments mainly on the application of the proposals to the waste sector. We defer to the mainstream local government sector in respect to the wider application of the proposals.

We would seek to highlight a number of issues:

- We agree that one of the main aspects to be addressed is that of cultural change.
- We consider that this needs to apply right across the spectrum of planning, i.e. central and local government, applicants, statutory consultees, community groups, etc..
- We support the proposed project management approach to strategic planning, area planning, and the development management process.
- We consider that this should similarly be applied to the change process itself.
- We consider that clarity, in terms of time horizons and expectations, is key to the success of a planning system which is fit for purpose.
- We would seek more clarity as to the decision-making process for strategic planning including in which department it will lie in the future given the current split in responsibility between DRD and DOE.
- We agree with the objective of a more expeditious and less controversial development planning process.
- We agree with the proportionate hierarchical approach to development management in respect to waste developments.
- We agree with robust community engagement. However, we have concerns about the lack of detail around implementation.
- We do not think that the time is right for consideration of a third-party appeal system until after the Reform agenda has been properly bedded in.
- We agree with proposals to extend the developer contribution regime and would seek to be involved in future dialogue in relation to waste.
- We consider that implementation and resourcing are key both in the transition phase and beyond, and that a focus needs to be applied to this element of the work as it proceeds in tandem with finalising strategic changes.

Discussion

arc21 is supportive of the initiation of a Planning Reform process given its concerns expressed over a number of years about the current fitness for purpose of the planning system to deliver mission-critical waste infrastructure and environmental protection measures in the region. Accordingly, we welcome the Reform process, but have a number of concerns about the proposals and, in particular, a perceived lack of clarity and fundamental omissions in the proposals.

In respect to the ethos adopted by arc21 in formulating our response, we align closely with those of local government in general, particularly in terms of achieving “strong local government".

Our focus is, however, on the delivery of critical waste infrastructure rather than on regulation. In this regard, the main principles applying to our response are:

1. Clarity in terms of roles and responsibilities of all stakeholders including central and local government and consultees;

2. Integration relative to the various statutory functions of the public sector to facilitate the delivery of strategic objectives;

3. Resourcing, capacity building and training for all stakeholders;

4. Management of an orderly transition to the steady state; and

5. Clarity and timeliness in respect of determinations.

General Issues

We do think there are a number of issues that have not been properly addressed in the document. These include:

1. Place Shaping / Community Planning

We are aware that some additional work is being done by RPA working groups in respect to community planning. However, the document suffers from a lack of clarity and a joined up approach to the place-shaping and community planning agendas and in our view focuses too narrowly on changes to the status quo. This means that a huge opportunity is being missed to fundamentally transform the planning environment in Northern Ireland. In our view it will be necessary for the outcomes of the various RPA considerations to inform the final strategic context of Planning Reform.

2. Inter-relationship between Central and Local Government

We consider that the Reform Agenda presents an opportunity for a more robust and pragmatic working relationship between central and local government post RPA and would consider that a stronger axis should be facilitated in the proposals.

There is also a need for clarity in respect to the position of the Regional Development Strategy and PPSs relative to the new area planning process. We consider there is a need for the methodology for transforming existing PPSs to be articulated and initiated in advance of RPA, to provide the basis for subsequent reform.

There is also a need to ensure clarity at the interface between the applicant and the planning authority particularly relative to the three tier system through a “one stop shop" approach.

3. Consultation

While we agree in principle to enhanced consultation with communities, statutory consultees and others, there are concerns about the detail of implementation in terms of:

- How community engagement will work;
- How proportionality will be applied to the outcome and how responses will be weighted; and
- How a performance management regime can be applied to the statutory consultation process to ensure timely and relevant responses given experience to date.

We consider that there needs to be a “presumption in favour" in the event of a nil response, that responses should be restricted to the statutory remit of the consultees, and that sanctions should apply to late responses, with extensions only allowed in exceptional circumstances.

4. Resourcing

A fundamental omission from the document is that of resourcing of the new regime, both in transition and beyond, particularly in the context of finance in the current recession, and in light of the reduction in planning application receipts.

5. Transition

There is a lack of clarity in terms of the transition process, particularly in respect of development plans, current area plans and existing drafts relative to the new council territories, pending new plans being finalised. There are concerns about how this process will work, and how vagaries and inconsistencies can be avoided.

In respect of the Planning Reform proposals we précis our comments as follows:

Development Plans

We agree with the two-tier system for new development plans to expedite the process. However, we do have some concerns about how the proposals will work in terms of the timing issues and the stated objective to avoid unnecessarily protracted consideration at public examination stage on site specific issues.

We would seek further clarity on the strategic role of central government and would encourage a stronger axis between central and local government in terms of the reform programme.

We feel that the methodology for redrafting PPSs needs to be articulated as soon as possible to inform the new area planning process.

We would wish to have further engagement and clarity on the issue of community involvement relative to development plans, in terms of methodology and resourcing implications.

Development Management

We agree with the three-tier development management proposals as they relate to waste.

We agree with community involvement proposals but would seek further clarity on implementation.

We have concerns about PAD and the statutory consultation process in the absence of controls and would seek clear articulation of a performance management regime in respect to the engagement of consultees and communities. We consider this is critical to the success of any new planning system if it is to give clarity to the process and ensure expeditious determinations and real engagement proportionate to the materiality of a given application.

In relation to community engagement, we consider that checks and balances need to be applied by the Planning Authorities in terms of, inter alia, proposed methodology, inputs and treatment of outcomes.

Appeals

We agree with a three month appeal period and consider that the Planning Appeals Commission (PAC) should retain discretion regarding the appeal method. We have some concerns as to the local member review panel model, particularly in terms of the legal perspective and exposure to challenge.

We do not consider that the time is right for the introduction of third party appeals until such times as the process is properly embedded. If third party appeals are further contemplated in the future, we would consider that this should be used on a restricted basis and there should be a facility to award costs against third party appellants in certain circumstances.

Enforcement and Criminalisation

We agree with the proposals accompanied by a fixed penalty mechanism and monitoring of planning applications by integrating building control capacity within the councils.

Developer Contributions

We agree, in principle, with an extension to developer contributions particularly the introduction of a levy. However, we would feel that this needs to be carefully thought through in respect to methodology, eligibility criteria and beneficiaries at the local or regional level.

Enabling Reform

We consider that there is a lot of thought to be given to implementation of the Reform Agenda and that there are gaps in the document in this respect. We recommend, as a matter of urgency, the preparation of a fully resourced project programme including time horizons, resource impacts, and capacity building requirements over the short, medium and long-term.

Response to the 'Reform of the Planning System in Northern Ireland'

Question	Yes / No	ARC21 Response Comments
Chapter 2 –		Planning Policy
Question 1 - Do you agree that, in future, Planning Policy Statements should provide strategic direction and regional policy advice only, which would then be interpreted locally in Development Plans?	Yes	• More strategic perspective required. • Concern over consistency. • Need to prioritise redrafting of current PPSs relative to those which can be maintained in the short-term. • The need for timescales for the programme and each PPS to be articulated. • More project management approach to be adopted.
Question 2 - Do you consider there are any elements of operational policy which	Yes	• Design guidance may be useful in the right context and particularly

Question	Yes / No	ARC21 Response Comments
should be retained in Planning Policy Statements?		operational guidelines for regionally significant infrastructure.
Chapter 3 –		Towards a More Effective Development Plan System
Question 3 - Do you think it appropriate to commence a 'plan led' system in advance of the transfer of the majority of planning functions to district councils under the Review of Public Administration?		• There is a need for clarity around the retention or otherwise of existing plans under preparation which have not reached draft plan stage. • While a 'plan-led' system has some advantages there are concerns about the capacity for such systems to be fluid and flexible in the context of the need to review on a regular basis. • arc21 can see some difficulty in proceeding with a 'plan-led' system in advance of transfer to councils in the event that there is no consensus within the local government cluster. This will need to be clarified.
Question 4- Do you agree that the objectives contained in paragraph 3.6 are appropriate for local development plans?	Yes	• Subject to emphasis on the following objectives: sustainable development, and community planning and wellbeing, relationship to RDS and PPS. • Integration with other planning objectives e.g. transportation, waste, energy. • arc21 would agree with the objectives outlined at paragraph 3.7.
Question 5 - Do you agree that the functions contained in paragraph 3.7 are appropriate for local development plans?	Yes	• We would suggest that an objective is added in terms of the integration mentioned above, i.e. integration with other strategic objectives such as transportation policy, waste management strategy and plans energy, and sustainable development, and that there should be a more robust articulation of the requirements of the various statutory agencies in terms of their input to the plans (including community plans) relative to their statutory functions. • arc21 would have some concerns to the proposed intervention mechanisms for oversight by the Department.

Question	Yes / No	ARC21 Response Comments
Question 6 - What are your views on the proposal that a district council's statement of community involvement must be in place before any public consultation on the local development plan?		• arc21 agrees with the concept of a statement of community involvement as a precursor to public consultation. • It will be necessary for the statement to include an articulation of the scope of community involvement and a methodology for the treatment of outcomes from the process. • It will also be necessary to ensure that mechanisms are in place to ensure that any such consultation is representative of the general community views and that it produces tangible outcomes where the community feels it is being genuinely engaged, otherwise there is a danger of consultation fatigue/overload. • We would agree with the suggestion that the community consultation could be integrated with the new community planning function. • arc21 would have concern about the time and resource implications of the community involvement proposals and would consider that this needs to be further thought through in terms of detailed implementation.
Question 7 - What are your views on the proposal for a programme management scheme?		• arc21 would agree in principle with the proposals for a programme management scheme for local development plans. However, the methodology for this will need to be carefully thought through, particularly as the plan requires the input of third parties and agencies outside the control of the competent authority. Such a programme management scheme where timescales are articulated and committed, will need to be accompanied by robust checks, balances and controls to ensure that such third parties input happens in a timely fashion. • There would be some concern over the level of oversight that may apply by central government in respect of the new regime.

Question	Yes / No	ARC21 Response Comments
Question 8 - Do you agree that a preferred options paper should replace the issues paper?	Yes	• arc21 would agree with the principle of a more expeditious process in terms of preparation for a local development plan but would reserve judgement on the proposal for an Options Paper to replace the existing Issues Paper as we would have no experience of the effectiveness of the proposal against the stated objective.
Question 9 - Do you agree with the proposal to introduce a local development plan process that comprises two separate but related documents to be published, examined and adopted separately and in sequence?	Yes	• arc21 welcomes the objective of a more expeditious plan process. We generally accept that a two-stage process could (technically) separate the strategic from the site specific issues and allow for a step development of the plan. However, we remain to be convinced that it will meet the objective of a more robust and less protracted process in terms of independent examination and less challenge. • We would seek more clarity as to the “test of robustness" and how it is intended to mitigate the potential for site specific issues to gain precedence at the independent examination stage.
Question 10 - What are your views on the proposal to deal with amendments to the local development plan?		• arc21 agrees with the objective to rationalise the process, but would have some concerns about the viability of the proposals in the absence of more information. We would suggest that consideration needs be given to the preparation of supplementary guidance on the methodology for modification or review of plans.
Question 11 - What are your views on the proposal that representations to a local development plan will be required to demonstrate how their proposed solution complies with robustness tests and makes the plan more robust?		• As above, arc21 agrees with the objective but would seek further clarity as to the methodology of the robustness test referred to as this seems to be key to the viability of the process.
Question 12 - What are your views on the proposal that representations to a local development plan will be required to demonstrate how their proposed solution meets the sustainability objectives of the local development plan?		• As above, more detail is required as to how the tests would apply in terms of sustainability objectives.

Question	Yes / No	ARC21 Response Comments
Question 13 - Should the Department give the examiner(s) the power to determine the most appropriate procedures to be used in dealing with representations to the local development plan?	No	• arc21 considers that the Planning Authority should remain responsible in respect to liaison with the examiner, rather than the Department.
Question 14 - Do you agree that the representations to the plan should be submitted in full within the statutory consultation period, with no further opportunity to add to, or expand on them, unless requested to do so by the independent examiner	Yes	• arc21 would agree with this proposal.
Question 15 - What are your views on the proposals for counter representations		• We would agree that counter representations are more appropriate at site specific stage.
Question 16 - Do you agree that the basis for examining plans should be changed from an objection-based approach to one which tests the 'robustness' of plans?	Yes	• Again this hinges on the viability and criteria to be articulated on the robustness test. Accordingly we would request further clarification on this issue which appears to be critical to the success of the process.
Question 17 - What are your views on the recommended approach for examining local development plans?		• arc21 would anticipate that its constituent councils would have concerns in relation to the level of scrutiny proposed by the Department and the extent of intervention suggested.
Question 18 - What are your views on the proposals to ensure regular monitoring and review of local development plans?		• arc21 agrees with the proposals for regular monitoring and review of development plans to ensure they are current, flexible, and continue to be responsive to the evolving needs of the district. • arc21 would remain concerned at legacy issues around current area plans and the potential deficit which may exist in some areas due to either the existence of an older local plan or the fact that emerging developed joint area plans which have not become drafts will be set aside under current proposals.
Question 19 - Do you agree with the proposed content of local development plans as set out in paragraph 3.44?	Yes	• arc21 would agree with the proposed content of development plans.
Question 20 -Do you consider that the topic areas contained in paragraph 3.46	Yes	• arc21 is broadly content with the topic areas articulated herein.

Question	Yes / No	ARC21 Response Comments
are appropriate for inclusion in local development plans?		
Question 21 -Do you agree that district councils should be required to prepare sustainability appraisals as part of their local plan preparation process?	Yes	• In principle, arc21 agrees with the need to prepare a Sustainability Appraisal, but would express concerns at the resource and time implications.
Question 22 - What are your views on the proposal that the Department should have the powers to intervene in the making, alteration or replacement of a local development plan by the district council?		• arc21 would expect constituent councils to have concerns over the level of intervention proposed and would seek further clarification.
Question 23 a) Do you agree that district councils should be given the power to make joint local development plans if they so wish? b) Do you consider that such powers would adequately deal with instances where neighbouring district councils would consider it beneficial to work together?	Yes	• arc21 believes that, in the context of regional infrastructure, planning and development, the sub-regional paradigm that has been developed through the Waste Management Plan preparation and implementation is a good one, and that there are compelling reasons for facilitating powers for councils to make joint development plans if they so wish. We would support a proposal for supplementary guidance to inform such a process for issues such as e.g. waste, transportation, energy etc. • arc21 would feel that the proposals could result in a lot of good preparatory work for plans being rendered nugatory and that there should be a way that such work can be taken into account in the preparation of new plans, or indeed in giving such considerations a status to inform future planning applications in advance of new plans.
Question 24- What are your views on the proposed transitional arrangements for development plans?		• We would also anticipate concerns within our constituent councils as to the methodology proposed in that the department will continue to progress plans at draft stage after the date of transfer. We would seek clarification as to how the new councils will be involved in this process. • The proposals will also leave some areas without currency in terms of existing plans. This will in our view leave a gap in the process which will reinforce the need to retain pre-draft

Question	Yes / No	ARC21 Response Comments
		work undertaken in area plans developed to date.
Chapter 4 –		Creating a Streamlined Development Management System
Question 25 - Do you agree with the proposed introduction of a new planning hierarchy to allow applications for the three proposed categories of development to be processed in proportion to their scale and complexity?	Yes	• arc21 would restrict its views in this context to the issue of waste applications. In other administrations there have been difficulties in the delivery of mission-critical waste infrastructure due to issues relating to procuring authorities responsible for waste functions also being responsible for determining planning applications with respect to relevant procurements. In many cases this has led to difficulties / conflicts in the process, particularly where such applications have been contentious. arc21 feels that there should therefore be a separation of responsibilities vis-à-vis the delivery of waste management targets relative to the decision-making process for statutory consents, particularly where these relate to regionally significant infrastructure. • Accordingly arc21 would agree with the proposals with respect to waste. We would anticipate that in respect to other development individual district councils will seek to retain as much decision-making in the process as possible, and to reduce the intervention of the Department and / or the Minister in terms of the significant applications, Article 31s, and call-in arrangements. • We would also agree that there may be circumstances where the council is conflicted in respect to proposals promoted by itself and there may be reasons for exercising a call-in arrangement in this regard.
Question 26 - Do you agree with the 3 proposed categories of development (regionally significant, major and local) and their respective definitions?	Yes	• With respect to waste facilities we would agree with the three categories of development and the definition's therein. We would not extend our comments to other uses and development descriptions as we would anticipate that district councils will

Question	Yes / No	ARC21 Response Comments
		justifiably seek to retain as much control as possible over these applications, in pursuance of principles of strong local government.
Question 27 - In relation to applications for regionally significant development, do you consider that the 4 legislative criteria (see paragraph 4.14), in association with a pre-application screening requirement, are sufficient to identify relevant potential developments?	Yes	• We would agree with the methodology in respect to waste. Please see our comments above in relation to other developments.
Question 28 - Do you have any comments on the proposed thresholds for the different types of development categories, particularly in relation to the classes of major development described in table 2?		• In respect to waste we agree with the thresholds which appear to align closely with the EIA regulations. We would refer to our comments above in relation to all other developments.
Question 29 - Do you agree with the proposed approach to urban/rural variation in setting the proposed housing thresholds for major development?		• arc21 has no particular view on this issue as it is not within the arc21 remit, referring as it does to residential development.
Question 30 - Do you agree that performance agreements should be in place before the submission of regionally significant applications?	Yes	• We agree in the context that both pre-application discussions and the agreement itself will be non-statutory. These issues are potential weaknesses in the process as we consider that without compulsion it would be difficult to ensure that timescales are met. This relates particularly to the pre-application stage for responses from consultees and in the absence of a prescribed methodology for community consultation at that stage. • Our experience with the PAD process for waste is one which demonstrates some benefits. It does have a potentially major shortcoming in the context of the front-loading objective not leading to an overall shortening of the timescale, and that it would simply delay the submission of a formal application until many of the issues are addressed in the pre-application (and voluntary) phase of the process.
Question 31 - What are your views on the suggested elements contained within a performance agreement, and setting a		• While arc21 would agree with the principle we have major concerns about the detail of implementation and would

Question	Yes / No	ARC21 Response Comments
timescale specific to each individual application?		seek to have further dialogue with the Department in this regard.
Question 32 - Do you agree that this should be a voluntary (i.e. non-statutory) agreement?		• As above, we have concerns about the voluntary nature of these agreements and would seek to explore ways of making the process more robust.
Question 33 -Do you agree that developers should hold pre-application consultation with the community on regionally significant developments?	Yes	• arc21 supports the concept of pre-application consultation with communities. As with many other proposals we have concerns as to its implementation. One of the issues will be checks and balances in terms of the methodology and inputs to the process. As this will be developer-led, there will need to be input from the council, in terms of the scoping the consultation, approvals process and outcomes, prior to the application being submitted. • It will also be important to articulate the criteria for the consultation and the ways in which outcomes will be addressed when consultation results are known.
Question 34 - Do you agree pre-application community consultation should be a statutory requirement?	Yes	• Subject to our comments above we would agree with the principle that pre-application consultation should be a statutory requirement. • There should be extensive input from the competent authorities in respect to the scoping of the consultation proposals, and checks and balances in terms if implementation.
Question 35 - Do you have any views on what the form and process for verifying and reporting the adequacy of pre-application consultation with the community should involve, particularly in relation to the elements indicated above at paragraph 4.32?		• arc21 would broadly agree with the elements specified at 4.32, but would feel that further careful consideration needs to be given to the detail of implementation. • Adequate assessment should include, inter alia, alignment to PAD community engagement proposals; scoping of community consultation to be based on extent of impact; handling of outcomes; mitigation measures to address community concerns.
Question 36 - Do you agree with introducing the power to decline to	Yes	• We broadly agree with the proposal to decline as outlined. However, we would

Question	Yes / No	ARC21 Response Comments
determine applications where pre-application community consultation has not been carried out or the applicant has not complied with the requirements of pre-application community consultation?		anticipate that any such determination would need to be based on robust and prescribed criteria.
Question 37 - Do you agree that the Department should determine applications for regionally significant development in association with the proposed statutory screening mechanism?	Yes	• arc21 agrees with the proposed methodology for regionally significant waste facilities as outlined above. • We understand that there may be issues around the thresholds and concerns from Member Councils in respect to potential constraints that this would apply to their sovereignty and remit with respect to planning. However, for the reasons stated above, we feel that waste should be considered in this way irrespective of the outcome for other classes of development.
Question 38 - Do you agree with the proposal to designate a district council as a statutory consultee where it is affected by an application for regionally significant development?	Yes	• arc21 strongly considers that local councils should be designated as statutory consultees.
Question 39 - Do you agree with the proposed notification and call-in mechanism, including the pre-application and application stages indicated in diagram 2, for applications for regionally significant development?	Yes	• We agree with the notification and call-in mechanism as it pertains to waste. However, in respect to other development we feel that there may be issues as discussed above. • We anticipate that there may be concerns from Member Councils with respect to an overarching notification and call-in process, given anticipated concerns about constraints on the remit of councils with regard to regionally significant applications.
Question 40 - Do you agree that if the Department decides not to call–in a notified application it should have the option to return the application to the district council, either with or without conditions, for the district council to grant permission subject to conditions that may be specified by the Department?	Yes	• With respect to waste applications, we would agree with the option to return an application as specified. However, we understand that councils may have issues with regard to the wider ambit of planning applications included herein.
Question 41 - Do you agree with the proposal giving the Department the option to appoint independent examiners to hold	No	• arc21 does not see the evidence base for moving these functions outwith PAC, other than the rationale articulated which appears to be based

Question	Yes / No	ARC21 Response Comments
a hearing or inquiry into applications for regionally significant development?		on limitation to resources. Accordingly we would encourage the Department to address the issue by ensuring that the resources are in place to maintain a timely and robust process in terms of enquiries and examinations, by ensuring that the PAC is adequately resourced, rather than need to consider the alternative proposals outlined.
Question 42 - Do you agree that the Department should prepare hearing and inquiry procedure rules for use by independent examiners?	No	• We would refer you to our answer above which renders the appointment of independent examiners moot if PAC is adequately resourced.
Question 43 - Do you agree that the processes for performance agreements should also apply to applications for major development?	No	• We would consider that similar voluntary performance criteria should apply to major applications. However we understand that the individual district councils may have divergent views on this for the reasons outlined above.
Question 44 - Do you agree that the processes for statutory pre-application community consultation should also apply to applications for major development?	Yes	• We see no reason why similar proposals should not apply, subject to proportionality being applied and the resources being provided.
Question 45 - Do you support a power for district councils to hold pre-determination hearings, with discretion over how they will operate, where they consider it appropriate for major developments?	Yes	• We would support the power for district councils to hold pre-determination hearings relative to major development. However, it would be important for some guidance as to the methodology of operation, albeit we agree that discretion should ultimately apply within the district council as to how this might operate.
Question 46 - Do you consider that there are other circumstances in which district councils should have the scope to hold such hearings?	Yes	• We would agree that there may be other circumstances in which local applications merit pre-determination hearings.
Question 47 - Where a performance agreement has not been reached, do you consider it appropriate to extend the non-determination appeal timescale for applications for major development to 16 weeks?	Yes	• We agree that the extension of 16 weeks appears reasonable, subject to the probability that a determination is more likely to be achieved within this timescale.
Question 48 - Do you agree that district councils, post-RPA, shall be required to introduce schemes of officer delegation for local applications?	Yes	• In the interest of expeditious decision-making we feel that schemes of officer delegation would be appropriate. However, we are not convinced that

Question	Yes / No	ARC21 Response Comments
		such should be mandated by the Department as we feel it would be more appropriate for this to be at the discretion of the district council.
Question 49 - Do you agree that, post-RPA: a) the list of statutory consultees should be extended and b) categories of development, linked to the development hierarchy, that require consultation (including pre-application consultation) before applications are determined by the planning authority, should be introduced?	Yes	• We agree that the statutory consultee scope should be extended subject to a project management approach being applied to the management of statutory consultees and a binding SLA arrangement whereby a prescribed timeframe is introduced. • We would also suggest that the extent to which statutory consultation is required should be proportionate to the hierarchal significance of the development. • We would reaffirm our concern (at Q30) about the pre-application phase vis-à-vis statutory consultees which would tend to be compounded by the current proposal if sanctions are not available in this phase for non-compliance.
Question 50 - Do you agree, post-RPA, that statutory consultees should be required to respond to the planning authority within a specified timeframe?	Yes	• We would endorse this proposal subject to a project management approach being applied.
Question 51 - If so, what do you consider the specified timeframe should be?		• We would presume towards a figure of 21 days but with the discretion to be available to the planning authority to extend this subject to the complexity of the application.
Question 52 - Do you agree that the existing legislation should be amended and clarified to ensure that anyone wishing to demolish any part of an unlisted building in a conservation area/ATC/AVC requires conservation area consent or planning permission?	Yes	• arc21 would support such an amendment.
Question 53 -Do you agree that the planning authority should be able to require that, where possible, proposed development should enhance the character of a conservation area?	Yes	• arc21 would support such a requirement.
Question 54- Do you agree that the normal duration of planning permission and	Yes	• arc21 would support the proposal.

Question	Yes / No	ARC21 Response Comments
consent should be reduced from five to three years?		
Question 55 - Do you agree that a statutory provision should be introduced to allow minor amendments to be made to a planning permission?	Yes	• We see merit in such an approach.
Question 56 - Do you have any comments on the details of such a provision as outlined at 4.101?		• arc21 would agree with the details outlined.
Question 57 - Would you be in favour of enabling the planning authority to correct errors in its planning decision documents without the consent of the landowner or applicant?	Yes	• arc21 would support this proposal.
CHAPTER 5 –		• APPEALS AND THIRD PARTY APPEALS
Question 58 - Do you agree that the time limit to submit appeals should be reduced? If so, what do you think the time limit should be reduced to – for example, 4, 3 or 2 months?	Yes	• We would consider three months to be appropriate.
Question 59 -Do you agree: a) that the PAC should be given the powers that would allow it to determine the most appropriate method for processing the appeal; or b) that appellants should be allowed to choose the appeal method?	Yes	• Subject to the understanding that both proposals are legally compliant, arc21 would consider option (a) to be the reasonable, on the basis of the proportionality principle. • We do however feel that this must be informed by robust engagement with stakeholders.
Question 60 - Do you agree that parties to appeals should not be allowed to introduce new material beyond that which was before the planning authority when it made its original decision?	Yes	• arc21 agrees with the proposal, subject to prescribed criteria being laid down.
Question 61 - Do you agree with the proposal that the planning authority should be able to refuse to consider a planning application where a 'deemed application' associated with an appeal against an enforcement notice is pending?	Yes	• arc21 agrees with the proposal.
Question 62 - Do you agree that the planning authority should have the power to decline repeat applications where, within the last two years, the PAC has refused a similar deemed application?	Yes	• arc21 agrees with the proposal.
Question 63 - Do you agree that a time limit of 2 months should be introduced for	Yes	• arc21 agrees with the proposal.

Question	Yes / No	ARC21 Response Comments
certificate of lawful use or development appeals?		
Question 64 - Do you agree that the PAC should be given a power to award costs where it is established that one of the parties to an appeal has acted unreasonably and put another party to unnecessary expense?	Yes	• arc21 agrees with the award of costs in the event of unreasonable or vexatious behaviour and in exceptional circumstances. • We would consider that the award of costs would be at the subject of guidance to be agreed after consultation with statutory bodies.
Question 65 - Do you think the new district councils should be able to establish local member review bodies to determine certain local planning appeals?	Yes	• arc21 would agree with the proposal in principle albeit we would have concerns about resource implications, capacity, conflict issues, and legal challenge. Accordingly we feel that this should be the subject of further consideration and dialogue.
Question 66 - If so, what types of applications should this apply to?		• We would agree with the consensus view that this should be only for minor applications and should be the subject of prescribed set of criteria which should be articulated in consultation with the statutory agencies.
Question 67 - Should provision for third party appeals be an integral part of the NI planning system or not? Please outline the reasons for your support or opposition.	No	• We do not feel the time is right for the integration of third party appeals into the planning system. We consider that this should be kept under review post-RPA and transfer. We feel there will be a need to allow the new system of reform and reorganisation to bed in before any such radical process is considered. In the meantime we would feel that there would be redress through other channels in relation to third-party concerns, which should continue to assure the robustness of the system.
Question 68 - If you do support the introduction of some form of third party appeals, do you think it should an unlimited right of appeal, available to anyone in all circumstances or should it be restricted?		• Any future consideration should be limited to a specific and prescribed set of circumstances and criteria on which further consultation would be required. As stated above, arc21 does not feel that such consideration is premature until such times as the new Planning Reform system beds in.
Question 69 - If you think it should be a restricted rights of appeal, to what type of		• As above.

Question	Yes / No	ARC21 Response Comments
proposals or on what basis/circumstances do you think it should be made available?		
Chapter 6 –		Enforcement and Criminalisation
Question 70 - Do you agree that a premium fee should be charged for retrospective planning applications and, if so, what multiple of the normal planning fee do you think it should be?	Yes	• We would agree with a premium fee for retrospective planning applications.
Question 71 - Do you think the Department should consider developing firm proposals for introducing powers similar to those in Scotland, requiring developers to notify the planning authority when they commence development and complete agreed stages?	Yes	• We would agree with the notification process in terms of commencement and completion.
Question 72 - Do you think the Department should consider developing firm proposals for introducing Fixed Penalty Notice powers similar to those in Scotland?	Yes	• We would agree with the proposals for Fixed Penalty Notice subject to the principle of proportionality for minor breaches.
Question 73 - Do you think the Department should give further consideration to making it an immediate criminal offence to commence any development without planning permission?	Yes	• arc21 support consideration of criminalisation with permissive powers at the discretion of the planning authority.
Chapter 7 –		Developer Contributions
Question 74 - Do you agree that there is a case for seeking increased contributions from developers in Northern Ireland to support infrastructure provision?	Yes	• arc21 would support increasing and enhancing developer contributions.
Question 75 - If so, should any increase be secured on the basis of extending the use of individual Article 40 agreements with developers on a case by case basis?		• arc21 support a revision to the current system by extending it beyond the current Article 40 agreements.
Question 76 - Alternatively, should a levy system of financial contributions from developers be investigated in Northern Ireland to supplement existing government funding for general infrastructure needs, e.g. road networks, motorways, water treatment works etc., in addition to the requirements already placed upon developers to mitigate the site-specific impact of their development?		• arc21 support further consideration of a levy-based system but would seek further dialogue on the issue.
Question 77 - What types of infrastructure should be funded through increased developer contributions, e.g. should affordable housing be included in the definition?		• arc21 would consider that the types of infrastructure should be fairly broad in terms of developer contributions and that consideration should be given to gain / benefit also being broad e.g.

Question	Yes / No	ARC21 Response Comments
		social or economic, community based, local infrastructure support, revenue and/or capital. It will be important that any assets or infrastructure generated through developer contributions should be sustainable in terms of the whole life of the asset and that an operational plan should articulate how this will be achieved.
Question 78 - If such a levy system were to be introduced in Northern Ireland should it be on a regional i.e. Northern Ireland-wide, or a sub-regional level?		• arc21 would consider that developer contributions should be hypothecated and presume towards a local context around developments before being considered on a hierarchical decision-making matrix for elevation to sub-regional or regional level.
Question 79 - If such a levy system were to be introduced should all developments be liable to make a financial contribution or only certain types or levels of development e.g. residential, commercial, developments over a certain size?		• arc21 is open as to the types of element to be considered to be included within any levy system and would see no reason at this point why it should not include developments of any type over a certain size/significance
Chapter 8 –		Enabling Reform
Question 80 - The Department invites views on how we (and other stakeholders) might ensure that all those involved in the planning system have the necessary skills and competencies to effectively use and engage with a reformed planning system.		• It is evident that as part of the process a capacity building programme will be required that is properly resourced project managed and financed. This should include, inter alia, developing capacity through a resource plan, training needs analysis for planning officers, local government, elected members, statutory consultees and other stakeholders.
Question 81 - Post-RPA, do you agree that central government should continue to set planning fees centrally but that this should be reviewed after 3 years and consideration given to transferring fee setting powers to councils?	Yes	• arc21 agrees that central government should continue to set fees for the first three years and that this should be reviewed after three years.
Question 82 - Do you agree that central government should have a statutory planning audit/inspection function covering general or function-specific assessments?	Yes	• arc21 would agree that there should be a quality assurance / performance management function within central government as oversight for the new regime. • We would, however, qualify this by stating that the performance of other

Question	Yes / No	ARC21 Response Comments
		consultees should also be monitored as part of the oversight process.

Conclusions

arc21's remit is, inter alia, to deliver mission-critical waste infrastructure as set out in its statutory Waste Management Plan. This delivery is critical to the Northern Ireland region in terms of the well-being of the local population, compliance with European legislation, and mitigation of the financial effect of fines for non-compliance.

All of these effects are considered material and it is therefore deemed to be in the public interest to ensure expeditious delivery.

One of the key factors affecting such delivery is securing planning permission for (potentially contentious) waste facilities and it is arc21's view that the current planning system is not fit for purpose in this regard. Accordingly, we consider that there needs to be radical and progressive change.

The reform proposals are therefore a welcome initiative, but arc21 would seek to make the following comments:

The Reform agenda should not be seen as a "big bang" solution. There is a need for progressive and prompt enhancement of the process to protect the public interest in Northern Ireland.

We have concerns about the formulaic nature of the consultation document which tends to focus responses in ways which could potentially restrict a wider perspective by consultees.

We have concerns that the proposals don't adequately consider in a joined-up way the strategic context of the post-RPA landscape, particularly around well-being and community planning.

The proposals would benefit from more thinking around implementation, resourcing and transition arrangements. We consider that there are a number of important strands still being considered we would have concerns that the outcome of these will emerge too late to inform the current process. These include issues such as community planning and wellbeing which are the subject of different RPA related work-strands.

As an organisation responsible for the delivery of infrastructure we have a vested interest in a robust performance management regime and agree with it in principle. However, we have concerns around the detailed implementation, particularly in relation to the effect of statutory, community and other consultees to the process and how this could impact on timescale, in the absence of robust control mechanisms.

We have concerns about the extent to which local government has been engaged in a process to date. Given the sector's remit post RPA, it is critical that this engagement from now on is timely and meaningful.

Ards Borough Council's Submission to the Planning Bill

Ards Borough Council actively engages in the strategic planning process as evidenced by its actions and co-ordination roles in matters such as the Ards and Down Area Plan 2015 and the imminent Public Inquiry into retailing for Newtownards (February 2011).

It acknowledges the clear relationship between spatial planning, community planning and cohesion, and sensitive and sensible development of the natural environment, together with urban and rural communities.

Ards Borough Council is corporately supportive of major reform of the planning process in Northern Ireland and commits to providing strategic input into this reform, as well as to assisting in the delivery of a new planning model for all of Northern Ireland.

It notes the gravity and implications of the Bill's proposed transfer of function and liability of the majority of the planning function, save for general policy, developments of regional significance, development orders, aspects of the statement of community involvement, of section 72 Orders, of planning zone schemes and particular planning controls.

As such, it vehemently requests that the Planning Bill is developed rather than enabled in view of the fundamental central, local government and inter-agency negotiations that are required in order to construct the necessary time, resources, performance, monitoring and policy issues required to develop a planning function which is efficient, effective, accountable and sustainable.

Ards Borough Council wishes to be a willing partner in the development of the Bill and the emerging planning process but has major concerns in regard to the resourcing and management of the proposals expressed in the Bill. In particular it rejects the punitive measures proposed in the Bill in regard to the Department enforcing as it sees fit a timetable and a community consultation process for local development plans (part 2, pages 3,4 et al) if Council processes are not deemed to be appropriate for such local development plans. "The Council must comply with this direction" is a regularly cited phrase which Ards Borough Council considers inappropriate and inequitable. The content of the Bill, the Council would suggest, is wholly premature in as much that until such times as a substantial and equal partner negotiation takes place in regard to the planning function and the associated transfer of responsibilities, assets and liabilities takes place, the external stakeholder consultation process is largely a bureaucratic, time and money exhausting exercise.

Ards Borough Council approves of a sub regional approach to planning administration linked to a central policy unit for all of Northern Ireland. It supports the role of Councils in regard to being the key agency for delivering and accounting for Local development plans. It wishes to see the integration of community, area and master plans and the associated transfer of resources required from DSD, and the DoE. It does not support the transfer of the local planning function to local authorities until such times as the equal party negotiations referred to above take place, with the requisite transfer of resources and assets and the right as a local authority to deliver a proposed statutory service within local authority performance management standards.

The Council respectfully and firmly requests that its interim response to the Bill is cross referenced by the Committee with the Council's previous response to the Planning consultations during 2010. This response is attached.

Finally, Ards Borough Council seeks immediate and clear assurances from the Committee and the DoE that the transfer of functions and the associated Bill will not be put into effect until proper and meaningful negotiations occur as mentioned above, in order to ensure a democratic, professional and value for money outcome for ratepayers and the wider public.

Derek McCallan

Director of Development, On behalf of - Ards Borough Council

Armagh City and District Council Submission to the Planning Bill

Response to Consultation on Planning Bill

January 2011

1. Introduction

Armagh City and District Council (the Council) welcomes the opportunity to respond to the Call for Evidence on the Planning Bill. The Council is concerned that such a short turnaround period was given to respond to the consultation which is of paramount importance to the Council and the Local Government Sector as a whole.

2. Strategic Issues

There are a number of key strategic issues that will be central to the Council's ability to deliver an effective planning function when it is transferred to us. These are outlined below.

Timing and Co-ordination with Local Government Reform

2.1 There is concern that the Planning Bill is being progressed ahead of the Local Government Reform Policy and Proposals. It would be more appropriate for the two pieces of legislation which specify significant changes in the future delivery of local government to be consulted on at the same time and in conjunction with each other.

2.2 It is considered critical that appropriate accountability and governance arrangements including those currently being consulted on in the local Government Reform Policy and Proposals are in place prior to the transfer of Planning to Councils. It is critical that the following issues are fully thought through, consulted on and implemented prior to the transfer of the function to Councils:

- a mandatory Code of Conduct for Elected Members, including specific arrangements for when there is a declaration of interest;
- decision-making structures within Councils;
- the Scheme of Delegation referred to in Clause 31;
- subordinate legislation, regulations or guidance to ensure that the planning function is delivered consistently across Northern Ireland.

Resources

2.3 The Council is concerned that the resources required to deliver the planning function effectively have not been adequately assessed. A full analysis needs to be undertaken to assess the resources required to deliver the development planning, planning control, enforcement and other functions outlined in this bill.

2.4 The funding structure of the planning function needs to be clarified, including a clear breakdown of which planning functions should be covered by planning fees and which functions are currently funded through central government or other means. The burden of the planning function should not be put onto the ratepayers, therefore the Council must be assured that the full resources required to deliver an effective planning service will be transferred to the Council. Of particular concern to the council are the following resource issues:

2.5 Staffing levels. It is well known that due to financial constraints, there has been a transfer of staff out of planning service in recent months and further rationalisation is expected. This has resulted in higher case loads per officer which may have a detrimental impact on service delivery. A detailed analysis of the estimated future case load in all aspects of the planning function is required to ensure that the service is adequately staffed at the time of transfer to local councils, both in terms of numbers of staff and levels of expertise.

2.6 Local Development Planning. The Local Area Plan covering the Armagh City and District Council area is long overdue, as are plans for many other areas in Northern Ireland. The Council welcomes the fact that it will have a role in developing a Local Area Plan and believes that it is right that the local authority should be responsible for this function, however there is great concern that the resources and expertise required to deliver this function will not be available to Councils. In particular the requirements to undertake a survey of the district and to undertake annual monitoring will require additional resources including expertise in Strategic Environmental Assessment and Appropriate Assessment. The Council seeks assurance that an adequate resource to carry out this activity will be transferred to the Council with the function.

2.7 Management Information Systems. Clarity needs to be provided as to the future use of Epic and other IT systems within the planning service. The Council requires clarification as to how this would work and the future investment that may be required to ensure that management information systems are effective.

2.8 Accommodation. Clarification needs to be provided as to the provision of accommodation for the planning function.

2.9 Compensation. There are grave concerns regarding Part 6 of the Bill which outlines the transfer of payment to Councils of compensation relating to the revocation or modification of planning permission. The Council requests that the information is provided on the extent of compensation payments made in the past by the Planning Service or Department. It is critical that funding for this eventuality is also provided by central government so that it does not become a burden on the rate-payers of the District. The Council is particularly concerned that there should be no liability on the Council for retrospective claims on decisions made prior to the transfer of planning to the Council or in the case where claims result from subsequent changes to legislation which is outside of the Council's control.

Oversight Provisions

2.10 The Council recognises that, as this is a new function transferring to Council, there will be a steep learning curve and therefore some oversight by the Department is to be expected. However, we consider that the oversight provisions laid out in this Bill are extreme. In all aspects of the Bill, the Department has retained the right to intervene in the process whether that be to; call in, monitor, assess, report and/or give directions to Councils in relation to the delivery of this function. There is no right of appeal for the Council should they disagree with a decision of the Department. The Council will seek to develop a productive working relationship with the Department to ensure that the transfer of planning is as seamless as possible and that the subsequent delivery is as effective as possible, however we consider that the level of control and

potential intervention by the Department as laid out in the Bill, could be counterproductive and is contrary to local accountability arrangements.

Planning Policy Gap

2.11 Planning Policy in Northern Ireland has not kept pace with England, Scotland and Wales. The absence of detailed policy, for example in relation to issues such as pollution and land contamination, makes development control decisions more difficult and time consuming. We would wish to see significant progress in addressing gaps in planning policy, or in the absence of this, guidance for Councils in setting local policies to ensure consistency of approach.

Capacity Building

2.12 It is important to ensure that there is sufficient capacity to deliver the planning functions within local government. The capacity issues which need to be addressed include:

- the number and expertise of staff transferring over to Councils;
- the capacity of elected members and officers within Council - it is critical that appropriate training and development takes place to ensure that there is an adequate knowledge transfer between central and local government and that support is available post-transfer to ensure service delivery does not suffer.
- governance structures need to be place to ensure that post-transfer the service is delivered effectively and efficiently and within the guidelines and codes of conducts provided.

3. Summary of Clauses within Planning Bill and Detailed Technical Response

Part 2 – Local Development Plans

3 – Survey of District	Details how a Council must keep under review the matters which may be expected to affect the development of the District or the planning of the development. Also that a Council may keep under review and examine matters in relation to any neighbouring district and must consult with the council for the neighbouring district in question.	The Council supports the need for district councils to keep under review matters which are likely to affect the development of its district including matters in any neighbouring district under review. The resource implications need to be fully assessed. The Council will be dependent on a number of government agencies for information and input into the process however, the bill does not detail the mechanism to oblige the relevant government agencies to work with local councils. In addition, the resources to carry out this function adequately need to be assessed and provided for.
4 – Statement of Community Involvement	Council must prepare and agree with Department	The Council welcomes the principle of community involvement as it should result in early efforts being made to address local concerns.

		However clarification is required as to how the Statement of Community Involvement would work in practice and the impact that this would have on the processing of applications. For the council to do this will require guidance, expertise and resources, especially as in subsection (4) the Department may direct that the statement must be in terms specified and (5) The council must comply. Moreover (6) The Department may prescribe – (a) the procedure…(b) form and content of the statement. Guidance will be required in terms of provision of a process and template that would be acceptable to the Department.
5 – Sustainable Development	Must exercise function with this objective	In subsection (1) the Bill requires that cognisance is taken of contributing to the achievement of sustainable development. Conditions in this regard are specified thereafter, but sustainable development is, in itself, a matter that is capable of various interpretations. Care must be taken that the provisions of this Bill correlate with the sustainable development duty contained within the Northern Ireland (Miscellaneous Provisions) Act 2006.
6 – Local Development Plan	Development Plan documents are (a) the plan strategy and (b) the local policies plan	The introduction of Local Development Plans is welcomed. The Council notes that there is no mention of the integration of Community Planning with the development of Local Development Plans. It is considered important that these two local planning responsibilities are closely integrated and that environmental and health and wellbeing issues such as Local Air Quality Management, Land Contamination, Obesity Prevention and Physical Activity are considered in Local Development Plans. The Council seeks assurance that an adequate resource to carry out this activity will be transferred to the Council with the function. The Council believes that it is important that

		appropriate transition arrangements are put in place to facilitate a seamless transition from central to local government?
	Any determination under this act, regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.	
7 – Timetable	Must be prepared	The procedure to be undertaken between the Council and the Department to agree the terms of the timetable of the Council's local development plan requires clarification. As the Planning Bill is currently proposed all power rests with the Department to dictate the final terms of the Council's local development plan. It is noted that the Department has the legislative capacity to disagree with the Council on the timetable and to proceed in requiring the Council to adhere to their direction on the timetable. This role by the department has not been qualified by the Planning Bill. Further clarity on this issue is required and justification for the default role/ power of the Department to direct and control the preparation of the timetable of the Council Local Development Plan.
8 & 9 – Plan Strategy and Local Policies Plan	Clauses 8 and 9 impose a statutory duty on the district council to prepare a plan strategy and a local policies plan. These documents taken together constitute a local development plan. The local development plan must set out the district council's objectives and policies in relation to the development and use of land in its district. The district council must take account of the matters listed in these clauses, including the Regional Development Strategy and must carry out a sustainability appraisal for the proposals in each document. The Department may prescribe the form and content of both the plan strategy and the local policies plan.	It is recognised that the preparation of the 'Plan Strategy' will be a critical plan making function of the Council and as such clarification is required as to the anticipated form and content of the strategy. Whilst there is reference to this matter at (8(3)) 'Regulations under this Clause may prescribe the form and content of the plan strategy', there is no commitment made or timescale suggested for the preparation of such 'Regulations'. Clarification is required regarding the scope of 'other matters' (8(5)(c)) which the Department may prescribe or direct and the required 'appraisal of the sustainability of the plan strategy'. (8(6)(a)). Clarification is required to the aims

		and definition of 'sustainability' 8 as this can mean different things in different contexts. Resource and capacity issues for carrying out a sustainability appraisal also need to be fully assessed. The Council considers that there should be some flexibility by local councils in relation to developing local plans and strategies to reflect local circumstances.
10 – Independent Examination	Local Development Plan must be submitted to Dept when ready for examination	There are some concerns as to why the Bill allows for an alternative to the PAC for this function. The Council seeks assurance that the process for appointing such a person will be standard and that the Council will be consulted prior to the appointment of such a person.
11 – Withdrawal	By Council prior to submission to Dept and by Dept after	
12 - Adoption	Dept directs Council to adopt / modify/withdraw the development plan document and give reasons. Council must comply within time period.	
13 - Review of LDP	By Council at such times as Dept may prescribe and report to Dept.	
14 - Revision	Council may revise plan strategy or local policies plan if it thinks it should or Dept directs it to do so.	
15 – Intervention by Department	Before LDP is adopted Dept may direct the Council to modify document	Council seeks a definition of the term 'unsatisfactory' in relation to development plan documents as referred to at 15(1)
16 – Department's Default Powers	If a council is failing or omitting to do anything it is necessary re the preparation or revision of LDP the Dept may prepare or revise the document but must give reasons. The Dept must cause an independent examination to be carried out by the planning appeals commission or a person appointed by the Department. The Council must reimburse Dept for any expenditure in relation to this.	The level of intervention proposed by the Department is extreme. Emphasis should be on a support and assistance on the development plan process.
17 – Joint Plans	Two or more Councils may agree to prepare a joint plan strategy (and joint local policies plan)	The Council welcomes the opportunity to work jointly with other Councils on local development issues and feel that this could be strengthened if the

		ability to liaise with Councils on a cross-border basis was provided for, as is the case in the Regional Development Strategy. The Council considers that the decision on the joint plan strategy process should be made by the relevant local authorities.
18 – Power of Dept to direct Councils to prepare joint plans	Dept may give direction to do this, councils must comply.	The power that the Department has to give direction in this regard removes autonomy and the decision making powers from local councils on the future development of their local areas.
19 – Exclusion of certain representations	Re new Towns Act 1965, part 7 of the Planning @Order 1991, an order under A14 or 15 of Roads Order 1993, a simplified planning zone scheme or an enterprise zone scheme.	
20 – Guidance	Dept, DRD or OFMDFM guidance must be followed by Council	
21 – Annual Monitoring Report	From each Council to Dept	
22 - Regulations	The Dept may make provision in connection with the exercise by an person of functions under this Part.....	Council requires clear commitment regarding the making of 'Regulations' and the detailed requirements therein. The omission of such commitments and any associated timescale undermines the ability of the Council to comment on an informed basis on the provisions of Part 2 of the Planning Bill.
Part 3 - Planning Control		
23 – Meaning of "development"	Means the "carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Further definitions and exclusions provided.	
24 – Development requiring planning permission	Required for the carrying out of any development of land.	
25 – Hierarchy of Developments	Splits into "Major developments" and "Local Developments". The Department must by regulations describe classes of development and assign each class to one of these categories. Dept may direct a particular local development to be dealt with as major.	Council requires clarification on the types of development that will be assigned as 'local developments' and 'major developments' and would have preferred that such details would have been available for review at the same time as the legislation is being reviewed.

		Council is in favour of allowing flexibility in the applications of thresholds in situations where the Department and Council are in agreement. The Council wishes to maintain autonomy over its planning making decision powers insofar as is possible The Council seeks a definition of the term 'class' as referred to in 25-(2). The Council seeks clarification as to the provision of 25-(3) where the Department may direct that a 'local' development is to be dealt with as if it were a 'major' development.
26 – Department's jurisdiction in relation to developments of regional significance	A person who proposes to apply for permission for any major development (except s209) must…. enter into consultations with the Department. Relates to significance to the whole or substantial part of NI or have significant effects outside NI, or involve a substantial departure from the LDP for area. Must apply for planning permission to Dept. Dept must serve notice on council. Further detail on national security applications, public local inquiries etc.	The Departments definition of what constitutes regional significance must be clearly defined.
27 – Pre-appliciation community consultation	For major developments applicant must give 12 weeks notice to Council before submitting application. Within 21 days the Council may notify the applicant that notice to additional persons is required and that additional consultation is required as specified.	
28 - – Pre-appliciation community consultation Report	Applicant has to prepare report to demonstrate compliance with 27.	
29 – Call in of applications, etc to Department	Dept may give directions requiring applications for pp made to a council or applications for the approval of a council of any matter under a development order, to be referred to it instead of being dealt with by Councils. Further detail provided.	This power afforded to the Department is over and above the legislative measures outlined in Part 3 Clause 25 of the Planning Bill. In the context of the legislative measures already afforded to the Department in the development management process this could be considered excessive. Department needs to outline clearly the criteria which could make an individual application subject to "call in" It would be preferable to ensure the PAC is fully resourced and able to

		deal with all relevant planning applications, as required.
30 – Pre-determination Hearings	Council to give applicant and any person so prescribed or specified an opportunity of appearing before and being heard by a committee of the council. Procedures for this to be set by council. Right of attendance as considered appropriate by Council.	
31 – Local developments: Schemes of delegation	A Council must prepare a scheme of delegation by which any application for planning permission for a development within the category of local developments …. is determined by a person appointed by the council. Where an application fails to be determined by a person so appointed the council may if it thinks fit, decide to determine an application itself which would otherwise fall to be determined by a person so appointed.	It would be helpful if the Department could set out in guidance a number of process models for the Council to consider in relation to setting up Scheme of Delegation.
32 – Development Orders	The department must by order provide for the grant of planning permission. A development order may either itself grant planning permission for development specified in the order for development of any class so specified or in respect of development for which planning permission is not granted by the order itself, provide for the grant of planning permission by a council. May be made either as a general order to all land, or as a special order applicable only to such land as specified in the order. May be subject to conditions or limitations. May be for use of land on a limited number of days. Further detail provided	Council seeks a detailed definition of 'development order 'as referred to at Part 3, Clause 32.
33 – 38 - Simplified Planning Zones	SPZ is an area in respect of which a simplified planning zone scheme is in place – has effect to grant planning permission for development specified in the scheme or for development of any class so specified. Council may make or alter within its district. Must take account of Regional development strategy, Departmental policy, guidance etc. Excludes conservation area, national park, areas of outstanding natural beauty, special scientific interest, national nature reserves.	We would request further clarification and discussion in relation to the introduction of simplified planning zones. In principle the planning reform proposal should result in a more effective and speedier planning process which would eliminate the need for simplified planning zones. The granting of Simplified Planning Zones needs careful site-wide consideration prior to their establishment. Much of the development within urban areas will

		be brownfield development therefore there will need to be express provision to provide the necessary soil investigation reports prior to such designation. We would recommend under Clause 38(1)b that included within the lands subject to exclusion from simplified planning zones is: Air Quality Management Areas declared under Article 12 of the Environment (Northern Ireland) Order 2002 (NI 7) ; Land identified as Contaminated Land under Articles 50 and 51 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (when commenced). The proposed inclusion would help safeguard human health.
39 – Grant of planning permission in enterprise zones	1981 Order – effect to grant planning permission for development specified. Department may direct that the permission shall not apply in relation to a specified development or specified class of development or a specified class of development in a specified area within the enterprise zone.	
Planning Applications		
40 – Form and Content of applications		The Council requests that consideration be given to introducing more robust Validation Procedures (as is the case in GB) for applications to ensure that only complete applications are accepted, thus speeding up the processing of applications. Consideration should be given to the inclusion of issues relating to amenity, nuisance and human health.as an additional sub-paragraph under 40 (3)
41 – Notice of applications		
42 – Notification	Certificates must accompany applications re ownership of land, notice given etc Excludes: NIHE in pursuance of redevelopment scheme approved by DSD or proposed by the Executive; electricity lines; gas pipes; water/sewerage pipes.	
43 – Notice requiring planning	If development already carried out without pp/approval under a	

application to be made	development order the Council may issue a notice requiring the making of an application within 28 days. Limit 4 years from development was begun if section 131 or 10 yrs for other development. Offence not to comply with notice, subject to conviction – level 3 daily fines.
44 – appeal against notice under s 43	To planning appeals commission
Determination of planning applications	
45 – Determination of planning applications	Council / Dept must have regard to LDP and to any other material considerations and may grant planning permission, either unconditionally or subject to such conditions as it thinks fit; or may refuse planning permission. A development order may provide that a Council or the Department must not determine an application for planning permission before the end of such period as may be specified by the development order. Council or Dept must take into account any representations relating to that application which are received by it within such period as may be specified by a development order. Must notify those who make representations.
46 – Power of Council to decline to determine subsequent application	May decline if no significant change since: Within period of two years since similar application refused / conditions is that in that period the planning appeals commission has dismissed an appeal / council has refused more than one similar application and there has been no appeal to pac against such refusal or appeal has been withdrawn. Further instances provided.
47 – Power of Department to decline to determine subsequent application	Dept may decline to determine an application within 2 yrs of refusal and no significant change, relevant considerations including LDP.
48 – Power of council to decline to determine overlapping application	May decline if made on same day as similar application or made at a time when any of the conditions applies: similar application under consideration by the Department or PAC under s58/59 Further detail provided.

49 - Power of Dept to decline to determine overlapping application	Similar to 48	
50 – Duty to decline where s27 not complied with	Additional information / notice/consultation etc	
51 – Assessment of environmental effects	Dept may by regulations make provision about the consideration to be given to the likely environmental effects of the proposed developments	
52 – Conditional Grant of Planning Permission	Planning permission can be granted by the district council or Department with conditions. These can relate to regulation of the land use, or restoration of the land at the end of a specified period of time.	The Council would support this clause and adequate resources should be available to monitor and ensure the conditions are met.
53 – Power to impose aftercare conditions on grant of mineral planning permission	Conditions requiring site to be restored may be imposed Further detail provided	
54 – Permission to develop land without compliance with conditions previously attached	Applies to applications for the development of land without complying with conditions subject to which a previous planning permission was granted. A development order may make special provision with respect to the form and content of such applications and the procedure to be followed. Details what must be done in order to grant pp in this case.	Clear guidance should be given for the reason for the removal of planning condition such as a change in planning policy or other material consideration.
55- Planning Permission for development already carried out	This clause allows the district council or Department to grant planning permission retrospectively on application. This can cover development which has no planning permission or which did not comply with conditions attached to a permission, including a time condition.	The Council would request consideration be given to the introduction of a premium fee for retrospective planning applications to act as a deterrent that focuses on the obligation to seek approval for proposals of clarification prior to the commencement of development. The fee should be proportionate to the level of the development and the level of uncertainty surrounding the form of development and associated provision for permitted development. The Council would also request that consideration be given within the Bill to the necessity to indemnify councils in the matters relating to retrospective approval or alternatively give robust

		investigatory powers and appropriate resources to determine such applications
56 – Directions etc as to method of dealing with applications	Provision may be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by Councils and the Department and in particular (a) for enabling the Department to give directions restricting the grant of planning permission by a council…. (b) For enabling the Department to give directions to a council requiring it to consider imposing a condition or not to grant pp without satisfying the dept that such a condition will be imposed or need not be imposed. (c) For requiring that councils must consult with such authorities or persons as specified by the Order. (d) For requiring the Department to consult with the Council in which the land is situated and others specified. (e) For requiring a Council (or dept) to give any applicant for pp within such time as may be specified such botice as to the manner in which the application has been dealt with. (f) For requiring a Council to give consent agreement or approval required by a condition imposed on a grant within such time as specified. (g) For requiring a council to give to dept and other persons specified such info as may be specified…	
57 – Effect of Planning Pemission	Permission shall have effect for the benefit of the land and all persons having an estate therin. Permission for erection of building for purpose specified or if not specified for purpose for which it is designed	
58 - Appeals	Notice in writing to planning appeals commission within 4 months from date of notification of decision. .	
59 – Appeal against failure to take planning decision	If no decision can appeal as if refused	Council seeks clarification on the period (as may be specified by a development order) for determining applications and the responsibility for prescribing the period.
60 – Duration of Planning Permission	Development must be begun within 5 years of date on which permission is granted or such other period as the	

	authority considers appropriate having regard to LDP and other considerations. Exclusions given.	
61 – Duration of Outline Planning Permission	Application within 3 years in case of reserved matter Development begun by later of 5 years from grant of OPP or 2 yrs from final approval of reserved matters.	
62 - 63	Further detail on duration / termination due to time limit, including completion notices to be served.	
64 - Effect of Completion notice	Department must confirm and can change details.	
65 – Power of Department to serve completion notices	Dept can serve but must consult council.	Council seeks justification as to the provision at 65-(1) for the Department to serve a completion notice itself instead of the Council serving the notice under Clause 64. Council notes that the Department shall consult with the Council if the Department is serving a completion notice; Council seeks clarification as to which authority has the final say on the serving of a completion notice under Clause 65.
66-71 – Changes, revocation or modification of Planning Permission	Details given on when/how this can be done by Council and Department	
72 – Orders requiring discontinuance of use or alteration or removal of buildings or works	If it appears to a council that it is expedient in the interests of the proper planning of an area within its district (including the interests of amenity) regard being had to the local development plan and to any other material considerations that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land; or that any buildings or works should be altered or removed; the council may by order require the discontinuance of that use within such time as may be specified in the order, or impose such conditions as may be so specified or require such steps to be taken for the alteration or removal of the buildings or works as the case may be. An order may grant pp for any development of the related land subject to conditions specified... The pp which may be granted under this includes the development carried out before the	

	date on which the order was submitted to the Dept under S73, with effect from date development carried out or end of limited period. Council makes the order.	
73 – Confirmation by Department of S72 Orders	Don't take effect unless confirmed by the Department. Council must serve notice on the owner and occupier and any other person affected. Must specify time period to give person opportunity to appear before and be heard by pac.	
74 - Power of Dept to make section 72 Orders	Detail given	
75 – Planning Agreements	Any person who has an estate in land may enter into an agreement with the relevant authority facilitating or restricting the development or use of land in any specified way; requiring specified operations or activities to be carried out in, on, under or over the land; requiring the land to be used in any specified way; requiring a sum or sums to be paid to the authority / NI Dept on specified dates; Can be subject to conditions / timescales Dept must consult the Council Further detail given on breaches to planning agreements etc.	Council notes that Council will be the 'relevant authority' in relation to all 'planning agreements' except those relating to applications where the Council has an estate in the land and those applications made to the Department (the Department must consult with the Council on all planning agreements for development within the Council area).
76 – Modification and discharge of planning agreements	By agreement. Dept must consult council. Person can apply for modification. Relevant authority must determine and give notice of determination within prescribed period.	
77 - Appeals	If relevant authority fails to give notice in 76(8) or determines that a planning agreement shall continue to have effect without modifications the applicant may appeal to PAC.	
78 – Land belonging to councils and development by Councils	Applications to be made to Department.	This is typical of a section where clarification as to the intention and implications of the Bill would be helpful
Part 4 – Additional Planning Control		
Chapter 1 Listed Buildings and Conservation Areas		
79	Department to compile lists etc	
83	Council can serve building preservation notices etc on non-listed buildings	The Council welcomes additional measures to protect the built environment but further

		consideration must be given to the additional resource capacity needed to carry out the function.
84	This clause provides that carrying out unauthorised works on a listed building will be an offence, and sets out the penalties and the circumstances when works on a listed building may be defended from prosecution. It further establishes when works for demolition, alteration or extension are authorised and excludes ecclesiastical buildings from the workings of this provision.	The fine of £30,000 does not seem a sufficient deterrent to prevent the unauthorised demolition of listed buildings, notwithstanding the possibility of imprisonment for the offence.
85	Applications to Council for Listed buildings consent	Council seeks clarification of the circumstances whereby an application for listed building consent would be referred to the Department instead of the Council.
88	Council receives applications but must notify dept.	Clarity on role of Council and Department required
89 – Decision on application for listed building consent	Council role (can be dept depending on circumstances) Can be refused or granted either conditionally or subject to conditions.	Further consideration be given to the additional resource (expertise) capacity needed to carry out the function.
91 – 92 – Power to decline subsequent / overlapping applications		
103 – Conservation Areas	A council may designate areas of special architectural or historic interest within its district the character or appearance of which it is desirable to preserve or enhance. Dept can also determine areas within council districts.	Council welcomes the provision for Councils to designate areas of special architectural or historic merit (103) but seeks clarification of the circumstances (103(2)) whereby the Department may designate a conservation area. And also requests further consideration be given to the additional resource capacity needed to carry out the function. The council would also welcome further provisions in relation to the enhancement to conservation areas, listed buildings and the like by the introduction of a section similar to Section 215 of the Town and Country Planning Act, England and Wales. This provision would allow the Council to designate protected areas within Armagh City and District Council. Areas such as arterial routes, investment zones and gateways to the city, by appropriate

		enforcement powers on property owners.
104 – Control of demolition in conservation areas	Council role, or for Council buildings the Dept.	
105 – Grants in relation to conservation area	Dept may make grants or loans for the purpose of preservation or enhancement	
106 – Application of Chapter 1 to land and works of councils	Shall have affect subject to such exceptions and modifications as may be prescribed.	
Chapter 2 Hazardous substances		
	Council consent required Dept to specify substances that are hazardous	The Council would welcome the clause but request further consideration be given to the additional resource (specialist Knowledge) capacity needed to carry out the function.
	Offences subject to fine up to £30,000	The fine of £30,000 does not seem a sufficient deterrent
Chapter 3 Trees		
	Duty of a council and the department to ensure wherever it is appropriate that in granting planning permission for any development adequate provision is made by the imposition of conditions for the preservation or planting of trees; and make such orders	The Council would welcome the clause but request further consideration be given to the additional resource (specialist Knowledge) capacity needed to carry out the function.
	Tree preservation orders – can be made for preservation of trees or woodlands For prohibiting cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of council For securing the replanting of woodland which is felled in the course of forestry operations permitted by or under the order	
Chapter 4 Review of Mineral Planning Permissions		
	A development order may make provision - mining operations of deposit of mineral waste	This Clause replaces provisions introduced by the Planning Reform (NI) Order 2006. This is anticipated to be a significant new area of work and we believe its implementation has been delayed due to lack of resources. Clarity is sought on how the current centrally held expertise located within Planning Service HQ which deals with most mineral, waste and wind farm applications

		will be equitably made available to all councils at time of function transfer. It is also noted that the review of mineral planning permissions may introduce compensation liabilities for councils should working rights be restricted. It would be envisaged that as many of the environmental impacts associated with mineral operations are directly related to Environmental Health functions, such a noise and dust control, that considerable resource input would be required on this function. It is not known how many sites are likely to be subject to review, however, it is known that a number of locations across Northern Ireland are likely to require detailed consideration due to the very close proximity of dwellings to mineral operations. The lack of adequate planning guidance in relation to the environmental impacts of mineral operations will make these reviews much more difficult. We would recommend that adequate policy and guidance is developed prior to the commencement of this function.
Chapter 5 Advertisements		
	Display, dimensions, appearance, sites etc – consent required from council	
Part 5 Enforcement		
Clause 130 – 177	47 clauses	
Includes clauses on the following:		
131	Time limits – 4 years for most development	A definition is required for what is meant by 'substantially complete' Whilst the Council welcomes the clarity for a single dwelling house to the four year rule, this would still appear to be a short period of time and is a cause for concern, especially with regard to the potential for risk to human health. Again issues about enforcement and the provision of adequate resources are critical to ensure proactive and effective policing of planning controls and a suitable and sufficient inspection regime. It is noted that no provisions have

		been included which require developers to notify the planning authority on stage completion. We would welcome the introduction of a stage completion requirement as an effective means of ensuring that planning conditions are adhered to within developments. We are aware of the Departments view to evaluate experience in Scotland if similar provisions are commenced. It is recommended that appropriate clauses are included in the primary legislation to accommodate any future decision to introduce this requirement when its value is recognised.
132	Power to Require information about activities on land	
133	Penalties for non-compliance with planning contravention notice	
134-136	Temporary Stop Notices including restrictions and offences	
137-139	Issue of Enforcement Notices by Councils and Department	
140-144	Variation / Withdrawal / Appeal of Enforcement Notices	
145	Execution of works required by enforcement notice and recovery of costs	
149-150	Service of Stop Notices	
152-153	Fixed Penalty Notices where enforcement notice not complied with	
	Use of fixed penalty receipts (council can use for the purposes of htis functions under this part i.e. enforcement)	
155	Injunctions	
156-159	Listed Buildings Enforcement Notices	The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function.
160	Urgent works to preserve building	The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function

161-162	Hazardous Substances contravention notices	The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function
163-166	Enforcement of duties as to replacement of trees	The Council would support this clause, however would request consideration is given to the additional resources needed to carry out this function.
167	Discontinuace orders	
168-173	Certificate of Lawfulness of existing use or development	
174	Advertisements – enforcement of advertisement control	
175-177	Right of entry for enforcement	
Part 6 Compensation		
Clause 178 -188	11 Clauses	
Includes clauses on the following:		
178	Compensation where planning permission is revoked or modified. The functions exercisable by the Department under the Act of 1965 are hereby transferred to Councils	Council is concerned with the provisions of Clauses 178 – 188 which state that Council must pay compensation associated with a range of circumstances including those in relation to consents which are revoked or modified, and losses due to stop notice and building preservation notices. Council has not been afforded adequate opportunity to consider these provisions which require detailed consideration by the Council's legal advisors before Council can make a substantive response Councils should be given indications of the potential costs of this measure based on the evidence of Planning Service in its operations
179-188	Includes compensation relating to minerals, listed building consent, discontinuation of use of land, tree preservation orders, hazardous substances, loss due to stop notices, building preservation notices.	As above
Part 7 Purchase of Estates in Certain Land Affected by Planning Decisions		
Clause 189 - 195	7 clauses	
189	Where an application for pp is refused or granted subject to conditions and the land owner claims that the land has become incapable of reasonably	On initial review of this clause the Council would suggest that this provision may be unnecessary. This places an unreasonable burden on

	beneficial use etc, the owner may serve on the council a notice requiring the council to purchase the owners estate in the land.	district councils even though it does appear that the provision would be rarely, if ever, used.
191-193	Actions by Council following service of purchase notice incl objections and referral to lands tribunal	
194	Effect of valid purchase notice	
Part 8 Further Provisions as to Historic Buildings		
Clause 196-200	Historic Buildings Council will continue to exist	The Council would request clear guidance on the role of the different bodies relating to listed buildings. Consideration should also be given to the additional technical expertise and resources needed to carry out this function by local councils. Responsibilities seem to be split between the Department, the Northern Ireland Environmental Agency and local councils which may cause confusion.
	Grants and Loans for preservation or acquisition of listed buildings, Endowments of listed buildings, compulsory acquisitions.	
Part 9 The Planning Appeals Commission		
Clause 201-202	There shall continue to be a planning appeals commission appointed by FM & DFM	
	Procedure laid out.	
Part 10 Assessment of Council's Performance or Decision Making		
Clause 203-206	This clause introduces new powers for the Department to conduct an assessment of a district council's performance or to appoint a person to do so. The assessment may cover the district council's performance of its planning functions in general or of a particular function.	The Council considers that the Department should have an assessment function to help support the introduction and enhancement of the new functions for local councils. The Council would have reservations in relation to the high levels of scrutiny proposed through a number of measures by the bill. The Council considers that the emphasis from the Department should be in providing assistance to local councils in areas of poor performance rather than highlighting poor performance The Council requires clarification on information requirements by the Department for assessment which could have significant resource implications for Councils. The

		various formal development plan processes and local development management will involve working with external agencies, including the Planning Appeals Commission, which are outside of direct local council responsibility. The Council would suggest that consideration must be given to ensuring their statutory engagement in order to facilitate the effective management and delivery of the local planning process.
203-204	The Department may conduct or appoint a person to conduct on its behalf an assessment of a council's performance of its functions under this act or of particular functions. Includes how a council deals with applications for planning permission and in particular as to the basis on which determinations have been made, the processes by which they have been made and whether they have been made in accordance with the local development plan or in conformity with advice given to the council by the Department.	The Council is concerned in relation to the level of scrutiny by the Department. The Councils processing of local planning applicants is dependent on statutory consultee duty to respond to consultation. The Council would request clarification on monitoring arrangements on consultee response performance and timeframes. A significant element of the evidence required for the proposed local plan process would not be under the control of the future councils responsible for their development. The Council would recommend early involvement to ensure the contribution to and engagement in the different stages of the development plan process is binding on all appropriate government agencies Other statutory consultees in the planning process have a key role to play in ensuring the timely delivery of statutory plans and planning application decisions which will ultimately now become a district council responsibility. The Bill could usefully consider the setting of performance standards for these agencies in the form of prescribed response periods which the Department and District Council could jointly monitor and enforce. This would avoid the situation where other consultees set their own pace for responding to a statutory process which the Council will be obliged to deliver timeously and on which we will be assessed.

205-206	Must notify council and report to council on findings	The Council is concerned that the Department arrangements for assessment could have significant resource implications for Councils.
Part 11 Application of Act to Crown Land		
Clause 207-214	This Act except s145, 156(6), 160 and 165 binds the Crown to the full extent authorised or permitted by the constitutional laws of NI	
	Urgent Crown Development – applications to Department	
Part 12 Correction of Errors		
Clause 215-218	If council or department issues decision document which contains a correctable error they may correct the error in writing. Includes correction notices and effect of correction.	
Part 13 Financial Provisions		
Clause 219 - 223	The Department may by regulations make such provisions as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of the performance by a council or the Department of any function under this act or anything done calculated to facilitate or is conducive or incidental to the performance of such function.	Funding and resourcing is pivotal to the Council being successful in implementing and enforcing the provisions of the proposed Bill. More detail is required in respect of proposed regulations and funding arrangements. The Council would welcome any arrangement permitting it to utilise funds raised by way of either penalty, fees in the application of any duties which it may hold under the Bill. Should consideration be given to developer contribution as is in the Republic of Ireland? Council seeks clarification on the circumstances whereby Council may be required by the Department to contribute to expenses associated with the functions of another Council. The Council would request consideration of a mechanism to oblige the relevant government agencies to work with local councils. Council would request clarification in relation to Council contributing to another Councils compensation in the case that support was not given for the proposal.
	Includes grants and bursaries, contributions by councils and statutory undertakers, contributions by departments towards compensation paid by councils.	The Council would request clarification on local council's involvement in this grant process.

Part 14 Miscellaneous and General Provisions		
Clause 224-242	Duty to respond to consultation, minerals, local inquiries, public inquiries, Directions Secretary of State, Directions Department of Justice, National Security, Rights of Entry, Services of Notices and Documents, Information as to estates in land.	The Department may cause a public local inquiry to be held for the purpose of the exercise of any of its functions under the Act. It is not clear who would pay for such an inquiry, and if the costs were to be apportioned, no detail of the various allocations.
237	Planning Register – Council must keep registers containing listed information	The Council is concerned about the use of the epic system or any other systems required to enable the planning function including the requirements of clause 237 to be met. The Council suggests that the department underwrites potential costs of future development or alterations to the software required.

Ballymena Borough Council Submission to the Planning Bill

Environmental Health comments on the draft Planning Bill

January 2011

Ballymena Borough Council

by the NI Pollution Sub-group. The Environmental Health Department of Ballymena Borough Council wish to endorse the comments of by the NI Pollution Sub-Group for CEHOG in relation to the impacts of draft Planning Bill on the Environmental Health function. Comments are as follows.

It is recognised that many issues regarding the transfer of the development control function to Councils remain to be discussed in detail, not least the resources required to successfully deliver the function. In general terms, however, the principle of a greater role for locally elected members and local government in development control within their area is to be welcomed.

Part 1

Clause 1 - Planning Policy

Planning policy in Northern Ireland has failed to keep pace with England, Scotland and Wales. The absence of detailed policy makes development control decisions more difficult for applicants, architects and agents as well as more time-consuming for decision-makers and consultees. One of the aims of planning reform is a more efficient and expedient development control system, accordingly we would wish to see significant progress on addressing gaps in planning policy, specifically we would welcome progress in relation to noise pollution and land contamination at the earliest opportunity.

Part 2

Clause 6 - Local Development Plans

The introduction of Local Development Plans within (and across councils) is welcomed as a means of bringing greater local accountability to decisions on the use of local land. The principle of a 'Plan Led' system is welcomed; however, the Local Development Plan must be evidence-based and be supported by comprehensive and robust planning policy. The Department should clarify as a matter of urgency the status of the current and draft Area Plans and detail how it is envisaged these will integrate with new Local Development Plans. Furthermore, Councils will need to consider how to integrate their Corporate Strategic Objectives into Local Development Plans and how to ensure that all relevant council interests, (including environmental health issues such as amenity protection, Local Air Quality Management, land contamination, obesity prevention etc) can be supported by the Local Development Plan.

In addition, as information vital to good Local Development Planning is held by external bodies such as Roads Service and NI Water, we believe that a statutory requirement should direct these bodies to facilitate the provision of information to Councils for the purpose of preparing and reviewing Local Development Plans.

Clause 4 - Statement of Community Involvement

The introduction of a Statement of Community Involvement is also welcomed but is also recognised as a new burden on Councils. The Statement of Community Involvement (SCI) must clearly integrate with Local Development Plans and any Community Planning functions. Knowing when and how the public will be able to engage with both the plan preparation process and the development control process will assist in providing a framework for full and open consultation and community engagement. However the proposed guidance on SCI content should provide clarification and direction for all stakeholders on how public concerns can be fully integrated into the decision-making process, and what weight community concerns may realistically receive to help manage public expectations arising from the process.

Clause 27 - Pre-application Community Consultation

The principle of 'front-loading' the development control process is welcomed as a more efficient means of addressing local concerns. The requirements upon applicants for major development should ensure that efforts are made to address local concerns prior to the application being submitted. This should aid developers in understanding the likely issues surrounding their proposal, and indeed the viability of their proposal, before application and similarly should shorten the length of time before a decision can be made on the application for planning permission. Again, clear guidance will be important to help provide clarity on the interpretation of what activities will satisfy the minimum consultation requirements that are to be prescribed by proposed Regulations.

Clause 33 - Simplified Planning Zones & Clause 34 -Making and alteration of simplified planning zone schemes

We would request further clarification and discussion in relation to the introduction of simplified planning zones. In principle the planning reform proposal should result in a more effective and speedier planning process which would eliminate the need for simplified planning zones.

The granting of Simplified Planning Zones needs careful site-wide consideration prior to their establishment. Much of the development within urban areas will be brownfield development

therefore there will need to be express provision to provide the necessary soil investigation reports prior to such designation.

Clause 38 - Exclusion of certain descriptions of land or development

We would recommend under Clause 38(1)b that the following be included within the lands subject to exclusion from simplified planning zones:

- Air Quality Management Areas declared under Article 12 of the Environment (Northern Ireland) Order 2002 (NI 7) ; and
- Land identified as contaminated land under Articles 50 and 51 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (when commenced).

The proposed inclusion would help safeguard human health.

Clause 40 - Form and Content of Applications & Clause 45 - Determination of Planning Applications

The development control system in Northern Ireland has in recent years been the subject of criticism for the length of time taken before a final decision is made on an application. In relation to Environmental Health's current role as a consultee to Planning Service the single most significant cause of delay is the poor quality of submissions from applicants. This is in a large part due to the lack of planning policy to direct the quality and content of such submissions. It is understood that similar concerns are held both by Planning Service and other consultees. It is hoped that the move to a front-loaded application system may help, however, the need for comprehensive planning policy remains. Furthermore, a greater level of validation should be incorporated into the process whereby poor quality or incomplete applications are not accepted. This would result in a more realistic representation of councils' performance in relation to development control by eliminating from the system applications which through no fault of the council cannot be progressed. It is not clear if the proposed Bill permits enhanced validation procedures that will then give councils a robust mechanism to return inadequate applications. This must be clarified, or confirmation given that subordinate legislation can accommodate this important requirement.

Issues relating to amenity, nuisance and human health, including land contamination, should also be addressed as these are of equal if not greater significance than the issues highlighted in Clause 40 (3) and a greater emphasis should be placed on whether a site is fit for its intended end use. Consideration should be given to their inclusion as an additional sub-paragraph under 40 (3).

Clause 55 – Planning permission for development already carried out.

We believe that applications for development already carried out without the benefit of permission should attract an additional fee as a means of discouraging developers from avoiding the development control system. The proposal in Clause 219 to accommodate this is welcome.

Clause 75 – Planning agreements

The scope within this section is welcomed as a means of indirectly addressing impacts of development. We would consider that the current Article 40 approach has been underused in Northern Ireland and has resulted in an element of uncertainty to developers. We would support

a revision to the method of obtaining developer contributions which would be linked to policies and infrastructure needs identified as part of the local development plan and community plan process.

The focus should be upon local impacts and the provision of appropriate local infrastructure linked to the scale / impact of the proposal.

Part 4 – Chapter 4

Clause 128 – Review of Mineral Planning Permissions

This Clause replaces provisions introduced by the Planning Reform (NI) Order 2006. This is anticipated to be a significant new area of work and we believe its implementation has been delayed due to lack of resources. Clarity is sought on how the current centrally held expertise located within Planning Service HQ which deals with most mineral, waste and wind farm applications will be equitably made available to all councils at time of function transfer.

It is also noted that the review of mineral planning permissions may introduce compensation liabilities for councils should working rights be restricted.

It would be envisaged that as many of the environmental impacts associated with mineral operations are directly related to Environmental Health functions, such a noise and dust control, that considerable resource input would be required on this function. It is not known how many sites are likely to be subject to review, however, it is known that a number of locations across Northern Ireland are likely to require detailed consideration due to the very close proximity of dwellings to mineral operations. Again the lack of adequate planning guidance in relation to the environmental impacts of mineral operations will make these reviews much more difficult. We would recommend that adequate policy and guidance is developed prior to the commencement of this function.

Part 5

Enforcement

Conditions attached to planning permission are currently a matter for the Planning Service to enforce. With the proposed transfer of a development control function to councils it would be envisaged that Environmental Health (who regularly request that conditions be attached to permission granted) and indeed other Council Departments would become more heavily involved in the monitoring and enforcement of such planning conditions. This will have resource implications for any Council Department involved in this work. Furthermore, given the relationship between conditions attached to planning permissions and other statutory functions of Councils, such as the investigation of noise complaints, Councils must consider the best means of communication between Planning and Environmental Health functions.

In addition, it is noted that no provisions have been included which require developers to notify the planning authority on stage completion. We would welcome the introduction of a stage completion requirement as an effective means of ensuring that planning conditions are adhered to within developments. We are aware of the Departments view to evaluate experience in Scotland if similar provisions are commenced. It is recommended that appropriate clauses are included in the primary legislation to accommodate any future decision to introduce this requirement when its value is recognised.

Clause 152 – Fixed Penalty Notice where enforcement notice not complied with.

We would welcome the option of the use of Fixed Penalty Notices as a means of more efficient enforcement action.

Part 6

Concern is expressed regarding the overview statement on page 6 of the 'Explanatory and Financial Memorandum', which states, "any compensation liability arising from the Departments decisions will fall to district councils". This suggests that Councils will be exposed to future compensation claims arising from planning decisions taken by the Department. There is also some ambiguity in relation to decisions made by Planning Service prior to the transfer of function. The primary legislation must make it clear that any such liabilities arising from any Department decisions remain with the Department, and explain how any such claims are to be administered. The full implications of any such compensation liabilities needs to be transparent and more information must be provided to local government.

Part 9

Clause 202 – Procedure of appeals commission

We are aware that the March 2010 Government response endorses the awarding of costs. However, it is not clear whether the draft Bill provides the function to the PAC. We would seek clarity on how this capacity has been accommodated within the Bill.

The Bill does not prevent the introduction of new material related to the application following the making of the appeal. We would still support the inclusion of this measure as a means of discouraging frivolous appeals or the use of the appeals system as a means of achieving a decision made based upon information not previously available to the council (or Department), and hence to the potential disadvantage of other consultees and / or third parties. In the absence of any explicit provision in the Bill, we would encourage the PAC to review their administrative procedures to ensure new information is shared well in advance of any hearings.

Part 14

Clause 224 – Duty to respond to consultation

It is noted that this provision may require consultees to report on their performance to the Department. It is envisaged that consultee relationships may be subject to a Service Level Agreement or Memorandum of Understanding. As the development control function will largely be the remit of Councils who will be scrutinised for their performance, we would recommend that this provision be amended to also include the submission of performance data to Councils from their consultees. This will allow Councils to better manage the consultation process and address any issues with consultees.

Suggested Omissions

In considering the Planning Bill, we would suggest that the following are potential omissions within the legislation.

i) Section 215 - Power to require proper maintenance of land.

We would request consideration be given to the potential inclusion within the Planning Bill of a similar provisions as set out within Section 215 of the Town and Country Planning Act 1990 of England and Wales, which would allow Councils to manage the amenity of an area. The details of Section 215 are outlined below:

(1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.

(2) The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.

(3) Subject to the following provisions of this Chapter, the notice shall take effect at the end of such period as may be specified in the notice.

(4) That period shall not be less than 28 days after the service of the notice.

Guidance & Regulations

We are conscious that the Bill consultation provides a fundamental framework for the future planning function; however, we would seek clarification on Councils' role in drawing up regulations and guidance that will underpin the new regime. With the proposed transfer of function to Councils they should be closely involved in the drawing up of the regulations and guidance.

Banbridge District Council Submission to the Planning Bill

Mr Cathal Boylan
Chair of the Environment Committee
Northern Ireland Assembly
Room 245
Parliament Buildings
Stormont
BELFAST
BT4 3XX 20 January 2011

Dear Mr Boylan

Draft Planning Bill

After discussion of the issues in the Bill the comments below will be submitted for endorsement by Banbridge District Council at its meeting on 24 January 2011:-

1. Welcome:

The Council welcomes the transfer of Planning to Councils. Local representatives have a close relationship with their elected areas and therefore understand the needs, demands and views of their local communities. The Council seeks to develop and shape its District to promote the social, economic and environmental growth. Planning is a critical tool in this development.

2. Timescale:

While the Council can understand the tight legislative timescale the consultation period with a key stakeholder ie Local Government has been very short and inadequate for such a detailed and critical piece of legislation.

The proposals need to be considered within the context of the cross cutting issues that arise from the Local Government Reform Proposals, the Finance Bill and Planning Fees consultation. Additional time is required to fully consider the implications and provide a strategic, meaningful and informed response.

The objective of the consultation is to lay a strong foundation for the future transfer of the Planning function and the detail in this enabling legislation therefore requires careful consideration e.g. legal liability, proposals relating to compensation, governance issues, resourcing, implications of the power of intervention and the inherent liability that could arise from the overlapping central/local government roles.

From a council perspective, it is also essential that the governance requirements of the corporate body are met and as such the Bill which was released in December 2010 will need to be considered within council committee structure prior to agreeing a response by the full council.

3. Fit for Purpose:

While much improvement has been achieved within Planning Service the Council still believes there are major improvements required to make it fit for purpose. For example we still have many out-dated Area Plans, delays in major applications, delays in Appeals. The Council would require Planning Service to engage in meaningful dialogue to ensure that when the service transfers it is fit for purpose.

4. Resources:

There are major resource shortfalls within Planning Service currently. Any transfer of Planning should be cost neutral to Councils. Therefore a review of fees and staff complement to ensure that when the transfer occurs that it will not be at additional cost to the Council.

5. Ethics and Standards:

A robust agreed ethics and standards regime is required prior to transfer of Planning to Councils. These proposals are contained within the Local Government Transfer Bill. These Bills need to be synchronized to ensure that the reformed Planning system can work with the confidence of the public

6. Operational Issues:

With the eventual transfer of Planning to Councils it would be important that Councils have some input into the governance and management arrangements of the 5 streamlined divisional offices. They will transfer to

Local Government and therefore any long term financial or structural commitments should be discussed with Local Government in advance.

Detail on the pilots due to commence in 2011 is still not available with three months to go. The Council is not aware of the pilot proposal or how the pilots will operate.

7. Capacity Building and Training:

Sufficient capacity within both central and local government sectors is vital to ensuring emerging service delivered in cost effective/efficient manner. New proposals eg. new local development plan system, preparation of community statements, pre-determination hearings, annual audits/monitoring are likely to have significant resource and capacity implications for councils upon transfer. Ssubstantial investment to develop capacity and skills is necessary. Scope for duplication resulting in inefficiencies eg. planning agreements, designation of conservation areas, TPOs and issuing enforcement notices.

8. Councils as Equal Partners:

The Council is concerned that local authorities have had only a minimal role to date in shaping the proposed planning system. If the sector is to assume responsibility for a new system, it must have confidence that it will be a workable arrangement. Only by embracing the sector will the Department help engender the necessary trust to ensure the future success of the system.

Yours sincerely

Liam Hannaway

Chief Executive

Building Design Partnership (BDP) Submission to the Planning Bill

Andrew Heasley\B2898\Planning Bill\AEH

2 Bruce Street
Belfast BT2 7JD
United Kingdom
T +44 [0]28 9024 3394
F +44 [0]28 9032 9337
www.bdp.com

14-01-11

BDP.

Planning Bill Consultation
Planning Service
Millennium House
17 - 25 Great Victoria Street
Belfast
BT2 7BN

Dear Sir / Madam

Planning Bill Consultation Response on behalf of BDP

Please see the attached document in response to public consultation on the draft Planning Bill.

Should the Department require further information or clarification of any of the issues identified in the document please do not hesitate to contact me directly.

Yours faithfully

pp Helen Harrison

Helen Harrison
Planning Director

BDP
Direct Line: +44 [0]28 9024 3394
Direct Fax: +44 [0]28 9032 9337
E-Mail: helen.harrison@bdp.com

Governance

BDP welcomes the references made throughout the Planning Bill to the extensive range of 'planning' duties for which Councils will assume devolved responsibility. Notwithstanding the comments set out in this document, BDP is extremely concerned that there is no reference whatsoever to the significant staffing levels and resources which will be required in order for Councils to effectively execute the duties set out in the Planning Bill including the determination of planning applications.

BDP seeks urgent clarification on the new statutory governance framework and on the Department's position on the significant capacity building which will be required in order to execute the provisions of the Planning Bill. BDP would not wish these issues to impact on the provision of planning services.

Regulations

BDP is concerned at the practice within the Bill of making numerous references to the possibility of the Department preparing '**Regulations**' (*the Department **may** by regulations*) particularly in relation to plan strategy, local policies plan and those matters listed at Clause 22 namely,

22.*(1) The Department may by regulations make provision in connection with the exercise by any person of functions under this Part.*
(2) The regulations may in particular make provision as to
(a) the procedure to be followed by the council in carrying out an appraisal under Clause 8(6) or 9(7);
(b) the procedure to be followed in the preparation of development plan documents;
(c) requirements about the giving of notice and publicity;
(d) requirements about inspection by the public of a development plan document or any other document;
(e) the nature and extent of consultation with and participation by the public in anything done under this Part;
(f) the making of representations about any matter to be included in a development plan document;
(g) consideration of any such representations;
(h) the determination of the time at which anything must be done for the purposes of this Part;
(i) the manner of publication of any draft, report or other document published under this Part;
(j) monitoring the exercise by councils of their functions under this Part.

BDP seeks urgent clarification from the Department as to the commitment or otherwise to prepare Regulations (Subordinate legislation) and the timescale for their completion. BDP considers that delays in preparing Regulations or uncertainty as to whether or not Regulations will be prepared could seriously affect the ability of Councils to effectively execute their planning powers.

Consultation with the Department

BDP is concerned with the plethora of Clauses (Sections) throughout the Bill which require Councils to seek approval from the Department for a myriad of matters, most of which could and should be adequately dealt with at Council level. BDP considers that the widespread requirement for consultation with and checking by the Department will add unnecessary bureaucracy and delay, and could affect the ability of Councils to effectively execute their planning powers. This could lead to delays in the planning system in Northern Ireland.

Role of the Department

Given the apparent commitment of the Department to the *'development of local accountable democracy'* and [1] *'putting power in the hands of locally elected representatives accountable to the people'*, BDP is concerned with the level of accountability of the Department where the Bill makes such extensive provision for the Department to intervene with Council planning duties with little or no rationale for such intervention.

Furthermore, BDP questions the need for this level of unchecked Departmental intervention and in particular the associated financial implications both in terms of the potential duplication of functions between the Department and Councils and the inevitable delays to the planning process.

NI Assembly – Official Report Tuesday 14 December 2010.

Matters not Previously subject to Consultation

BDP is concerned with the inclusion in the Bill of a range of matters which were not included in the Reform of Planning consultation document. Whilst BDP welcomes the principle of provisions made in respect of *Simplified Planning Zone Schemes (33 – 38), Grant of Planning Permission in Enterprise Zones (39), Land and Works of Councils (106), Hazardous Substances (107 –119), Trees (120 – 127), Review of Mineral Planning Permissions (128)* and *Advertisements (129) Purchase of Estates in Certain Land Affected by Planning Decisions (189 – 195) Further Provisions as to Historic Buildings (196 – 200) Application of Act to Crown Land (207 – 214) Assessment of Council's Performance or Decision Making (203 – 206)* and *Application of Act to Crown Land (207 – 214)*, BDP has not been previously consulted on these matters and as such is not in a position to make a substantive response.

Reform of Public Administration

Notwithstanding BDP's comments regarding the content of the Bill, BDP recognises that there will be a transition period when Councils first take responsibility for the suite of planning powers set out in the Planning Bill. In this context BDP considers that this Planning Bill should be acknowledged as an 'Interim Bill' which will apply for a defined period (2-3years) after which time the Bill would be amended to appropriately reflect the Reform of Public Administration and revised Council administrations, and to significantly reduce the involvement of the Department except in exceptional circumstances where the requirement for consultation and intervention is clearly justified. This will allow a more efficient and less bureaucratic planning system.

Hierarchy of Planning Policy

BDP welcomes the devolution of planning powers and the provisions within the Planning Bill for the preparation of evidence based planning policy in the form of Local Development Plans. BDP seeks clarification on the relationship between this evidenced based planning policy and the more strategic policy to be contained within a new suite of Planning Policy Statements.

[1] *NI Assembly – Official Report Tuesday 14 December 2010.*

BDP.

Belfast City Council Submission to the Planning Bill

Chief Executive's Department

Your reference

Our

Date 21 January 2011

Cathal Boylan, MLA
Chairperson, Committee for the Environment
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST
BT4 3XX

Dear Mr Boylan,

Re Committee for the Environment - Call for Evidence on the Planning Bill

I refer to your letter, dated 16th December 2010, seeking written evidence on the Planning Bill currently under Committee Stage consideration.

The Council's Strategic Policy and Resources Committee considered the Planning Bill, at its meeting on 21st January 2011, and I would submit for the consideration of the Environment Committee, the Council's initial technical response (appended).

In submitting this initial response the Council would highlight its concern in respect to the short timescale set for the provision of written evidence to the 248 clauses set out within the Bill (one of the largest to come before the Assembly), and the difficulty that this creates for the Council and the wider local government sector to undertake any detailed due diligence review of the proposals put forward and the impact upon the future administration of the functions.

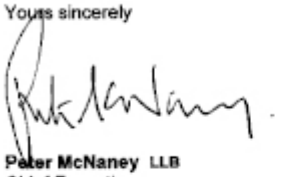
Adequate time is required to allow broader consideration which would include the linkages and potential implications of the local government reform proposals. Whilst the local government reform is also currently out for consultation the differential timescale makes it difficult to effectively assess the full implications for the future administration of the provisions as set out within the Planning Bill. This parallel consideration may highlight deficiencies or omissions in the Planning Bill subsequent to the close of consultation.

The Council therefore reserves the right to make a further submission to the Environment Committee on the Planning Bill subject to its full consideration of the proposals put forward, including any potential omissions, and would seek further engagement with the Committee to ensure that this important legislation is as comprehensive and constructive as possible.

Belfast City Council, Chief Executive's Department.
Adelaide Exchange, 24-26 Adelaide Street, Belfast BT2 8GD
Tel: 028 9032 0202, Textphone: 028 9027 0405, Fax: 028 9027 0232
Email: mcnaneyp@belfastcity.gov.uk

Should you require clarification in respect of the appended response please do not hesitate to contact either myself or my colleague Keith Sutherland on 028 9027 0559.

Yours sincerely



Peter McNaney LLB
Chief Executive

Enc.

Belfast City Council, Chief Executive's Department,
Adelaide Exchange, 24-26 Adelaide Street, Belfast BT2 8GD
Tel: 028 9032 0202, Textphone: 028 9027 0405, Fax: 028 9027 0232
Email: mcnaneyp@belfastcity.gov.uk

Belfast City Council Submission to the Planning Bill

Written Evidence on Planning Bill

1. Introduction

Belfast City Council recognises the need for a reformed Planning System within Northern Ireland and welcomes the opportunity to submit its views on the Planning Bill, seeing it as progressive and instrumental in supporting reform.

The Council considers that an effective local planning function offers the potential to bring to fruition the new community planning role to be given to councils, enabling a much more strategic and integrated approach to be taken to the social, economic and physical regeneration of local areas and in improving the quality of life of citizens. The Council therefore welcomes the recognition of Community Planning as being fundamental in the hierarchy of the development plan formation. It also welcomes the increased importance attached to community participation in the determination of major planning applications.

The Committee will be aware that the Council had made a detailed response, in 2009, to the original Departmental consultation “Reform of the Planning System in Northern Ireland: Your chance to influence change" which set out proposals for planning reform. In cross-referencing the Council’s original response with the provisions as set out within the Planning Bill, it would appear that a number of concerns expressed by the Council have not been fully addressed.

The comments, as set out within this response, therefore reinforce previous views expressed by the Council. They are intended to be constructive and seek to ensure that the reform proposals contained within the Planning Bill are maximised in the interests of enhancing the customer experience, improving social outcomes for the citizen and achieving an efficient and effective service.

The following response sets out both a high-level commentary on the proposed reform of the Planning Service and the general tenor and focus of the Planning Bill, highlighting any potential omissions. Detailed commentary is provided also on the individual clauses as set out within the Bill.

It should be noted that in responding to the Planning Bill, the Council is conscious that much of the detail around the out workings of this legislation (such as the definition of regional development and the criteria for both departmental intervention and call in procedures) may be set out within the subsequent subordinate legislation (regulations) arising from the Bill.

Belfast City Council feels that, in accordance with good practice, the Department should ensure that local councils are consulted in the drafting of the relevant detailed subordinate regulations in respect of information requirements, timeframes and processes involved. This is particularly the case in respect of:

- Part 2, Clause 15 (Intervention by Department) - the definition of what the department considers as an “unsatisfactory" development needs to be clearly defined.
- Part 3, Clause 26 (Department’s jurisdiction in relation to developments of regional significance) – the Departments definition of what constitutes regional significance must be clearly defined
- Clause 29 (Call in of applications, etc to Department) – Department needs to outline clearly the criteria which could make an individual application subject to “call in"

The Council would commend that the underpinning principle for moving forward should be consultation on any regulations which materially affect the future discharge by councils of any function.

2. General Comments

Consultation timing

As noted by the Executive at its second stage debate on the Planning Bill on 14th December 2010, the Council would be concerned that the short timescale set for the provision of ritten

evidence to the 248 clauses set out within the Bill (one of the largest to come before the Assembly), may make it difficult for many respondents to undertake any detailed due diligence review of the proposals put forward and the impact upon the future administration of the functions.

Alignment and Integration of Legislation

The Council is aware of the separate, but associated consultation underway on Local Government Reform which sets out proposals which will inevitably impact upon the future administration of planning functions by Councils (e.g. proposals in relation to governance, ethical standards, decision-making processed, performance frameworks etc). It would appear that the reform of the Planning Service, as set out within the Planning Bill, has been considered almost in isolation from these other matters. Due consideration will need to be given to the important interconnection and sequencing of these two strands of legislation.

Planning Service Restructure

Accordingly, the Council would like to take this opportunity to highlight its concerns in relation to the recent announcement made by the Environment Minister on 30th November regarding the restructuring of the Planning Service and the creation and composition of the proposed new Belfast Area Office. The Council is surprised that due consideration had not been given to the possibility of the new Belfast Area Office covering those district areas which comprise the Belfast Metropolitan Area – an already recognised spatial area as part of the Belfast Metropolitan Area Plan.

Notwithstanding, the Council would seek further clarification from the Department in relation to how the new Area Offices will operate and, in particular, the prioritisation of workload, allocation of resources and the resolution of potential disputes within the proposed new Belfast Area Office which covers 5 council areas.

The Council would also request any supporting information which informed the Minister's decisions in regards to his restructuring proposals and creation of the Area Offices including, for example, a breakdown of current and anticipated future resources; any assessment of ratio of applications to staff pre and post restructure etc.

Oversight and Intervention

Whilst the Council recognises and accepts the necessity for regional oversight, it would be concerned that the proposed scope and level of intervention and scrutiny by the Department (e.g. reserve powers, monitoring, call-in, scrutiny, intervention, performance assessment, reporting and direction), of the future administration of planning functions by councils may create unnecessary tensions and potential delays in the process. It is suggested that the level of oversight/intervention is overly bureaucratic, process driven and may, in fact, militate against local democracy and accountability.

The Council would also seek further clarification and detailed guidance on the proposed call-in arrangements afforded to the Department for planning applications being progressed by

councils. The Council would suggest that the scope and application of such call-in arrangements by the Department should be limited.

Under Section 15 (1) of the Bill provisions are set out whereby the Department can intervene in circumstances whereby development plans being prepared by Councils are deemed to be 'unsatisfactory'. The Council believes that this clause is open to wide interpretation and would, therefore, seek clarification and definition of the term 'unsatisfactory'. The Council would recommend that in accordance with good practice, the Department should ensure that local councils are consulted in the drafting of the relevant detailed subordinate legislation which emerges from this Clause.

Duplication of responsibilities

There are a number of areas of responsibility outlined in the Planning Bill which duplicate functions between the Councils and the Department (e.g. drawing up planning agreements; the designation of conservation areas; the making of tree preservation orders and the issuing of enforcement notices). The Council considers this as an unnecessary repetition of responsibility and resources which has the potential to cause unnecessary confusion within the planning process.

Enforcement

The Council considers enforcement as an important function of the development management process and welcomes, in principle, the provisions as set out within the Planning Bill to further enhance the enforcement element of the planning process. Clearly it will be important that appropriate resources are made available to councils to administer the enhanced enforcement role envisaged and that the Department provides greater clarity on this issue. The Councils own experience in dealing with the current enforcement side of the planning process is that it is under resourced and that this/ any absence of enforcement only serves to undermine the entire planning process.

Consultee obligations

The Council would seek further clarification on the intended obligations to be placed upon designated consultees to respond in a timely and appropriate manner and the role of the Department and council in ensuring compliance with such obligations. This is particularly important in respect to the ability of councils to meet the proposed new ambitious timescales for processing planning applications and developing local area plans.

The Council would also seek clarification within the Bill as to the process for managing advice received from consultees and the obligation placed upon councils to take on board such advice and manage conflicting views.

Regional Significant Developments

Under Section 26 of the Bill provisions are set out giving the Department jurisdiction in relation to developments of 'regional significance'. Given the potential for key developments within Belfast being designated as being of regional significance, the Council would seek further clarification as to the process envisaged by the Department for the determination of planning applications. Again, the Council would seek further engagement by the Department and Committee in the development of the associated subordinate legislation on this matter. In many respects, the Minister for the Environment will have the final say in the determination of regionally significant applications. When it is considered that the respective Minister in the

Republic of Ireland is not even allowed to decide upon any planning application, let alone a regionally significant one, it might be worth entrusting the determination of regionally significant applications in Northern Ireland to the Planning Appeals Commission. In so doing, the impartiality and independence of the decision-making process will be maintained. Also, the Ministerial power to appoint persons other than the PAC to conduct hearings should be applied only in the most exceptional of circumstances, such as in those instances when the workload of the PAC delays the programming of the hearing in a timely fashion.

Resource Implications

The Council would be concerned that inadequate consideration has been given to the resource and financial implications for councils of implementing the new regime and would seek further engagement with the Department in this regard. For example, one of the objectives of the reform of planning is to make it faster and more accessible to the public. The provision of a comprehensive web service is considered essential in this regard. Hence, the detail of just how the new ePIC internet service will be transferred to Councils will be a key operational consideration that has obvious resource implications.

If councils are to ensure the effective administration of planning functions and the maintenance of service continuity, it will be important that sufficient resources are available to support the level of transformation and additional responsibilities, processes and requirements embodied within the reform proposals. This also needs to be considered within the context of the recent proposals for significant downsizing of Planning Service staff. The Council would commend that the transfer of planning functions to local government should be cost-neutral at the point of transfer.

It is important to note that the Planning Service with its full complement of staff and resources has been unable to ensure full development plan coverage and therefore, due consideration will need to be given to the resource implications for councils in meeting this aspiration as set out within the Planning Bill.

Local Development Plans

Given the significant resource implications required in the preparation of the proposed local development plans, the Council would seek assurances within the Planning Bill that the local development plans will be the primary material consideration for planning applications.

Capacity Building

The Council recognises that there is a critical need to ensure that there is sufficient capacity within both central and local government to ensure that the reformed planning service is delivered in an effective and efficient way both pre and post transfer of specific functions to councils.

The reform proposals as set out within the Planning Bill including, for example, the new local development plan system, preparation of community statements, a new role of pre determination hearings, annual monitoring reporting, audit and reporting of performance, are likely to have significant resource and capacity implications for councils when functions transfer. The new councils will have limited experience in statutory planning delivery requiring the development of significant capacity and expertise.

Supporting Members' development will be a critical element of ensuring the effective administration of planning functions when they transfer to councils. This is further necessitated

by the fact that under the local government reform proposals, councils will inherit a new governance, decision making and ethical standards regime which will coincide with the transfer functions to councils and will inevitably underpin the future administration of planning functions by councils.

The Council believes that given the delay in the Local Government reform process and the recent proposals announced by the Environment Minister in his announcement to the Assembly on 30th November regarding potential planning pilots, there is a real opportunity to strengthen the relationship between the Planning Service and councils, enhancing the joint capacity of both and ensuring vital learning is gained in advance of the full transfer of the function as part of the RPA. This approach could facilitate the exploration of potential synergies with the existing Council functions and the additional responsibilities proposed for transfer as part of the wider RPA process.

3. Omissions

In considering the Planning Bill, the Council would suggest that the Power to require the proper maintenance of land to enable the protection of the general amenity of areas is potential omissions within the legislation.

The Council would request consideration be given to the potential inclusion of powers to require proper maintenance of land within the Planning Bill of a similar provisions as set out within Section 215 of the Town and Country Planning Act, England and Wales, which would allow councils to manage the amenity of an area. The details of Section 215 are outlined below:

(1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.

(2) The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.

(3) Subject to the following provisions of this Chapter, the notice shall take effect at the end of such period as may be specified in the notice.

(4) That period shall not be less than 28 days after the service of the notice.

The timescale for the consideration of the Planning Bill has prevented the Council from fully considering the potential omissions including the issues of the award of costs and the acquisition of land for planning purposes.

4. Conclusion

There are many positive attributes included in the proposals for this Planning Bill. However the Council would have concerns in relation to the overall resource required to make the Planning System, which does seem more comprehensive, functional.

We recognise that many additional requirements will emerge as a result of the subsequent regulations and believe that the transfer and set up of this system will be fraught with difficulties. We would therefore anticipate that there will be many appeals and legal challenges to the new system before a status quo is formed. We believe that the Planning Appeals Commission would therefore require additional resourcing in order to process these challenges, the determination of which will help form the basis of the new system.

5. DETAILED TECHNICAL RESPONSE ON BILL

Part 1: Functions of Department with respect to development of land

Clause 1: General functions of Department of the Environment with respect to development of land	
	Belfast City Council Comments
This clause maintains the Department's duty to formulate and co-ordinate planning policy which must be in general conformity with the Regional Development Strategy. A statutory duty is imposed on the Department in exercising these functions to do so with the objective of contributing to the achievement of sustainable development. This clause also provides for the Department to continue to undertake such surveys or studies as it considers necessary.	The Council would request further clarity in regards to the role of local councils in the production of the revised planning policy. The Council would suggest a programme management scheme similar to that proposed for local development plans for the review of planning policy to show timescale and regular monitoring and review arrangements. The Council would support more focused Planning Policy Statements produced in a shorter timescale. The Council considers the current system as lengthy and does not necessarily reflect the unique land use requirements of the different district Council areas for Northern Ireland. The proposals for the planning bill do not address the Regional planning policy split across the two departments (i.e. DRD and DOE). The Council are concerned that this is could lead to the system becoming more fragmented and increase uncertainty regarding the responsibility for leadership in relation to regional planning. The Council would request that an expressed obligation is set out within the Bill putting an obligation on the Department to consult with relevant district councils when formulating policy.
Clause 2: Preparation of statement of community involvement by Department	
This clause maintains the requirement for the Department to produce a statement of its policy for involving the community in its development control functions.	The Council would support the introduction of a statement of community involvement but would request clarity in respect of the proposed role of the Department and the scrutiny in the process requiring Councils to seek prior approval from the Department on the statement.

Part 2: Local Development Plans

Clause 3: Survey of district	
This clause requires a district council to keep under review matters which are likely to affect the development of its district or the planning of that development. A district council may also keep matters in any neighbouring district under review, to the extent that those matters might affect the area of the district council, and in doing so they must consult the district council for the neighbouring district concerned.	The Council would support the need for district councils to keep under review matters which are likely to affect the development of its district including matters in any neighbouring district under review. However, the resource implications need to be fully assessed. The Council will be dependent on a number of government agencies for information and input into the process however, the bill does not detail the mechanism to oblige the relevant government agencies to work with local councils.
Clause 4: Statement of Community Involvement	
This clause defines a district council's statement of community involvement as a statement of its policy for involving interested parties in matters relating to the development in its district. It requires the district council and the Department to attempt to agree the terms of the statement and provides a power of direction for the Department where agreement is not possible. This statement will apply to the preparation and revision of a local development plan and to the exercise of the district council's functions in relation to development control.	The Council would support the introduction of a statement of community involvement but would have concerns in respect of the proposed level of Departmental scrutiny in the process requiring Councils to seek prior approval from the Department on the statement. The Council would seek further discussion on the basis for the assessment on which approval may be agreed and the introduction of a mechanism or process for appeal or challenge if central government endorsement is not given. Local Councils already have a duty to engage under Equality Legislation and will have both wellbeing and community planning responsibilities. The Council would suggest that there may be operational merit in combining community consultation on the local development plans with the Council's community planning function which would allow for resources to be shared and reduces the possibility of consultation fatigue in relation to the strategic element of the proposed plans.
Clause 5: Sustainable development	
This clause imposes a statutory duty on any person or body who exercises any function in relation to local development plans to do so with the objective of contributing to the achievement of sustainable development. In doing so they are required to have regard to policies	The Council welcomes the inclusion of a statutory duty to contribute to sustainable development when exercising any function in relation to a Local Development Plan. However, the Council would suggest that the reference to the sustainable development duty at Section 2, article 5

and guidance issued by the Office of the First Minister and Deputy First Minister, the Department of the Environment and the Department for Regional Development.	(1) within the Planning Bill may be technically incorrect. The actual requirement is as follows:- *"A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case."* Therefore, the statutory requirement is not absolute as indicated in part 2, article 5 of the Planning Bill By way of amplification, and for possible inclusion within the Bill, the development control / planning extract from the new OFMDFM Sustainable Development Strategy sets out the following strategic objectives:- ○ Striking an appropriate balance between the responsible use and protection of natural resources in support of a better quality of life and a better quality environment. ○ Promote sustainable land management. ○ Ensure that our built heritage is used in a sustainable way. ○ Improve that quality of life of our people by planning and managing development in ways which are sustainable and which contribute towards a better environment It is noted that these additional commitments do not appear to have been referenced explicitly either within the draft bill or linked to its various local development control plan provisions. We believe the imperative could be stronger and be included in the Strategy Plan and should also be able to demonstrate how it achieves the objectives set out in policy and regulations. In particular the Council believes that all brownfield redevelopment is sustainable. The Council would recommend that *Article 5 (2)a* also
	includes policies, guidance and best practice advisory notes issued by Local Authorities. E.g. "Air Quality and Land Use Planning", "Waste Storage Guide". Also that there is a local authority provision for adopting specific guidance; E.g. Belfast specific guidance note for developers and air quality consultants. Furthermore, on a more general point, the Council has particular concerns about the use of 'Negative Conditions' to secure planning permission for sites which may be contaminated. In line with current Government Policy, and English, Scottish and Welsh Planning Policies we would strongly recommend that this approach is avoided by Planning Authorities.
Clause 6: Local development plan	
This clause sets out the definition of a local development plan and clarifies the position in relation to potential conflicts between local development plan policies; the conflict must always be resolved in favour of the policy contained in the last development plan document to be adopted. It also confirms in law the status of a development plan in the determination of planning decisions. Where regard is to be had to the local development plan, the determination must be in accordance with the plan unless material considerations indicate otherwise.	The Council would support a plan led system which gives certainty to developers but has concerns that difficulties may arise in introducing a plan led system across the region in circumstances where the new councils will have different administrative areas that could include existing plans that are at different stages of the local plan development process. Given the significant resource implications required in the preparation of the proposed local development plans, the Council would seek assurances within the Planning Bill that the local development plans will be the primary material consideration for planning applications. The Council would support procedures to be put in place in circumstances where Councils do not fully support the existing local plan for their area. There should be a mechanism for such circumstances such as reverting back to the policy of the Regional Development Strategy or Planning Policy guidance pending adoption of a new or amended plan. The Council would request that guidelines are drawn up to clarify support to be offered from the new regional planning body in relation to the potential legal challenges that could arise from the introduction of a completely new development plan system. There are likely to be

	significant challenges for a plan led system when it also is introduced with inconsistencies in up to date plan coverage. The weight attached to the development plan in addition to the proposals for the accelerated plan production process will have significant resource issues beyond the current levels of provision. This needs to be recognised in the document and reflected in the requirement for contextual support and guidance from the Department in relation to the maintenance of any existing development plans and the introduction of new style plans. The transfer of responsibility to Councils will also require a commitment to the transfer of the evidential baseline information and support in relation to the defence of adopted plans developed by the predecessor authority. The Council would contend that Local Development planning process should be made to deal with issues relating to prematurity in which the application of existing policy has the potential to undermine any emerging development planning. In relation to sub- para 4 the Council welcomes the ability to deviate from the development plan when material considerations indicate that this is appropriate to do so. This will allow for the application of policy which is sensitive to local needs or emerging circumstances.
Clause 7: Preparation of Timetable	
This clause places a requirement on the district council to prepare and keep under review a timetable for the preparation and adoption of its local development plan. The district council must agree the timetable with the Department. However, if the timetable cannot be agreed, then the Department may direct that the timetable is in the terms specified in the direction.	The Council accepts the requirement to prepare and keep under review a timetable for preparation and adoption of local development plans. Whilst it believes the views of the Department in this process would be material to this obligation it believes that the requirement to comply with directions issued by the department is unnecessary. The Council would support the principle of a timetable in relation to the development plan process however the main issues relate to the processes that lie outside the control of the councils. The Council will be dependent on a number of government agencies for evidence and input into the process but the document does not detail the mechanism

	to tie in the relevant government agencies to the programme delivery. The Council would advocate early discussion with the Department and the relevant government agencies to agree on an appropriate mechanism. The proposed local development plan process introduces a number of elements and functions that would lie outside the control of the Councils, thereby making a rigid programme management scheme difficult to deliver. Before the principle of a rigid statutory programme management process could be supported, the Council would request further dialogue on the mechanism for approving the different stages of the plan development and on those parts for which central government would be responsible - the Department of the Environment or the Executive. The Council would have reservations in relation to the high levels of scrutiny proposed through a number of measures including requiring agreement on the programme management scheme prior to agreement on resource and capacity building implications. The proposals for the new local development plan system along with a number of other reforms will have significant resource and capacity implications for the new Councils and these have not been fully assessed. The various formal development plan processes will involve working with external agencies, including the Planning Appeals Commission, which are outside of direct local council control. The Council would suggest that consideration must be given to ensuring their statutory engagement in order to facilitate the effective management and delivery of the process.
Clauses 8 and 9: Plan Strategy and Local Policies Plan	
Clauses 8 and 9 impose a statutory duty on the district council to prepare a plan strategy and a local policies plan. These documents	Whilst the Council recognise the need for a faster, more flexible plan making process clarification is required on a number of issues:

taken together constitute a local development plan. The local development plan must set out the district council's objectives and policies in relation to the development and use of land in its district. The district council must take account of the matters listed in these clauses, including the Regional Development Strategy and must carry out a sustainability appraisal for the proposals in each document. The Department may prescribe the form and content of both the plan strategy and the local policies plan.	• The proposed status of the options paper and associated consultations as outlined above. • Clarification or examples are needed on the strategic content of the document and the proposed evidential base to support the development. • Clearer guidance is required on the engagement and role of the Department / Central Government generally, in respect of the public inquiry stage. • The Council would seek to further explore the mechanisms for dealing with the Commissioners report following the public inquiry. The proposed option for the Department to issue the binding report that could direct the Council to adopt a plan, modified from that developed through participation in a full public inquiry process, is not considered appropriate. Resource and capacity issues for carrying out a sustainability appraisal also need to be fully assessed. The Council considers that there should be some flexibility by local councils in relation to developing local plans and strategies to reflect local circumstances. Within Clause 8, the Council would highlight the fact that within UK law, waste sites have to be identified as part of the plan strategy and that the waste plans sit alongside this master-plan /"plan strategy" and would therefore call for the same in our jurisdiction. We would stress the importance of Waste Management and would seek clarity as to where the Councils Waste Plans sit within the proposed developments from the department. In the absence of specific reference to Waste Plans within the Bill, we would request that further guidance is produced and that any future Waste Plans can be aligned with changes in waste planning and can also incorporate the principles of Sustainable Development. This lack of clarity within the Planning law could potentially incur infraction proceedings if it leads to ambiguity about land use.
Clause 10: Independent examination	
This clause requires the district council to submit its plan strategy and local policies plan to the Department for independent examination and makes provision for the Department to cause an independent examination to be carried out by the PAC or a person appointed by the Department. The purpose of the examination will be to determine whether the plan strategy or local policies plan is sound and whether it satisfies the requirements relating to its preparation. Any person who makes representations seeking a change to the plan strategy or local policies plan has a right, if they so request, to appear in person at the examination. After completion of the independent examination, the person appointed to carry out the examination must make recommendations on the plan strategy or local policies plan and give reasons for those recommendations.	The Council would have concerns in relation to the proposed soundness test of the inquiry evidence. Whilst the evidence may be provided by a number of government agencies that lie outside of local government control the Council will be required to assess and defend the robustness of this evidence. The Council has concerns in relation to the level of scrutiny proposed by the Department in the development plan process with the potential for this to contribute to delays. The Council considers that it is more appropriate for the local authority responsible for the plan development and the programme management to appoint and work with the examiner/ commissioner. In relation to sub section 10 (5) (b), the Council feels that the provisions as set out lacks clarity and should be removed as it affords the person undertaking the independent examination a range of discretion in the context of independent examination which is excessive. In order to safeguard the objectivity and impartiality of the planning process, the Department should only appoint a person other than the PAC to conduct a hearing in exceptional circumstances when there are unacceptable delays caused by the increasing workload of the PAC. The wording of the statute would need to be amended to incorporate this exceptional clause.
Clause 11: Withdrawal of development plan documents	
This clause enables a district council to withdraw its plan strategy or local policies plan at anytime before it submits it to the Department for independent examination. However, if either of these documents has been submitted for independent examination, it can only be withdrawn by direction of the Department.	The Council considers that it is more appropriate for the local authority responsible for the plan development and the programme management to be responsible for the withdrawal of development plan documents at all stages.
Clause 12: Adoption	
This clause requires the Department to consider the recommendations	The Council would request further exploration on the process for

of the independent examination and provides a power of direction for the Department to undertake one of three options at this stage. It can direct the district council to adopt the development plan document as originally prepared; adopt the document with such modifications as may be specified in the direction or direct the district council to withdraw the development plan document. The district council must comply with the direction within such time as may be prescribed and adopt the plan strategy or local policies plan by resolution of the council as directed.	considering the inquiry advisory report. The Council considers the proposed process whereby the Department would have the option for issuing a binding report as inappropriate and suggests that the final step in advance of adoption should either be independent or carried out by Councils in consultation with the regional planning body. The Council would be concerned that there appears to be an absence of a consultation or dialogue between the department and the Council prior to the adoption of the development plan.
Clause 13: Review of local development plan	
This clause requires the district council to carry out a review of its development plan at such times as the Department may prescribe and to report to the Department on the findings of the review.	The Council recognises the need to regularly review and monitor local development plans and considers that local councils should have responsibility for triggering the review process.
Clause 14: Revision of plan strategy or local policies plan	
This clause empowers a district council to revise a plan strategy or local policies plan at any time (after adoption). If a review under clause 13 indicates that they should do so, or they are directed to do so by the Department, then they must carry out a revision. Revisions to a plan strategy or local policies plan must comply with the same requirements as those which apply to the preparation of a plan strategy or local policies plan.	The Council recognises the need to regularly review and monitor local development plans to ensure up to date coverage. However the Department must recognise and commit to the significant resources input this will require both by Councils and those wider agencies involved in the process
Clause 15: Intervention by Department	
This clause allows the Department, if it thinks that a plan strategy or local policies plan is unsatisfactory, to direct a district council to modify the plan strategy or local policies plan at any time before it is adopted. The district council must comply with the direction.	The Council has general concerns on the level of potential scrutiny or intervention proposed by the Department. The emphasis and focus should be on a supportive role and approach to engagement with councils responsible for plan development and a more positive stance should be outlined on how the Department can assist local councils rather than emphasis on powers to intervene.
Clause 16: Department's default powers	
This clause contains default powers for the Department to prepare or revise a district council's plan strategy or local policies plan if it thinks the district council is failing to properly carry out these functions itself. The district council must reimburse the Department for any expenditure it incurs in exercising these powers.	The Council has general concerns on the level of intervention proposed by the Department. Emphasis should be on a support and assistance on the development plan process.
Clause 17: Joint plans	
This clause enables two or more district councils to jointly prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan. It also sets out the arrangements which are to apply in such a case. If any district council withdraws from an agreement to prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan, it will be possible for the remaining district council(s) to continue with the preparation of the plan strategy or local policies plan if it satisfies the conditions required for it to be treated as a "corresponding document".	The Council considers that the decision on the joint plan strategy process should be made by the relevant local authorities.
Clause 18: Power of Department to direct councils to prepare joint plans	
This clause enables the Department to direct two or more district councils to prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan. In the instance of the Department issuing such a direction no district council may withdraw from the joint working and the preparation of (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan must continue to its natural conclusion.	The Council considers that the decision on the joint plan strategy process should be made by the relevant local authorities. The power to give direction without some means of independent testing whether such a direction is reasonable would seem in appropriate.
Clause 19: Exclusion of certain representations	
This clause allows the district council, PAC or person appointed by the Department to disregard representations in relation to a plan strategy or local policies plan if the representations are made in respect of anything that is done or proposed under certain orders or schemes made under the New Towns Act (Northern Ireland) 1965; the Housing (Northern Ireland) Order 1981; Part 7 of the Planning (Northern Ireland) Order 1991; the Roads (Northern Ireland) Order 1993; or a	Given the strategic importance of Waste Management we cannot deliver the requirements of the EC Landfill Directive and Waste Framework Directive without adequate waste infrastructure (including provision for storage, collection, reprocessing and treatment of waste). We would therefore ask that, subject to the Waste plan for a specific area, specific waste facilities, such as household recycling centres and civic amenity sites, are excluded under subsequent regulation.

simplified planning zone scheme or an enterprise zone scheme under this Bill. These Orders and this Bill set out specific procedures for considering the representations and objections concerned.	The Council would also request that the Bill allows for the exclusion of amenities such as automatic public conveniences. Currently these are permitted if a street works licence is obtained from the DRD. If these are not excluded will this continue to be the case?
Clause 20: Guidance	
This clause requires that any body involved in carrying out any function under this part must have regard to any relevant guidance issue by the Department, Department for Regional Development or Office of First Minister and Deputy First Minister.	The proposals for reform appear to leave Regional planning split across the two departments (i.e. DRD and DOE) with the majority of local planning returning to local councils. The Council would suggest that efforts should be taken to rationalise and streamline the whole planning system within Northern Ireland with the emphasis on the regional function supporting the delivery of the proposed local planning system by Councils
Clause 21: Annual monitoring report	
This clause requires district councils to report annually to the Department on whether the policies in the plan strategy or local policies plan are being achieved. The clause also provides powers for the Department to make regulations prescribing what information an annual report must contain, the period it must cover, when it must be made and the form it must take.	The Council would support monitoring and review of the development plan process however adequate resources that reflect the proposed additional responsibilities, processes and requirements are needed.
Clause 22: Regulations	
This clause gives the Department the power to make regulations in connection with the exercise by any person of local development plan functions.	The Council seeks clarification in the role of local authorities when drawing up regulations for the development plan function. As the role of local development plan is proposed to be transferred to local councils they should be closely involved in the regulation process.

Part 3: Planning Control

Clause 23: Meaning of "development"	
This clause carries forward the broad definition of the meaning of development and clarifies what is deemed to be included under the term, "building operations". It also lists the operations or uses of land which, for the purposes of the Bill, do not involve development of land. An amendment is included to exclude (for certain buildings specified by direction) structural alteration consisting of partial demolition from the definition of development.	The Council supports this clause
Clause 24: Development requiring planning permission	
This clause maintains the requirement for planning permission to be sought for developing land. Permission is not required to return to a former land use after planning permission which is time bound expires. Development orders can grant planning permission without applications being required. Enforcement notices carry implicit permission for the use of the land for any purpose it could have been legally used for if the development which is being enforced against had not been carried out.	The Council supports this clause
Clause 25: Hierarchy of Developments	
A new hierarchy of developments is defined and the Department can make regulations as to the classes of development which fall into either the major developments or local developments categories. The Department can require a specific application which would normally be a local development to be dealt with as if it is a major development.	The Council considers that the thresholds to determine the scale of potential major applications will vary across the different local authority areas and thresholds should be set to reflect this. The threshold proposed for major developments do not reflect the potential for similar developments to have differing impacts that depend on the locality within the region rather than the scale of the individual proposal. The Council suggest that it may be more appropriate to consider whether or not such proposals would be in accordance with the local development plan. The introduction of any threshold system should be related to the potential impact and the justification for central government intervention linked to the consideration of broader issues or impacts beyond that of the local authority area.

Clause 26: Development's jurisdiction in relation to developments of regional significance	
This clause allows the Department to make regulations as to which applications falling within the major developments category should be submitted directly to it. Developers must approach the Department if the proposed development falls above prescribed thresholds and the Department will decide if the application is regionally significant or involves a substantial departure from the development plan, and is to be dealt with by it instead of the district council. An exception is made for urgent development by the Crown where application can be made directly to the Department. Applications under this clause follow the process similar to that previously used for Article 31 applications under the 1991 Planning Order, with the option for a public inquiry to be held by the PAC or a person appointed by the Department. If an application raises national security or security of premises issues, an inquiry route must be followed. The decision of the Department is final for these applications.	The proposed upper threshold for major development could be exceeded by a significant number of proposed developments in Belfast and potentially undermine the ability of the new Council to manage the process of development within the city. The Council would suggest that the hierarchy should be simplified and the call-in or article 31 process(es) clarified to reflect the very limited circumstances where it is proposed to reserve decision making to the Minister. The Council have concerns in relation to arrangements for calling in projects centrally which has the potential to undermine the local authority and local democracy. The work of the retained regional planning functions should be focussed on the provision of a strategic framework for the development of the region and the consideration of the very limited number of regionally significant projects or infrastructure. Decisions relating to regionally significant applications must also have regard for the local development plan and indeed the Council's view on the proposals as inevitable all planning decisions are local in their nature. In order to ensure the impartiality and independence of any hearing it is recommended that the PAC be appointed to this role. A ministerial appointment should be made only in the most exceptional of circumstances.
Clause 27: Pre-application community consultation	
Obligations are placed on the developer to consult the community in advance of submitting an application if the development falls within the major category. This includes those major developments which the Department will determine because they are of regional significance. The minimum period of consultation is 12 weeks, and regulations will prescribe the minimum requirements for the developer. Additional requirements may be placed on the consultation arrangements for a particular development if the district council or Department considers it appropriate.	The Council would agree that pre application consultation with communities should be a statutory requirement in respect of regionally significant applications to ensure the process is open and transparent and allow communities the opportunity to influence the proposal at an early stage. The applicant should be responsible for the community consultation. Further clarification of guidance in relation to the relationship with the formal statutory process, including details on the statutory consultees, is required. Clarification should be provided in relation to the requirements and what is considered to constitute both the process and the definition of communities for the purposes of an application's potentially broad areas of impact. Liaison with Councils in relation to the proposed arrangement may facilitate the development of effective consultation processes.
Clause 28: Pre-application community consultation report	
After the community consultation in clause 27, a report must be produced and this is to be submitted with the application. Regulations can be made as to what this should contain.	The Council would support the production of a report. Information on the outcome of community involvement and the steps taken to address community concerns should be provided.
Clause 29: Call in of applications, etc., to Department	
This allows the Department to direct that certain applications (including those where the Secretary of State or the Department of Justice have certified that an application raises national security or security of premises issues) be referred to it instead of being dealt with by the district council. It covers applications which would not be over the thresholds specified in clause 26. The process for determination is then the same as for the regionally significant developments of that clause, with the option for a public inquiry. An inquiry route must be followed if an application raises national security or security of premises issues. The decision of the Department is final for these applications.	The Council would request procedures to ensure that local council's views on the application are considered and that councils are involved in the formulation of conditions in the event of an approval. The provisions set out under this clause should detail the circumstances in which the department is entitled to invoke this power – as it stands this provision may be viewed as being excessive.
Clause 30: Pre-determination hearings	
The Department can require the district council through subordinate	The Council agrees with the legislation to allow pre-determination

legislation to provide the opportunity for the applicant to have a hearing before the district council, as part of the application process, for certain types of applications. The procedures for the hearings will be decided by the district council concerned, and it will decide on the parties which will have a right to attend the hearing.	hearings at the discretion of the local authority.
Clause 31: Local developments: schemes of delegation	
This clause requires each district council to prepare a scheme of officer delegation, stating the application types which they will allow the decision to be taken by one planning officer rather than the council. The scheme must be kept under regular review. The decision will have the same effect as one taken by the council. In individual cases the district council will be able to decide that an application which would normally fall within this scheme should be determined by the council.	The Council would support a scheme of officer delegation with the option for an application to be removed from this scheme at the request of the Council committee. Section 31 (a) The Council would suggest that consideration be given to replacing the word 'must' with 'may'....and delete the sub-sections (a) (i) and (ii) Accordingly, consideration should be given to the removal of sub-section 3 under this clause.
Clause 32: Development orders	
The Department must make a development order stating the types of development which are granted planning permission and those for which permission must be applied for to the district council or Department. The grant of permission can include permission with conditions if necessary. In the case of permitted development, the district council and Department will have the power to direct in relation to a particular case or area of land that the permission granted by the order does not apply, and an application must be made.	The Council would support the drawing up of development orders jointly with local authorities.
Clause 33: Simplified planning zones	
This clause lays the basis for simplified planning zones by defining them and by prescribing their content and effect. The effect of a simplified planning zone is to grant planning permission for development specified in the scheme or for development of any specified class.	The Council would request further clarification and discussion in relation to the introduction of simplified planning zones. In principle the planning reform proposal should result in a more effective and speedier planning process which would eliminate the need for simplified planning zones.
Clause 34: Making and alteration of simplified planning zone schemes	
This clause enables a district council to make or alter a simplified planning zone scheme at any time in any part of its area. The exception is where a scheme has been approved by the Department rather than adopted by the district council. In such cases, the consent of the Department is required before a scheme may be altered by the relevant district council. In making or altering a simplified planning zone scheme district councils must take account of the regional development strategy, any guidance issued by the Department and any other matters either prescribed in regulations or contained in a direction given by the Department.	The Council would request further clarification and discussion in relation to the introduction of simplified planning zones. The Council would raise concerns of the proposal for blanket development zones. Much of the development within Belfast will be brownfield development therefore there will need to be express provision to provide the necessary soil investigation reports prior to approval. Or alternatively the zonal permission will be granted subject to such analysis being made available to the council and, where containments do exist, mitigating measures can be enforced. Particular problems may arise where unsuitable development takes place on land where particular measures are required prior to the land being developed. Consequently, the granting of Simplified Planning Zones needs careful site-wide consideration prior to their establishment. The conditional granting of planning permission in such zones would only be an effective control mechanism if conditions are appropriately adhered to and enforced. We therefore call for subsequent regulation that requires the developer to ensure that all the relevant statutory agencies are consulted in advance of the determination.
Clause 35: Simplified planning zone schemes: conditions and limitations on planning permission	
This clause describes the types of conditions and limitations which may be placed on planning permission specified in a simplified planning zone scheme. It also covers the effects of a simplified planning zone on development other than that for which permission has been granted under the scheme. Clause 36: Duration of simplified planning zone scheme	The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.

This clause provides that a simplified planning zone scheme shall last for a period of ten years from the date when it was adopted by the district council or approved by the Department. Upon expiry of the scheme, the planning permission granted by the scheme shall no longer have effect except where development authorised by it has already been commenced.	The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.
Clause 37: Alteration of simplified planning zone scheme	
This clause sets out the effect of alterations to an existing simplified planning zone scheme. Such alterations range from the inclusion of additional land in the scheme to the exclusion of land previously included in the scheme and the withdrawal of planning permission.	The Council would request further clarification and discussion in relation to the introduction of simplified planning zones.
Clause 38: Exclusion of certain descriptions of land or development	
This clause provides that a number of specified types of land or development may not be included in a simplified planning zone. These include land designated as a National Park, land designated as an area of outstanding natural beauty, land declared to be an area of special scientific interest and land declared to be a national nature reserve. The Department also has the power to make an order preventing a simplified planning zone from granting planning permission in relation to certain specified areas of land or development of a specified description.	The Council would request further clarification and discussion in relation to the introduction of simplified planning zones. The Council would recommend under *Section 38 (1)b* that included within the lands subject to exclusion from simplified planning zones is: ○ Air Quality Management Areas declared under Article 12 of the Environment (Northern Ireland) Order 2002 (NI 7) ○ Land identified as Contaminated Land under Articles 50 and 51 of the Waste and Contaminated Land (Northern Ireland) Order 1997 The proposed inclusion would help safeguard human health.
Clause 39: Grant of planning permission in enterprise zones	
This clause declares the effect of an enterprise zone designation in planning terms. It also describes the effect where modifications to an existing scheme are made. Planning permission granted under an enterprise zone scheme may be withdrawn in relation to certain developments where a direction to that effect is made by the Department.	The Council would request further clarification and discussion in relation to the introduction of enterprise zones.
Clause 40: Form and content of applications	
The format of applications for planning permission is governed by this clause. A development order may specify information and documents which must accompany an application and the form and content of it. The provisions of the order can cover applications for any consent, agreement or approval required by this Bill. This clause requires certain applications for planning permission and consent to be accompanied by a statement about the design principles and concepts that have been applied to the development and a statement about how issues relating to access to the development have been dealt with. Powers are also provided to enable the applications to which this is intended to apply to be prescribed in subordinate legislation.	The Council would support this clause and the inclusion of a statement about how the issues relating to amenity, nuisance and human health have been dealt with as these are of equal if not greater significance than the issues highlighted in the proposed Article 40 (3) and a greater emphasis should be placed on whether a site is fit for its intended end use.
Clause 41: Notice, etc., of applications for planning permission	
The publicity requirements for applications previously contained in the 1991 Planning Order have been amended. Instead of replicating the previous provisions, this clause reflects the situation in England, Wales and Scotland, where the power to specify the publicity requirements is contained in subordinate legislation. This will allow the requirements to be regularly reviewed to keep up to date with changing media.	The Council would support this clause
Clause 42: Notification of applications to certain persons	
This clause carries forward the requirement for one of four certificates to be submitted with each application to satisfy the district council or Department that the owner has consented to or is aware of the	The Council would support this clause

application for development of their land. It covers land held in tenancy, and makes it an offence to issue a false certificate. The form of these certificates can be prescribed by development order.	
Clause 43: Notice requiring planning application to be made	
The district council may serve a notice on an owner or occupier requiring them to apply for planning permission for development which has been carried out without this having been granted in advance. It is an offence not to comply with this in the time specified within the notice. Provisions are included for a change of ownership and withdrawal of notices.	The Council would support this clause
Clause 44: Appeal against notice under section 43	
The notices served under clause 43 can be appealed, and the three grounds for this are set out in this clause. Appeals are made to the PAC and the appellant has the opportunity to appear before and be heard by the Commission, as does the district council.	The Council would support this clause
Clause 45: Determination of planning applications	
The procedure for determining a planning application requires the district council or the Department to have regard to the local development plan and any other material considerations. Representations made must be taken into account when determining the application.	The Council would support this clause
Clauses 46 to 49: Power to decline to determine subsequent or overlapping applications	
These clauses clarify and expand the cases where a district council or the Department may decline to determine subsequent, repeat or overlapping applications. Existing powers within the 1991 order are expanded to allow district councils to decline to determine a repeat application where the PAC has refused a similar deemed planning application within the last 2 years. District councils may also decline to	The Council would support this clause

determine overlapping applications made on the same day as a similar application and where similar applications are under consideration by the PAC.	
Clause 50: Duty to decline to determine application where section 27 not complied with	
If the pre-application community consultation requirements in clause 27 have not been complied with, the district council or Department must decline to determine the application. The district council or Department can request additional information in order to decide whether to decline the application.	The Council would support this clause however the community consultation requirements should be clear to remove any uncertainty that would be subject to challenge and could introduce delays into the process. Clear guidance on what is defined as community and clear guidance on the consultation process is required.
Clause 51: Assessment of environmental effects	
Regulations may be made by the Department requiring the environment effects of development to be a consideration when determining a planning application. Can I suggest amending the last sentence to read 'This allows the EU requirements to be recognised in Northern Ireland planning legislation'	The Council would welcome the introduction of regulations requiring that all the Environmental effects of a development become a material consideration when determining a planning application. At present, planning guidance note PPG24 cites noise as a material consideration. We welcome that this will now be formally recognised in statute. The City council has long argued that Planning Policy Guidance should have recognised Air Quality, Contaminated land, Odour and lighting as material considerations. We would ask that the proposed regulations include all of the aforementioned environmental effects. We agree that the Regulations should reflect the requirements of all relevant current and future EU regulations and standards. Further we would call for that these requirements do not duplicate or compromise other construction standards that are being enforced by the council. To this we would therefore that construction standards be dealt with under the building regulations. This is line with government thinking in England and Wales.
Clause 52: Conditional grant of planning permission	
Planning permission can be granted by the district council or	The Council would support this clause and adequate resources should

Department with conditions. These can relate to regulation of the land use, or restoration of the land at the end of a specified period of time.	be available to monitor and ensure the conditions are met.
Clause 53: Power to impose aftercare conditions on grant of mineral planning permission	
The power to impose aftercare conditions is made available to district councils and the Department to ensure mineral sites are restored to the required standard once development has finished	The Council would support this clause
Clause 54: Permission to develop land without compliance with conditions previously attached	
A person who has been granted planning permission with conditions can apply under this clause to have them removed, provided the time has not expired on the planning permission. The form and content of applications will be set out in the development order. The district council or Department can amend or replace the conditions or remove them completely if it considers appropriate.	Clear guidance should be given for the reason for the removal of planning condition such as a change in planning policy or other material consideration.
Clause 55: Planning permission for development already carried out	
This clause allows the district council or Department to grant planning permission retrospectively on application. This can cover development which has no planning permission or which did not comply with conditions attached to a permission, including a time condition.	The Council would request consideration be given to the introduction of a premium fee for retrospective planning applications to act as a deterrent that focuses on the obligation to seek approval for proposals of clarification prior to the commencement of development. The fee should be proportionate to the level of the development and the level of uncertainty surrounding the form of development and associated provision for permitted development. The Council would also request that consideration be given within the Bill to the necessity to indemnify councils in the matters relating to retrospective approval or alternatively give robust investigatory powers and appropriate resources to determine such applications
Clause 56: Directions etc. as to method of dealing with applications	
The Department may make a development order to specify how applications are to be dealt with. It can direct that the district council is restricted in its power to grant permission for some developments, and	Further clarification is required on this clause. Again it is noted that the power of the department to veto locally taken

require it to consider conditions suggested by the Department before granting permission on an application. A development order may require district councils and the Department to consult specified authorities or persons before determining applications. A development order can also specify who applications need to be sent to under the Bill, and who should in turn be sent copies	decisions seems excessive.
Clause 57: Effect of planning permission	
This provision states that once planning permission is granted it has effect for the benefit of the land and of anyone who has an interest in the land at the time. If the permission includes the erection of a building, it can specify the use to which this building should be put. If the permission does not specify a use, then it is assumed to be the use associated with the purpose for which the building was designed.	The Council would support the clause
Clause 58: Appeals	
If an application made to a district council is refused or granted subject to conditions the applicant may appeal to the PAC. The previous time limit for lodging an appeal is reduced from 6 months to 4 or such other period as may be prescribed by development order. If the applicant or district council wish, they may appear before and be heard by the Commission.	The Council would support the clause
Clause 59: Appeal against failure to take planning decision	
An applicant may ask the PAC to determine their planning application if a district council has not done so within a specified or agreed time (a "non determination appeal").	The Council would support the clause
Clause 60: Duration of planning permission	
Every planning permission granted or deemed to be granted, will continue to be subject to the condition that the development must begin within 5 years of the date on which permission is granted (or such other period as considered appropriate by the Department or district council which granted the permission).	The Council would support the clause in the present climate but the length of duration should be kept under review. The Council would suggest that measures are introduced to address or counteract any potential increase in technical starts.

Clause 61: Duration of outline planning permission	
Outline planning permission establishes for the applicant whether a proposal is acceptable in principle before embarking on the preparation of detailed plans ("reserved matters"). Unless provided otherwise reserved matters must be submitted for approval within 3 years of the grant of outline planning permission and development must be begun within 5 years of the grant of outline permission or 2 years from the final approval of reserved matters.	The Council would support the clause
Clause 62: Provisions supplementary to sections 60 and 61	
This clause includes ancillary provisions required for the working of clauses 60 and 61 above. These include defining planning authority as a district council, the Department, the PAC (when planning permission is granted on foot of an enforcement appeal) and the Department of Enterprise Trade and Investment when planning permission is deemed to be granted under Schedule 8 of the Electricity (NI) Order 1992 (NI 1). Those operations which establish the time of commencement of development are also defined.	The Council would support the clause
Clause 63: Termination of planning permission by reference to time limit	
This clause allows a district council to issue a "completion notice" to require a development which has a time bound planning permission, and which has been begun, to be completed. The district council must give at least one year for the completion. Notices can be withdrawn by the district council if appropriate.	The Council would support the clause
Clause 64: Effect of completion notice	
Completion notices issued by the district council under clause 63 must be confirmed by the Department before they take effect. The person on whom it is served can request a hearing before the PAC, as can the district council. Once it takes effect the planning permission expires at the end of the period allowed for the development's completion.	The Council considers the agreement by the Department on completion notices as unnecessary.
Clause 65: Power of Department to serve completion notices	
This allows the Department to issue completion notices which have the same effect as those issued by the district council. It must consult the district council before doing so.	The Council considers the duplication of the authority for issuing completion notices by the Department as unnecessary. The Council suggests the function lies solely with the district council to avoid confusion.
Clause 66: Power to make non-material changes to planning permission	
District councils may make a change to a planning permission already issued on application. The change must not have any material effect on the permission, and it includes the power to amend or remove conditions or impose new ones.	The Council would support the clause
Clause 67: Revocation or modification of planning permission by council	
This clause allows a district council to revoke or modify any planning permission, provided the operations have not been completed or change of use has not yet occurred.	The Council would welcome the powers granted to it by virtue of this provision permitting a level of flexibility to revoke or modify permissions to ensure a consistency with the local development plan and to give a discretion predicated upon other material considerations.
Clause 68: Aftercare conditions imposed on revocation or modification of mineral planning permission	
This clause permits a district council to impose aftercare conditions where a mineral planning permission has been modified or revoked via an order served under clause 67.	The Council would support this clause
Clause 69: Procedure for section 67 orders: opposed cases	
This clause requires that an opposed modification or revocation order served under clause 67 by a district council must be confirmed by the Department before it can take effect. The person on whom it is served can request a hearing before the PAC, as can the district council. The Department may confirm an order with or without modification.	The Council considers the approval by Department on section 67 orders as unnecessary scrutiny
Clause 70: Procedure for section 67 orders: unopposed cases	
This clause allows for an expedited procedure for clause 67 cases in	The Council would support the clause

that the confirmation of the Department is not required.	
Clause 71: Revocation or modification of planning permission by the Department	
This gives the power for the Department to revoke or modify planning permission itself, after consulting the district council. The district council has the opportunity to request a hearing prior to its issue. The notice has the same effect as if it were issued by the district council, and applies to mineral permissions.	The Council would not support the clause and would seek its removal or at minimum seek further clarification on the circumstances in which the department may revoke or modify a planning permission given by the Council.
Clause 72: Orders requiring discontinuance of use of alteration or removal of buildings or works	
The district council can issue an order requiring a particular land use to stop or require buildings to be removed or altered. The NIHE has a duty to house anyone whose place of residence is displaced if there is no reasonable alternative.	The Council would support the clause
Clause 73: Confirmation by Department of section 72 orders	
The Department must confirm orders issued by the district council in clause 72 before they take effect. They may modify it before they confirm it. Notification requirements for the district council are contained in this clause, which take place at the same time as the notice is submitted to the Department for approval. The person on whom the notice is served has the opportunity to appear before and be heard by the PAC.	The Council considers the approval by Department on section 72 orders as unnecessary scrutiny and would seek its removal.
Clause 74: Power of Department to make section 72 order	
This allows the Department to issue an order under clause 72 instead of the district council, and it has the same effect. It must first consult the district council.	The Council considers the duplication of the authority for issuing section 72 orders by the Department as unnecessary. The Council suggests the function lies solely with the district council to avoid confusion.
Clause 75: Planning agreements	
This clause enables any person who has an estate in land to enter into a planning agreement with either the district council or the Department (whichever is the relevant authority). A planning agreement may facilitate or restrict the development or use of the land in any specified way, require operations or activities to be carried out, or require the land to be used in any specified way. An agreement may also require a sum or sums to be paid to the relevant authority or to a Northern Ireland department on a specified date or dates or periodically. The relevant authority has the power to enforce a planning agreement by entering the land and carrying out the operations itself. Any expenses incurred through doing so are recoverable from the person or persons against whom the agreement is enforceable.	The Council considers that the Article 40 approach has been underused in Northern Ireland and it also presented an element of uncertainty to developers. The Council would support a revision to the method of obtaining developer contributions which would be linked to policies and infrastructure needs identified as part of the local development plan process. The emphasis should focus on local impacts and the provision of appropriate local infrastructure linked to the scale / impact of the proposal with the contributions managed by the district councils. Any contribution to broader infrastructure should be related to the provisions with the new Development Plan and provided in consultation with the appropriate statutory agency. Furthermore under subsection (4) of this article we would ask that the council has wider enforcement powers to ensure that all beneficiaries of such agreement may be made to comply with the Planning Agreement.
Clause 76: Modification and discharge of planning agreements	
This clause provides that a planning agreement may not be modified or discharged except by agreement between the relevant authority and the person or persons against whom the agreement is enforceable. It sets out the conditions under which a planning agreement may be modified or discharged and enables regulations to be made with respect to applications under subsection (4) and determinations under subsection (7).	The Council would support this clause
Clause 77: Appeals	
This clause enables a person who applies for the modification or discharge of a planning agreement to appeal to the planning appeals commission where the relevant authority fails to give notice of its determination to the applicant within such period as may be prescribed, or determines that a planning agreement shall continue to have effect without modifications.	The Council would support this clause

Clause 78: Land belonging to councils and development by councils	
This clause introduces new powers setting out the procedure for dealing with district councils' own applications for planning permission. The new powers are introduced to ensure district councils do not face a conflict of interest in dealing with their own proposals for development. The principle remains that district councils will have to make planning applications in the same way as other applicants for planning permission. Provisions are introduced for district councils to grant planning permission for their own development or for development carried out jointly with another person and for development to be carried out on land owned by district councils. Specifically, the new powers enable the Department to make regulations modifying the application of Parts 3 (Planning Control), 4 (Additional Planning Control - apart from Chapters 1 and 2 of that Part) and 5 (Enforcement) of the Planning Bill in relation to land of interested district councils; and the development of any land by interested district councils jointly with any other persons. The regulations will deal with governance arrangements and will ensure that conflicts of interest are avoided	The Council would support this clause, however, would seek consultation on the drafting of the relevant detailed subordinate legislation which emerges from this Clause.

Part 4: Additional Planning Control

Clause 79: Lists of buildings of special architectural or historic interest	
This clause will ensure that the Department will continue to compile lists for buildings of special historic or architectural merit. The Department will continue to consult with the Historic Buildings Council and the appropriate district council before it compiles or amends any list.	The Council would request further clarification on the councils role
Clause 80: Temporary listing: building preservation notices	
Under this clause the district council can issue a building preservation notice served on the owner or occupier, to protect a building in its area which is not a listed building and which is in danger of demolition or alteration which would affect its character. The notice remains in force for 6 months or until the Department either lists the building under clause 79 or notifies the district council that it does not intend to do so.	The Council welcomes additional measures to protect the built environment but additional resource capacity and technical expertise will be needed to carry out the function.
Clause 81: Temporary listing in urgent cases	
This clause enables the district council, where it appears urgent that a building preservation notice should come into force, to fix the notice conspicuously to an object on the building instead of serving the notice on the owner or occupier.	The Council welcomes additional measures to protect the built environment but further consideration must be given to the additional resource capacity needed to carry out the function.
Clause 82: Lapse of building preservation notices	
This clause applies where a building preservation notice ceases to be in force after the 6 month expiry period has lapsed or by departmental notification. A person who commits an offence under clause 84 "Control of works for demolition, alteration or extension of listed buildings" or clause 146 "Offence where enforcement notice not complied with" while the notice is current can still be prosecuted and punished even after the notice has ceased to be in force under clause 82. However, any applications for listed building consent – or any consent granted - while the notice was in force shall lapse. Likewise,	The Council would support this clause

any listed building enforcement notice served while the notice was in force shall cease to have effect.	
Clause 83: Issue of certificate that building is not intended to be listed	
This clause describes the circumstances in which the Department can issue a certificate that it does not intend to list a building. This also precludes the Department from listing that building for a period of 5 years or for the district council to issue a building preservation notice during that period.	The Council would request further clarification of the council's involvement in the listing process.
Clause 84: Control of works for demolition, alteration or extension of listed buildings	
This clause provides that carrying out unauthorised works on a listed building will be an offence, and sets out the penalties and the circumstances when works on a listed building may be defended from prosecution. It further establishes when works for demolition, alteration or extension are authorised and excludes ecclesiastical buildings from the workings of this provision.	The Council welcomes this measure to protect the built environment.
Clause 85: Applications for listed building consent	
This clause specifies that applications for listed building consent must be made in a manner and format which will be specified in regulations. The regulations shall specify that applications for consent must include statements about design principles, access to the building, publicity for the application and requirements as to consultation. Regulations must also specify requirements for the district councils to take account of responses from consultees.	The Council would request further consideration given to the additional resource capacity needed to carry out the function.
Clause 86: Notification of applications for listed building consent to certain persons	
This clause sets out the requirements to be satisfied before a district council will entertain an application for listed building consent.	
Clause 87: Call in of certain applications for listed building consent to Department	
Under this clause the Department may direct that certain applications (including those where the Secretary of State or Department of Justice have certified that an application raises national security or security of premises issues) be referred to it instead of being determined by the district council. The direction may relate to individual applications or to a class of buildings as may be specified in the direction. The clause also allows the Department to call a public local inquiry to be held by the PAC or a person appointed by the Department. An inquiry route must be followed if an application raises national security or security of premises issues.	The Council has concerns on the wide scope by the Department to call in applications. This should only be used in limited circumstances to ensure local authorities retain the function to influence the development of their area.
Clause 88: Duty to notify Department of applications for listed building consent	
This clause places a duty on the district council, where it intends to grant an application for listed building consent, to first notify the Department providing details of the works for which consent is required. This allows the Department to decide if it wishes to call the application in.	The Council has concerns on the wide scope by the Department to call in applications. The scrutiny by the Department on the local councils decision process on listed buildings is unnecessary and should be dealt with through the consultation process.
Clause 89: Directions concerning notification of applications, etc	
This clause enables the Department to direct, in applications for listed buildings consent which it may specify, that clause 88 does not apply. Thus, while such a direction is in force, district councils may determine applications of the type specified in the direction in any way they think fit. The Department may also direct district councils to notify the Department and other specified persons of any listed building consent applications and district council decisions on those applications.	The Council has concerns on the wide scope by the Department to call in applications. The scrutiny by the Department on the local council's decision process on listed buildings is unnecessary and should be dealt with through the consultation process.
Clause 90: Decision on application for listed building consent	
This power ensures that an application for listed building consent may be refused, granted without conditions or granted subject to conditions. It also establishes the factors a district council or the Department must consider when deciding to grant listed building consent or any conditions that it wishes to attach to the consent.	The Council considers that the development control decisions on listed buildings should be the responsibility of local councils in consultation with statutory consultees.
Clauses 91 and 92: Power to decline to determine subsequent or overlapping application for listed building consent	
These clauses clarify and expand the cases where applications for	The Council supports this clause

subsequent (repeat) or overlapping listed building applications may be declined.	
Clause 93: Duration of listed building consent	
This requires that listed building consents must be granted subject to a condition that the works must begin within 5 years of the grant of consent or any other such time as the district council or Department may direct.	The Council would request further consideration on the duration of listed building consent.
Clause 94: Consent to execute works without compliance with conditions previously attached	
This clause relates to applications for listed building consent for the execution of works to a building without complying with conditions subject to which a previous consent was granted. An applicant can apply to a district council - or the Department if it granted the original consent to have the conditions (other than those relating to time limits) to which a previous listed building consent was subject changed or set aside if it is considered that they are no longer appropriate.	The Council would support this clause if the conditions applied are no longer appropriate.
Clause 95: Appeal against decision	
Under this clause an applicant can appeal to the PAC where their application to a district council for listed building consent or approval is refused or where they object to any conditions that have been imposed. As with appeals under clause 58 for planning applications, the appeal must be lodged with the Commission within 4 months or such other period as may be prescribed by development order. If the applicant or district council wish, they may appear before and be heard by the Commission.	The Council would support this clause
Clause 96: Appeal against failure to take decision	
An applicant may appeal to the PAC if a district council has failed to determine an application for listed building consent within a specified period or extended period as agreed in writing between the applicant and the district council.	The Council would support this clause

Clause 97: Revocation or modification of listed building consent by council	
A district council may revoke or modify listed building consent in a manner similar to clause 67 that is used for the revocation and modification of planning permission. Such action can only be taken before authorised works are completed.	The Council would support this clause
Clause 98: Procedure for section 97 orders: opposed cases	
Under this clause section 97 orders made by a district council but which have been opposed by the parties specified in the clause, shall not take effect unless confirmed by the Department (following a hearing by the PAC if requested by an opposing party).	The Council considers this to be unnecessary scrutiny by the Department.
Clause 99: Procedure for section 97 orders: unopposed cases	
This clause applies where a district council has made an order under section 97 revoking or modifying a listed building consent and the owner or occupier of the land and all persons who the district council think will be affected by the order have notified the district council in writing that they have no objections. The Department's confirmation is not required in such cases.	The Council would support this clause
Clause 100: Revocation or modification of listed building consent by the Department	
This clause enables the Department to make an order revoking or modifying the consent to such an extent as it considers expedient but the Department must consult with the relevant district council before doing so.	The Council considers this to be unnecessary scrutiny by the Department and should be the responsibility of the Council to avoid duplication and confusion.
Clause 101: Applications to determine whether listed building consent required	
Under this clause if a person proposing to execute any works to a listed building wishes to have it determined as to whether the works would involve the alteration or extension of the building in a manner which would affect its character as a building of special architectural or historic interest, they may apply to the district council to determine the question.	The Council would support this clause

Clause 102: Acts causing or likely to result in damage to listed buildings	
This clause establishes that anyone carrying out unauthorised works on a listed building will be guilty of an offence. It also establishes that a person who fails to prevent damage or further damage resulting from this offence is guilty of a further offence.	The Council would support this clause
Clause 103: Conservation areas	
This clause enables and sets out the procedures whereby a district council can designate areas within its remit which it decides are of special architectural or historic interest with the objective to preserve or enhance its character or appearance. The clause also enables the Department to designate a conservation area but it must consult with the relevant district council before doing so. The district council or the Department must pay special regard to enhancing the character or appearance of these areas where the opportunity to do so arises. This amendment is the Department's response to the House of Lords " South Lakeland" ruling and allows its policy for the enhancement of conservation areas to be maintained.	The Council would welcome responsibility to designate conservation areas but request further consideration be given to the additional resource capacity needed to carry out the function. The Council considers the duplication of the authority by the Department as unnecessary and designation should be carried out by Councils in consultation with the key statutory bodies.
Clause 104: Control of demolition in conservation areas	
This clause prevents the demolition of unlisted buildings in conservation areas without consent. Such buildings should not be demolished without the consent of the appropriate district council or Department. The Department may specify by direction buildings to which this clause does not apply. An addition to this clause provides (following the House of Lords "Shimizu ruling") that structural alteration of buildings to which this clause applies, where the alteration consists of partial demolition, will also require consent. This effectively creates a new offence of partial demolition of an unlisted building in a conservation area without consent.	The Council would support this clause
Clause 105: Grants in relation to conservation areas	
This clause permits the Department to continue to make grants or loans to offset expenditure incurred in the promotion, preservation or enhancement of the character or appearance of any conservation area.	The Council would support this clause but would request clarification on the role of local councils in this process.
Clause 106: Application of Chapter 1, etc., to land and works of councils	
This clause introduces new powers setting out the procedures for dealing with district councils' own applications for listed building consent. The provision of the Bill which apply are listed with an enabling power taken to allow the Department by regulations, to modify and to make exceptions from certain provisions of the Bill in their applicability to district councils.	The Council would request further consideration on this clause
Clause 107: Requirement of hazardous substances consent	
This clause continues the basis of control over hazardous substances and the requirement for hazardous substances consent.	
Clause 108: Applications for hazardous substances consent	
This clause is a regulation making power making provision for the form and content of consent applications and makes it an offence to supply false information. Regulations made under this clause may also require a district council to consult the Health and Safety Executive (HSENI) before determining an application for hazardous substances consent.	
Clause 109: Determination of applications for hazardous substances consent	
This clause gives the district council the power to grant or refuse hazardous substances consents, outlines certain factors that the district council shall have regard to and gives the district council the power to attach conditions to any consent. A new amendment requires a district council to have regard to the advice given by the HSENI	

during the consultation required by clause 108. A district council may only grant consent if the conditions are consistent with HSENI advice.	
Clause 110: Grant of hazardous substances consent without compliance with conditions previously attached	
This clause confers power for a district council or the Department to review the conditions subject to which the consent had previously been granted. Thus a person making a fresh application for hazardous substances consent can apply to have the conditions attached to the original consent reviewed.	
Clause 111: Revocation or modification of hazardous substances consent	
Under this clause where it appears to a district council that there has been a material change of use of land, or planning permission has been granted for development and the carrying out of which would involve a material change of use of such land, and the development to which the permission relates has been commenced, it may revoke the consent. The district council may revoke the consent if it relates to only one substance or, if it relates to more than one substance it may revoke it or revoke so far as it relates to a specified substance. Any person on whom a notice is served, by the district council, must be afforded an opportunity of appearing before, and being heard by, the PAC.	
Clause 112: Confirmation by Department of section 111 orders	
This clause confirms that an order under section 111 will not take effect unless it is confirmed by the Department. The Department may confirm the order either without modification or subject to such modification as it thinks fit. When the district council submits a section 111 order for confirmation it must also notify the landowner, any person who appears to it to be in charge of the land or any other person who, in its opinion will be affected by the order. This notice must also specify that any person on whom the notice is served can	

appear before and be heard by the PAC. The Department must give such an opportunity to both that person and the district council.	
Clause 113: Call in of certain applications for hazardous substances consent to Department	
Under this clause the Department may direct that certain applications (including those where the Secretary of State or Department of Justice have certified that an application raises national security or security of premises issues) be referred to it instead of being determined by the district council. The direction may relate to individual applications or to a class of buildings as may be specified in the direction. The clause also allows the Department to call a public local inquiry to be held by the PAC or a person appointed by the Department. An inquiry route must be followed if an application raises national security or security of premises issues.	The circumstances in which the department may call in applications should be more particularly described.
Clause 114: Appeals	
This clause gives a right of appeal when an application for hazardous substances consent is refused or granted subject to conditions. The appeal is made to the PAC.	
Clause 115: Effect of hazardous substances consent and change of control of land	
This clause ensures that hazardous substances consent ceases to have effect if there is a change in the control of part of the land and requires that anyone taking control of the land must make a fresh application, unless an application for the continuation of the consent has previously been made to the district council. The district council is responsible for the grant of an application for the continuance of the consent and the Department will have no role in this regard. In dealing with an application the district council must have regard to any advice given by the HSENI in relation to the application.	
Clause 116: Offences	
Under this clause if there is a contravention of hazardous substances control the appropriate person will be guilty of an offence. This is the	Consideration should be given to a potential penalty of imprisonment.

case when a quantity of hazardous substance (equal to exceeding a controlled quantity) is present on or has been present on, over or under land and there is no hazardous substances consent for the presence of that substance. Alternatively, an offence is committed if the quantity exceeds the maximum permitted by the consent or there has been a failure to comply with any conditions attached to the consent. The person guilty of the offence is the person knowingly causing the substance to be present, any person who allows it to present or the person in control of the land. It shall be a defence for the accused if it can be proved that they did know that the substance was present (or was present in quantities that contravened the consent), or if they can prove that all reasonable precautions were taken or that commissioning of the offence could only be avoided by taking action amounting to a breach of a statutory duty.	
Clause 117: Emergencies	
This clause ensures that this power will be retained by the Department only. The Department may make a direction that the presence of a hazardous substance specified in the direction is necessary for the effective provision of that service or commodity if it appears that the community is likely to be deprived of an essential service or commodity.	
Clause 118: Health and safety requirements	
This provision prevents conflict between any action that may be taken under the hazardous substances provisions and any relevant statutory provision. Where such conflict arises, any consent which allows these actions shall be void. There is a requirement to consult the HSENI when a consent or hazardous substances contravention notice is believed to be void in this manner and the consent must be revoked if HSENI advises that the consent or notice has been rendered void.	
Clause 119: Applications by councils for hazardous substances consent	
This clause introduces new powers setting out the procedures for dealing with district councils' own applications for hazardous substances consent. The provisions of the Bill which apply are listed with an enabling power taken to allow the Department by regulations, to modify and to make exceptions from certain provisions of the Bill in their applicability to district councils.	
Clause 120: Planning permission to include appropriate provision for trees	
This clause places a duty on a district council and the Department to make provision for the preservation or planting of trees when granting planning permission.	The Council would welcome the clause but request further consideration be given to the additional resource capacity needed to carry out the function.
Clause 121: Tree preservation orders: councils	
This clause allows district councils to make tree preservation orders (TPO). TPOs prohibit the cutting down or damaging of protected trees and can also secure the replanting of felled trees. TPOs can apply to an individual tree, a group of trees or woodland. The Department may make regulations as to the form of TPOs and the procedure to be followed in the making of such orders. No TPO shall apply to the cutting down, uprooting, topping or lopping of trees which are dying or dead or have become dangerous.	The Council would welcome the clause but request further consideration be given to the additional resource capacity needed to carry out the function.
Clause 122: Provisional tree preservation orders	
This clause allows a tree preservation order to be made with immediate effect by a district council, in circumstances which they deem to be urgent, and does not require previous confirmation.	The Council would welcome the clause but request further consideration be given to the additional resource capacity needed to carry out the function.
Clause 123: Power for Department to make tree preservation orders	
Under this clause the Department, after it has consulted the relevant district council, can decide to make a tree preservation order or amend or revoke an order.	The Council considers this as unnecessary duplication of responsibility.
Clause 124: Replacement of trees	
This clause gives the district council the power to require the owner of land where a TPO is in force to replace any trees that have been removed.	The Council would welcome this clause

Clause 125: Penalties for contravention of tree preservation orders	
This clause provides for penalties to be imposed in respect of the contravention of a TPO. It also makes it an offence to cut down or destroy a tree in contravention of a tree preservation order, or to top or lop a tree in such a way as is likely to destroy it.	The Council would welcome this clause
Clause 126: Preservation of trees in conservation areas	
This clause applies the protection given by a TPO to trees within conservation areas. Thus it is an offence to carry out works to a tree within a conservation area unless notice was served of the intention to carry out works to the tree, consent was given or the works were carried out 6 weeks after the notice was issued and before the end of 2 years.	The Council would welcome this clause
Clause 127: Power to disapply section 126	
The Department can make regulations under this provision to disapply the requirement to preserve trees in conservation areas: section 126). This can relate to specified conservation areas, trees of specified species or size, trees belonging to specified persons or bodies or specified acts that may be carried out on the trees	The Council would not support this clause
Clause 128: Review of mineral planning permissions	
This clause and the provisions introduced by the schedules enable district councils to start a process resulting in an initial review of all mineral permissions granted in Northern Ireland thereby ensuring that their conditions meet modern expectations and current environmental standards. The provisions also prevent dormant sites from reopening without a review of the conditions attached to their permissions. A further duty is placed on district councils to instigate additional periodic reviews of all mineral sites. Although the majority of these functions will fall to the district councils, the Department will be able to require that certain applications for review are referred to it.	The Council would request further consideration be given to the additional resource capacity needed to carry out the function.
Clause 129: Control of advertisements	
This clause enables the Department to make regulations for controlling the display of advertisements in the interests of amenity or public safety. These allow the regulation of the dimensions, appearance and position of advertisements and also require that the consent of the relevant district council is obtained before the advertisement can be displayed. The regulations may prohibit the display in any area of special control (which may be defined by means of orders made or approved by the Department) of all advertisements except advertisements of such classes as may be prescribed. Finally, planning permission is deemed to be granted where the display of advertisements, in accordance with regulations made under this clause, involves the development of land.	The Council considers this as unnecessary scrutiny by the Department on local development control decisions. A Planning Policy Statement is in place relating to the control of advertising. The Council welcomes the enforcement of advertisement control; however we would also see merit in the beneficiary of any unauthorised advertisement being liable to prosecution. Thus we would call for the powers of enforcement to include enforcement against all relevant persons. In addition we ask the department to enable Councils to issue fixed penalty notices in respect of this offence. This would support the intent of the Clean Neighbourhoods Bill in that the beneficiaries would also be liable to prosecution.

Part 5: Enforcement

Clause 130: Expressions used in connection with enforcement	
This clause defines a breach of planning control and sets out that enforcement action constitutes the issuing of an enforcement notice or breach of condition notice.	The Council considers enforcement as an important function of the development management process and would request additional time to consider the issues. The Council would be generally supportive of the clause but require more detail of the proposed process, additional resources needed and the need for clarity of responsibility.
Clause 131: Time limits	
This clause sets out the time period within which action may be taken in respect of breaches of planning control, by establishing two different limitation periods for enforcement action i.e. the 4 year rule and the 10 year rule. Where the breach consists of carrying out without planning permission of building, engineering, mining or other operations no enforcement action may be taken after 4 years beginning with the date on which the operations were substantially completed. If the breach consists in the change of use of any building to use as a single dwelling-house no enforcement action may be taken after 4 years beginning with the date of the breach. In the case of any other breach of planning control no enforcement action may be taken after the end of 10 years beginning with the date of the breach.	The Council would be generally supportive of the clause but require more detail of the process. Whilst the Council welcomes the clarity for a single dwelling house to the four year rule, this would still appear to be a short period of time and is a cause for concern, especially with regard to the potential for risk to human health. Again issues about enforcement and the provision of adequate resources are critical to ensure proactive and effective policing of planning controls and a suitable and sufficient inspection regime.
Clause 132: Power to require information about activities on land and Clause 133: Penalties for non-compliance with planning contravention notice	
A district council may serve a temporary stop notice to halt a breach of planning control for a period of up to 28 days as soon as the breach is identified, without first having had to issue an enforcement notice. The district council has up to 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue. The provisions also impose certain limitations on activities on the land in question. Temporary stop notices issued under clause 134 are not applicable to residences, or to other activities which the Department can specify in regulations. They cannot be issued for development or activities whose time limits for enforcement have passed. Only one notice can be issued unless further enforcement action is taken. Clause 136 specifies that contravention of a notice issued under clause 134 is a criminal offence, punishable on summary conviction by a fine of up to £30,000 or on indictment by an unlimited fine.	The Council would request additional time to consider the issues
Clause 137: Issue of enforcement notice by councils	
This clause provides the district council with the power to issue an enforcement notice to remedy a breach of planning control. An enforcement notice must be served within defined time periods on the owner or occupier of the land to which the notice relates and on any other person with an estate in the land.	The Council would support this clause, however would suggest that provision should be made for an alternative arrangement for service in the event that the whereabouts of any of the relevant parties cannot be ascertained.
Clause 138: Issue of enforcement notice by Department	
This clause provides the Department with the power to issue an enforcement notice, however the Department must consult the district council for that area before doing so.	The Council considers this as an unnecessary duplication of responsibility which has the potential to cause confusion.
Clause 139: Contents and effect of enforcement notice	
The enforcement notice has to be sufficiently clear to enable any recipient to understand exactly what breach of planning control is alleged and what action is required to remedy this. A timeframe must be stated in the notice during which time all actions to remedy the breach must be completed. The district council or Department have the flexibility to require only partial remedy of a breach of planning control where, at the time of enforcement, a total remedy is not considered necessary.	The Council would request further time to consider the contents and effect of enforcement notices.
Clauses 140 and 141: Variation and withdrawal of enforcement notices by councils or Department	
These clauses allow for the withdrawal or variation of an enforcement	The Council would support this clause but considers the function

notice by the district council or Department without prejudice to their power to issue a further notice.	should be the responsibility of a single authority.
Clause 142: Appeal against enforcement notice	
This clause includes provisions which specify the grounds on which an appeal against an enforcement notice can be made and the procedures for making a valid appeal. Before determining an appeal under these provisions the PAC must provide all appellants, the relevant district council or the Department the opportunity to appear before and be heard by the Commission.	The Council would support this clause
Clause 143: Appeal against enforcement notice – general supplementary provisions	
This clause provides that the PAC must quash an enforcement notice, vary it or uphold it on appeal. The Commission may correct any mistakes in the notice or vary its terms as long as the correction or variation can be made without injustice to either the appellant, the district council or the Department.	The Council considers the involvement of the Department and the local council in the process as unnecessary and confusing.
Clause 144: Appeal against enforcement notice – supplementary provisions relating to planning permission	
When determining an appeal under clause 142 the PAC can grant planning permission for the matters the notice refer to, change the conditions of an existing permission or issue a certificate of lawfulness of existing use or development. The PAC must notify the appellant of the amount of the planning application fee and specify the period within which it must be paid. If the fee is not paid within that period then the appeal on the planning merits will lapse and the Commission will be barred from considering or determining the deemed planning application.	The Council would support this clause
Clause 145: Execution and cost of works required by enforcement notice	
This clause includes provisions which allow the district council or the Department to enter land and carry out steps to ensure compliance with an enforcement notice and to recover from the land owner any	The Council considers the involvement of the Department and the local council in the process as confusing and responsibility should lie with a single authority.

reasonable expenses in doing so. It is an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale, to wilfully obstruct anyone authorised to carry out those steps.	
Clause 146: Offence where enforcement notice not complied with	
This clause deals with offences for not complying with an enforcement notice. The maximum level of fine, on summary conviction, is £30,000. A person can be convicted and fined on indictment for this type of offence. The courts when determining the level of fine shall have regard to any financial benefit, which has accrued or appears likely to have accrued, in consequence of the offence. The clause also provides that a person found guilty of an offence, and who continues not to comply with a notice, may be guilty of a further offence, and subsequently, of still further offences until there is compliance with a notice.	The Council would request further time to consider the offence process in relation to the enforcement notice.
Clause 147: Effect of planning permission etc., on enforcement or breach of condition notice	
If planning permission is subsequently granted to development mentioned in an enforcement notice or a breach of condition notice, the notice ceases to have effect in relation to the part or parts of the development which has permission. This does not remove any previous liability of a person for non-compliance with either notice.	The Council would support this clause
Clause 148: Enforcement notice to have effect against subsequent development	
Once an enforcement notice has been complied with the requirements within it continue to stand for future use of the land to which it relates. Discontinuance of use must be permanent, as must alteration or removal of buildings. To breach this requirement is punishable by a level 5 fine (currently £5,000).	The Council would support this clause but would request further consideration on the level of fine.
Clause 149: Service of stop notices by councils and Clause 150 Service of stop notices by Department	
These clauses allow the district council or the Department to issue a stop	The Council would support the stop notice guidance but consider the

notice requiring that an activity for which an enforcement notice has been issued should cease. The Department must consult the appropriate district council before serving a stop notice. A stop notice has immediate effect unless the district council or Department state otherwise. The contravention of a stop notice is an offence; the maximum level of fine for contravention of a stop notice is £30,000 on summary conviction; a person may be convicted and fined on indictment for this type of offence; and courts are required to take account of any benefits accrued or which appear likely to accrue as a result of the offence.	duplication of responsibility between the Council and the Department as confusing.
Clause 151: Enforcement of conditions	
This clause provides for the district council to issue a breach of condition notice for breaches of conditions attached to a planning permission. It may be served if there is clear evidence that a planning condition has not been complied with. Non-compliance with a breach of condition notice shall be an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).	The proposed level of call in of planning applications by the Department and their imposition of conditions on applications may result in local councils carrying out enforcement action where they may not agree with the proposal or condition.
Clause 152: Fixed penalty notice where enforcement notice not complied with and Clause 153: Fixed penalty notice where breach of condition notice not complied with	
Clauses 152 and 153 enable an authorised officer of a district council, to issue a fixed penalty notice for the offences of failure to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court. The amount of the penalty can be such amount as may be prescribed. The fixed penalty payable is reduced by 25% if paid within 14 days.	The Council would support this clause
Clause 154: Use of fixed penalty receipts	
This clause enables district councils to use the receipts from fixed penalty notices issued under clauses 152 and 153 for the purposes of enforcement functions or other functions specified in regulations.	The Council would support this clause In relation to other penalties for other offences under the Bill it would ask that consideration is given to these monies similarly being made

	available to it for the discharge of functions
Clause 155: Injunctions	
This clause gives the district council a power to apply to the Courts for an injunction to prevent any actual or threatened breach of planning control. This power also applies in relation to unauthorised demolition or works to a listed building, breaches of a tree preservation order and certain acts in respect of trees in a conservation area; and, any actual or apprehended breach of hazardous substances control.	The Council would support this clause
Clause 156: Issue of listed building enforcement notices by councils	
This clause enables a district council to issue a listed building enforcement notice where the requirement to obtain listed building consent for works to a listed building has not been complied with. This includes if conditions associated with that consent are not being adhered to. The notice must set out the steps to be taken to remedy the breach and the timeframe allowed.	The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function.
Clause 157: Issue of listed buildings enforcement notices by Department	
The Department may issue a listed building enforcement notice, after consulting the appropriate district council, and this has the same effect as a notice issued by a district council.	The Council considers this as an unnecessary duplication of resources
Clause 158: Appeal against listed building enforcement notice	
Notices issued under clauses 156 or 157 may be appealed and this clause sets out the timings and possible grounds for appeal. Appeals are determined by the PAC, and the Commission can grant listed building consent or discharge/substitute any condition attached to previous consent.	The Council would support this clause
Clause 159: Effect of listed building consent on listed building enforcement notice	
If listed building consent is subsequently granted to development mentioned in a listed building enforcement notice, the notice ceases to have effect in relation to the part or parts of the development which has consent. This does not remove any previous liability of a person for non-compliance.	The Council would support this clause
Clause 160: Urgent works to preserve building	

The district council or the Department may carry out and recover the costs of urgent works to either a listed building or one which the Department has directed that this clause shall apply. The Department may direct this clause applies to buildings in a conservation area. A notice issued to the owner can be appealed to the PAC on the grounds specified in this clause.	The Council considers that the remit should lie with a single authority to avoid duplication of resources.
Clauses 160 and 161: Hazardous substances contravention notice (including variation)	
These clauses enable district councils to issue a hazardous substances contravention notice for a contravention of hazardous substances control. Service requirements and specifics to be contained within the notice are outlined in clause 160. A notice can be withdrawn, and the Department is required to make regulations to cover appeals provisions and may make further regulations as to the specific requirements of the notice. Clause 162 allows the district council to vary a notice which it has already issued, regardless of whether the notice has taken effect.	The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function
Clauses 163 and 164: Enforcement of duties as to replacement of trees and appeals against section 163 notices	
These provisions include enforcement measures in respect of the protection of trees that are subject to a TPO with a power for the district council to enforce the duty to replace trees subject to a TPO. They also set out (in clause 164) specific grounds and method of appeal against enforcement notices issued under clause 163 in relation to trees.	The Council would support this clause, however would request consideration is given to the additional technical expertise and resources needed to carry out this function
Clause 165 and 166: Execution and cost of works required by clause 163 notice and enforcement of controls as respects trees in conservation areas	
Clause 165 enables the district council to enter onto land to replant trees subject to a TPO, and to recover any costs incurred as a civil debt. Clause 166 places a duty on an owner to replace trees that are removed in a conservation area.	The Council would support this clause, however would request consideration is given to the additional resources needed to carry out this function.
Clause 167: Enforcement of orders under section 72	
This clause includes provisions dealing with enforcement of orders (issued under clause 72) requiring the discontinuance of use or alteration or removal of buildings or works. The district council or the Department is	The Council considers that the remit should lie with a single authority to avoid duplication of resources.

permitted to enter the land and carry out any works required by the order, and recover the costs as a civil debt. Provisions cover change of ownership of land and the failure to comply being attributed to a third party.	
Clauses 168 and 169: Certificate of lawfulness of existing use or development and Certificate of lawfulness of proposed use or development	
Clause 168 enables a person to apply to the district council for a certificate to establish whether any existing use or development, or non compliance with a condition on a planning approval is lawful. Provisions cover the circumstances for issue and actual requirements of the certificate. Clause 169 enables any person to apply to the district council to establish whether any proposed use or development, or any operations to be carried out in, on, over or under land is lawful. Again, provisions cover the circumstances for issue and actual requirements of this certificate.	The Council would support this clause
Clauses 170 to 173: Certificates under sections 168 and 169, supplementary provisions, offences, appeals against refusal or failure to give decision on applications, further provision as to appeals under clause 172	
Clause 170 covers supplementary provisions associated with procedures for obtaining/revoking the certificates under clauses 168 and 169 to be specified by development order. Clause 171 deals with offences and sets out that any person who makes a false or misleading statement in respect of procuring a certificate will, on summary conviction, be liable to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both. Clause 172 provides a right of appeal to the PAC against a district council's refusal or failure to give a decision on applications for a certificate. The PAC can grant the appellant the certificate or dismiss the appeal if it considers the district council's decision appropriate. In relation to appeals clause 173 provides the opportunity for all appellants and the district council to appear before and be heard by the commission.	The Council would require further consideration of this clause

Clause 174: Enforcement of advertisement control	
This clause allows a district council to deal with enforcement of advertisement control. On conviction for display of an advertisement contravening regulations, made under clause 129 for the control of advertisements, a person is liable to a maximum fine up to level 4 on the standard scale (currently £2,500). The defendant may be a landowner / occupier or those whose advertisement is being displayed.	The Council would support this clause.
Clauses 175, 176 and 177: Rights to enter without warrant, under warrant and supplementary provisions	
Clause 175 allows any person authorised by the district council to enter land without a warrant to carry out enforcement functions under this Bill. The provisions also enable the Department to enter land prior to issuing an enforcement notice, listed building enforcement notice, stop notice, following consultation with the district council. Clause 176 provides that if entry to land has been refused or the case is urgent, the district council or Department can obtain a warrant to enter the land. Clause 177 covers administrative arrangements for the entering of land either with or without a warrant, and includes offence provisions e.g. an offence of obstructing the entry of authorised persons.	The Council would support this clause but request clarification of the role the Department to avoid confusion and duplication of resources.
Part 6: Compensation	
Clause 178: Compensation where planning permission is revoked or modified	
Clause 178(1) transfers the functions under sections 26 and 27 of the Land Development Values (Compensation) Act 1965 ("the 1965 Act") from the Department to district councils on the day of transfer. This excludes certain functions to be retained by the Department, namely setting the time within which the compensation claim is to be lodged (section 20(2) as applied by section 26(6)) and compensation recovery (section 24 as applied by section 27(5)). Clause 178(3) ensures that references to the Department in any relevant statutory instrument or provision passed before the transfer date will be construed as references to a district council.	The Council would request further time to consider this clause. There appears to be over regulation by the Department in the process. Notwithstanding the above, the Council would recommend compensation should not be payable in the circumstances when the revocation or modification of permission is to secure compliance with some subsequent rule of law (subsequent to the grant of planning permission). Nor should compensation be payable in circumstances in which the applicant has misled the Council in respect of making the application for permission.

Sections 26 and 27 of the 1965 Act provide for the payment of compensation by a council when planning permission is revoked or modified. Section 26(5) applies section 29 of the 1965 Act which makes provision for how compensation is measured in instances where it relates to new development or "Schedule 1 development". Schedule 1 development, so called because it is specified in schedule 1 of the 1965 Act, includes a number of relatively minor types of development (more generally known as existing use) which might be expected to receive planning permission as a matter of course. New development is development not specified in this schedule. Section 26(6) applies section 22 specifying how compensation is to be paid. Section 27 allows a district council to apportion compensation between different parts of the land to which the claim relates and also to register details of the apportionment.	
Clause 179: Modification of the Act of 1965 in relation to minerals	
This clause makes provision corresponding to Article 97 of the Planning (Northern Ireland) Order 1972. It modifies section 26(1) of the 1965 Act so that a claim for expenditure or loss when planning permission for the winning and working of minerals is revoked or modified shall not be entertained in respect of buildings plant or machinery unless the claimant can prove that they are unable to use them except at the loss claimed. The reason is that such machinery can often be moved and the provision ensures that only the net loss is paid on revocation.	The Council would request further time to consider this clause See comments at Clause 178 above
Clause 180: Compensation where listed building consent revoked or modified	
This clause provides that compensation is payable when listed building consent is revoked by a district council under section 97 or by the Department under section 100. The clause specifies that a claim may be made for abortive expenditure or loss or damage, but not for expenditure on work carried out before the grant of listed building consent nor for other loss or damage arising out of anything done or omitted to be done before the grant of consent. Clause 180(4) applies the provisions from the 1965 Act relating to revocation and modification to this provision.	The Council would request further time to consider this clause See comments at Clause 178 above

Clause 181: Compensation in respect of orders under section 72 or 74	
This clause provides for compensation when a discontinuance order is made by a district council under section 72 or by the Department under section 74. Clause 181(5) ensures that no compensation is payable if a purchase notice has been served in respect of an estate in the land or if the estate has been purchased by the district council under Part 7.	The Council would request further time to consider this clause
Clause 182: Compensation in respect of tree preservation orders	
Under this clause a tree preservation order may make provision for the payment of compensation if consent is refused to fell, lop or top a tree which is the subject of a tree preservation order with a consequent loss to the owner of the value of the timber. The compensation is not related to the development value of the land. Thus a claim for compensation could not include an item for loss of development value if refusal to allow felling of the tree means that the land cannot be developed. A claim may also be made for any loss or damage caused by a consent granted subject to conditions.	The Council would request further time to consider this clause
Clause 183: Compensation where hazardous substances consent modified or revoked	
This clause provides that compensation is payable when there is a change to the person in control of part of the land to which a hazardous substances consent relates and the district council revokes or modifies the consent upon an application for its continuation under section 115(2).	The Council would request further time to consider this clause
Clause 184: Compensation for loss due to stop notice	
Compensation is payable when a stop notice is served by a district council (under clause 149) or the Department (under clause 150). A person who has an estate in or occupies the land is entitled to compensation if the enforcement notice is quashed on grounds other those mentioned in clause 142(3)(a) (planning permission granted for those items contained in the stop notice on appeal); if the enforcement notice is varied, other that that mentioned in clause 142(3)(a), so that the activity prohibited by the stop notice ceases to be relevant; if the notice is withdrawn for reasons other than the grant of planning permission where it is assumed that there was a withdrawal because the notice was invalid or was not warranted; or if it was withdrawn (and by implication should never have been served).	The Council would request further time to consider this clause

Clause 185: Compensation for loss or damage caused by service of building preservation notice	
This clause provides that compensation is payable when a building preservation notice ceases to have effect without the building being included on the list of buildings of special architectural or historic interest compiled by the Department under clause 79.	The Council would request further time to consider this clause
Clause 186: Compensation for loss due to temporary stop notice	
This clause applies if a temporary stop notice is issued to halt an alleged breach of planning control and the activity specified is subsequently authorised either by a planning permission or development order, if a certificate in respect of the activity is issued under clause 168 (Certificate of lawfulness of existing use or development - CLUD) or granted by virtue of an appeal against a decision not to issue a CLUD under clause 172 or if the district council withdraws the temporary stop notice. The clause provides for compensation for any loss that may have occurred under these circumstances.	The Council would request further time to consider this clause
Clause 187: Compensation where planning permission assumed for other development	
A claim for compensation following modification or revocation of planning permission can be made to a district council under article 26 of the 1965 Act. It may, however, appear to the district council that planning permission could have been granted for development other than that which gave rise to the claim. In such cases the district council may direct that it shall be assumed that permission for that other development would be granted either unconditionally or conditionally when assessing the amount of compensation payable.	The Council would request further time to consider this clause
Clause 188: Interpretation of Part 6	
This clause provides that Part 6, "compensatable estate" has the same meaning as in the 1965 Act.	The Council would support this clause

Part 7: Purchase of estates in certain land affected by planning decisions

Clause 189: Service of purchase notice	
This clause enables a land owner, who claims their land is left without any reasonable beneficial use by virtue of a planning decision, to issue a purchase notice to seek to have the district council acquire it from them. A purchase notice must be served within the time and manner specified by a development order.	On initial review of this clause the Council would suggest that this provision may be unnecessary. This places an unreasonable burden on district councils even though it does appear that the provision would be rarely, if ever, used. The Council would request further time to consider this clause
Clause 190: Purchase notices: Crown land	
This clause sets out the conditions whereby a purchase notice may be served in respect of Crown land only.	The Council would request further time to consider this clause
Clause 191: Action by council following service of purchase notice	
Under this clause after a purchase notice is served on the district council it may respond in a number of ways. The district council may serve a notice that it is willing to comply with the purchase notice or it may serve a counter-notice by way of objection. A counter-notice must state the reasons why the district council does not wish to comply with the purchase notice.	The Council would request further time to consider this clause
Clause 192: Further ground of objection to purchase notice	
This clause allows the district council to object to development of land which although incapable of beneficial development in its existing state, ought to remain undeveloped in accordance with a condition attached to a previous planning permission.	The Council would request further time to consider this clause
Clause 193: Reference of counter-notices to Lands Tribunal	
This clause empowers the Lands Tribunal to decide if either the purchase notice or the district council's counter-notice should be upheld. Clause 194: Effect of valid purchase notice	The Council would request further time to consider this clause
Clause 195: Special provision as to compensation under this Part	
Under this clause if compensation is payable in respect of expenditure incurred in carrying out any work on land under section 26 of the 1965 Act, then, if a purchase notice is served on that land, it is payable in respect of the acquisition of that estate in pursuance of the purchase notice and shall be reduced to an appropriate value.	The Council would request further time to consider this clause

Part 8: Further provisions as to historic buildings

Clause 196: Historic Buildings Council	
This clause authorises the continuance of the Historic Buildings Council which is unique to Northern Ireland within the UK. It also outlines the functions of the Council as keeping under review the general state of preservation of listed buildings, advising the Department on the preservation of such buildings as the Department may refer to it and such other functions as conferred on it by statutory provision.	The Council would request clear guidance on the role of the different bodies relating to listed buildings. Consideration should also be given to the additional technical expertise and resources needed to carry out this function by local councils.
Clause 197: Grants and loans for preservation or acquisition of listed buildings	
Under this clause the Department has the option to make a contribution for expenditure (through grants or loans) incurred in the repair or maintenance of a listed building, or in the upkeep of land comprising any such building or repair or in the maintenance of objects kept in the building. The Department, in conjunction with Department of Finance and Personnel, can make grants or loans to the National Trust towards the cost of acquiring; a listed building; any land associated with any such building; or any objects which are usually kept in the building.	The Council would request clarification on the roles of the different bodies relating to listed buildings. Responsibilities seem to be split between the Department, the Northern Ireland Environmental Agency and local councils which may cause confusion.
Clause 198: Acquisition of listed buildings by agreement	
Under this clause the Department may acquire a listed building or land comprising such a building by agreement, purchase, lease or otherwise or by gift. The Department may also acquire objects which have been kept in a listed building or an estate vested in the Department or in a listed building under its control or management. The Department may at its discretion make arrangements for the management, custody and use of property acquired or accepted by it.	The Council would request clarification on the role of the Department and local councils on listed buildings.

Clause 199: Acceptance by Department of endowments in respect of listed buildings	
This clause sets out arrangements for the acceptance by the Department of endowments in respect of listed buildings.	The Council would request clarification on the role of local councils in relation to endowments in respect of listed buildings
Clause 200: Compulsory acquisition of listed buildings	
Under this clause the Department may intervene and compulsorily acquire the listed building and any land associated with the building if the Department determines it necessary to preserve the building or for its proper control or management. Compulsory acquisition procedures are set out within the clause.	The Council would request clarification on the role of local councils in relation to listed buildings acquisition.

Part 9: The Planning Appeals Commission (PAC)

Clause 201: The Planning Appeals Commission (PAC)	
This clause describes the continued governance arrangements of the PAC including its senior structure, impartiality and administration. These provisions were transferred to OFMdFM by the Departments (Transfer of Functions) Order (NI) 2001, SR 2001, No. 229.	
Clause 202: Procedure of appeals commission	
This clause describes the internal procedures of the PAC, including appointment of members of the appeals commission to hear appeals, inquiries / independent examinations or hearings and after consultation with the commission and the Department (OFMdFM), the appointment of assessors to sit with the members appointed to advise the member on any matters arising.	The Council would request further time to consider this clause.

Part 10: Assessment of Council's performance or decision making

Clause 203: Assessment of council's performance	
This clause introduces new powers for the Department to conduct an assessment of a district council's performance or to appoint a person to do so. The assessment may cover the district council's performance of its planning functions in general or of a particular function.	The Council considers that the Department should have an assessment function to help support the introduction and enhancement of the new functions for local councils. The Council would have reservations in relation to the high levels of scrutiny proposed through a number of measures by the bill. The Council considers that the emphasis by the Department should be in providing assistance to local councils in areas of poor performance rather than highlighting poor performance The Council requires clarification on information requirements by the Department for assessment which could have significant resource implications for Councils. The various formal development plan processes and local development management will involve working with external agencies, including the Planning Appeals Commission, which are outside of direct local council responsibility. The Council would suggest that consideration must be given to ensuring their statutory engagement in order to facilitate the effective management and delivery of the local planning process.
Clause 204: Assessment of council's decision making	
This clause gives the Department or an appointed person the power to conduct an assessment of how a district council deals with applications for planning permission. In order to capture long term trends, this power is limited to exclude decisions made within the year preceding the date that the district council are notified of the assessment. The assessment may cover the basis for determinations, the processes by which they have been made and whether they were in accordance with the local development plan or conformed to advice given by the Department.	The Council is concerned in relation to the level of scrutiny by the Department. The Councils processing of local planning applicants is dependent on statutory consultee duty to respond to consultation. The Council would request clarification on monitoring arrangements on consultee response performance and timeframes. A significant element of the evidence required for the proposed local plan process would not be under the control of the future councils responsible for their development. The Council would recommend early involvement to ensure the contribution to and engagement in the different stages of the development plan process is binding on all appropriate government agencies
Clause 205: Further provision as respects assessment of performance or decision making	
This clause details the arrangement for assessments of district councils' performance or decision making. The Department is required to notify the	The Council considers that the arrangements should be drawn up in close consultation with local councils.

district council of its intention to carry out an assessment, and to indicate its intended scope, and where it appoints a person to carry out the assessment it is to advise the district council who the appointed person is. The Department will have powers to determine that the scope of an assessment under clause 204 may relate to a type of application, a period of time or a geographical area. For the purposes of any assessment the Department or the appointed person may require access to any premises of the district council and any documents which appear to be necessary for the purposes of the assessment. The clause allows the Department or the appointed person to require a person to give them such information as necessary and to attend in person to give the information or documents and requires the district council to provide the Department or the appointed person with every facility and all information which may reasonably be required. The Department or the appointed person must give 3 clear days notice of any requirement under this section and produce a document of identification if required to do so.	
Clause 206: Report of assessment	
The Department or the appointed person is required to prepare a report (an assessment report), and issue it to the district council. The report may recommend improvements which the district council should make. The district council is required to prepare and submit a response report to the Department within 3 months of receipt of the assessment report. This report will set out the extent, the manner and the period within which it proposes to implement the recommendations or reasons for declining to implement recommendations. Both reports must be published. The Department may issue a direction specifying actions where the district council declines to implement recommendations or appears not to be carrying out what it proposes in its response report. The Department must publish any such direction or variation of a direction.	The Council is concerned that the Department arrangements for assessment could have significant resource implications for Councils.

Part 11: Application of Act to Crown Land

Clause 207: Application to the Crown	
Clause 206 applies the provisions of the Bill to the Crown with the exception of enforcement functions covered by clauses 145, 155, 160 and 165 of the Bill, subject to express provisions detailed in the remainder of Part 11. This means that the Crown requires planning permission or consent as required by the Bill and relevant subordinate legislation.	
Clause 208: Interpretation of Part 11	
This clause deals with the interpretation of Part 11 and includes various definitions.	
Clause 209 on Urgent Crown development and clause 210 on Urgent works relating to listed buildings on Crown land	
Covers instances where development by Crown bodies will be considered to be of significant public importance and require the processing of applications more quickly than permitted by the processing procedures of district councils. The new powers aim to streamline the process and provide for the direct submission of planning applications to the Department. A similar procedure is introduced for urgent works to a listed building on Crown land.	
Clause 211: Enforcement in relation to the Crown	
This clause provides that the Crown should remain immune from prosecution for any offence under the Bill. A district council or the Department is able to initiate enforcement action by, for example, serving enforcement notices but is not able to enforce them by entering land or making applications to the court without the consent of the appropriate authority (appropriate authority is defined in clause 208 of the Bill). In granting such consent the appropriate authority may impose such conditions as it considers relevant. This might mean, for example, that any site visit by the Department has to be accompanied, to take place at a pre-arranged time and/or to exclude certain parts of the site.	

Clause 212: References to an estate in land	
This clause deals with references to an estate in land and states that references to an "estate" in land includes a Crown estate.	
Clause 213: Applications for planning permission, etc. by Crown	
This clause sets out that, through subordinate legislation, the Department may modify or exclude any statutory provision relating to the making and determination of applications for planning permission or consent etc by the Crown.	
Clause 214: Service of notices on the Crown	
This clause deals with the service of notices on the Crown and states that notices under the Planning Bill must be served on the appropriate authority. In addition Section 24 of the Interpretation Act (Northern Ireland) 1954 in relation to the service of notices has been disapplied.	

Part 12: Correction of Errors

Clause 215: Correction of errors in decision documents	
The power to allow the Department to correct minor typographical errors in its decision documents/notices was introduced by The Planning Reform (NI) Order 2006 (No. 1252 NI 7). This power has now been amended by the current Bill. Firstly, the power to correct errors is now transferred to district councils and secondly, the requirement to first obtain the written consent of the applicant (or the landowner if that is not the applicant) has now been removed. The clause also allows a district council to correct an error if requested in writing by any person and if it sends a written statement to the applicant explaining the error and stating that it intends to make a correction.	The Council would support this clause
Clause 216: Correction notice	
Under this clause the district council must after making any correction or deciding not to make any correction, issue a notice in writing specifying the correction of the error or giving notice of its decision not to correct such an error.	The Council would support this clause

Clause 217: Effect of correction	
This clause describes the impact where a correction is made or where a correction is not made.	The Council would support this clause
Clause 218: Supplementary	
This clause defines a decision document and a correctable error for the purposes of this Part.	The Council would support this clause

Part 13: Financial Provisions

Clause 219: Fees and charges	
This clause contains provisions for the payment of both charges and fees relating to planning and consent applications. The provisions enable the Department to make regulations for the payment of charges or fees for the recovery of the costs of performing district council or departmental functions. OFMDFM may also make regulations for the payment of a charge or fee in respect of deemed planning applications or planning appeals. This clause also introduces new provisions for charging multiple fees for retrospective planning applications.	Funding and resourcing is pivotal to the Council being successful in implementing and enforcing the provisions of the proposed Bill. More detail is required in respect of proposed regulations and funding arrangements. The Council would welcome any arrangement permitting it to utilise funds raised by way of either penalty or fees in the application of any duties which it may hold under the Bill.
Clause 220: Grants for research and bursaries	
This clause allows the Department to make grants to research or education institutions relating to planning and design of the physical or built environment. Students undertaking particular courses may be awarded bursaries.	The Council would request clarification on local councils role in the grant process, commissioning of research and having access to the information produced.
Clause 221: Grants to bodies providing assistance in relation to certain development proposals	
These provisions allow the Department to award a grant to an organisation which is assisting the community with particular applications for development, or which is providing technical expertise to allow an application to be easily understood. Grants may also be made to organisations which aim to further the preservation, conservation and	The Council would request clarification on local council's involvement in this grant process.

regeneration of historic buildings. The organisations being funded must not be profit making bodies.	
Clause 222: Contributions by councils and statutory undertakers	
This clause creates a discretionary power to allow statutory undertakers or other district councils to contribute to the costs of a council carrying a review under clause 3 – matters affecting development. Also available is a discretionary power allowing statutory undertakers or other district councils to contribute to another council's costs when discharging specified planning functions under the Bill. Finally, the Department will be able to require councils to contribute to another council's compensation costs when that council is carrying out certain specified functions under the Bill.	The Council would support the power to allow contributions to local council in carrying out survey work relating to the local development function. The Council would also request consideration of a mechanism to oblige the relevant government agencies to work with local councils. Council would request clarification in relation to Council contributing to another Councils compensation in the case that support was not given for the proposal.
Clause 223: Contributions by departments towards compensation paid by councils	
This clause provides a discretionary power whereby a government department can contribute to the compensation costs of a district council if those costs were incurred by a council decision or order made in the interest of services provided by that government department. Part 14: Miscellaneous and General Provisions	The Council would support this clause.
Clause 224: Duty to respond to consultation	
This clause introduces a requirement that those persons or bodies which are required to be consulted by a district council or the Department before the grant of any permission, approval or consent must respond to consultation requests within a prescribed period. The clause also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.	The Council would strongly support this clause, however, would seek further clarification on the intended obligations to be placed upon designated consultees to respond in a timely and appropriate manner and the role of the Department and council to enforce compliance with such obligations. This is particularly important in respect to the ability of councils to meet the proposed new ambitious timescales for processing planning applications and developing local area plans. The Council would also seek clarification within the Bill as to the process for managing advice received from consultees and the obligation placed upon councils to take on board such advice and manage conflicting views.

Clause 225: Minerals	
This clause provides for the application of the Bill to development consisting of the winning and working of minerals, subject to modifications. The circumstances under which mining operations are considered to be a "use" of land are stipulated.	The Council would support this clause
Clause 226: Local inquiries	
This clause allows the Department to hold a public inquiry when carrying out any of the functions of this Bill. The provisions of the Interpretation Act (NI) 1954 apply to these inquiries. The Department may make rules for the procedures to be followed during the inquiry process.	The Council considers that the decision to hold public inquires should be made in close consultation with local councils.
Clause 227: Inquiries to be held in public subject to certain exceptions	
Given the changes in the role of the Secretary of State and the new role of the Department of Justice, following devolution of policing and justice, these provisions clarify the responsibilities of the Secretary of State and the Department of Justice in relation to inquiries. The provisions deal with procedures for planning applications, etc, where, in the opinion of the Secretary of State/the Department of Justice, the consideration by the council or Department of objections or representations received in relation to the application raise issues of national security or the security of Crown or other premises and that the disclosure of related information would be contrary to the national interest. The Secretary of State will have responsibility for issuing a relevant direction under clause 227 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information relating to: (a) national security; or (b) the measures taken or to be taken to ensure the security of any premises or property belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department; or (c) measures taken or to be taken to ensure the security of any premises	The Council would support this clause

or property which is used for the purposes of the armed forces of the Crown or the Ministry of Defence Police. The provisions also set out that the Department of Justice will have responsibility for issuing the relevant direction under clause 227 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information (contrary to the public interest) relating to the measures to be taken to ensure the security of any premises or property other than premises or property mentioned above.	
Clause 228: Directions: Secretary of State	
This clause sets out that the Secretary of State may direct that certain evidence may only be heard by, or be open to inspection by, certain persons. If the Secretary of State is considering giving such a direction, the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.	The Council would support this clause
Clause 229: Directions: Department of Justice	
This clause sets out that the Department of Justice may direct that certain evidence may only be heard by, or open to inspection by, certain persons. If the Department of Justice is considering giving such a direction, the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.	The Council would support this clause
Clause 230: National security	
This clause contains the procedures for planning applications, consents	The Council would support this clause

and approvals where, in the opinion of the Secretary of State or as the case may be the Department of Justice, the consideration by a district council or the Department of objections or representations received in relation to the application raise issues of national security or matters relating to the security of Crown or other properties and the public disclosure of such information would be contrary to the national interest. Procedures will enable decisions to be made where, for security reasons, details of the development cannot be revealed but where to withhold such details would impact on the ability of interested parties to fully participate in the planning process. The Department will be required to hold a public local inquiry in such circumstances. The roles of the Secretary of State and the Department of Justice in relation to certification under this clause are split. The Secretary of State will have responsibility for the making of rules in circumstances where he has certified under this clause, the Department of Justice will have responsibility for the making of corresponding rules where that Department issues the relevant certification under this clause.	
Clause 231: Rights of entry	
This clause gives district councils and the Department the powers of entry they require to discharge their functions under this Bill. Powers of entry are also given to the Department of Social Development, Department of Finance and Personnel and the PAC in respect of their functions under this Bill.	The Council would have no comment on this clause.
Clause 232: Supplementary provisions as to powers of entry	
This clause sets out the obligations on a person exercising powers of entry under clause 231 to provide notice to occupiers and, if required, identification on arrival. Provisions covering trade secrets and damages to property are addressed.	The Council would support this clause
Clause 233: Supplementary provisions as to powers of entry: Crown land	
Additional provisions for the exercise of the powers of entry under clause 231 when the land is owned by the Crown are contained in this clause. Advance permission must be obtained from the appropriate	The Council would support this clause

authority.	
Clause 234: Service of notices and documents	
This clause allows for the service of notices to be completed via electronic communication where the recipient has agreed to this. Provisions are contained for permission to be withdrawn and a list of notices to which this cannot apply is listed in paragraph (3).	The Council would support this clause
Clause 235: Information as to estates in land	
This clause allows a district council or the Department to require occupiers of premises to provide information to them on the owner, to enable them to serve a notice or other document on them. Failure to give this information within the stipulated timeframe is an offence.	The Council would support this clause
Clause 236: Information as to estates in Crown land	
This clause disapplies clause 235 when the land is Crown land. Powers are given to the district council or Department to request the same information as that in clause 235, and the authority must comply with this request.	The Council would support this clause
Clause 237: Planning Register	
This clause requires all district councils to keep and make available a planning register containing copies of the items listed, which includes all applications for planning permission. A development order may require the Department to populate the register of the relevant district council when an application is submitted directly to it, or it issues a notice under departmental reserved powers.	The Council would support this clause
Clause 238: Power to appoint advisory bodies or committees	
This clause allows the Minister to appoint bodies to assist the Department in any of its functions under this Bill.	The Council would request input into the decision to appoint bodies to assist in the functions of this bill.
Clause 239: Time limit for certain summary offences under this Act	
This clause gives jurisdiction to the Magistrates' court to hear complaints on offences relating to breaches of tree preservation orders and breach of condition notices if the complaint is made within 3 years from the time when the offence was committed or ceased to continue.	The Council would request further time to consider this clause.
Clause 240: Registration of matters in Statutory Charges Register	
This clause sets out the matters which are a permanent encumbrance on land or property and must be registered in the Statutory Charges Register.	The Council would support this clause.
Clause 241: Directions	
This clause confirms that any directions which may or must be given by a district council or the Department may be withdrawn, varied or revoked by a subsequent direction.	The Council would support this clause
Clause 242: Regulations and orders	
This clause details the Assembly controls which will apply to regulations and orders under the Bill.	The Council would support this clause

Part 15: Supplementary

Clause 243: Interpretation	
This clause contains interpretation provisions and defines a number of terms used throughout the Bill.	The Council has no comment on this clause
Clause 244: Further provision	
This clause allows the Department to make subordinate legislation to give full effect to the Bill including transitional or transitory provisions and savings in connection with the coming into operation of any provisions. A draft of such an order must be laid before and be approved by resolution of the Assembly.	The Council considers that subordinate legislation should be formulated in close consultation with local councils.
Clause 245: Minor and consequential amendments	
This clause provides for the amendments set out in Schedule 6 to have effect.	

Clause 246: Repeals	
This clause provides for the repeals set out in Schedule 7 to have effect.	
Clause 247: Commencement	
This clause concerns the commencement of the Bill and enables the Department to make Commencement Orders.	The commencement of the bill should be carried out in close consultation with the local councils.
Clause 248: Short title	
This clause provides a short title for the Bill.	

Belfast Harbour Submission to the Planning Bill

Belfast Harbour

Chief Executive Officer: **Roy Adair**

Harbour Office
Corporation Square
Belfast, Northern Ireland
United Kingdom, BT1 3AL

Tel: +44 (0)28 9055 4422
Fax: +44 (0)28 9055 4411
Email: info@belfast-harbour.co.uk
Web: www.belfast-harbour.co.uk
Text phone: 028 9032 2013

13 January 2011

Cathal Boylan
Chairperson, Committee for the Environment
Northern Ireland Assembly
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
Belfast BT4 3XX

Dear Sir

Committee for the Environment – Call for Evidence on the Planning Bill

We refer to your correspondence dated 16 December 2010 re the commencement of the Committee Stage of the Planning Bill.

We assume that this draft Bill follows on from the consultation paper of July 2009 entitled 'Reform of the Planning System in NI.'

We note the majority of clauses relate to the proposed transfer of planning powers to local councils with a number of new provisions and noting those powers to be retained by DoE.

Part 1
We would welcome the Statements of Community Involvement at pre-application stage for major applications.

Part 2
We look forward to working with Belfast City Council in the preparation of the local development plan in respect of the area impacting the Harbour Estate.

Part 3
We welcome the introduction of the hierarchy of development determining the method by which an application is processed. Whilst councils will determine most applications it is imperative that those of regional significance will be handles by DoE.
We welcome the provisions relating to simplified planning and enterprise zones and would be keen that the non-Port lands within the Harbour Estate be considered for such provisions.

Parts 4 - 12
No comments applicable.

Part 13
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.

Parts 14 – 15
Belfast Harbour very much welcomes the introduction of a requirement for consultees to have to respond within specified timescales.

We trust this is in order however if you require any further amplification/input we would be pleased to provide.

Yours sincerely

Graeme Johnston
Property Director

Belfast Healthy Cities submission to the Planning Bill

HEALTHY CITIES
Belfast

Mr Cathal Boylan MLA
Chairperson

Committee for the Environment
Room 247
Parliament Buildings
Stormont
Belfast BT4 3XX 14 January 2011

Dear Chair

Please find enclosed Belfast Healthy Cities' evidence submission for the Committee Stage of the Planning Bill.

Belfast Healthy Cities welcomes the opportunity to provide evidence for consideration during the Committee Stage. We would be pleased to expand on any of the points contained in our submission, should that be helpful.

Yours sincerely

Joan Devlin

Director

Evidence submission to the Planning Bill Committee Stage

14 January 2011

Belfast Healthy Cities welcomes the opportunity to submit evidence for consideration at the Committee Stage of the Planning Bill. This is a very important Bill, as it will shape not only physical development, but also social and environmental outcomes for the foreseeable future. Because planning has such a major impact for all people and sectors in Northern Ireland, it is vital that the Bill reflects all the key issues.

Our submission focuses on how the Bill can help create not only economic, but also social prosperity and wellbeing for all, and draws on evidence that shows how planning legislation, policy and practice shapes people's health and wellbeing as well as how it affects health and social inequalities. Appendix 1, extracted from our recent publication Healthy Places: Strong Foundations, gives a brief outline of the links between land use planning and health. The full publication is enclosed with the submission.

Belfast is a designated Healthy City, and a leading member of the World Health Organization (WHO) European Healthy Cities Network, with a strong track record of meeting WHO goals and objectives. Belfast Healthy Cities is a citywide partnership working to improve health equity and wellbeing for people living and working in Belfast, and responsible to WHO for the implementation of requirements for designated WHO European Healthy Cities. Our focus is on improving social living conditions and prosperity in a healthy way, through intersectoral collaboration and a health in all policies approach. Key partners include Belfast City Council, Belfast Health and Social Care Trust, Bryson Group, Department of Health, Social Services and Public Safety, East Belfast Partnership, Northern Ireland Housing Executive, Planning Service, Public Health Agency, Queen's University of Belfast and University of Ulster.

Belfast Healthy Cities' office has a staff team dedicated to working with partner organisations to facilitate and support change. The office also acts as the link between the city and WHO, and Belfast currently provides the secretariat to the Network.

Healthy urban environment (HUE) is a core area of our work and focuses on highlighting how the physical environment impacts on people's lives, health and wellbeing. Our work has focused on collating evidence and building capacity among planners and other built environment professionals, as well as health professionals, on how the built environment affects health and wellbeing.

We would be happy to expand on any of the points in this submission, should that be helpful.

The key points of this submission are:

- Purpose of the planning system: – Clause 1 - should be strengthened by outlining desired outcomes of the process, which also offers a good basis for steering development in a way that supports the prosperity of Northern Ireland as a whole. Wellbeing and sustainable development are key outcomes that should be reflected throughout this Clause, for example by amending Clause 1(1) to state the function of the Department as being 'to secure proper planning, community wellbeing and sustainable development'. Sustainable development and wellbeing should also feature as matters to be kept under review, and matters on which surveys can be conducted. Also referring to the duties of the Minister would strengthen democratic accountability, which is important for building confidence in the planning system.
- An outcome focused planning system would also be well placed to contribute to community planning. It would be important to create a strategic link to community planning in the Bill, in order to facilitate the most effective operation of both land use and community planning across the region. An effective linkage, in turn, is important to ensure the best possible outcomes for all in Northern Ireland, whether in terms of ensuring access to services (and from a commercial viewpoint, customers), promoting health and wellbeing, or delivering best value services. The Local Development Plan approach taken offers good opportunities for linkages at the local level.
- Statements of community involvement and pre application consultation are important elements of a transparent and accountable planning system, and essential for empowering communities for participative decision making. The Bill should include greater detail on the key elements of these engagement processes, as has been done for example in the Localism Bill going through Westminster, and incorporate a duty to take responses into account. It would also be important that the impact and effectiveness of statements of community involvement is monitored, in particular in relation to Section 75 groups and more deprived population groups.
- Incorporating a requirement for sustainability appraisal offers potential to ensure appropriate attention to the impacts and potential outcomes of Local Development Plans. For planning control, the requirement to assess environmental effects provides similar opportunities. However, consideration should be given to incorporating impacts on people and communities, to help ensure development contributes to sustainable social development. This can be done within a single tool; for example, there may be potential to link sustainability appraisal with elements of Health Impact Assessment. Belfast Healthy Cities has developed considerable experience on Health Impact Assessment and would be happy to expand on this.
- Third party right of appeal should be incorporated in order to ensure transparent, quality decision making throughout the process, and should be viewed as a complement to the

otherwise strong focus on community engagement. The right can be limited and the introduction of fees can be used to deter vexatious or frivolous appeals.

There may also be scope for considering planning mediation as an element of the community engagement process, which is not referred to in the Bill at present.

- It would be desirable to consider the strength of wording throughout the Bill, in particular regarding the strength of the duty to take into account instruments such as Departmental policy and guidance, Local Development Plans and statements of community involvemen in decision making. This would help create clarity and confidence in the system for all stakeholders. Considering that a substantial amount of detail is deferred to subordinate legislation and guidance, it would also be helpful to establish how long it will take to put this in place.

Key areas of concern and the Clauses they affect

Part 1 – Functions of the Department of the Environment with respect to development of land

Clause 1, subsection 1. This subsection of the Clause states the purpose of the planning system as “securing the orderly and consistent development of land and the planning of that development". However, this wording serves to separate planning and development from outcomes or impacts of planning and development, and therefore does not utilise an opportunity to shape these outcomes by stating what the desired outcomes are. This is at present outlined in planning policy and guidance, but including the broad, high level aims in the Bill would strengthen opportunities to indeed secure orderly development, but in a desired direction. It would also support a move to a more collaborative approach to planning, as planning as a specific function would have clarity as to what it aims to achieve, in addition to managing the process of planning control.

Belfast Healthy Cities would recommend amending this Clause to reflect the above, as has been done in other jurisdictions. For example, in the Republic of Ireland the stated purpose includes “proper planning and sustainable development". Sustainable development also features strongly in relation to planning in the Localism Bill recently introduced in the Westminster Parliament. Incorporating definitions of the key terms would further improve clarity.

Belfast Healthy Cities would recommend incorporating ‘wellbeing’ into this section, as a desired outcome of planning, so that subsection 1(1) sets out the Department’s responsibility ‘to secure proper planning, community wellbeing and sustainable development’, and to provide policy that secures this in an orderly and consistent way. Both planning and development have very profound impacts on the wellbeing of people, which in turn affects the economic wellbeing of the region as a whole. For example, the recent trend of increasing suburban, low density development has increased reliance on the car. This trend is linked to a fall in physical activity and the rise in obesity, which increases demand for health care, and also reduces productivity throughout the economy. Similarly, the growing number of out of town and edge of town commercial development has reduced the viability of town centres, which is associated with a loss of social cohesion and local identity that support mental and social wellbeing.

Finally, consideration should be given to incorporating a reference to the duties of the Minister, which at present are given no attention. While it is important and helpful to clearly state the functions of the Department, also outlining the duties of the Minister would strengthen democratic accountability and transparency, which are of paramount importance for building trust in the planning system, that in turn is so critical for building sustainable prosperity.

Clause 1, subsection 2. It is to be welcomed that achievement of sustainable development is included as an objective for the Department. Sustainable development is essential not only to protect the natural environment, but also to protect people and communities, and ensure long term economic prosperity. Human health and wellbeing is also dependent on a healthy natural environment, while a successful economy requires a healthy population.

However, Belfast Healthy Cities believes a stronger wording of the Bill would be appropriate, to stress that sustainable development is a priority. For example, the subsection could state '..with the objective of securing sustainable development". Indeed, we believe consideration should be given to including sustainable development as a desired outcome of the planning system in subsection 1. As noted above, this has been done in other jurisdictions, and it would create a strong basis for the new hierarchy of plans, which provides clarity and direction for all stakeholders.

It is notable that this reference to contributing to sustainable development is not included in Part 3 on planning control. There appears therefore to be a risk that the provisions of Clause 1 on sustainable development are diluted in the process of planning control and management, and the overall impact reduced. Incorporating a clause similar to Clause 1.2 in Part 3 would help avoid such a situation, and also create clarity.

Clause 1, subsection 4. It is to be welcomed that this Clause incorporates social and environmental characteristics of an area among topics on which the Department can conduct surveys. In particular, the socioeconomic composition and population structure has an influence on what type of development is relevant, and also what type of specific conditions or protections may be required. For example, people in the most deprived population groups areas are more likely to suffer ill health than others, and potentially hazardous development near more deprived areas may compound previous risks and generate additional health burdens, for individuals and society.

This Clause should include wellbeing, for example under subsection (a) as 'characteristics and wellbeing'. This would help ensure that the information on which planning policy and guidance is based incorporates the fullest possible evidence on what promotes the overall positive development of a given area.

Clause 2. Belfast Healthy Cities strongly supports the requirement for the Department to prepare a statement of community involvement. This is important from the perspective of empowering communities and underpinning participative democracy, both of which strengthen community wellbeing and confidence in public administration. It can significantly help achieve the best possible outcomes of planning policy and planning control, as the knowledge and expertise of people and communities is captured effectively. In addition, engaging people from the early stages of the process through to decision making is a good way to improve effectiveness, as it can reduce representations at a late stage.

A statement of community involvement can provide an effective link to community planning, which also hinges on greater community engagement in planning and delivering services. The Bill could help create a link by stating how a statement should, or could, link to community planning structures potentially being developed in the next few years.

It would be helpful to include some further detail on the expected content of the statement, formats for engaging people, definitions of relevant communities and groups to be engaged, and arrangements for review. It would also be important to incorporate a requirement to assess the potential impact of the statement, in particular in relation to Section 75 groups and more deprived areas/population groups. Similarly, the effectiveness of the statement should be monitored, in particular in terms of its impact on these potentially vulnerable groups.

The Localism Bill currently going through Westminster Parliament includes considerable detail on citizen engagement, and may provide potentially useful and relevant models.

It may be useful to consider referring to planning mediation in the Bill, which is not included at present. This is a process where an independent party facilitates negotiation on disputes or contested issues/plans, and can help strengthen community engagement, as well as improve the quality and effectiveness of decision making.

Part 2 – Local Development Plans

Clause 3, subsections 1-3. The comments made above in relation to Clause 1.2 apply also to these sections.

Clause 4. As in relation to Clause 2, Belfast Healthy Cities strongly supports the requirement for local authorities to develop a statement of community involvement, and the comments made in relation to Clause 2 apply to this section also.

We also note that subsection 6 provides a useful outline of key considerations in relation to the statement. We would suggest that the same provisions could be stated in a separate subsection dealing with the expectations about what a statement should look like. Clarity of this type could be very helpful and help avoid situations where consultation in different areas is undertaken in very different ways, with the potential for raising disputes.

It would also be important to outline at earliest opportunity to what extent, if at all, how statements developed by local authorities should link to the Department's statement. At minimum, guidance should be provided on the procedure for ensuring due engagement in cases where the Local Development Plan process (or major applications) is called in by the Department.

We would stress that engagement of communities throughout the process is a vital element for effective and equitable community engagement. A requirement to include in the statement a clear indication of how people's views will shape decision making, and how this will be monitored, goes a long way towards achieving this. In addition, this is a key way of increasing confidence in the system, which both strengthens community wellbeing and improves effectiveness of the system (as representations and conflicts are reduced).

Detailed guidance in relation to statements of community involvement will be required, in particular covering instances of joint plans. This is vital to ensure people in all areas have adequate opportunities to participate and be heard in the process.

Clause 5, subsection 2a. There is a notable discrepancy between the wording of the duty to consider policies and guidance by the Department for Regional Development in this section and section 1.3, in that section 1.3 states "must be in general conformity", while this section states "must have regard to". It would appear appropriate to make the duty in both cases similar, in order to secure consistency across policies. Belfast Healthy Cities believes the stronger wording provides a better basis for securing consistency and clarity, in that it establishes a hierarchy of conformance.

Clause 6. Belfast Healthy Cities supports the structure of Local Development Plans, divided into a plan strategy and a local policies plan. This approach will offer a basis for linking land use planning to community planning, which is important as land use affects the planning and delivery of most public services. It can also create greater flexibility in relation to specific areas of interest.

We note that there is no mention of community planning in the Bill, although the planning reform is intended to run in parallel with local government reform. It would be important to create a strategic link to community planning in the Bill, in order to facilitate the most effective operation of both land use and community planning.

We would also stress that the process of introducing Local Development Plans and associated responsibilities to local authorities will require new skills from local officers and elected representatives. A programme of capacity building is vital to ensure the system operates as accurately and effectively as possible from the outset.

Clause 6, subsection 3. This section creates an expectation that conflicts are resolved in favour of the newest policy. However, it provides no indication of how it can be ensured that for example specific protections are not reduced in this way, without full examination. Clarification of this would be helpful.

Clause 7. There may be scope to consider setting an upper time limit for preparing Local Development Plans, in order to ensure plans remain timely and current, and avoid the potential for confusion caused by lengthy delays.

Clause 8, subsection 2. Comments made above in relation to Clause 1.1 are relevant also to this section.

Clause 8, subsection 3. It would be helpful if the Bill gave more detail on the required form and content of the plan strategy. This would help create a level playing field across the region, and ensure that plans in all areas are developed in a comparable and equitable way. It would also create clarity from the outset and ensure the strongest possible basis for dealing with any issues or concerns that may arise.

Clause 8, subsection 5. The comments made above in relation to Clause 5, subsection 2a apply to this section as well.

Clause 8, subsection 6. Belfast Healthy Cities supports the introduction of a requirement to carry out sustainability appraisal, although it would be welcome to clarify at earliest possible opportunity how this differs from, or relates to Strategic Environmental Assessment. Incorporating this requirement becomes particularly valuable in relation to the independent examination, and can help ensure that sustainable development – in all its facets - is considered appropriately in the plan, as Clause 10 states all requirements under Clauses 7 and 8 must be satisfied.

We understand that detailed guidance on how to apply this methodology will need to be developed separately, but it would be helpful if the Bill gave basic details about the format and content it expects. Again, this would help create an equitable and level situation for all local authorities.

Sustainability appraisal offers potential opportunities to integrate a number of key issues, including health and wellbeing. Belfast Healthy Cities, which has developed considerable capacity on Health Impact Assessment, is currently exploring opportunities with statutory agencies in Northern Ireland to develop such an integrated tool. We would be happy to expand on this at a suitable time.

Clause 9. Comments made above in relation to Clause 8 apply also to this section.

In addition, it would create clarity if the Bill gave a broad outline of the type and/or level of policies local authorities are expected to develop. For example, the English local development plan system includes Area Action Policies, which can make particular provisions for specific areas within a locality, such as areas where very rapid – or very limited – change is to be expected or desired. In addition to clarity, this would create appropriate flexibility both between and within local authorities. Clause 10, subsection 6. Belfast Healthy Cities supports the provision that any person who makes representations seeking to change a local development plan will have the right to be heard in person. This safeguards in particular people, and communities, with more limited capacity of submitting written representations, which is important to ensure equity between all population groups.

Clause 11, subsection 1. It would be helpful if the Bill, rather than subordinate legislation, gave an outline of the reasons and circumstances under which a local authority can withdraw a local development plan document. This would create clarity and provide a strong basis for dealing with any disputes that may arise.

As noted under Clause 2, it would be important to also outline at earliest opportunity the procedure in relation to the statement of community involvement and ensuring appropriate opportunities for communities to continue to participate in the process, in these cases.

Clause 13. Including greater detail on the required intervals and formats for review in the Bill would be helpful. This would reduce the scope for very varying interpretations and practices, and help ensure equitable provisions for people across Northern Ireland.

Clause 14. Comments made above in relation to Clause 13 also apply to this Clause.

In addition, Belfast Healthy Cities supports the flexibility granted by subsection 14 (1). It is important, however, that provisions are made to ensure that all relevant persons are made aware of a proposed review, to maximise accountability, transparency and an opportunity for relevant persons to make representations.

Clause 17-18. Belfast Healthy Cities supports the provision for joint plans across local authorities. This can help ensure meaningful development of a larger area, and help reduce the potential for competition of any kind between local authorities.

In relation to Clause 18, greater detail would be helpful on the circumstances in which the Department may direct two or more local authorities to prepare a joint plan. Detailed guidance in relation to statements of community involvement will be required to ensure people across the relevant area have adequate opportunities to participate and be heard in the process.

Clause 20. Comments made above in relation to Clause 5 (2a) also apply to this section.

Belfast Healthy Cities welcomes the inclusion of the Office of the First Minister and Deputy First Minister among Departments whose guidance is highlighted. It would be helpful if any subsequent regulations or guidance highlighted that relevant guidance from OFMdFM also includes policy in relation to equality and poverty. Planning and development can have a significant impact on both equality and poverty, and ensuring alignment with existing policy in these fields would help avoid unintended outcomes that may result in increasing disadvantage.

Part 3 – Planning control

Clause 25. Belfast Healthy Cities accepts the division of development into major and local, and believes that this will enable appropriate attention to be focused on each development

application or proposal. While we appreciate that the detail around the classification must be included in separate subordinate legislation, it would be helpful if the broad thresholds were given in the Bill. Similarly, it would be helpful if the Bill could outline circumstances in which the Department may reclassify a development proposal. This would create clarity and help all interested persons and stakeholders assess the process accurately from the outset.

Clause 27. Belfast Healthy Cities strongly supports the introduction of pre application consultation, which is an important way to inform and involve relevant persons in shaping development proposals, and promoting participative decision making. Pre application consultation can also help ensure that development supports the needs in the relevant area.

Comments made in relation to Clauses 2 and 4 apply also to this section. We would further stress that the Localism Bill currently going through Westminster Parliament includes a significant level of detail on requirements for pre-application consultation, including format, content and acceptable publicity. For example, this Bill incorporates clauses where applicants must be able to contact the majority of people in an area and must provide a statement of how they have responded to consultation. These can provide a ready made and helpful model for Northern Ireland. Incorporating this detail creates both clarity and confidence for the public, and can help create an empowering and inclusive, high quality yet timely planning process.

Clause 28. This section would benefit from greater detail on the required form and content of the report. It would also be important to include a duty on the person conducting the consultation to take responses to it into account in the report. This would strengthen accountability and transparency, and provide reassurance to persons participating in the consultation that it is a valuable exercise. It could also help speed up the application process, by reducing the likelihood of objections at a later date. In addition, such a provision would strengthen the provisions of Clause 50.

Clause 30. Belfast Healthy Cities supports the provision for pre determination hearings. While we appreciate that the detailed procedure cannot be incorporated in the Bill, we would at this stage like to stress that any subordinate legislation or guidance on this should set clear minimum criteria. This would ensure high quality and equitable practice across Northern Ireland, and help build confidence in the system, while not removing the scope for flexibility and choice by individual local authorities.

Clauses 33-38 – Simplified Planning Zones

Belfast Healthy Cities would welcome clarification in the Bill as to whether making or altering a Simplified Planning Zone, if this does not coincide with the preparation of a Local Development Plan, amounts to a revision of the Plan. In particular, we believe it is important to clarify what external consultation is needed in conjunction with this, so that relevant persons have clarity on how to make representations. This is important also to ensure accountability and transparency, and build public confidence.

Belfast Healthy Cities believes that it is important to exclude conservation areas and areas of natural importance from simplified planning zones, as stated by Clause 38(1). We believe it would be desirable to also make specific provisions for cases where a zone is proposed in an area of high deprivation. While development in itself may not be objectionable in such an area, provisions should offer existing residents mechanisms to be heard and safeguarded against for example large scale decanting, as this will harm established communities, with potential risks for social exclusion, and also create risks to the wellbeing of individuals.

Clause 51. Belfast Healthy Cities supports the requirement to consider environmental effects of a proposed development as part of considering a planning application. We would suggest that consideration is given also to incorporating effects on humans, and in particular equity, human health and wellbeing. This would help ensure that all development contributes to sustainable social and human development, and avoid unintended negative outcomes for people affected by any given development.

Such consideration may take a number of formats. A potentially useful model is Health Impact Assessment (HIA), which provides both a methodology and concrete tool for assessing the potential health impacts (positive and negative) of a proposal, and making recommendations for how to maximise benefits. HIA has been successfully used to inform decision making elsewhere, including in England where an increasing number of regeneration projects and spatial plans incorporate at least some element of HIA. In practice, HIA is often carried out at the request of a public sector organisation, but a key principle of the concept is that all interested stakeholders are involved on an equal basis.

Belfast Healthy Cities has developed considerable experience on Health Impact Assessment, and would be happy to expand on this, should that be helpful.

Belfast Healthy Cities has also led the development of a set of indicators that can be used to monitor how regeneration affects health, equity and wellbeing of local residents. The aim of the set is to help ensure both that regeneration improves health and that regeneration successfully contributes to economic renewal, as the issues are interdependent: a healthy economy requires a healthy population and cohesive, skilled and engaged communities. It includes both existing and new indicators under a total of five domains, including economic, social, environmental and access issues, plus neighbourhood indicators.

The project has been undertaken with the support of EU funding under the Urbact II fund, by a partnership including Belfast Healthy Cities, Belfast City Council, Belfast Health and Social Care Trust, Northern Ireland Housing Executive, Public Health Agency and the five Belfast Area Partnerships. The indicators are currently being tested and piloted on concrete regeneration proposals in Belfast, including the regeneration of Templemore Avenue School in east Belfast and the housing regeneration in the Village area of south Belfast.

We would be happy to expand also on this model, should that be helpful.

Clauses 58-59 – Appeals

Belfast Healthy Cities note that no reference is made in the Bill to third party right of appeal (TPRA). We believe it would be very important to include provision for this in the Bill. There may be scope to introduce it initially as a transitionary provision, while the return of planning powers to local authorities embeds. At this stage, TPRA is particularly important to safeguard a transparent and credible planning system.

Third party right of appeal is important to ensure quality decision making, and helps ensure equitable, balanced and participative decision making by offering relevant interested persons full opportunities to participate throughout the process. As such, it can be seen as complementing the strong emphasis on community engagement in the Bill, and a way of ensuring and testing that development is in the public interest. It can also be viewed as a way of safeguarding the rights of landowners neighbouring a particular proposal site. In addition, the existence of this provision is likely to provide an incentive to invest in pre-application consultation, which can as noted above speed up the planning process.

It is important to note that TPRA can be introduced in a number of formats, including different limitations that help ensure it is used appropriately – for example, limiting the types of development it applies to, the parties who have a right to appeal, and through the use of costs. For example award of costs, or a charge for making an appeal, is likely to deter vexatious or frivolous appeals, and the scaling of fees can be used to strengthen this deterrent.

Alongside provisions for TPRA, it may be useful to also consider referring to planning mediation in the Bill, which is not included at present. This is a process where an independent party facilitates negotiation on disputes or contested issues/plans. It can help strengthen community engagement by offering opportunities to be heard and air concerns for all parties, as well as improve the quality and effectiveness of decision making by reducing conflicts prior to appeal stage.

Clause 75-77 - Planning agreements

In relation to these Clauses on planning agreements, Belfast Healthy Cities notes that no reference is made in the Bill to a community infrastructure levy or similar arrangement. We believe consideration should be given to introducing this, at a time to be specified, in order to increase planning gain. Such a requirement may also help ensure development is well considered; it may be worth noting that the 'ghost estates' in the Republic of Ireland have resulted in costs to the councils within which they are located. In addition, these estates have had impacts on the wellbeing of those residents who remain in these areas, in particular in relation to mental wellbeing.

We also note that the Localism Bill currently going through Westminster incorporates a community infrastructure levy and makes detailed regulations around this.

Appendix 1

The links between land use planning and health

Drawn from Healthy places: Strong Foundations, Belfast Healthy Cities, April 2010. Available at http://www.belfasthealthycities.com/publications.html.

Land use planning

Land use planning shapes people's everyday living environment and through it people's health and wellbeing. Land use that supports local services and facilities, green and open spaces and good connectivity can underpin improved health and wellbeing. Through supporting local communities it can also contribute to a vibrant and sustainable economy.

Access, economy and wellbeing

Land use planning can improve access to jobs and services.

Locating key job hubs close to residential areas, as well as integrating good transport links with land use development, improves physical access to jobs, education and other essential services for all population groups. This can strengthen equity, as it reduces or simplifies travel, which can be a barrier for vulnerable groups. In particular it can benefit people from lower socioeconomic backgrounds, who are less likely to own a car but more likely to have low paid jobs.[1]

Mixed land use can also improve access by altering perceptions. Especially in more deprived neighbourhoods, mental images of where suitable jobs are located and what places are safe to go to can affect job search.[2]

Vibrant places support the economy. Vibrant, active places help sustain existing and generate new local business opportunities, as they increase footfall and people's willingness to spend time and money within the local area. As an example, experiments with pedestrianising town centres in England have indicated increased use and associated economic benefits. Even small businesses can help sustain or regenerate a local high street, through generating footfall to other businesses. Squares can support more informal economic activity, such as markets, which also can be essential for social cohesion and interaction.[3] There is also increasing evidence that house buyers are willing to pay a premium for a positive sense of place, and living in a walkable environment with easy access to key services.[4]

Places support equity. Economic development of the type outlined above can also have a positive impact on equity, by creating new job opportunities within the local neighbourhood. Local jobs are particularly significant in more deprived areas, because people in these areas may face a range of barriers to employment elsewhere, from transport to personal attitudes. Positive impacts can be maximized when new businesses and workplaces aim to fit within the area, in terms of offering jobs and services that local people can access and benefit from.[5]

Sustainable communities

Social networks thrive in local places and economies. Locally available services and public space encourage active use of the neighbourhood. This physical dynamic supports natural social interaction and can strengthen social capital and social cohesion. Greater housing density can create the 'critical mass' for supporting local provision.[6] Mixed tenure can further support cohesion across socioeconomic groups, which is vital to support wellbeing as well as job readiness across groups. Such 'community spirit' is an important support for mental wellbeing, and a prerequisite for developing resilient communities with a strong, positive identity and ability to tackle challenges. Cohesive communities are also likely to be less affected by anti social behavior, which provides public cost savings.[7]

Places shape lifestyles. Places that offer local destinations of interest, such as shops, schools, services and greenspace, within a reasonable distance can encourage people to walk and cycle, which is vital for preventing and treating obesity, as well as reducing emissions from motorized travel. Tackling obesity can bring about considerable savings, as it has been estimated that obesity and associated conditions cost the UK economy about, and may cost £50 billion per year by 2050.[8]

Urban design and wellbeing

Good urban design supports wellbeing and prosperity. Design that focuses on active uses facing the street – whether this includes shops, cultural and community uses or dwellings with windows overlooking the street – creates a welcoming atmosphere that encourages use of the street. It also contributes to place making, which focuses on integrating land uses in a specific space, in ways that respect and meet people's needs. In particular, design that encourages active use of urban space generates social life, which is essential to sustain visitor interest and can help underpin economic development and stability.[9]

Careful design can improve community safety. Active frontages and streets that are populated for most of the day provide natural surveillance, which can improve both actual and perceived safety. Over time this can reduce anti social behaviour and crime, with associated cost savings

for the public sector and police. Safe communities also support mental wellbeing, and are important for social cohesion.[10]

What shapes our health?

Health is the result of many factors, which are outlined in figure 1. The figure highlights that living conditions determine health, by shaping the choices people can make. In short, it illustrates that while lifestyle choices ultimately determine health, wider social factors crucially influence them.

The figure shows that the built environment and land use policy are crucial for health and wellbeing. For example, well designed, maintained and safe urban environments encourage people to actively use their neighbourhood and help create strong social support networks. Greenspaces are vital supports for mental wellbeing and can also strengthen the local economy, for example by attracting visitors. A walkable, well connected environment encourages active use of the neighbourhood, including physical activity.[11] This supports health directly and can also strengthen environmental health through reducing reliance on cars, which contributes to good air quality and safer roads.

Figure 1. The determinants of health

Source: Barton & Grant 2006[12]

What are inequalities in health and how do they arise?

What the figure does not show is how differences in living conditions result in differential health outcomes. Health inequalities are defined as such differences in health, which are avoidable and therefore can be considered unjust. Striving for equity is not about ensuring that everyone has the same level of health, but about providing fair conditions that allow everyone to attain their full potential.[13]

Income and social status are key determinants of equity, or inequality. The level of income has a decisive influence on material living conditions. Social status affects both self esteem and mental wellbeing, and ability to alter those conditions. People on low incomes and in lower social groups are more likely to die young and suffer ill health, primarily because their physical and social living conditions are poorer.[14]

There is also increasing evidence that having or perceiving low social status can lead to chronic stress, which contributes to physical health risks. Stress is associated for example with a higher risk of heart disease, diabetes and metabolic syndrome.[15]

The built environment can influence health inequalities significantly, although often indirectly. For example, land use that concentrates social housing at the edges of towns and/or with limited facilities and public transport connections may reduce access to work, for people without access to a car. Limited maintenance of the built environment or greenspace can add to the stress of living on a low income. Especially poorly maintained greenspace can negatively impact on people's image of an area and residents' sense of place.[16]

Health and the economy: some figures

A quarter of the Northern Ireland population is obese, and over half is overweight. Figures in England are similar and obesity costs the NHS an estimated £4.2 billion per year.

If current trends continue, it has been estimated that obesity will cost the UK economy £50 billion per year by 2050, through increased need for healthcare, increased incapacity to work and lost productivity at work.[17]

Air pollution reduces average UK life expectancy by about eight months. Each year an estimated 50,000 people die prematurely because of air pollution, which also damages ecosystems.[18]

Around 100 people die each year in road crashes in Northern Ireland. UK wide, the estimated value of preventing all casualties was £17.9 billion, of which about £10 billion involves human costs, £5.6bn damage to property, £2.5bn lost output and the remainder public costs and insurance.[19]

In 2007, the Public Accounts Committee found that missed outpatient appointments alone cost the Northern Ireland NHS £12million in 2007.[20]

Transport problems have been identified as one factor why people miss appointments.[21]

In 2006, 34% of households in Northern Ireland were classified as fuel poor. Fuel poverty is predominantly an issue for lower income and older households: 75% of households with an income under £7,000 were fuel poor, dropping to 25% of households in the £15,000-£19,999 income bracket. In total 43% of households with a head aged 60-74 were fuel poor, compared to 28% of households with a head aged 40-59.[22]

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Belfast Healthy Cities - Healthy Places - Strong Foundations

HEALTHY PLACES – STRONG FOUNDATIONS

Celebrating World Health Day
7 April 2010 - Urbanisation and Health

Healthy Cities 21st Century

HEALTHY CITIES
Belfast
Working together for a healthier Belfast

FOREWORD

Over half of the world's population now lives in cities, and more are moving in: just in the third world, cities grow by 1.2 million people every week. This has significant impacts on cities and their ability to function and support their populations. It also has major impacts on health and wellbeing, as population growth puts pressure on cities' ultimately finite space and resources.

In Belfast and Northern Ireland, rapid urbanization has largely stopped; rather, a key issue is suburbanization. This also has significant implications for city governance, as it affects the population structure, as well as resources and demand for services. Suburbanization also brings its own set of health issues, in particular reduced physical activity, considerable car dependence, and often limited local social networks.

This publication aims to provide an overview of how the built environment contributes to and shapes health and wellbeing. It is published to celebrate World Health Day in Belfast, which this year, 2010 focuses on urbanization and health.

The key message is that all sectors contribute to health, and that healthy people are the foundation for a healthy, sustainable and prosperous society. By applying a 'Health in All Policies' approach to policies and decisions on the built environment, policy can achieve these multiple aims, improve health and well being and the causes of inequalities in health determinants be tackled.

I commend this publication to you produced by Belfast Healthy Cities in a call by the World Health Organization for all cities to work towards their goal of being healthy, sustainable and prosperous cities.

Naomi R Long

Councillor Naomi Long
Lord Mayor

PREFACE

Our health is one of our greatest resources. Healthy people can lead active, fulfilling personal lives and contribute to healthy communities, with strong support networks. The World Health Day celebrates this, and in 2010 offers an important opportunity to consider how urbanization has shaped health and wellbeing.

Land use and spatial planning, open and green space, transport and housing and regeneration are all important health determinants in their own right. However, together they add up to a very powerful health determinant. The built environment shapes virtually all aspects of health and wellbeing through its impact on our everyday lives and the choices we can make. Positive environments, which offer safe opportunities for physical activity, social interaction, stress relief and recreation alongside easy access to jobs, schools and essential services contribute greatly to all aspects of our health and wellbeing. Such places are also important for strengthening health equity, because they improve living conditions for all, but in particular improve opportunities for the most vulnerable groups.

The growing population of cities puts pressure on the physical as well as the social environment, and therefore strengthening urban health offers particular challenges. Globally as well as locally here in Northern Ireland, urban areas tend to have poorer health outcomes and are often affected by considerable deprivation.

It is helpful to recall that public health and urban planning have joint roots, as both originated to tackle the very poor living conditions and high levels of disease and mortality in 19th century cities. The issues today are different but no less urgent: obesity and air pollution directly affect life expectancy, while mental health problems and declining social networks reduce quality of life. Health inequalities concentrate health risks and contribute to incapacity, benefit reliance as well as social divisions and tensions. There are therefore strong incentives for new, more collaborative ways of working, which can draw on the knowledge and experience of the built environment as well as health sectors.

This publication provides an introduction to the links between health and the built environment. It can be a helpful tool for developing future collaboration and its strong messages can contribute to improved health and wellbeing.

Dr Eddie Rooney
Chief Executive
Public Health Agency

CONTENTS

INTRODUCTION

Spatial and land use planning sets the contours of urban spaces and uses, and is therefore one of the most crucial and far reaching functions in society. Not only does this affect the economy, but policies and decisions on the built environment also shape health, as they influence people's ability to access jobs, services and leisure opportunities, be physically active, and build social networks. The quality of the built environment is vital for reducing inequalities in health, which cause both individual suffering and societal loss, through unused human potential.

The key message is that all sectors contribute to health and wellbeing. The healthcare sector provides vital care and education, but a high quality built and social environment can prevent ill health, thus reducing the need for healthcare and supporting considerable cost savings. The second key message is that a healthy population contributes to a prosperous and sustainable society, through greater productivity, innovation and ability to maintain high skill levels. The built environment has a pivotal role both in initiating and maintaining this positive feedback loop, which also supports long term human and environmental health.[1]

A prosperous future has been identified as a shared goal across Northern Ireland. Wellbeing and sustainability are also identified as key goals and elements of prosperity. In many cases, synergies and multiple aims can be achieved relatively easily and with minimum cost implications, by widening the evidence base on which actions are built. Collaboration across sectors is key to securing positive outcomes.

This publication aims to support that process of collaboration. It is intended to share evidence on how the built environment contributes to and impacts on health, and on measures that can effectively support health equity and wellbeing, as well as the economy and the environment. It is aimed at a number of key stakeholder groups, in particular land use, transport and housing planners, regeneration professionals and health professionals. It may also be useful for elected representatives, who are or will be responsible for planning policy and decisions.

Figure 1.
The determinants of health

Source: Barton & Grant 2006[2]

What is health?

Health is much more than the absence of disease; the World Health Organization defines it as a 'state of complete physical, mental and social wellbeing'. It can also be defined as 'a resource for daily living' rather than an end in itself: healthy people can be active, enjoy positive relationships and lifestyles and contribute to society, through formal employment and productive work as well as more informally, through supporting cultural activity and social networks.

A healthy population is then a prerequisite for a healthy economy. Healthy people are less likely to be absent from work or incapable of work, need less healthcare and, importantly, are less likely to rely on benefits over the long term.

What shapes our health?

Health is the result of many factors, which are outlined in figure 1. The figure highlights that living conditions determine health, by shaping the choices people can make. In short, it illustrates that while lifestyle choices ultimately determine health, wider social factors crucially influence them.

The figure shows that the built environment and land use policy are crucial for health and wellbeing. For example, well designed, maintained and safe urban environments encourage people to actively use their neighbourhood and help create strong social support networks. Greenspaces are vital supports for mental wellbeing and can also strengthen the local economy, for example by attracting visitors. A walkable, well connected environment encourages active use of the neighbourhood, including physical activity.[3] This supports health directly and can also strengthen environmental health through reducing reliance on cars, which contributes to good air quality and safer roads.

What are inequalities in health and how do they arise?

What the figure does not show is how differences in living conditions result in differential health outcomes. Health inequalities are defined as such differences in health, which are avoidable and therefore can be considered unjust. Striving for equity is not about ensuring that everyone has the same level of health, but about providing fair conditions that allow everyone to attain their full potential.[4]

Income and social status are key determinants of equity, or inequality. The level of income has a decisive influence on material living conditions. Social status affects both self esteem and mental wellbeing, and ability to alter those conditions. People on low incomes and in lower social groups are more likely to die young and suffer ill health, primarily because their physical and social living conditions are poorer.[5] There is also increasing evidence that having or perceiving low social status can lead to chronic stress, which contributes to physical health risks. Stress is associated for example with a higher risk of heart disease, diabetes and metabolic syndrome. It has also been suggested that negative lifestyles, such as smoking and problem alcohol or drug use, can be a coping mechanism related to the stress of living with disadvantage.[6]

The built environment can influence health inequalities significantly, although often indirectly. For example, land use that concentrates social housing at the edges of towns and/or with limited facilities and public transport connections may reduce access to work for people without access to a car. Limited maintenance of the built environment or greenspace can add to the stress of living on a low income. Especially poorly maintained greenspace can negatively impact on people's image of an area and residents' sense of place.[7]

Ways of working that support health and wellbeing

Intersectoral collaboration. Developing relationships across sectors can strengthen understanding of the core issues of each sector, which in turn can support the development of synergistic solutions. Land use and spatial planning offers an ideal platform for co-ordinating the contributions across sectors, while land use planners possess the key technical skills required to facilitate the process.

Community engagement. Engaging with people and organizations directly affected by a proposal can significantly support health and wellbeing. Local stakeholders have vital knowledge about the area and its needs, and can contribute to the development of a more effective and successful proposal. Having a say also contributes to mental wellbeing and community confidence, which can increase ownership and positive engagement with development. To ensure effective and positive outcomes, it is important to engage early and allow stakeholders to consider a range of options or scenarios.

Utilising a wide evidence base. Considering evidence from a range of fields to inform policy and action planning can help identify key issues as well as solutions that can support multiple aims. It may also be useful to utilize elements of assessment tools to support decision making, for example a Health Impact Assessment approach, or a Health in All Policies approach, which emphasizes seeking solutions that achieve sectoral objectives while also supporting health and wellbeing. External capacity may be available to support these processes, for example from the health sector or the community and voluntary sector.

Health and the Economy

A quarter of the Northern Ireland population is obese, and over half is overweight. Figures in England are similar and obesity costs the NHS an estimated £4.2 billion per year.

If current trends continue, it has been estimated that obesity will cost the UK economy £50 billion per year by 2050, through increased need for healthcare, increased incapacity to work and lost productivity at work.[8]

Air pollution reduces average UK life expectancy by about eight months. Each year an estimated 50,000 people die prematurely because of air pollution, which also damages ecosystems.[9]

Around 100 people die each year in road crashes in Northern Ireland. UK wide, the estimated value of preventing all casualties was £17.9 billion, of which about £10 billion involves human costs, £5.6bn damage to property, £2.5bn lost output and the remainder public costs and insurance.[10]

Missed outpatient appointments alone cost the Northern Ireland NHS £12million in 2007.[11] Transport problems have been identified as one factor why people miss appointments.[12]

In 2006, 34% of households in Northern Ireland were classified as fuel poor. Fuel poverty is predominantly an issue for lower income and older households: 75% of households with an income under £7,000 were fuel poor, dropping to 25% of households in the £15,000-£19,999 income bracket and 8% of households in the £20,000-£29,999 bracket. In total 43% of households with a head aged 60-74 were fuel poor, compared to 29% of households with a head aged 40-59.[13]

LAND USE AND SPATIAL PLANNING

Land use and spatial planning shapes people's everyday living environment and through it people's health and wellbeing. Land use that supports local services and facilities, green and open spaces and good connectivity can underpin improved health and wellbeing. Through supporting local communities it can also contribute to a vibrant and sustainable

Access, economy and wellbeing

Land use and spatial planning can improve access to jobs and services. Locating key job hubs close to residential areas, as well as integrating good transport links with land use development, improves physical access to jobs, education and other essential services for all population groups. This can strengthen equity, as it reduces or simplifies travel, which can be a barrier for vulnerable groups. In particular it can benefit people from lower socioeconomic backgrounds, who are less likely to own a car but more likely to have low paid jobs.[14]

Mixed land use can also improve access by altering perceptions. Especially in more deprived neighbourhoods, mental images of where suitable jobs are located and what places are safe to go to can affect job search.[16]

Vibrant places support the economy. Vibrant, active places help sustain existing and generate new local business opportunities, as they increase footfall and people's willingness to spend time and money within the local area. As an example, experiments with pedestrianising town centres in England have indicated increased use and associated economic benefits. Even small businesses can help sustain or regenerate a local high street, through generating footfall to other businesses. Squares can support more informal economic activity such as markets, which also can be essential for social cohesion and interaction.[16] There is also increasing evidence that house buyers are willing to pay a premium for a positive sense of place, and living in a walkable environment with easy access to key services.[17]

Places support equity. Economic development of the type outlined above can also have a positive impact on equity, by creating new job opportunities within the local neighbourhood. Local jobs are particularly significant in more deprived areas, because people in these areas may face a range of barriers to employment elsewhere, from transport to personal attitudes. Positive impacts can be maximized when new businesses and workplaces aim to fit within the area, in terms of offering jobs and services that local people can access and benefit from.[18]

Sustainable communities

Social networks thrive in local places and economies. Locally available services and public space encourage active use of the neighbourhood. This physical dynamic supports natural social interaction and can strengthen social capital and social cohesion. Greater housing density can create the 'critical mass' for supporting local provision.[19] Mixed tenure can further support cohesion across socioeconomic groups, which is vital to support wellbeing as well as job readiness across groups. Such 'community spirit' is an important support for mental wellbeing, and a prerequisite for developing resilient communities with a strong, positive identity and ability to tackle challenges. Cohesive communities are also likely to be less affected by anti social behavior, which provides public cost savings.[20]

Places shape lifestyles. Places that offer local destinations of interest, such as shops, schools, services and greenspace, within a reasonable distance can encourage people to walk and cycle, which is vital for preventing and treating obesity, as well as reducing emissions from motorized travel. Tackling obesity can bring about considerable savings, as it has been estimated that obesity may cost the UK economy $50 billion per year by 2050.[21]

Urban design and wellbeing

Good urban design supports wellbeing and prosperity. Design that focuses on active uses facing the street – whether this includes shops, cultural and community uses or dwellings with windows overlooking the street – creates a welcoming atmosphere that encourages use of the street. It also contributes to place making, which focuses on integrating land uses in a specific space, in ways that respect and meet people's needs. In particular, design that encourages active use of urban space generates social life, which is essential to sustain visitor interest and can help underpin economic development and stability.[22]

Careful design can improve community safety. Active frontages and streets that are populated for most of the day provide natural surveillance, which can improve

both actual and perceived safety. Over time this can reduce anti social behaviour and crime, with associated cost savings for the public sector and police. Safe communities also support mental wellbeing, and are important for social cohesion.[22]

What policy can do

Focus on place making. Integrated planning of all elements within a space can strengthen accessibility and create supportive environments that promote wellbeing. Physical elements that support social cohesion and active use can incorporate greenspaces, squares and even well connected streets. Focusing on pedestrians can also support the local economy, as people moving on foot are more likely to visit shops and linger in a place. This is particularly important for people with visual impairments or mobility limitations and therefore also contributes to health equity. It can also help reinforce a sense of place through attention to the shared public realm.

Support and prioritise mixed use development. Mixed use, socially active and cohesive environments can be particularly important for older people, as they can prevent and alleviate social isolation, which is a major risk factor for ill health among older people. They can also support the healthy development of children, as they may have greater opportunities to move around independently and develop friendships with people of different ages.

Safeguard and strengthen greenspace. The existing targets for brownfield development offer a good starting point to protect greenspace across Northern Ireland. Regeneration offers a key opportunity to incorporate greenspace in urban areas, in ways that can support economic as well as social and environmental regeneration. Commercially less attractive land may be cost effectively transformed into greenspace on a permanent or temporary basis.

Support and promote good urban design. Urban design largely determines the character of an area, which affects how people perceive and use it. Good urban design can support revitalization of an area and a community, while respecting its original character. Creative reuse of buildings is one example of this, which also can contribute to more active street frontages.

Case study: The London Plan Spatial Strategy

The spatial strategy of the London Plan was originally published in 2004 and republished in 2008 with alterations since 2004. It aims to accommodate London's growth within its boundaries, and takes sustainable development, health and equality as key underpinning principles. Tackling climate change is an overarching objective, and the Plan sets out to develop London as an exemplary, sustainable world city, including working towards carbon neutrality. The strategy promotes community engagement and collaborative working, across sectoral and local authority boundaries.

A key aim of the Spatial Strategy is to guide growth, which it aims to channel to Areas for Intensification and Opportunity Areas well served by public transport. Growth in these areas should be focused on mixed use development, and neighbourhoods should be walkable with services locally based. However, all development is expected to take place within the overarching framework, which aims to preserve open space and respecting the Blue Ribbon Network of blue spaces.

To support equality and social inclusion, the Strategy emphasizes the need to make links between these growth hubs and nearby areas of deprivation, or Areas for Regeneration. Improving access and tackling quality of life issues in suburbs is a central physical aim, while the Strategy also sets out to support social regeneration through local job creation, skill building and support services such as childcare. It promotes mixed tenure housing, creative reuse of buildings and sustainable construction, as well as retrofitting of older buildings to meet modern energy efficiency standards.

For more information see
http://www.london.gov.uk/thelondonplan/development/spatial.jsp

OPEN AND GREEN SPACE

Open and green space supports health and wellbeing by encouraging physical activity, offering opportunities for recreation and relaxation, and providing a natural space for informal social interaction. Strong green infrastructure, providing easy access to local greenspaces, with green links to more traditional 'destination' green and blue spaces can also support a healthy environment, while offering new economic opportunities.

Defining green and open space

Open space can be defined as land of (potential) public value in an urban area, and includes undeveloped land, a wide range of green spaces and blue spaces, or waterways.[24] Greenspace is defined in similar terms, although the term emphasises space with vegetation.[25]

Human wellbeing

Access to greenspace encourages an active lifestyle. In a Europe wide survey, it was found that people living in neighbourhoods rich in greenspace were three times more likely to be physically active than people who had limited access to greenspace. These areas also had 40% lower prevalence of obesity.[26] Measures such as walking trails, cycle tracks and open air gym equipment can further encourage physical activity in greenspace.

Contact with nature underpins mental wellbeing. The relaxing qualities of greenspace are strongly associated with stress relief and an opportunity to escape everyday worries and concerns. These associations are particularly strongly made by people living with deprivation and disadvantage.[27] There is also evidence that people living in social housing who have a view of trees are better able to cope with stress than people who do not.[28]

People with dementia as well as people with learning difficulties benefit from natural environments such as sensory gardens. Contact with nature can also help people coping with mental illness.[29] Some findings indicate that people recover faster from surgery if they have a view of nature.[30]

Low cost access to positive environment supports health equity. The benefits of greenspace are often available at no or nominal cost to users, which is key to strengthening equity. It is vital, however, that greenspace is of high quality and well maintained. Poor quality greenspace can attract anti social behaviour and serve to lower wellbeing through reducing the quality of the neighbourhood and often also its reputation. Currently, provision of good quality greenspace is less common in more deprived areas.[31]

Social wellbeing and prosperity

Social cohesion can be built within greenspaces. Greenspaces offer a meeting place open to all, and are prime spaces for natural encounters between people of different ages and backgrounds. Parks can be a key safe place where older people share a space with young people, reducing anxieties and helping prevent social isolation.[32] Greenspaces can also provide a hub for different types of community activity, which supports a sense of belonging and can offer opportunities for concrete collaboration. Community gardens and allotments can, in addition, make a considerable contribution to urban food production, which is likely to become increasingly important in the context of climate change and food security.[33]

Strengthening greenspace contributes to economic prosperity. Within urban centres, even small greenspaces offer a vital break from the built environment, which supports mental wellbeing. Importantly, this can also contribute to productivity in nearby workplaces.

Green infrastructure provides a pleasant aesthetic environment, which may attract visitors and support the local economy, including new businesses.[24] There is also evidence that green space boosts the value of nearby properties.[25]

Greenspace can also offer new employment opportunities, for example in maintenance, leisure activities and food production. Especially older, mature parks can be significant economic assets in themselves, worth up to several million pounds in terms of physical infrastructure alone.[26]

Urban greenspace is vital for environmental sustainability. Greenspaces are crucial for supporting urban biodiversity. Trees provide shade and act as natural coolants, thus reducing the need for mechanical cooling, which in turn reduces the demand for electricity and energy. They also improve air quality by absorbing pollutants, including CO_2. Not just parks, but street trees, green verges and gardens all contribute to natural drainage, which reduces the risk of localised flooding. In other words, green spaces can help deal with climate change, and support energy policy goals by potentially contributing to lower demand.[27]

What policy can do

Develop local greenspaces. Small greenspaces, such as community gardens, play areas and neighbourhood parks play a vital role for wellbeing, as they offer easy access from home, which is essential to enable and encourage frequent use. It is particularly important for less mobile groups, including children, older people, people without cars and people living on low incomes.

The current requirement to incorporate 10% of new development as open space provides a significant opportunity to support health and wellbeing of users and residents, while also boosting the value of the development. Key to this is ensuring that open space is integral to development, and not fenced off or parceled away in the lowest grade sections. Examples could include a community garden or play area in a housing development, or a small garden or parkland within a business development.

Converting derelict land to greenspace or community space temporarily, while regeneration plans are developed, can be cost effective as it can support local health and wellbeing, provide social and environmental benefits and thus control vandalism and further dereliction.

Provide infrastructure to support usage. Integrating greenspaces into the neighbourhood, with several access points and 'shortcut' routes through the greenspace, helps encourage and maximise use. Flexible spaces that support a variety of uses strengthen this, through enabling creative use by different user groups.[28]

Places that are open throughout the day and ideally lack fences are best placed to support community building as well as other uses. Such openness encourages people to take ownership of the place, and can support responsible use with low levels of vandalism.

Support and develop greenways. Linear greenways and even tree lined streets offer many of the benefits of greenspace, including sustainable urban drainage. Such measures can contribute to health equity by introducing these benefits to disadvantaged areas at relatively low cost, and without the need for significant land use change. Where for example native fruit trees are introduced, such measures can also support biodiversity, community activity and contribute to improved understanding of how and where food can be produced.[29]

Prioritise maintenance and safety. Design, maintenance and safety is paramount to support and encourage use of greenspace. Spaces that are poorly maintained and perceived as unsafe can invite anti social behaviour and add to the stress and health risks of disadvantage, while improved quality and safety in a green or open space can both improve wellbeing and spark social and economic regeneration.[30]

Case study:
Commonwealth Orchard

Commonwealth Orchard is a Scottish project which aims to develop community gardens, with native apple, pear and plum trees, across Scotland. The project aims to support local, urban food production, biodiversity and conservation of native species, but also to improve health and build skills and confidence among individuals, communities and businesses. A key factor is also supporting people from a wide range of backgrounds to develop strong bonds and social networks. The name draws on an old meaning of commonwealth, 'common weal' or common good, but the project also aims to create a legacy for the Commonwealth Games to be held in Glasgow in 2014.

Launched in 2009, Commonwealth Orchard is an initiative of Children's Orchard, a social enterprise based in Glasgow. It has worked with many organizations and sectors, including schools, local authorities and public bodies. By early 2010, it has supported schools, communities and individuals to plant of significant numbers of fruit trees across Scotland, and contributed to planning for many more community gardens. For example in Edinburgh, the creation of an orchard in a deprived community has encouraged the local authority to seek more potential sites.

The original idea of the Children's Orchard is to work with children to plant fruit trees, for example apple trees in school grounds and community gardens. Its focus is to develop greenspaces, but also give children the skills to enjoy a healthier lifestyle now and over their lifecourse. The project has also been used to develop cross community relationships.

For more information see www.commonwealthorchard.com and www.childrensorchard.co.uk.

TRANSPORT

Transport is vital for daily living and through this health and wellbeing.

Transport allows people to take up jobs, gain an education and access services, as well as socialise, visit friends and family and participate in society generally. Good public transport can widen access, while reducing congestion and air pollution. Active travel can support this, and can also help tackle obesity through increased physical activity.

Access, economy and wellbeing

Good public transport can help people become and remain economically active. A good public transport system can widen the area for job search and improve people's opportunities to earn a living and participate in society. This is particularly important for people from more disadvantaged backgrounds, who are less likely to own a car, and also often have limited job opportunities due to limited formal qualifications.[41]

Accessible systems encourage usage. Key characteristics of accessible public transport systems include:

- a focus on connectivity and linking people with jobs and services, along orbital as well as arterial routes;
- appropriate and reliable scheduling;
- affordable fare structures that support and incentivize use; and
- high quality vehicles and waiting facilities.[42]

Such systems are particularly well equipped to improve health equity in a sustainable way. The key benefits, which support individual health as well as public finances, include reduced benefit reliance and reduced need for healthcare.

Improving public transport and active travel can support economic prosperity. Longer term, transport systems that focus on public transport and integrate active travel as a key form of road use can reduce traffic and congestion. This cuts air pollution and CO_2 emissions and contributes to environmental sustainability, while also cutting driver stress. Reduced congestion can bring economic benefits, by limiting work time lost in traffic, improving reliability for freight, and reducing the need for road maintenance.[43] Meanwhile, it has also been found that people are willing to pay a premium for living in socially cohesive and walkable environments.[44]

Integrated systems support environmental sustainability and equity. Air pollutants involve a complex mix of gases and sources, but the most serious health impacts are associated with particulate matter, which is emitted above all from motorised vehicles. Reducing long term exposure to particulates can help reduce significant health risks, such as an increased risk of respiratory tract infection, allergies and complications of conditions such as asthma and heart disease.[45]

Reducing air pollution supports equity, as people living in more deprived areas typically have greater exposure to air pollution, often because these areas are located near busy major traffic arteries. UK wide, air pollution shortens the average life expectancy by about eight months and is associated with up to 50,000 premature deaths each year.[46]

Roads, safety and lifestyle

Road crashes are a major cause of ill health; risks are greater for pedestrians, cyclists and motorcyclists. In Northern Ireland, road crashes are the leading cause of death for young men aged 16-24.[47] While most people killed and injured are car drivers and passengers, the risk is greater for less protected pedestrians, cyclists and motorcyclists. People from more deprived areas are also more likely to be injured in crashes than the average population.[48]

Safe traffic conditions contributes to healthy child development. Concerns about traffic are a major reason why children are driven to school and have limited opportunities for free physical play outdoors. This is of concern because it is linked to the rising levels of childhood obesity, and because lifestyle habits are formed in childhood and adolescence. Unsupervised physical play and for teenagers a degree of independent mobility is also essential for healthy mental and social development.[49]

Safe roads can help older people stay active. Concerns about traffic can discourage older people from walking in their neighbourhood. This can contribute to social isolation and reduces physical activity, which is associated with factors from greater fear of crime to more rapid

cognitive decline and greater need for residential care.[40]

Active travel, wellbeing and sustainability

Active travel can be particularly effective for tackling obesity and depression. Walking and cycling for transport has been identified as perhaps the best way to increase levels of physical activity at a population level, since active travel can be incorporated into daily routines and is therefore relatively easy to sustain. Physical activity also boosts mood and can be as effective as medication in relieving mild to moderate depression.[41]

Active lifestyles can strengthen communities and make them safer. Active travel offers important opportunities for social interaction, which can both support mental wellbeing and encourage social cohesion. There is considerable evidence that people living on heavily trafficked streets have fewer friends and acquaintances in their neighbourhood than people living in light traffic streets.[42]

The flow of pedestrians and cyclists also creates life on the street, which improves safety both in itself and through providing natural surveillance. This can, in the longer term, reduce anti social behaviour and the need for security measures. It can also encourage new population groups to use the street, including children and older people, and further strengthen communities.[43]

Reducing motorized travel helps deal with climate change. Modal switch to active travel and public transport can also significantly reduce greenhouse gas emissions and help deal with climate change, which is a health as well as environmental risk.[44] Road traffic currently accounts for nearly a quarter of Northern Ireland's emissions of CO_2 and emissions have risen in line with the growing vehicle stock.[45]

What policy can do

- **Strengthen public transport.** Dedicated and systematic public transport planning can strengthen effective provision. Community engagement on transport needs can be a useful way of gaining essential information on desired routes and further encourage uptake, thus supporting viability of services. Ensuring affordability and connectivity is likely to have the greatest impact on inequalities.
- **Strengthen active travel facilities.** Footpaths and cycle lanes that provide a continuous link between key desired destinations help make active travel a more viable option. Integrating facilities into new development can support a sense of local community and support sustainable development targets, while potentially boosting the property values. Where facilities are retrofitted, gradually creating meaningful stretches is key to encouraging and sustaining use.
- **Improve safety on active travel routes.** Well lit and maintained footpaths and cycle lanes, combined with safe crossing points in desired points, are a key prerequisite for encouraging active travel. Maintaining footpaths as an integral part of the road network can also provide cost savings, for example through reducing slips in winter, which can reduce pressure on the healthcare system.[46]
- **Improve road safety.** Local traffic calming schemes have had positive results in reducing injuries and encouraging people to use their neighbourhood more actively. In England and the Republic of Ireland, a number of local authorities are piloting 20 miles per hour speed limits to widen the impact of local schemes.

Case study:
York Local Transport Plan

The City of York was awarded the status of the UK's leading cycling city in 2004. The city has also managed to limit peak traffic to 1999 levels, while bus patronage increased by 49% between 2001 and 2005 and walking targets were met four years ahead of schedule. In 2007-08, just under 45% of journeys to work were by car, and 18.5% of children were driven to school.

Transport policy in York has focused on developing an integrated, sustainable transport system since the 1980s. However, these achievements are the result of the city's first Local Transport Plan (2001-06) and ongoing second Plan (2006-11). A key aim of both Plans has been to reduce car traffic in the city, and the city has introduced a 'hierarchy of transport users', which prioritises pedestrians, followed by people with mobility problems, cyclists and public transport users. The Plans have built on key pillars including reducing congestion, improving road safety, improving quality of life and improving accessibility. Promoting health and enabling healthier living has been an explicit objective of both Plans, which also aim to support sustainable economic performance. Interventions have included improvements to public transport – including bus lane improvements, continuous development of park and ride sites and orbital routes and improved service reliability; investment in walking and cycling routes which are interlinked to public transport, and road improvements that direct traffic away from the city centre.

The Plans are also directly linked to the community plan for York, which emphasizes sustainable development.[87]

Trends

Single parents, young people and people in rural areas are particularly likely to state that lack of suitable transport limits their job opportunities; combining trips to childcare, school and work is particularly challenging.[88]

About 70% of all journeys in Northern Ireland are taken by car, which is more than in England or Wales. The figure includes almost a fifth (17%) of journeys under one mile.[89]

The proportion of people walking to work in Belfast has increased to 25%, while the number of local bus passenger journeys has grown by 33% since 2005, when Metro was introduced.[90]

Over half of primary school pupils (4-11 year olds) in Northern Ireland and nearly a quarter of secondary school pupils are driven to school.[91] In Britain, 48% of 5-10 year olds walk to school.[92]

HOUSING AND REGENERATION

Housing supports health and wellbeing by providing physical shelter and a safe space for recreation and self expression. Warm and secure accommodation is a prerequisite for good health, while a supportive physical and social neighbourhood can underpin mental wellbeing and social cohesion.

Housing quality, wellbeing and equity

High quality housing is vital for physical wellbeing. Warm, dry and draughtproof housing is essential to support health, especially for more vulnerable groups such as older people, children and people with chronic conditions. At its most severe, cold and damp housing can increase the risk of a heart attack, especially among older people. Children living in poor housing have an increased risk of respiratory tract infections.[42]

Good housing also underpins mental wellbeing. A well designed, appropriately spaced dwelling offers a space for rest and recuperation in private, which is vital for mental wellbeing. It can also enable creativity and self expression; homes can be a major source of life satisfaction.[43] For older people, independent living supports wellbeing and suitable housing is crucial for this.[44]

Warm homes are a key support to improved educational attainment. They can also support people's social networks, by enabling people to socialise at home. Young people may also be safer, as cold homes often encourage young people to socialize outdoors, with associated increased risks to wellbeing.[45]

Energy efficient housing supports health equity. According to the 2006 House Condition Survey, most properties that failed the Decent Homes standard did so on the thermal comfort criterion.[47] Energy efficient housing helps reduce and prevent fuel poverty, and is key to reduce the health risks of cold housing, including a greater risk of heart attacks for older people and respiratory tract infections among children. It is also vital for dealing with climate change and improving energy security, which have disproportionate impacts on vulnerable groups.[48] Domestic emissions, which include housing, currently account for a fifth of Northern Ireland's greenhouse gas emissions.[49]

Energy efficient housing also strengthens health equity by cutting energy costs. This can be vital for low income households, who are most at risk of fuel poverty.[50]

Social wellbeing and prosperity

Good housing creates a positive built environment that supports community cohesion. Housing is a core element of the built environment; well designed and maintained housing creates a framework that can encourage trust, social interaction and a sense of 'community', local identity and cohesion. This is essential for mental wellbeing, while there also is evidence that people who live in a supportive environment typically are in better health, requiring less health and social care, and indeed live longer.[71,72] A positive local environment is particularly important for less mobile groups including older people and people on lower incomes, and can reduce the stress associated with lower social status. Social cohesion can also help strengthen informal social control within a neighbourhood, which can reduce anti social behaviour.[73] It can also help generate confidence and willingness to take action for developing the area.

Mixed tenure can support health equity and wellbeing as well as the local economy. More socially mixed areas can strengthen social cohesion and equity, through supporting interaction and understanding between people of different backgrounds. They can also create new economic opportunities, by ensuring viable local spending power exists.[74]

Mixed tenure can also improve equity in health by widening access to information about jobs, education opportunities and ways to deal with authorities. Studies indicate that such 'linking' social capital enhances people's life opportunities and their wellbeing, by increasing a sense of control over one's life, but currently tends to concentrate among more educated and affluent groups.[75] Conversely, concentrating social housing into estates, sometimes with limited links to local job and service hubs, serves to reduce access to information and opportunities. It has also often resulted in concentration of side effects of disadvantage, such as anti social behaviour, which adds to stress and low wellbeing, and can erode trust.[76]

What policy can do

Support high quality housing. Implementing strict quality standards for new housing can support healthy future environments, while improvements to existing stock can underpin and support regeneration of a neighbourhood.

Improve energy efficiency. Ensuring new housing meets stringent energy efficiency standards can help tackle fuel poverty now and in the future. Encouraging exploration of new approaches, for example passive heating and novel designs, also builds resilience to a changing climate and energy context, and can provide long term savings by reducing the need for retrofitting and adaptation.[17] Prioritising local and sustainable materials in construction further supports this and can also provide new jobs, for example in quarrying.

Support lifetime homes and integrated specialist housing. Flexible housing design, which can be adapted to meet the needs of older residents and residents with disabilities, can help manage long term demand in an ageing society and provide savings in adaptation costs. Integrating specialist housing into mainstream housing supports the health and social wellbeing of residents, by enabling social interaction that can reduce for example fear of crime, and can strengthen social cohesion and trust.

Support greater dwelling density. Greater density, especially when coupled with easy access to greenspace, local facilities and services, can create new opportunities for developing social support networks, by increasing informal meeting places. Increased densities reduce travelling distances and can encourage active travel, which is important for increasing levels of physical activity as well as reducing energy demand. This, in turn, is a vital component of dealing with climate change and energy security concerns. By encouraging new community hubs, denser housing can also support new economic opportunities.

Support and strengthen mixed tenure residential areas. Mixed tenure can support health and also underpin regeneration of an area. It does, however, run the risk of increasing polarization and alienating especially more vulnerable social groups. Such approaches have the greatest potential to support health and wellbeing, and regeneration, when housing for different tenures is mixed in an equitable way and supported by community facilities, to ensure equity of access.

Regeneration

Regeneration can significantly support health and wellbeing, by improving the built and social environment. Physical regeneration can kickstart a positive process of building motivation and aspiration, as outlined above. The greatest returns can be expected when this is linked to social regeneration, such as skill building, supporting early years and other measures aimed at improving life opportunities. The social element is crucial especially when regenerating deprived areas, as omitting it and focusing on attracting new residents and investment can lead to gentrification.[18] This can force existing residents to leave, with potentially significant harm to their health and wellbeing through displacement and disruption to existing social networks. There may also be community tension, especially if income gaps between old and new residents are big and if existing residents feel excluded and unable to benefit from regeneration.[19]

Physical regeneration can support social regeneration and underpin economic regeneration. Initiatives that support social enterprise and community activity, such as capacity building, childcare, education and training contribute to health equity and wellbeing, by improving the skills and opportunities of residents especially in more disadvantaged

areas. Such approaches can also strengthen the local economy in a sustainable way. Retail is vital for a vibrant community and viable economy, but primarily retail led regeneration may be vulnerable in an increasingly volatile economic environment, and if unsuccessful add to blight and dereliction. Jobs created in retail are often also low grade, which can have limited health benefits, as these jobs are characterized by high demand, low control and limited progression routes.[49]

Trends

A third of households in Northern Ireland were classified as fuel poor in 2006.[51]

Over 40% of properties in west Belfast are social rented, compared to 16% in east and 19% in south Belfast.

Housing need projections indicate a 30% rise in one and two person households between 2006 and 2020, associated with population ageing and other lifestyle changes such as family formation at later ages.

In 2009, there were just over 6,860 new dwelling starts, of which 14% were social housing. In 2008, just over 9,200 applicants were accepted as homeless, while just over 20,640 households were deemed to be in housing stress.[52]

What policy can do

Support sustainable regeneration. Evidence from England indicates that in some cases, regeneration has focused on fast food outlets and bars. Especially the latter has direct consequences and costs for policing and healthcare, while increasing access to fast food contributes to poor diet and increases the risk of obesity and ill health. Meanwhile, linking social and economic regeneration, for example through can bring particular benefits to health and wellbeing by providing a range of job opportunities and improving long term prospects of an area and its residents.

Strengthen community engagement. Community engagement can support the creation of spaces that meet people's needs, as local stakeholders have key knowledge on these. Engagement can also contribute to successful regeneration, as it enables local stakeholders to take ownership of the process and supports a stronger sense of place and pride in the neighbourhood.

Case study: Dove Gardens, Derry City, Health Impact Assessment and regeneration strategy.

Dove Gardens, Brandywell Ward, Derry City was an unpopular complex of 76 maisonettes and flats located in one of the most deprived areas of Northern Ireland. Built in the 1960's it had a number of intrinsic design and construction deficiencies resulting in the properties becoming problematic. They experienced an increase in long term vacancies, a mismatch between house type and occupant, a significant rise in anti-social behavior and a dramatic rise in turnover of stock which was difficult to let.

The Housing Executive carried out an economic appraisal and determined that redevelopment was the appropriate course of action to alleviate the local problems. Prior to embarking on the progression of the scheme a decision was reached to carry out a Health Impact Assessment (HIA). An HIA has been defined as "a systematic method of ensuring that policies and programmes from a range of areas give one regard to their impact on Health" This process involved a wide range of statutory and voluntary organizations working with the local community in the decision making process. The HIA assessed a wide range of health determinants which included environmental, fuel poverty, community safety and cohesion, mental and physical health and educational attainment. This process concluded demolition and replacement with ground floor accommodation appropriate for all household groups was the best way forward.

The outcome, which implemented the recommendations of the HIA, has been a very popular modern housing scheme of 63 traditional houses and bungalows constructed by North and West Housing Association. All the new homes have front and back gardens and the area has been enhanced by a public park, a playing pitch and a proposal for a children play area. The construction included high levels of insulation and the provision of solar panels both aimed at reducing heating costs.

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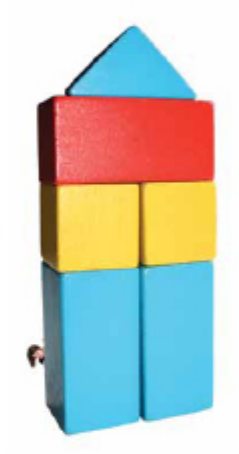
Chair:	Sam Kendal, Planning Service *(until February 2010)*
	Joan Devlin, Belfast Healthy Cities *(from February 2010)*

Members 2009:

Leah Anderson	Planning Service *(until February 2010)*
Anne Doherty	Belfast City Council (Development Department)
Dr Geraint Ellis	SPACE, Queen's University of Belfast
Robin Hawe	Northern Ireland Housing Executive
Adele Keys	Belfast City Council (Health and Environmental Services)
Dr Christine McMaster	Public Health Agency
Bryan Nelson	Belfast HSC Trust
Caroline Scott	Belfast Healthy Cities
Stephen Walker	Belfast City Council (Parks and Leisure) *(until February 2010)*
Jonna Monaghan	Belfast Healthy Cities
Joan Devlin	Belfast Healthy Cities

Members joined 2010:

Michael Hegarty	PLACE Centre for Architecture and the Built Environment
Peter Mullaney	Planning Service
Deborah Peel	Built Environment Research Institute, University of Ulster
Cynthia Porter	Belfast Regeneration Office
Carol Ramsey	RTPI representative



This publication has been endorsed by the Royal Town Planning Institute Northern Ireland.

Belfast Metropolitan Residents Group Submission to the Planning Bill

Draft Planning Bill
Submission of views to the Environment Committee

The Belfast Metropolitan Residents' Group (BMRG) was formed in 1998 to make a community input into strategic planning. It is an umbrella group for twenty four community groups in the

greater Belfast area. Over the past twelve years the BMRG has made numerous detailed contributions to policy formation.

We would be grateful if the Committee would consider the following matters:

1. Councils overly powerful

The Bill takes a devolved English planning model, in which large councils (many of which administer services to populations large than that of Northern Ireland) and applies it to NI. We think this is a very bad idea. We think that it will result in a system which will in practice be more like that of the Republic of Ireland, where the devolution of planning powers to County Councils has been little short of disastrous, and a major contributory cause of the distorted building patterns which have driven the country into its present dire financial straits.

These proposals will politicise planning. This is not necessarily a good thing. Developers and councillors frequently enjoy close relationships. How is corruption to be avoided? The reform scheme offers no proposals in this regard. Developers contribute significant amounts of money to political parties. Full and transparent disclosure of donations will be required in conjunction with these proposals.

The idea that giving planning powers to councils will make planning more 'democratic' and accountable is naïve. Councils are institutions which can serve their own ends, not necessarily the wishes of the community, particularly on planning issues, and the two things are not properly distinguished in the proposals. Councillors often serve their party machines, showing little independence, and are adept at distancing themselves from unpopular decisions, effectively making themselves unaccountable. In practice, electoral considerations will not require councils to take account of public opinion on planning issues. Electors vote the way they do based on a complex range of issues. The clear chain of accountability assumed in the Bill does not exist.

It is naive to think that area plan 'looseness' will facilitate local democracy. Its actual effect will be to give the already powerful more power, and make planning less accountable.

2. Community participation

Too much power is being vested in councils. The community is not properly mobilised in the legislation. To be genuinely progressive, the Bill should see the transfer of real power to the community, creating a THIRD TIER within the scheme (centre, councils, community). We suggest this be done by giving the community STATUTORY RIGHTS OF PARTICIPATION, conferring on them the various rights that go with this position.

The SCI is of questionable value. The concept seems woolly and unfocussed. Some means will need to be found to make community involvement genuine, and more than a box ticking exercise.

3. Conformity with RDS

The best way to guarantee the sustainability of council-made area plans is to require them to conform with the RDS, which needs to be more fully integrated in area plan making. The Bill sidelines the RDS and the whole idea of a 'plan-led' system. This is madness. The RDS's policies are the outcome of the most thoroughgoing consultation ever undertaken by the DoE, a process that involved thousands of consultees and years of work. This made the RDS the most authoritatively mandated component of our planning system. However, the RDS depends on area plans for its implementation. The Bill suggests that local area plans should only 'have

regard' to the RDS. This is meaningless, and will fatally weaken the RDS. Plans that are in 'conformity' with the RDS will be required if its objectives of sustainability and enhancing the environment are to be realised. If you are not going to insist on this, then junk the RDS, for it will be a waste of time and money.

The Bill does not adequately address the issue of coherence and the fulfilment of regional goals, which every area must play its part in. If decision making is to be consistent across plans (as well as within them) then a higher standard of conformity with the RDS will be required.

4. Three classes of development

We believe there should be THREE CLASSES OF DEVELOPMENT, not two as proposed. The second category (local) should be subdivided into two, and a new category ('minor') should be created below the local. Minor applications should include things like a conservatory or a roofspace conversion. Local applications should include things like the demolition of a house and its replacement by two dwellings. In 'local' developments by this definition pre-application consultation should be required. Without revision, the vast bulk of applications will fall into the local category, to which no consultative 'front loading' applies. They will therefore remain as contentious as they under the present system. This is not progress.

Further, all applications by a district council should be handled centrally, by the Planning Service. The circumstance in which the local council is 'both judge and jury' should not be allowed to arise.

5. Third Party appeals

The Bill makes no mention of Third Party Appeals. Third Party Appeals offer a cheap and effective way of improving the quality of development management decision making.

Why do so many bad developments get planning permission? Is it because the Department is incompetent and incapable of distinguishing good from bad? Is it because the policy and regulatory framework is insufficiently robust? Or is it because developers are overly advantaged under the current system? We would suggest that it is the latter. The availability of an applicant's right of appeal powerfully biases the current system in favour of applicants. Both applicants and third parties should have this right, or neither should have it, and planning authority decisions should be final, with perhaps a filtered system to allow appeals on points of principle.

A powerful bias works on planning officials charged with deciding applications. On the one hand they can approve the application, and have a quiet life. On the other they can refuse it, and face having their lives being made hell by developers' barristers, planning consultants, etc., at the Planning Appeals Commission.

The best way to remove the bias is via the introduction of a filtered Third Party appeal system. This need not adding significantly to costs (which would vary according to the level of filter applied) but will add markedly to the quality of decision making. As for the question of speed of processing, the question must be asked, what do we put a higher premium on, good decisions or fast ones? We believe the public interest lies in good decisions, and that this long view is the more important. In the interests of equitability, the bias in the current system should be removed.

We would be happy to discuss any of these points with the Committee.

With thanks,
Yours etc.

Sheila Gallagher

Honorary Secretary, Belfast Metropolitan Residents' Group (BMRG)

Belfast Civic Trust Submission to Planning Bill – Received after Closing Date

Dear Sirs,

Re Consultation on Planning Bill

In response to the above we would state that we fundamentally disagree with the concept of devolving planning powers to Councils in Northern Ireland.This creates uncertainty when developers and the public requires certainty in this area. It is better that developers have certainty of planning rules so that they know they cannot build in certain areas or that certain areas have restrictions such as height or massing or conservation rules which are enforced strictly. Provided the rules are consistently enforced the developer should have less expense in trying to pursue development which ultimately will be turned down. The present laxity in enforcing rules leads developers to try to move the goal posts sometimes successfully but sometimes unsuccessfully leading to extra nurgatory expense by the developer. The move of planning powers to Councils will lead to more inconsistency and uncertainty which may lead to a deteoriation of the environment and the attractiveness of Northern Ireland as an inward investment location or tourist destination.. Also it will result in uncoordinated planning across Council boundaries. (Was that not the reason along with the objective of avoiding abuse that planning was removed from district councils and centralised originally?).Proper planning of development is actually an encourager of long term economic development as it ensures development takes place in the right places and is sustainable It ensures other areas have restricted development to preserve the environment which ultimately will encourage ecomomic development through tourism and inward investment being attracted by the overall attractive environment which has been preserved.The move to Councils will also encourage Councillors to be under more pressure from local constituents to approve applications which in the greater interest of the overall Northern Ireland community should not be allowed.We should avoid the example of the Republic of Ireland where unrestricted development in many Council areas led to a culture of unrestricted building in areas where ultimately houses or development was not required and was unsustainable. This led to the uncontrolled boom in house building which ultimately led to the economic crash due to the unsustainability of many of the developments in the long term.

We would generally support the submission of the Belfast Metropolitan Group relating to the Planning Bill.(We enclose a copy of their submission). They too are opposed to the devolution of planning powers to the Councils on similar grounds to our own objections detailed above.However we would primarily argue that there are sound economic reasons to keep planning centralised to ensure coordination , consistency , certainty and sustainability in planning decisions.

Yours Sincerely,

David Flinn
Chairperson

Castlereagh Borough Council Submission to the Planning Bill

Castlereagh Borough Council

Stye Braes o Ulidia Burgh Council

Civic & Administrative Offices
Bradford Court, Upper Galwally
Castlereagh BT8 6RB Northern Ireland
TEL: (028) 9049 4500 FAX: (028) 9049 4515
Email: council@castlereagh.gov.uk

SR/CMcW/PLAN

20 January 2011

Cathal Boylan
Chairperson, Committee for the Environment
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST BT4 3XX

Dear Mr Boylan

Committee for the Environment – Call for Evidence on the Planning Bill

Thank you for your letter of 16th December 2010 calling for comments on the emerging Planning Bill. Castlereagh Borough Council welcomes the opportunity to comment but has difficulty with the timescale presented for feedback. The implications of this Bill will have wider repercussions for local government than for any other sector. There should therefore have been more time to fully assess the potential impacts on local councils which are already facing a period of flux and uncertainty in the next few years. As a result of the timing of this consultation, the following comments will serve as an overview of the strategic concerns of Castlereagh Borough Council.

Procedure

The Reform of Planning is moving ahead hand-in-hand with Local Government Reform. Much of the substance of the Planning Bill is dependant on the smooth transition of these other reforms. The amount of reorganisation and reallocation required of resources to allow the transfer of functions must not be underestimated. The Bill should not therefore be rushed through the Assembly without first achieving the other reforms or at least ensuring that they are co-ordinated.

This consultation process does not indicate whether there will be an opportunity to review or evaluate the proposals. If the Planning Bill comes into force and parts of it are found to be unworkable, there must be a mechanism to review and alter as necessary.

Resource Implications

Without knowing the outcome of the Local Government and Planning Reforms it is impossible to comprehend how the Planning Bill will be implemented. The Explanatory and Financial Memorandum issued with the Bill states that the transfer of planning functions to councils will not cost any more than planning services and functions currently cost. There is no evidence to back this up and considering the number of new provisions expected to be carried out by councils there may be a much greater cost implication for staff and support, such as legal advice, than is anticipated.

There are concerns about funding the new procedures and Central Government needs to be clear on the arrangements. There must be transparency with regard to the full transfer of funds from Central to Local Government to finance the service effectively. The cost of providing planning functions should not be borne by the rate-payers. If is this is to be the case, then it should be equalised in the Regional Rate.

There has been no clear guidance on how current Planning Service staff will be assimilated into the local government hierarchy given the lack of Single Status Agreements and differences in local government and civil service terms and conditions of employment. Councils may also need to provide additional offices, equipment and support if it is not already available.

Councils will have to reorganise their planning committee structures and functions in order to carry out the constituent parts of the emerging Planning Bill. This will take time and resources to ensure the Members are prepared for the changes.

Capacity Building

The enormity of introducing this Bill must not be underestimated. The Planning Service staff transferring to local government will have to learn a new process which may require capacity building and specific training. The councillors who currently enjoy a limited amount of influence over planning functions will become the decision makers. This will require further building of capacity.

Department/Local Government Relationship

The emerging Bill states the expected role of the Department and of the local planning authority. The purpose of the Reforms was to create more local autonomy and to give more power to local communities. However, the emerging Bill illustrates the lack of willingness of the Department to let go of control. It has retained powers to call-in, monitor, direct and enforce which is contrary to the ethos of local accountability. The balance of power still lies firmly with the Department.

Community Planning

There is no mention in the emerging Planning Bill of community planning or the power of well-being which are inextricably linked to the development or conservation of land and property. The emerging Bill has missed an opportunity to integrate these issues.

Technical Detail

The emerging Bill is rightly a piece of technical legislation. However, as there are many new provisions contained within the Bill, coupled with the knowledge that they will be carried out in new circumstances and by people with limited experience of the subject, more time should be given to fully consider the implications.

Direction from the Department

If the Reforms go ahead councils will be taking on roles they have not had for nearly 40 years. The Department has been carrying out planning functions in those intervening years. It is therefore expected that the Department will produce very detailed guidance, protocol, regulations and best practice on how councils should implement the provisions of the Planning Bill, considering how much influence and control the Department will still have over planning functions. A lack of direction may result in 26 quite disparate planning authorities enacting the same Bill.

It is clear that the Councillors assuming the role of decision-maker will need to adhere to a strict Code of Conduct to ensure fairness and openness, to protect them from accusations of bias and also to protect applicants. The Code would include penalties for those Councillors found to be abusing their position.

The above comments are strategic in nature as there was not sufficient time to fully assess the technical substance of the emerging Planning Bill. Castlereagh Borough Council welcomes any changes that will improve the planning system in Northern Ireland. However, we must be certain that the proposed changes are robust and achievable.

Yours sincerely

Stephen Reid
CHIEF EXECUTIVE

Chartered Institute of Housing Submission to the Planning Bill

Planning as an Enabler: Submission of Evidence on the Planning Bill to the Committee for the Environment

Chartered Institute of Housing in Northern Ireland

January 2011

The Chartered Institute of Housing (CIH) Northern Ireland is the professional body for people involved in housing and communities. It is a registered charity with a diverse and growing membership of over 22,000 national and international members. The CIH in Northern Ireland has over 500 members working for public, private and voluntary organisations and educational institutions. Our primary aim is to 'maximise the contribution that housing professionals make to the wellbeing of communities'. The CIH seeks to achieve this by supporting a network of professionals in the sector through the development of policy and practice solutions, research, publications, training, events and professional qualifications.

Introduction

As a member of the Ministerial Advisory Forum on Planning Reform, the Chartered Institute of Housing (CIH) is pleased to submit this paper to the Committee for the Environment to help inform its consideration of the Planning Bill.

Planning as an Enabler

Planning must be an enabler for economic and social goals. In particular, it must facilitate and promote an effective housing system, which meets the housing needs of the population. An effective plan-led system enables all communities to understand (and contribute to) use of land in the public interest - it results in a strategic approach to government's intentions for use of land.

The explanatory memorandum to the Planning Bill is clear that the proposed reform changes 'relate to the complete overhaul and redesign of the development plan and management systems'. The CIH welcomes this approach and would urge that the final bill does represent and promote this transformation of the planning system.

We would reference two reports that are highly relevant to the debate on planning reform- the report of the independent Commission on the Future for Housing in Northern Ireland (chaired by Lord Best), and Independent Review of Economic Policy (chaired by Professor Richard Barnett). Both reports made similar conclusions regarding the need for policy coherence across government, for the benefit of economic growth. We therefore welcome an approach which would enable greater coherence and strengthen the relationship between the Regional Development Strategy (RDS), the planning framework and any future housing strategy.

Lessons can be learnt from other jurisdictions regarding coherence between the RDS and planning frameworks. Since 2000, planning authorities in the Republic of Ireland have been required to ensure that development plans 'take account' of the National Spatial Strategy. However, this approach to 'take account' has been found to be insufficiently robust and is being replaced by an additional requirement to produce 'core strategies' whereby authorities must demonstrate how their plans will meet the objectives of the National Spatial Strategy. This positive obligation is an option which we would suggest merits consideration during the passage of the bill.

The CIH would query the potential operation of the provisions which give the Department of the Environment (DoE) a 'default' intervention over local government. While the principle is clearly the right one, it is difficult to see how it can be applied under the framework being proposed in the bill. Other commentators have suggested that the default could work whereby it is informed by a land use strategy for Northern Ireland, which would guide all those involved in making

decisions on the management and use of land in Northern Ireland. The CIH strongly supports this view.

Housing's role in the achievement of economic goals is undisputed and is reiterated in the Commission on the Future for Housing's report. However, the integration of the housing and planning systems in Northern Ireland (strategically rather than institutionally) has never been achieved and, in our view, hinders a long term vision for land use and for our housing system. The CIH strongly believes that the planning bill should ensure stronger strategic integration between housing and planning systems to ensure:

- The management of land and land availability to reduce volatility in the housing market;
- The management of land and land availability to strike a greater balance between supply and demand in the market;
- The reduction in segregation and achievement of income, tenure and religious mix in housing developments; and
- The prevention of under-occupation and oversupply in new developments.

The CIH also strongly welcomes the approach taken in the Planning Bill to apply land use planning at the appropriate scale - taking account of the strategic and regional significance of developments.

The meaningful involvement of individuals and communities in the planning process, and ultimately in shaping planning outcomes is to be strongly welcomed. However, a balance must be struck between enabling involvement while also ensuring an efficient and streamlined system that ensures that developments are brought forward in the timely manner.

The CIH is struck by the potential for collaboration across jurisdictions - and in particular between governments in Northern Ireland and the Republic of Ireland, where developments are of strategic interest to both jurisdictions, and in border areas. We would welcome greater focus within the planning frameworks on approaches for cross jurisdictional collaboration on strategic projects.

The institutional changes outlined in the Planning Bill will embed a culture of positive enabling into the planning system- away from an adversarial or reactive system. This is to be strongly welcomed.

The CIH welcomes the proposed move to a system of development management which will provide a more positive framework for the use of land. We are also strongly supportive of greater linkages with the RDS and other key strategies; however, we would like to see a requirement included whereby local councils have to actively demonstrate how their plans meet the objectives of these strategies. The CIH would appreciate further debate on the best way forward, but the key principle is to ensure that authorities take positive steps to implement the RDS, not just 'take account of it' or 'have regard to it'. The CIH also welcomes the introduction of the principle of hierarchy of development, which should ensure the appropriate allocation of resources and priority to developments. We would like to see the inclusion of incentives for joint working between new local authorities, with sharing of resources and collaboration in the production and delivery and development plans where appropriate.

Finally the CIH is disappointed not to see the Planning Bill as an opportunity to introduce a form of planning gain or developer contribution, which would enable future (medium term) developments to yield a contribution to social housing and/or community infrastructure. The Commission on the Future for Housing recommended that "as market conditions improve,

Northern Ireland's form of developer contribution should be used to require house builders to ensure that social/affordable housing is provided, usually through housing associations, as a matter of course". We would welcome the opportunity for further discussion on the matter.

Conclusion

The planning reforms proposed will provide Northern Ireland with a spatial rather than regulatory planning system. If the reforms are implemented correctly, land use planning in Northern Ireland should be strategic and integrated - an enabler for appropriate and timely development and a positive contributor to economic development.

Many of the comments made in this paper reflect the findings and recommendations of the independent Commission on the Future for Housing in Northern Ireland and the work that CIH is engaged in to build upon those recommendations. We would welcome the opportunity to further discuss the report – in particular its recommendations with regard to the planning system and the need for greater policy coherence between housing and planning – with the Committee as part of the planning reform process, if that would be helpful.

Council for Nature Conservation and the Countryside Submission to the Planning Bill

An Advisory Council to the Department of the Environment

4th Floor, Clarence Court, 10-18 Adelaide Street, Belfast, BT2 8GB
Tel: 02890 541071
secretariat-hillst@doeni.gov.uk
www.cnccni.gov.uk 13th January 2011

Planning Bill – a response to the request to submit evidence to the NI Assembly Environment Committee.

CNCC would wish to preface its response to the content of the Planning Bill with a general comment on the timing of this legislation with regard to other proposed changes to local government. We believe that the moving of responsibilities for many planning matters to local councils should take place at the same time as the reorganisation and rationalisation of local council boundaries and the transition from 26 to 11 councils within Northern Ireland. The proposed planning changes make no sense if they are not accompanied by this reorganisation, and we fear that the existing council structures will be unable to deal with the scale of change that is proposed. In addition we are concerned that planning functions should be transferred without a clearly articulated code of conduct for Councillors and Council staff, and without detailed training for those involved in the Planning system in governance and administrative roles.

We would also like to restate our grave concern about the lack of capacity within the existing Planning Service of technical expertise in a range of fields, including nature conservation, landscape and arboriculture, and the failure to address this in the proposed new structures. With the removal of many planning functions from the Department the expertise of NIEA in a wide range of fields may no longer be available for a wide range of vital activities. These include assessments of whether an Environmental Statements is necessary, evaluation of such Statements, and advice on biodiversity duties and implications.

CNCC also remains deeply concerned about the lack of any reference to any over-arching layer of spatial planning for Northern Ireland which could put all the local and simplified plans into perspective. While there is scope for neighbouring councils to liaise with each other, there is a real need to have a framework into which local plans can fit and relate with one another. This is a serious weakness of the proposed system.

Specific Comments

General Functions

1(1) 'Orderly and consistent development'. We believe that it is important to state overtly that this is in the public interest. As expressed, a development could be 'orderly and consistent', but only serve the interests of certain individuals or groupings.

1(2) Sustainable Development. CNCC supports the principle of Sustainable Development strongly, but we believe that it should be clearly defined. The terms 'sustainable' and 'sustainability' may be used to convey quite different meanings (which are often misunderstood or misinterpreted), and in every case a clear definition needs to be articulated. In this context we would recommend the following definition: "Development which meets the needs of the present without compromising the ability of the future generations to meet their own needs" (Brundtland Report 1987).

In order to fulfil this commitment all bodies involved in planning need to adopt the Ecosystem Approach, giving careful and equal consideration to environmental, social and economic factors. The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way. It recognizes that humans, with their cultural diversity, are an integral component of ecosystems. The UK has signed up to the use of this methodology through the Convention on Biological Diversity, and needs to put it into practice.

2. Community Involvement. The Department needs to ensure that Councils involve citizens at all levels and all stages of the planning process, achieving this through setting appropriate standards and carefully monitoring the performance of all Councils.

Local Development Plans

4. Statement of Community Involvement – CNCC is concerned that a Council would become the arbiter of who might 'have an interest in matters relating to development in its district'. This section should simply ensure the potential for involvement of all citizens of the Council's area in the making of all plans. There also needs to be a mechanism whereby the residents most closely affected by a proposed development are kept fully informed and involved throughout the planning process. We also believe strongly in the need for Third Party Appeals, subject to a careful screening process to avoid mischievous abuse of the system.

5. Sustainable Development – See comments above.

CNCC believes that this section could include a paragraph drawing attention to the Biodiversity Duty that will be placed on all public bodies through the Wildlife and Natural Environment Bill, and stressing the need to give full consideration to Biodiversity in the preparation of Local Development Plans.

There appears to be no mention of Strategic Environmental Assessments and who will be responsible for producing them for the plans that will be produced. This is a serious omission

that should be rectified to ensure that important European legislation is complied with in the new planning process. Experience within Planning Service of the failure to comply with the legislation should be learnt from to avoid another total failure of attempts to set up a plan-led planning system.

Simplified Planning Zones

38. Exclusion of certain descriptions of land or development.

(b) (ii) We suggest that this should read 'Area of Outstanding Natural Beauty' – this is a formal title, as with 'National Park' in the previous paragraph.

(b) (iii) We suggest 'Area of Special Scientific Interest', as above.

(c) We suggest 'National Nature Reserve', as above. We are also concerned about the status of Statutory Nature Reserves, which are part of the suite of top nature conservation sites but may not reach the standard of excellence required for designation as a National Nature Reserve. We therefore suggest that they are included in this paragraph.

We are surprised at the omission of Natura 2000 sites (Special Areas of Conservation and Special Protection Areas), designated under the European Habitats Directive and the European Birds Directive, and recommend that they are included in this list. While most are also covered through designation as ASSIs, that is not the case for all of them. In addition we believe that Sites of Local Nature Conservation Interest (SLNCIs) and Local Nature Reserves (LNRs) should also be included in this list of lands which may not be included in a simplified planning zone.

Finally we would like to express our concern with the absence of any mention of Marine Planning, and of how the terrestrial planning system will interact with the proposals set out in the consultation for the NI Marine Bill. One of the critical points raised in that consultation was on the integration of planning on land and sea, and we believe that there needs to be some recognition of this issue within this legislation.

An Advisory Council to the Department of the Environment

Calvert House, 23 Castle Place, Belfast, BT1 1FY
Tel: 028 90254721/254731 Fax: 028 90254706
secretariat-hillst@doeni.gov.uk
www.cnccni.gov.uk 2nd October 2009

Marianne Fleming
Director of Corporate Services
Planning Service
1st Floor
Millennium House
17-25 Great Victoria Street
Belfast
BT2 7BN

Dear Ms Fleming

Reform of the Planning System in Northern Ireland

CNCC welcomes the opportunity to comment on these proposals which represent possibly the most comprehensive overhaul of planning administration in the history of Northern Ireland.

The Purpose of the Planning System (Paras 1.1 and 1.2), sets out the current purpose of the system. We consider that it should give greater emphasis to the need to;

(i) work in the public interest, rather than for the benefit of individuals and corporate bodies

and

(ii) seek to achieve the balance between economic development and protection of our “rich natural and built heritage" in a more sustainable way.

The scale of change proposed is massive and the shift from one planning authority to 11+ 1 (Councils + DoE) raises great risk of variability of application across the province. Whilst respecting the integrity of each new council it is absolutely vital that a common approach to planning policy and procedure is achieved. The proposed timescale of 2011 is an unrealistically short period to achieve all that is proposed.

Whilst the document is comprehensive in relation to the Planning System, CNCC believes that it fails to consider wider matters which are crucial to its purpose. These may have been omitted because of the strait jacket of departmental and legislative structures, but we believe they are of crucial and fundamental importance to the success of the proposed changes to the planning system.

These are:

1) The role of the Regional Development Strategy in the current review.

2) Definitions of sustainability.

3) The importance of natural environment and landscape in the planning system.

4) The dilution of professional resource and expertise arising from the creation of eleven separate planning authorities in Northern Ireland.

5) Scale of change required.

6) Consistency of outcomes across the province.

7) A Statutory Code of Conduct for elected members and officers.

1) The Role of the Regional Development Strategy and Review

The two tier framework referred to in Professor Greg Lloyd’s paper (Annex 1 Page 170-171) is not clearly enunciated in the consultation papers.

“A Regional Development Strategy needs to set out a robust Regional Spatial Planning agenda. This would translate the Regional Strategy into strategic action plans which will inform the preparation of local development plans by local authorities".

This process is not referred to in the main part of the document.

CNCC is aware of the review of the RDS announced in June 2008 by Minister Murphy DRD. Council is unaware of any thought in the current review which relates to Professor Lloyd's requirement for a

"robust Regional Spatial Planning agenda".

Without such a foundation the proposals for local development plans and a plan-led system must be of questionable value.

Council, is extremely concerned that issues relating to natural environment, nature conservation and sustainability are missing from the topics for consultation.

2. Definitions of Sustainability

The prominence given to economic and social development over Sustainability, in the absence of any reference to the natural environment and its role in underpinning sustainability and all human activity, represents a fundamental weakness. Similarly there is no reference to the natural environment in the Objectives For Reform (Para 1.23, page 26).

CNCC notes the frequent use of the word sustainability, but there is no definition of this concept in the document. Sustainable Development is defined as;

"Development which meets the needs of the present without compromising the ability of the future generations to meet their own needs" (Brundtland Report 1987).

It is recognised that the definition can be difficult to apply in many situations when complex issues have to be considered. Because of this it is too easily passed by and ignored.

If sustainability is to be a cornerstone of the new system, it demands clear thinking, debate and frequently hard (often unpopular) choices. For this reason alone it should figure both more prominently and explicitly, not only in the reform document but in all land development policy documents. This should be linked to a clear exposition of exactly what sustainability means in the context of the planning process.

3. Natural Environment and Landscape

There is little reference to the crucial role of the open countryside and the natural environment in the document. Whilst accepting that planning policy is proposed for review by revision of the PPS's, CNCC believes that the reform offers an opportunity to acknowledge and enhance the role of the natural environment, nature conservation and landscape protection. In particular, CNCC would again seek to have the planning system acknowledge fully the statutory landscape designations of AONB and National Parks (when the proposed legislation is brought forward).

Without this clear inclusion there is a danger that the strategy will be perceived as fostering the effective urbanisation of the countryside and in doing so undermining one of the key economic resources of Northern Ireland.

4. Dilution of Expertise

The decision to have eleven Local Planning Authorities raises the question of the ability to command the essential and necessary planning staff and other resources. Whilst noting the comments regarding capacity (paras 8.4 – 8.9) Council remains sceptical about the ability of the

new councils to access the necessary professional skills e.g. Tree Protection requires arboreal knowledge. Will every one of the eleven new councils be able to employ and access such knowledgeable staff in a timely manner?

There is currently an absence of certain skills within Planning Service itself – landscape, nature conservation, archaeology, building conservation. Currently these are provided by NIEA, but this will not be possible in the future, since NIEA will be carrying out the SEA of Development Plans, and so cannot input the expertise at that stage of the process.

In considering individual planning applications, NIEA may in some circumstances be an objector, and in others act as Statutory Consultee, so could not realistically provide advice. These skills will therefore have to be found within the system – possibly shared between groups of councils or provided by external consultancy. If the latter there would be a clear risk of compromise for CNCC fear that this is a fundamental weakness in the proposed reforms arising from the Review of Public Administration as it affects planning.

The likely future consequences of a lack of timely specialist advice are likely to be a requirement for additional funding and poor quality decisions and service.

CNCC consider that the absence of and variation in skills and resources between authorities will give rise to inconsistent and varied decisions and performances.

Northern Ireland is too small to afford such an outcome.

CNCC recommend that these problems of resources and skills, which will impact on the new councils and the planning system, be addressed as a matter of extreme urgency. They carry major implications for both the quality of the future planning system and costs of the reorganisation.

5. Scale of Change required

The document refers to the necessity for a 'cultural change' to support the planning reform. Council agrees, but believes that the scale of change required, not just in relation to land use planning, but in relation to all the powers and activities transferring to the new local councils, will be affected by the dangerously short timeframe now remaining.

The timescale for the RPA at 2011, and the absence of detail of structures for delivery, causes us to doubt the administrations' ability to achieve such a wide cultural change within this timeframe.

6. Consistency of Outcomes

Within the current system there is significant variance of outcome between different Divisional Offices. The proposed eleven authorities carry the risk of increased variability of outcome across the province. To avoid this clear strategic guidance must be available to the new councils. See response to Question 1 below.

7. Statutory Code of Conduct

Northern Ireland currently lacks a statutory Code of Conduct for elected members of councils. CNCC strongly believes that a statutory Code of Conduct for councillors and officials providing for criminal sanctions is a fundamental pre-requisite to local government restructuring. Land use

planning with its associated economic outcomes and potential for community benefits and dis-benefits is one of the most morally sensitive areas of government.

CNCC strongly recommend the adoption of a code similar to that currently in place in England.

The LGA publication, “Probity in Planning-The Role of Councillors" ISBN Number: 978 1 84049 682 6 should be used as a basis.

Adequate resources will have to be available to effectively police this in order to provide public confidence in the devolved Planning system.

The role of the Local Government Ombudsman provides an important control but this is limited to failures to follow agreed policy. The findings are also not binding upon authorities. This should be changed to ensure that the new local authorities are required to follow the Ombudsman’s judgments and recommendations.

Yours sincerely

Patrick Casement

Chairman

Community Places - Submission to the Planning Bill

Community Places

Mr Cathal Boylan MLA
Chairperson
Committee for the Environment
Parliament Buildings
Stormont
BELFAST BT4 3XX 14 January 2011

Dear Chairperson

Evidence on the Planning Bill

Thank you for inviting us to submit our views on the proposed Planning Bill. Please find enclosed our submission on the key elements of the Bill which will impact most on local communities. Our submission draws on our experience of advising and consulting with local communities on planning issues. Wherever possible we have made recommendations for amendments which we believe will improve the Bill.

We would welcome the opportunity to present our recommendations in person to the Committee. This would enable us to respond to any questions Committee members have on our views and recommendations.

Yours faithfully

Colm Bradley

Colm Bradley

Director

Enc

Community Places

Response to Consultation on the Draft Planning Bill December 2010

Community Places
January 2011

Community Places
Response to Consultation on the Draft Planning Bill December 2010

Introduction

Community Places is the only regional voluntary organisation which provides planning advice to individuals and communities. We also facilitate community participation in planning and support community development by assisting groups to develop the skills, knowledge and infrastructure needed to regenerate disadvantaged areas.

We were invited by the Assembly Environment Committee to submit our views on the draft Planning Bill. In doing so we have drawn on our experience of supporting and consulting with communities on planning issues. Our comments are intended to enhance the package of reforms and ensure that the aims of the Reform are realised in practice in the years ahead.

We have compared the Planning Bill provisions with the commitments given by the Department in March 2010 in its response to the public consultation findings on its Planning Reform proposals (see Reform of the Planning System in NI – Government Response to Public Consultation March 2010). We have drawn attention to those issues where the Department made commitments in March 2010 but has not included these in the Bill.

Community Places supports the current reform of the planning system and welcomes many of the proposals and aims of the Reform particularly those that relate to the principles of pre-application community consultation, sustainable development, the planning hierarchy and the statutory duty to respond to consultation.

Purpose and Functions of the Planning System

In its March 2010 report (see above) the Department committed to incorporating tackling disadvantage and poverty and promoting inclusion and equality of opportunity in the definition of the functions of local development plans. This commitment is not reflected in the Bill.

We welcome the Bill's proposals under Part 2 which require councils and others to contribute to achieving sustainable development when exercising functions under Part 2. However we believe the wording should be strengthened to require the Department and councils to have securing sustainable development as one of the aims of their planning functions.

The introduction of sustainability appraisals is welcome. However there is no detail on what this means nor commitment to producing guidance to local councils on how appraisals should be undertaken. In our view sustainability appraisals should include demonstrating how the development plan is delivering the Community Plan.

The Bill requires the Department to ensure that its planning policies are "in general conformity" with the Regional Development Strategy (section 1 (1)). For consistency councils should be required to do likewise when preparing a local policies plan under section 9 (6).

The introduction of provisions for joint planning by local councils (Section 17) is welcome as it may make better use of resources and improve co-ordination on strategic issues.

Recommendations:

- In Part 1 of the Bill the following should be added to the end of section 1 (1) "and to secure sustainable development, tackle disadvantage and poverty and promote inclusion and equality of opportunity".
- Sections 1 (2) (b) and 5 (1) of the Bill should both be amended by the addition of the phrase "tackling disadvantage and poverty and promoting inclusion and equality of opportunity". They should also be further amended by inserting the word "securing" in place of the phrase "contributing to the achievement of".
- Section 9 (6) should be amended by replacing the words "take account of" with "ensure the plan is in general conformity with the Regional Development Strategy".
- Section 8 of the Bill should state that the Department will publish guidance to councils on sustainability appraisals.
- The Environment Committee should seek from the Department a timetable showing when all subordinate regulations and guidance will be issued.

Community Planning

There should be a statutory link between local development plans and Community Plans. This would provide opportunities to: co-ordinate consultation on the Community Plan and the development plan; develop a shared research and evidence base; and undertake joint monitoring and review for both plans. This would avoid duplication and make best use of resources. Again this was a commitment given by the Department in its March 2010 report (see above) but it has not made its way into the legislation. As the Department acknowledged in its March 2010 report a statutory link would mirror the position in Scotland, Wales and England.

Recommendation:

- Sections 8(5) and 9 (6) should be amended to ensure that plan strategies and local development plans “take account of Community Plans" which have been prepared by councils.

Planning Control

We welcome the introduction of the proposals in relation to the hierarchy of developments and the proposed categories of development.

The Bill requires the Department to issue regulations on the definition of each category of development. This issue was consulted on in 2009 as part of the wider public consultation on Planning Reform. Given the centrality of this issue to the future shape of the planning system the Department should issue draft regulations for consultation on this as soon as possible. The regulations should include the criteria which the Department will use when determining whether a proposed major development will be treated as a regionally significant proposal.

Section 26 (2) should be strengthened to ensure that the Department will be required to publish regulations on the consultation procedures for developments of regional significance. This will provide certainty on requirements for developers and transparency for the public and elected representatives.

We welcome the proposals set out in section 25(3) for avoiding ‘phased’ development applications which are in reality one major development. However there remains the issue of the cumulative impact of a number of local applications which, when taken together, would fall into the category of major development. The Bill should be amended to take account of this by enabling the Department to treat applications which create cumulative impact as major development applications. This would facilitate co-ordination between applicants with similar proposals and lead to better planning of infrastructure to support developments.

Recommendations:

- Section 25 (2) should be amended by adding “Such regulations will include the criteria which the Department will use when determining that a development is of regional significance under Section 26".
- The definitions of and criteria for determining regional, major and local developments and details on each should be issued for consultation as soon as possible.
- Section 26 (2) of the Bill refers to consultations on regional developments and should be amended to read “the Department will make regulations ... in relation to consultations ..."
- Section 25 (3) should be altered to take account of similar applications for developments which have an overall cumulative impact in an area.
- An addendum to the section should read: “The Department may, as respects two or more local developments, direct that the developments be dealt with as if they were a major development."

Pre-application Community Consultation

We are in favour of pre-application community consultation which was supported by the 2009 public consultation. However, contrary to the Department’s March 2010 commitments, the Bill does not make pre-consultation a statutory requirement. As presently worded the Bill only enables councils and the Department to introduce directions on pre-application consultation – it does not require them to do so. Furthermore, this limited reference to pre-application community

consultation does not include regionally significant applications. These are serious omissions which contradict all that the Department has previously said about pre-application community consultation.

We are in favour of the introduction of pre-application community consultation reports. It is important that there is consistency, transparency, fairness and minimum standards across the whole region. In order to achieve this the Bill should require the Department to issue regulations on the form of consultation and the content of reports and issue good practice guidance on pre-consultation procedures. This is all standard practice in other jurisdictions where pre-consultation has been introduced. The absence of such clear regulations and guidance or their application on a case by case basis (as the Bill appears to permit) will lead to inconsistencies, potential unfairness and allegations of arbitrary application. This requirement on the Department would also give full expression to the Government commitments in the Department's March 2010 report and the Bill's Explanatory and Financial Memorandum.

We welcome the introduction of the power to decline determination of applications where pre-application community consultation has not been carried out as required (Section 50). However in the interest of fairness and transparency regulations and guidance must be issued on the standards of consultation which will be required. This approach would be in keeping with pre-application community consultation provisions in other jurisdictions including Scotland.

The pre-application community consultation report should be made publicly available at no charge and communities affected by major and regional applications should have the opportunity to comment on and have their comments considered at the point where councils and/or the Department is assessing the report. The reports should also show how the developer has given regard to the community consultation views and comments.

Guidance from the Department on the content of pre-application community consultation reports should include: the extent of community opposition or support, a list of objections and how these have been addressed and any written submissions from communities. Additionally evidence of how the application has changed as a result of the consultation process; how the development enhances the character of the area; and a statement from the community expressing their opinion on the quality and level of consultation. Pre-application community consultation should be facilitated by independent people who have been approved by the Department/Councils.

Recommendations:

- Section 26 (2) should be amended to the effect that the Department will issue regulations on pre-application consultations for regionally significant applications. Section 27 (5) should similarly be amended with regard to major development applications. The word "may" in each section should thus be replaced with "will".
- Section 28 should be amended to require the publication of the pre-application community consultation report at no charge to the public or community groups. It should also state that "the Department and/or councils will provide the public and community groups the opportunity to comment on the pre-application community consultation report and will take account of these comments when assessing the report for the purposes of Section 50". Furthermore this section should include a requirement that the reports demonstrate how the person submitting the application has had regard to the views and comments expressed during the community consultation.

Statement of Community Involvement

The Planning Reform Order 2006 requires the Department to publish a Statement of Community Involvement (SCI). This has not been published in the intervening five year period. While we welcome the renewed requirement for an SCI we recommend that the Bill now set a date for its publication. Similarly a timescale should be established for the publication of Statements by Councils. The Bill should also require the Department to issue guidance on the procedures to be used by Councils in preparing their Statements.

These procedures should include provision for public and community involvement in the process and approval of Statements by the Minister.

Recommendations:

- Section 2 should be amended to require the Department to publish a Statement of Community Involvement “by December 2012".
- Paragraph 4 should be amended to require councils to publish their statements of community involvement within one year of planning powers being devolved.
- In Section 4 (3) the word “attempt" should be deleted so that the wording reads “the Council and the Department will agree the terms of the Statement of Community Involvement."
- In Section 4(4) the word “may" should be replaced with the word “will".
- In Section 4(6) the word “may" should be replaced with the word “will".
- Section 4(6) (a) should be amended by adding “and the inclusion of community groups and the public in the preparation stages of the Statement of Community Involvement".

Intervention and Assessment by the Department

We support the provision of Departmental intervention and default powers in relation to development plan documents as set out in Sections 15 and 16 of the Bill.

We support the proposals in Part 10 of the Bill for Departmental assessment of a council’s performance of its functions and how it deals with planning applications under the Bill. In the unlikely event that a council declines to or delays action on implementing the recommendations of an assessment report the Department should issue directions to the council.

Recommendation:

- In Section 206 (7b) the word “may" should be replaced with the word “will".

Grants for Research and Assistance

The Bill makes provision for grants for research and the provision of assistance to communities. These provisions are however too restrictive and provide for the approval of the Department of Finance for each grant.

Grants are currently available to enable communities to respond to development proposals but should be extended to enable communities to understand and respond to planning policy proposals. This would enable communities to appreciate wider strategic planning issues and the context for individual development proposals.

The approval of the Department of Finance for individual grants is not found in relation to grants made by other Departments for research and assistance (eg grants made under the Social Needs Order by the Department for Social Development). It is a bureaucratic requirement which is unnecessary and wasteful of resources. Its removal would not impinge on the Department of Finance's oversight functions in relation to monitoring, auditing and grant aid procedures and conditions.

Recommendations:

- Section 221 (1) should be amended by inserting after the word understanding the words "of planning policy proposals and".
- Sections 220 and 221 should be amended by removal of references to the consent and approval of the Department of Finance.

Independent Examination

We welcome the proposals in Section 10 for independent examination of development plans by the Planning Appeals Commission. It is important that these are seen to be independent. The Commission is not appointed by the Department and is independent of it. We thus have some questions about the proposal in the Bill to allow the Department to appoint someone other than the Planning Appeals Commission to carry out an examination. If the Department was to do so this could cast some doubt on the independence of the examination.

Recommendation:

- Section 10 (4) should be amended by the deletion of clause (b) which empowers the Department to appoint an examiner other than the Planning Appeals Commission.

Right to be Heard in Person

We are in support of the right to be heard in person at appeals and welcome the proposals in Section 173 of the Planning Bill.

Third Party Right of Appeal

The majority of respondents to the 2009 consultation on Planning Reform supported the right for Third Party Appeals. In its 2010 report which responded to the consultation findings the Department stated that further consultation on the issue would be required after the implementation of RPA. The delays in RPA implementation were not anticipated when this commitment was made. In light of this it is our view that the Department should progress work on the issue and publish a consultation paper.

Recommendations:

- We recommend that the Environment Committee ask the Department to provide details of its work on preparing for consultation on Third Party Right of Appeal and a target date for issuing a consultation paper.

Community Infrastructure Levy

The Department's 2010 report of the Planning Reform public consultation process records that: 71% of respondents agreed that developers should make a greater contribution towards the

provision of infrastructure; 21 of the local councils and NILGA welcomed the principle of increased developer contributions and 43% of developers agreed there is a case for increased contributions while one third did not.

Recommendation:

We recommend that a new section be inserted in the Bill to reflect the support for developer contributions. This new section should provide enabling powers for the introduction of an infrastructure levy at a future date and with the agreement of the Executive.

Community Places
2 Downshire Place
Belfast BT2 7JQ
T: 028 9023 9444
F: 028 9023 1411
E: info@communityplaces.info

Community Relations Council Submission to the Planning Bill

20th January 2011
DOE Committee - Call for Evidence on the Planning Bill

1. Introduction

a. The Community Relations Council (CRC) welcomes the opportunity to provide evidence to the DOE Committee on the current Planning Bill.

b. CRC believes that all government policies should be embedded with the concept of building strong cohesive and sustainable communities.

c. CRC has a key interest in the planning system, in particular its contribution to building a shared and better future as set out in the Programme for Government (PfG). DRD's Strategic planning guideline 3 (SPG-SRC) stipulates an aim to develop community cohesion: 'to foster development which contributes to better community relations, recognises cultural diversity, and reduces socio-economic differentials within Northern Ireland'[1]. CRC therefore believes that the Reform of Planning must be underpinned by a vision of reconciliation and transformation for our society. Furthermore it is absolutely critical for the future of planning that is acknowledges that it is carrying out and implementing its functions within a spatially segregated society.

2. Community Planning and Development Planning

a. Spatial planning allows for the development of a community vision and it is crucial the development planning process is seen as the spatial expression of community planning. Spatial planning should be anchored in examining how a development plan can connect and provide solutions to a number of community planning issues.

b. Planning should fundamentally ensure that the fabric of our social life is more than the sum of private, market-based activities. It can achieve this through fostering the development of the public realm e.g. parks, galleries etc. These public spaces can then act as places with permeable boundaries allowing ownership by all, thus preventing the creation of territories. Without a

commitment to developing the public realm we end up with commercial centres with no sense of place, and which bring no benefit to the disadvantaged communities on the periphery e.g. the commercial and economic development of Belfast has had little impact on the most deprived neighbouring communities, who are often the most segregated communities, and the shared spaces that exist in the city are unevenly matched with the interface barriers across Belfast.

3. Recommendations

a. CRC is concerned at the absence of any explicit aim and objective linked to peace building in the proposed Bill and would urge the Committee to include this in the final Bill.

b. CRC recommends the development of a specific aim and objective that promotes good relations, to ensure the rhetoric and vision of cohesion and sharing becomes a reality.

PART 1 - Functions of Department of the Environment with respect to development of land

Section 1
Sustainable development.

CRC would like to see the inclusion of a specific reference to Equality & Good Relations in this section of the Bill, and puts forward the following:

2 (b): Exercise its functions under subsection (1) with the objective of contributing to the achievement of sustainable development, (2) have regard to the desirability of promoting good relations.

Policies and Guidance

Clause 3 (a) should be extended to include

3-a-iii – to implement the requirements of the Northern Ireland Act 1998 relating to Equality as defined in sections 75(1) and 75(2).

Surveys or Studies

Clause 4 (a) should be expanded to include the physical, economic, social, environmental and segregated characteristics of any area……

The inclusion of good relations impacts and monitoring is crucial. The technical design should consider accessibility and connectivity etc.

PART 2 - Local Development Plans

Again CRC wants to see the inclusion of good relations objectives and mechanisms to monitor the impact/contribution to reconciliation and shared spaces. Spatial planning under Council authority should complement the current Peace Plans as required under current Peace III funding and Good Relations Strategies of district councils, as well as the regional obligations.

Section 3 - Survey of a District

Clause 2 (b) - this should be a new issue and contain the following wording:

(b) the good relations impact of a development and how it contributes to community planning

Section 5 - Sustainable Development

Clause 2 add in new item

iv to implement the requirements of the Northern Ireland Act 1998 relating to Equality as defined in sections 75(1) and 75(2).

Section 8 - Plan Strategy

Clause 2 (c) '...other such matters'.

This section is vague and given the important connections between development planning and community planning it would be beneficial if the legislation stated what 'other such matters' may include and give examples e.g. Good Relations Strategies, Economic Development Strategies, Health, education and other community planning issues.

Section 9 - Local Policies

Clause 6 (C). Again this section is vague and unless a cultural shift is achieved the 'other matters' could exclude community planning issues. This section should include and give examples e.g. Good Relations Strategies, Economic Development Strategies, Health, education and other community planning issues.

Section 9 - Local Policies

Clause 7 (a) 'sustainability appraisal'.

Given the role of planning in contributing to the planning and development of shared spaces in the context of a post-conflict society. The legislation should ensure that the Council has a duty to carry out an appraisal on the impact of a local policies plan on good relation in the area.

CRC recommend the expansion of this clause to include a 'carry out an appraisal of the sustainability (and should include good relations and equality indicators)...'

Section 21 – Annual Monitoring Report

Clause 21 (b)

Annual monitoring reports should incorporate indicators for shared space, accessibility, permeability etc and make recommendations for tackling negative impacts e.g. 'a sectarian audit of the impact of all main public intervention: does it contribute to, or subtract from, the divisions that cripple community relations?[2]'.

4. Other issues that should be considered for inclusion

a. Cultural Change/Leadership

Spatial planning should address socio-economic issues. Whether it is regional, major or local development plans aims and objectives should include the creation of sustainable, safe and welcoming spaces. The reform of the planning system must represent more than an operational and management change, and reflect a change in attitude – one that truly embraces and works for the objectives of social change, regeneration and reconciliation.

The goal should be the improvement of the physical and economic and social infrastructure of communities – not in isolation but as part of a strategic vision.

This will require a shift in how planning is done and will necessitate training for all those involved in the various processes. The Committee should therefore consider the inclusion of a clause that requires staff and relevant stakeholders (including those involved in development services) to participate in training and capacity building that focuses on the connection between development planning and community planning.

b. Developments of regional Significance

CRC strongly believes that developments of regional significance should include a duty to involve other government bodies in the development of the land in order to maximise benefits for the whole of society i.e. economic, environmental and social impacts.

Furthermore those developments which point to the emergence of a more integrated society or make a contribution/enrichment of the public realm should normally be favoured.

c. Foreword

CRC would like to see the inclusion of a Foreword. It should specifically recognise the impact of the conflict on the planning system and the challenges it faces.

Conclusion

The planning system and its decision makers should support public realm developments that promote integration and not social division. Murtagh's paper on post-conflict Belfast states 'a sharper set of competencies to do with managing segregation, connectivity and planning gain are urgently required. This needs to be located within a clearer and simpler policy framework that places the legacy of segregation and exclusion at the heart of urban planning and regeneration. Belfast's renaissance will be put at risk if the city simply displaces one form of segregation with another. The lateness of these processes and an understanding of experience and practice in other places may provide an opportunity to rethink the purpose and nature of spatial planning in the post-conflict city'[3].

[1] DRD-Regional Development Strategy

[2] Planning Shared Space for a Shared Future; Frank Gaffikin et al. Page 152.

[3] New Spaces and Old in 'Post-Conflict' Belfast, Brendan Murtagh. Page 24

Consumer Council Submission to the Planning Bill

The Consumer Council Elizabeth House
116 Holywood Road
Belfast BT4 1NY
Tel 028 9067 2488

Fax 028 9065 7701

Ref: 3/15/4.11

14 January 2011

Mr Cathal Boylan, MLA
Chairperson
Committee for the Environment
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST
BT4 3XX

Dear Chairperson

Evidence to the Committee for the Environment on the Planning Bill

The Consumer Council is pleased to provide evidence to the Committee for the Environment on the Planning Bill. We responded to the Department of the Environment's (DOE) July 2009 consultation "Reform of the Planning System in Northern Ireland: Your chance to influence change". A copy of our response is appended for your reference.

The Committee's call for evidence requested that comment be focused on key issues of concern, the clauses they affect, any clauses to be amended, added or deleted. We have therefore limited our brief comments below to areas that will concern and impact all consumers covered by the Bill.

1. Joined up Government

The Bill gives effect to the Review of Public Administration (RPA) changes and defines the role of DOE and the transference of major planning functions and powers to district councils. The redefinition of the role of central government with regard to regional planning facilitated by this draft legislation must be balanced with its compatibility with wider governance.

It must be clear how local decision making will fit with a delayed RPA.

The Regional Development Strategy (RDS), currently out for consultation, is the overarching strategic plan for, amongst other topics, "the location of jobs and houses, infrastructure provision and the protection of our natural and built environment" .

The Bill would seem to retain sufficient control of policy by DOE to accommodate any outcome from the RDS consultation with clause 1 placing duties on DOE to formulate and co-ordinate planning policy in general conformity with RDS and regard guidance issued by DRD and OFMDFM.

To clarify these linkages to consumers DOE should be placed under obligation to produce clear guidance on how its policies will link with the RDS and other key strategies such as Public Transport Reform.

2. Consultation

Throughout the Bill there are different duties placed on different parties to consult. Clauses 2 and 4 place a duty respectively on DOE and district councils to produce statements of community involvement including the involvement of persons who appear to have an interest in matters relating to development in its district or development. Clause 27 places a duty on a Developer to carry out pre-application community consultation on major developments.

The Consumer Council encourages inclusive consultation. To ensure inclusive consultation all documentation must be easy to understand. The Bill contains instruction on what must be contained in proposals of application and that regulations can prescribe the form of the consultation and the persons to be consulted. We would expect that these regulations are not restrictive.

We would repeat our request that DOE investigate the possibility of including Northern Ireland Water on its list of statutory consultees to ensure sufficient consideration is given to the provision of adequate water and sewerage services or their alternative.

Additionally, while not forming part of the Bill, we are glad that subordinate legislation and guidance will be subject to further detailed consultation as stated in the explanatory and financial memorandum.

3. Redress

Part 9 of the Bill continues the duties of the Planning Appeals Commission. Such a system of redress is essential. The system must be user-friendly and set up to provide the maximum support to the consumer. It is important that this process includes a limited third party right of appeal.

Like all information provided by DOE, Planning Service or the district councils a clear and easily understood guide to the appeals process should be produced.

4. Customer Satisfaction and mystery shopping

The Consumer Council would encourage the Planning Service to continue to conduct and publish customer satisfaction surveys.

We welcome Part 10 of the Bill with new provisions for DoE to undertake audits or the assessment of the council's performance. The findings of these assessments should be published alongside the Planning Service's own satisfaction reports on the Service's website.

Thank you for the opportunity to respond to the Committee on the Planning Bill. Should you have any questions please contact me.

Yours sincerely

Aodhan O'Donnell

Director of Policy and Education

Craigavon Borough Council Submission to the Planning Bill

The Planning Bill (As Introduced)

Preliminary Remarks

The Planning Bill (As Introduced) has been read by a team of officers from Craigavon Borough Council including Southern Group Environmental Health and Southern Group Building Control. Officers would wish to draw the contents of pertinent Sections to the attention of Members. These Sections have been highlighted below with direct quotations in italics and comments of officers in standard font. These comments have been made in advance of the Consultation Event organised by NILGA.

Part 2

Local Development Plans

In this part the Bill re-defines the role of the Department in relation to the proposals that Planning will substantively move to local Councils, but also sets out the obligations placed upon local Councils in their discharge of this statutory function.

Survey of District
Section 3:

In Sub-Section (1) the document states "A Council must keep under review the matters which may be expected to affect the development of its district or the planning of that development." Sub-Section (2) and Sub-Section (3) go on to state that these matters include the principal, physical, economic, social and environmental characteristics of the Council's district; the principal purposes for which land is used in the district, issues re population and communication and "any changes which the Council thinks may occur in relation to any other matter"; and "the effect such changes are likely to have on the development of the Council's district or on the planning of such development."

Sub-Section (4) states "a Council may also keep under review and examine the matters mentioned in Sub-Sections (2) and (3) in relation to any neighbouring Council to the extent that those matters may be expected to affect the district of the Council" and Sub-Section (5) goes on to state "in exercising a function under Sub-Section (4) a Council must consult with the Council for the neighbouring district in question." This is a considerably onerous requirement on the part of the Council which will rely a lot on members of staff having the time to collate intelligence from neighbouring Councils. It will also require a degree of openness and transparency on the

part of each and every Council to make neighbouring Councils aware of what is planned for its area.

This may work against a Council which hopes to attract investment and could lead to a developer playing one Council against another in order to obtain more favourable terms.

Statement of community involvement
Section 4:

For the Council to do this will require guidance, expertise and resources, especially as in Sub-Section (4) the “Department may direct that the statement must be in terms specified" and Sub-Section (5) “The Council must comply." Moreover Sub-Section (6) “The Department may prescribe – (a) the procedure…(b) form and content of the statement." Guidance will be required in terms of provision of a process and template that would be acceptable to the Department.

Sustainable development
Section 5:

In Sub-Section (1) the Bill requires that cognisance is taken of “contributing to the achievement of sustainable development." Conditions in this regard are specified thereafter, but sustainable development is, in itself, a matter that is capable of various interpretations. These would need to be clarified and referenced.

Local development plan
Section 6:

This must be prepared and appropriate policies defined. To carry out such a function will require expertise that is currently not generally within the Council structures. If the Department is minded to provide that expertise, what will the transition arrangements be to facilitate a seamless transition from central to local government? Moreover, what financial and other assistance will be made available so that the newly located planning function does not unnecessarily impose additional burden on local ratepayers?

Preparation of timetable
Section 7:

This Section states that a Council “must prepare and keep under review a timetable for the preparation and adoption of the Council’s local development plan." It further states that if the Council and the Department cannot agree the terms of the timetable then the Department may “direct that the timetable must be on the terms specified in the direction" and that the Council must comply with the direction.

It is interesting to note that Councils are expected to prepare such a timetable when no such timetable was or appeared to be in force when DOE Planning Service was responsible for Area Plans.

Plan strategy
Section 8:

In the Bill it states at Sub-Section (1) “A Council must prepare a plan for its district (to be known as a plan strategy). Sub-Section (2) “A plan strategy must set out – (a) the Council’s objectives

in relation to the development and use of land in its district;" and so on. Whilst Councils have lobbied for, and will probably welcome, the opportunity to specify what appropriate development ought to be in its district to maximise the potential of the local area, the preparation of such a plan will require extensive expertise and resources in terms of people and money. Clarity is required on how these will be provided and who will pay for same. It is also noted at Sub-Section (6) that “The Council must also - (a) carry out an appraisal of the sustainability of the plan strategy; (b) prepare a report of the findings of the appraisal." Clarification is required on the aims and definition of ‘sustainability’ as this can mean different things in different contexts. Guidance and clarification are required.

Local policies plan
Section 9:

In this part of the Bill there is an obligation on Councils to set out at Sub-Section (2) “(2)(a) the Council’s policies in relation to the development and use of land in its district" which must include at Sub-Section “(4)(b) the Council’s statement of community development." Although Councils have expertise in interfacing with the local community, clarification will be required on how this specifically relates to the planning function.

Independent examination
Section 10:

Sub-Section “10 (1) The Council must submit every development plan document to the Department for independent examination." There is an underlying theme in the Planning Bill which is that, even though the function of planning is given over the Councils, the final say will remain with the Department; and that the Department would appear to have a veto on local decisions. The shape and construction of the proposed new system would seem to retain a key role for the Department, with key decisions taken at the centre and parameters defined within which local Councils must operate. The exact powers and limitation of each of the parties in these arrangements would require to be defined. It would appear that the central role remains with the Department and the impression is given of a secondary role for the local Council.

Sub-Section (4) states that unless the Department intends to make a direction it must “cause an independent examination to be carried out by – (a) the Planning Appeals Commission; or (b) a person appointed by the Department." The question must be asked as to why an outsider should have influence over what any Council deems to be best for its district.

Withdrawal of development plan documents
Section 11:

The above observation appears to be supported by noting in the Bill the statement “(2) The Department may, at any time after the development plan document has been submitted to it under section 10(1), direct the Council to withdraw the document."

Adoption
Section 12:

This gives the Department the power to direct Councils to adopt the development plan document as originally prepared; adopted with such modifications as specified by the Planning Appeals Commission or a person appointed by the Department or to withdraw the development plan document. Sub-Section (3) states that the Council must comply with a direction given under this Sub-Section.

Review of local development plan
Section 13:

In this section the Department prescribes the timeframe for a review of the local development plan and defines a prescribed form for such. In this way, again, the final control rests with the Department.

Revision of Plan Strategy or local policies plan
Section 14:

The wording of this Section appears to suggest that Councils do not have to refer any revision of a planned strategy or a Local Policies Plan to the Department for approval which seems strange in light of the stipulations to have the Department's approval for everything else.

Intervention by Department
Section 15:

If the Department does not like what the Council has produced it may "direct the Council to modify the document."

To do this implies that there will remain a central planning regime, resourced centrally(?), that will direct what is acceptable on a Northern Ireland wide basis, and Councils will be obliged to operate within these parameters.

Department's default powers
Section 16:

Sub-Section "(1) This section applies if the Department thinks that Council is failing or omitting to do anything it is necessary for it to do in conjunction with the preparation or revision of a development plan document. Sub-Section (2) The Department may – (a) prepare the document; or (b) revise the document." It should be noted, again, that the final determination lies with the Department and if it has to intervene." Sub-Section (7) The Council must reimburse the Department for any expenditure the Department incurs." There are potential, significant, costs to Council if it does not discharge its functions in planning in accordance with the Act.

Joint plans
Section 17:

This Section makes provision for two or more Councils agreeing to prepare joint plans. Whilst this may be sensible if referring to the Cluster Councils as envisaged under RPA, there is no mention as to what sanction there would be if one of the Councils decided to withdraw, i.e. who would pay for work carried out to date if part of the Plan had to be abandoned and would the remaining Council/s be expected to prepare a revised Plan and/or commence the process again.

Power of Department to direct Councils to prepare joint plans
Section 18:

In this section the Department "may direct two or more Councils to prepare – (a) a joint plan strategy; or (b) a joint plan strategy and joint local policies plan" and this intervention "may

relate to the whole or part of the Councils' districts." Critically, the Bill states that where such occurs "a Council must comply with a direction given by the Department."

This is probably the most significant part of the Bill. The implication is that the Department can direct Councils to work together in clusters of two or more. This goes beyond voluntary arrangements and any 'coalition of the willing' as suggested in ICE (Improvement, Collaboration and Efficiency). It is possible that the Department may direct Councils to operate in regions as suggested by the proposed by the recently published New Model for Local Democracy. These consortia are more extensive than those existing clusters that were explored, with varying degrees of success across Northern Ireland, in the preparation for RPA.

Notwithstanding, the Councils do have in the Building Control and Environmental Health statutory group system the experience in working in this type of wider dimension, yet this was not recognised in the PriceWaterHouse Coopers report on RPA or advanced by SOLACE or NILGA as an option. It is almost certain that the Planning Bill will require those initial positions to be re-visited and the scope provided by the group system to be re-examined. This is not beyond possibility, but will require a fresh look at these structures by Councils, and a change of attitude to embrace genuine collaboration and not just sentiment. It is also probable that such implications in the Bill will require a new statute, or amendment to existing (group) legislation.

The concerns raised under Section 17 above in relation to what sanctions can be imposed if a Council decides to withdraw from the process are perhaps more pertinent in the event of Councils being "directed" by the Department to prepare joint plans, i.e. will the Department undertake to cover any additional expenses incurred by the remaining Council/s? Sub-Section (2) of this Section states "a direction given by the Department under Sub-Section (1) may relate to the whole or part of the Councils' districts." To date each Council has been responsible for its own autonomous area and the idea that a Council, especially if that Council was not one of the proposed Cluster Councils, would have an input into part of another Council's area, is difficult to envisage.

Annual monitoring report
Section 21:

"(1) Every Council must make an annual report to the Department." The Council must report and, as will be noted later, the Department is empowered to evaluate whether the Council is carrying out its role in Planning efficiently and effectively. This does not appear to be the passive reporting of Performance Indicators (PI's) that was introduced under Best Value, but which do not appear to have resulted in any sanctions, or comment by the Department. It seems reasonable to assume that this will be a more robust type of assessment, which will apply to the planning function noting comments in other documents (The Local Government Reform Policy Proposals) which define a pattern for future auditing by the Department generally.

The preparation of the Annual monitoring report will be yet another drain on the Council's time and resources.

Part 3

Planning Control

Concern should be expressed at the level of interference which the Department is retaining for itself under this part of the proposed Planning Bill, e.g. Section 29 states at Sub-Section (1) "the Department may give directions acquiring applications for Planning Permission made to a

Council, or applications for the approval of a Council or any matter required under a development order, to be referred to it instead of being dealt with by Councils."

This part of the Bill appears to relate to actual development and development control matters, and it seems to present an update on existing Planning legislation, in which it is not intended to comment in much detail as these matters relate to specific Planning processes and procedures, that follow a similar presentation to those that apply to Building Control and Environmental Health which the local Councils have had responsibility for since 1973, and in which there is in-house expertise. Notwithstanding, comments could be offered to the Committee as follows:-

Meaning of “development"
Section 23:

Sub-Section (3) – describes those operations that are exempt, and includes in (f) demolition under this category which ought to be included – not exempted - especially if such is proposed for buildings or parts of buildings that are of historical or other interest

Hierarchy of developments and Department’s jurisdiction in relation to developments of regional significance
Sections 25 and 26:

It is noted that major developments will be dealt with by the Department

Local developments: schemes of delegation
Section 31:

Clarification will be required in relation to these proposals.

Simplified planning zones
Section 33:

Sub-Section (3) states “Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme."

However, although land in a conservation area or designated for the natural environment may not be included in a simplified planning zone, Section 38 Sub-Section (1) and Sub-Section (2) states: “where land included in a simplified planning zone becomes land for such a description, Sub-Section (1) does not have effect to exclude it from the zone."

This poses a risky scenario for Councils since damage to the environmental features of land which is subsequently designated for conservation after the simplified planning zone scheme is initiated, could lead to liability for a failure to adequately protect it. It is considered that an explanation should be included in Section 38 (2) to the effect that while the protected land is still within a Simplified Planning Zone, then the “conditions, limitations or exceptions" should be modified accordingly.

Revocation or modification of planning permission by Council
Section 71:

Clarification is required as to whether or not the power of Council to revoke or modify Planning Permission granted, refers only to Planning Permissions granted by Council, i.e. after the transfer of the Planning Function, or can Councils revoke/modify Planning Permissions granted prior to that date.

Land belonging to Councils and development by Councils
Section 78:

This is typical of a section where clarification as to the intention and implications of the Bill would be helpful

Part 4

Additional Planning Control – Chapter 1 – Listed Buildings and Conservation Areas

Control of works for demolition, alteration or extension of listed buildings
Section 84:

Sub-Section (6)(b) – the fine of £30,000 does not seem a sufficient deterrent to prevent the unauthorised demolition of listed buildings, notwithstanding the possibility of imprisonment for the offence.

Revocation or modification of listed building consent by Council; Conservation areas and Control of demolition in conservation areas

Sections 97, 103 and 104:

The matter of listed buildings/conservation areas is one where the Council and Department could come into conflict, especially where the Council deems the listing of buildings, or streets perhaps, as detrimental to the economic development of a town or region. The rules on engagement on these matters should be clearly defined, and parameters set out that can be discussed and agreed so that both the interests of Department and Council could be accommodated.

Sub-Section (4) of Section 104 includes a clause permitting a designation to be varied or cancelled by the authority which made the designation. This would not appear to assist Councils which would seek such a variation or cancellation of a designation to help revitalise sections within a conservation area designated by an authority prior to the implementation of the Planning Bill. The Department still retains the right under this Section to designate conservation areas in Council districts.

Part 4

CHAPTER 3 – TREES

Tree preservation orders: Councils

Section 121:

This has huge cost implications for Councils, involving the preliminary survey of trees and woodlands which have a Tree Preservation Order proposed.

Part 5 Enforcement

Time limits

Section 131:

A definition is required for “substantially completed."

Variation and withdrawal of enforcement notices by Councils Section 140:

From this Section it would appear that a Council can only vary or withdraw Enforcement Notices issued by it, i.e. after the Planning Function is transferred to Councils. Clarification is required as to whether or not this is in fact the case.

Injunctions Section 155:

In this part the Council should be aware of the possibility of having to apply for an injunction and the costs associated with same, and the provision that may require to be made in the budgets to enable the effective discharge of its responsibilities.

Hazardous substances contravention notice Section 161:

Whereas the role of the Historic Buildings Council is defined (196) in the Bill, the role of HSENI and Environmental Health have not. Is this not inconsistent?

Part 6 Compensation

Compensation where planning permission is revoked or modified Section 178:

Sub-Section (1) of Section 178 states “the functions which immediately before the day on which this Section comes into operation (in this Section referred to “the transfer date") are exercisable by the Department under or for the purposes of the provisions of the Act of 1965 listed in Sub-Section (2) are hereby transferred as from that day to Councils." The question must be asked as to where money will come from to enable Councils to pay compensation especially since the Councils will not have been party to the decision to revoke or modify Planning Permission prior to the date of transfer.

Councils should be given indications of the potential costs of this measure based on the experience of Planning Service in its operations

Part 7 Purchase of Estates in Certain Land Affected by Planning Decisions

Service of purchase notice
Section 189:

There is a requirement under Section 189 of this Part of the Bill, for Councils to purchase the landowner's estate in lands adversely impacted by refusal for Planning Permission or if granted, subject to conditions or under certain circumstances if Planning Permission is revoked or modified by the imposition of conditions and the landowner can no longer have "reasonably beneficial use of the land."

This appears particularly onerous on Councils and confirmation would be required that, if permitted to remain in its current format, this Section will only be operative in respect of decisions made following the transfer of functions, i.e. by Councils. Councils should not have to pay for the decisions of the Department. The term "reasonably beneficial use" should be clarified.

Part 10 Assessment of Council's Performance or Decision Making

Due to the nature of this Part, Sections 203 to 206 have been reproduced and are attached at Appendix 1.

Assessment of council's performance
Section 203:

"The Department may conduct, or appoint a person…to conduct on its behalf, an assessment of the Council's performance – (a) of functions generally under this Act, or (b) particular functions under this Act."

This part of the Bill goes on to impose obligations on the Council to assist the Department and provide "every facility and all information" [(205)(5)(a)(b)] as required. The Bill does not state Councils' i.e. plural, which suggests that, irrespective of any collaboration arrangements imposed by the Department, each Council will be investigated individually if there is a failure in the collaboration arrangement. Whilst it seems reasonable for the Department to reserve such a right, and this is not uncommon in other jurisdictions and in other government bodies, it would be helpful if the standards expected were defined and agreed in advance so that Councils would be aware in advance of the benchmark to be established, and the terms and conditions of any assessment protocol. (In Scotland, protocols were set up by the Scottish Government in consultation with Councils, to facilitate assessment of the Council Building Control operations based on a balanced scorecard approach.)

Part 11 Application of Act to Crown Land

Urgent Crown development
Section 209:

Sub-Section (1) states that this Section applies to a development if "the appropriate authority" certifies-

"(a) that the development is of significant public importance, and

(b) that it is necessary that the development is carried out as a matter of urgency"

There is no definition as to who or what constitutes "a public authority."

Sub-Section (2) goes on to state that instead of making a planning application to the Council, the appropriate authority must make an application to the Department under this Section. There is no reference to any public consultation being required for such development.

Enforcement in relation to the Crown
Section 211:

Sub-Section (1) states “no act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act." Carte-blanche is therefore offered.

Part 13 Financial Provisions

Fees and charges
Section 219:

The establishment of appropriate fees remains with the Department (as is the case in Building Regulation fees). As Councils will have to fund the planning operations this would present difficulties in the future if the Department chooses, for whatever reason, not to increase fees and this would have an impact on rates over which Councils would have no control. This would require protocols to be established so the Council could have a meaningful input.

There may also be an implication that those parts of government that are involved in the statutory consultation process may be able to charge a fee for their contribution to the planning process. This too would require defining, and agreeing.

No reference is made under Section 219, i.e. Fees and Charges in respect of producing development plans and/or enforcement actions from which no fees are currently obtainable. This is a major cost implication to Councils and a definitive response should be sought from the Department as to how they envisage all “non cost neutral" duties imposed on Councils by virtue of the transfer of the Planning Function are to be met.

Part 14 Miscellaneous and General Provisions

Local inquiries
Section 226:

“The Department may cause a public local inquiry to be held for the purpose of the exercise of any of its functions under the Act."

It is not clear who would pay for such an inquiry, and if the costs were to be apportioned, no detail of the various allocations.

Planning register
Section 237:

“A Council must keep, in such manner as may be specified by a development order, one or more registers containing such information as may be so specified...." Currently Council keep many records, and one more should not present a problem. Typically such registers are now electronic and it is understood that Planning Service have its own electronic system – EPIC. It is not clear if Council would be required to adopt that system with any ongoing attendant costs, or have the option of designing its own local system using open codes that would facilitate networking, using the latest technological advancements.

Department of Agriculture and Rural Development
Submission to the Planning Bill

From the Office of the Minister
Michelle Gildernew MP MLA

Department of
Agriculture and
Rural Development
www.dardni.gov.uk
an Roinn
Talmhaíochta agus
Forbartha Tuaithe
Ma Roinn
Fairms an
Kintra Fordèrin

Mr Cathal Boylan MLA
Chairperson of Environment Committee
Room 247 Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST
BT4 3XX

Room 438
Dundonald House
Upper Newtownards Road
Belfast BT4 3SB
Telephone: 028 9052 4140
Fax: 028 9052 4170
Email: private.office@dardni.gov.uk

Our Ref: COR/658/2010
Your Ref:

13 January 2011

Cathal, a chara

Committee for the Environment – Call for Evidence on the Planning Bill

Thank you for your letter dated 22 December 2010 seeking the views of my Department in relation to the proposed Planning Bill.

DARD officials had previously highlighted some concerns at the consultation and pre executive committee stages, namely that the Bill made no mention of PPS 15: Planning and Flood Risk or to Drainage Infrastructure Charging being applied where drainage infrastructure was being provided at public expense.

After receiving assurances that these issues will be taken forward independently of the Planning Bill by DOE, I am content with the draft Planning Bill and have no further comments.

Is mise le meas

MICHELLE GILDERNEW MP MLA
Minister of Agriculture and Rural Development

If you have a hearing difficulty you can contact the Department via the textphone on 028 9052 4420

Department of Employment and Learning
Submission to the Planning Bill

Department for
Employment
and Learning
www.delni.gov.uk

Mr Peter Hall
Clerk to the Committee
for Employment and Learning
Room 283
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Adelaide House
39/49 Adelaide Street
Belfast
BT2 8FD
Tel: 028 9025 7777
Fax: 028 9025 7778
email: private.office@delni.gov.uk

Our Ref: COR/397/10

19 January 2011

Dear Peter,

Please see attached response which issued to the Environment Committee today.

Yours sincerely

FIONA STANLEY
Departmental Assembly Liaison Officer

FROM THE MINISTER

Department for
Employment
and Learning

Adelaide House
39/49 Adelaide Street
Belfast
BT2 8FD
Tel: 028 9025 7791
Email: private.office@delni.gov.uk

Cathal Boylan MLA
Chairperson
Committee for the Environment
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
Belfast
BT4 3XX

Our Ref: COR/397/10

15 January 2011

Dear CATHAL,

Thank you for your letter of 22 December 2010 seeking the Department's views and submission of written evidence on the Planning Bill.

I can confirm that there are no issues of concern for DEL, therefore there are no requests for any amendments, additions or deletion of any clauses within the Planning Bill.

Yours sincerely

Danny Kennedy

DANNY KENNEDY MLA
Minister for Employment and Learning

Department of Justice Submission to the Planning Bill

FROM THE OFFICE OF THE MINISTER OF JUSTICE

Department of
Justice
www.dojni.gov.uk

Minister's Office
Block B, Castle Buildings
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90528121
Fax: 028 90528434
Teletext: 028 90527668
private.office@dojni.x.gsi.gov.uk

Your ref:
Our ref: JCP\10\174

Cathal Boylan
Chairperson, Committee for the Environment

By e-mail doecommittee@niassembly.gov.uk

13 January 2011

Dear Cathal

Committee for the Environment – Call for Evidence on the Planning Bill

Thank you for your correspondence of 22 December 2010 requesting views on the proposed Planning Bill. I have confined my consideration to those clauses which are of direct interest to my Department, namely 104, 152, 227,229 and 230. Clause 104 puts beyond doubt that the criminal offence of demolishing certain buildings in a conservation area also covers partial demolition. In addition, clause 152 provides for the establishment of a fixed penalty scheme where an enforcement notice has not been complied with. I note that the form and amount of the fixed penalty are to be set out in regulations – I should be grateful if your officials would liaise with mine as any such regulations are being drafted.

Clauses 227, 229 and 230 set out the Department of Justice role in respect of planning applications where the disclosure of information would be contrary to the public interest.

[redacted]

FROM THE OFFICE OF THE MINISTER OF JUSTICE

Department of Justice
www.dojni.gov.uk

I am content that these clauses adequately reflect my Department's position and I have no further comments on the Bill at this stage.

Yours

David

DAVID FORD MLA
Minister of Justice

[redacted]

Department of Enterprise, Trade and Investment Submission to the Planning Bill

From the Office of the Minister

Department of
Enterprise, Trade and Investment
www.detini.gov.uk

NETHERLEIGH
MASSEY AVENUE
BELFAST
BT4 2JP
Tel: 028 90 529452
Fax: 028 90 529545
E Mail:private.office@detini.gov.uk
Our Ref: DETI COR 633/2010

Cathal Boylan MLA
Chairperson, Committee for the Environment
Room 247
Parliament Buildings
BELFAST
BT4 3XX

20th January 2011

Dear Chair,

Thank you for your letter of 22 December 2010 requesting evidence on the proposed Planning Bill.

My officials worked closely with DOE colleagues in the drafting of the proposed Bill, specifically regarding

- Part 1: General functions of Department with respect to development of land;
- Part 2: Local Development Plans;
- Part 3: Planning Control (specifically including section 25 Hierarchy of developments; section 39 Grant of planning permission in enterprise zones; and section 63 Termination of planning permission by reference to time limit);
- Part 6: Purchase of Estates in Certain Land Affected by Planning Decisions;
- Part 9: The Planning Appeals Commission;
- Part 10: Application of the Act to Crown Land; and
- The implications of the Seveso Directive.

I have confirmed to Minister Poots that I have no outstanding areas of concern.

I am copying this letter to the Chair of the ETI Committee.

Yours Sincerely,

ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Development Planning Partnership Submission to the Planning Bill

Belfast

4th Floor, Scottish Mutual Building,
16 Donegall Square South, Belfast BT1 5JG
Tel: 02890 268420 Fax: 02890 268421

www.dpplp.com

Reference: CMCD/1213811-1 /L0002

21 January 2011

Cathal Boylan
Northern Ireland Assembly
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
BT4 3XX

Dear Cathal

Re: Response to Call for Evidence on the Planning Bill

With reference to the above and your letter of 16th December we welcome the opportunity to respond prior to the introduction of this important legislation.

Planning reform is a critical element in the support for economic recovery and we are in support of the return of planning powers to local councils and accordingly appreciate the importance of the planning bill in the transfer of development plan and development management to councils within a timetable to be agreed by the executive. Local decisions will help to provide for transperent decision making as desired by the majority of people. This understanding of local issues will enable councillors to take positive control of planning for their local areas.

Against this background we have the following comments to make on the legislative detail.

In respect of plan production and adoption Clause 6 provides for a 2 tier plan document, the plan strategy and the local policies plan.

This suggestion has been the subject of much debate and while it is appreciated that there is a need to speed up the plan production schedule it is not feasible to have a plan document in the absence of directional guidance as to what it relates (as is contained in the local policies document). Decision makers need both the criteria based policy and detailed zoning position to be clear and it is somewhat suprising that the legislation is not drafted to adapt to emerging circumstances and to move away from this approach should it be required.

In respect of Clause 9 there is no facility to commence the preparation and drafting of the local policies plan until such time as the plan strategy has been fully adopted. This rigidity will inhibit an inclusive plan process as the pressure to push the plan program forward will

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prohibit adequate levels of public participation in the process.

Clause 7 sets out the timetable for plan production. While the legislation provides for the agreement of timetabling between the Department and Council, the Department ultimately retain the facility to have outright control over the process, somewhat suprising given their track record in cumbersome and lengthy plan production schedules but also the lack of ability to match timetabling with available resources given they have no direct control over council resources or priorities. In situations where agreement on timetabling cannot be reached it should go to an independant arbitrator.

We support the requirement for councils to produce annual monitoring reports to assess the extent to which the objectives of the local development plan are being achieved as set out under Clause 21. The Department currently only monitor housing starts hence this process is more labour intensive than that currently undertaken but will result in a much more accurate baseline that the current procedures and should be encouraged.

One of the most significant changes introduced by the bill is the decision to bring demolition within the definition of development (Clause 23). This is a very significant change and one which has not been substantially debated. We would ask that this element in not enacted until the financial circumstances warrant it as it is a change which will bring additional uncertainty for developers, especially if applied retrospectively. To avoid this additional material consideration many developers will be forced to demolish buildings before the change is enacted, creating areas of planning blight until such time as developers are able to gain appropriate financial leverage to enable substantive works to be started.

Paragraph 4 similarly seeks to make a substantive change that remains to be substantially discussed as it could bring internal works and specifically mezzanine floors within the definition of development. This should be delayed pending more substantial debate on the matter.

The procedures set out under Clause 26 for 'regionally significant applications' need carefully assessed in terms of the timeframes for the submission of applications that are subject to the special powers under Article 31. It is unclear if this clause is replacing Article 31 in the 1991 Order and indeed if the current grounds for designation are to be removed i.e. *affect the whole of a neighbourhood and consist of or include the construction, formation, laying out or alteration of a means of access to a trunk road or of any other development of land within 67m of the middle of such road or nearest part of a special road.* If this is a replacement of the Article 31 powers it is totally unnecessary that consultations are undertaken with the Department prior to pre application community consultation without any associated benefit in terms of time savings later in the process. This has the potential to delay the most significant applications in the province when they are the most realistic opportunities for economic growth and is contrary to Government objectives of growing the economy.

The introduction of community consultation and ultimate submission of statements of community involvement (27) is welcomed however legislation should not prescribe how this should take place. It should be within the gift of the applicant to determine the most appropriate mechanisms for encouraging local communities to get involved as it is not a case of one size fits all.

It is suprising that no attempt has been made to differentiate between major applications and subsequent amendments to them. We support pre application notification but not the ability of councils to decide who should be consulted within the 12 week period, subject to advising the applicants within 21 days of additional consultees. Dependant on the scale of additional consultees suggested this could delay some schemes needlessly, there should be a facility to 'carry over' some consultations into the post validation/application determination period to avoid needlessly delaying proposals. An extension of the three week period into the timeframe for processing of the application will merely co incide with the timeframe for advertisement and issuing of consultations and will not cause any delays in detrmination.

Clause 29 provides substantial call in powers in the absence of criteria setting out when this would be applicable. This brings an additional level of uncertainty hence criteria should be clearly set out for when a call in could be triggered.

While we welcome the continued opportunity to discuss proposals prior to issue of decision notices via the pre determination meetings, where there is a substantial body of objection in clause 30 we do not agree that council should decide who should appear. The current deferral process is an opportunity to meet with planners, often for the first time given the Departments scarce resources and accordingly it should be within their gift to decide attendees although we would not object to a restricted number.

We are in support of Clause 40 which introduces design and access statements, however they do not dispense with the need for proper assessment by professional planners and on this basis there is no need to prohibit validation until submission.

Clause 43 introduces notices requiring a planning application to be made. It is unclear how this can be required when it is not illegal to commence works without planning permission, only when one is in breech. The timeframes are closely tied to the 4 year rule and it is confusing how this sits in the context of a CLUD especially given the Departments lack of resources and current enforcement powers. This notice again puts the ethos on planning officers to commit themselves to non fee earning activity rather than concentrating on work which creates a fee income for the relevant Department and is not a sustainable business model on that basis.

Clause 58 reduces the appeal timeframe from 6 to 4 months which we are in support of however 59 extends the non determination period to 4 months which we consider unnecessary given the 'front loading' of applications suggested elsewhere in the legislation.

Clause 66 permits councils to make non material changes to planning permissions however this facility should also be allowed for the Department. It also extends beyond the ability of the Department in the Reform Order to correct errors given the applicant can only be made by or on behalf of a person with an estate in the land to which the permission relates. The current power to correct errors applies to an application by any person and this should be retained in the case of non material changes to consents.

Clause 121 sets out the facility for confirmation of a tree preservation area (TPO's) however we are against the removal of the provision to appeal to the PAC against the decision to designate a TPO

on a persons land. While we accept that decisions such as this must be made prompty to avoid stalling develop through the uncertainty a pending decision can bring, landowners must have the recourse of an appeal should they be dissatisfied with the decision reached in respect of a TPO.

Clause 227 sets out the situations when inquiries are to be held in private, including when they relate to a government building to protect the security of government owned buildings. These provisions are excessive as they prohibit people from becoming involved with issues that affect their local community and we feel they circumstances when inquiries can be held in private should be narrowed further to avoid any interference with natural rights of participation.

Other Matters

We would urge the committee to seek assurrances from the Minsiter that the Planning Bill will be properly resourced. The document makes no reference to alternative funding routes for development plan or enforcement work yet this is critical if we are to move towards the plan led system.

I trust this assists and look forward to embracing the changing times ahead. If I can be of any further assistance please do not hesitate to call the office.

Yours faithfully

Carrie McDonagh
(carrie.mcdonagh@dppllp.com)
DPP
Direct Line: 028 90 268420

Department of Finance and Personnel Submission to the Planning Bill

From the Office of the
Minister for Finance and Personnel

Department of Finance and Personnel

DFP Private Office
Craigantlet Buildings
Stoney Road
Belfast BT4 3SX

Telephone: 028 90529140

Email: private.office@dfpni.gov.uk

Your reference:
Our reference: COR/4/2011

Cathal Boylan MLA
Chairperson, Committee for the Environment
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST
BT4 3XX

19 January 2011

Dear Cathal

Thank you for your letter of 22 December about the Planning Bill.

I wrote to the Environment Minister in November 2010 supporting the introduction of the Planning Bill. There are no issues of concern or amendments that I wish to make in relation to the Bill.

Yours sincerely

SAMMY WILSON MP MLA

[redacted]

Down District Council Submission to the Planning Bill

Down District Council - Draft
Response to the Committee of the Environment
Call for evidence on the Planning Bill

Introduction

Minister Poots in the Planning Reform document stated that, to be successful, the reform process requires “new and revised processes and procedures, as well as fundamental changes in attitude

and culture." Improvements in administration processes are more readily delivered than fundamental changes to attitude and culture. Local government officials who have worked with planning processes see a void where joined up engagement should be, at development plan level and in the everyday operation of planning processes.

The key challenge is to get the strategic context and outlook aligned in the thinking, systems and orientation of everyone involved in the transition. The bill seeks to place Community Planning, Local Development Planning, and Development Management in alignment. Council is somewhat concerned that the Bill lacks any mechanism/imperative which will require other statutory consultees to co-operate efficiently. This commitment is required both strategically with the Development Plan context and operationally within the Development Management environment.

Integrating local development planning and community planning in order to create prosperous, socially enabled and sustainable places will not happen as an accessory or by-product to regulatory functions; integration must be 'designed into' legislation.

Council welcomes the progress of a new Planning Bill which will, it is hoped, deliver on the needed reforms of the system. High levels of expectation for service delivery will consequently be placed on new local government organisations and yet there is much to be done in terms of the capacity of the sector to deliver.

It must be noted that at this point local government is not resourced to perform the services identified in the legislation and further, Council also has some reservations about a number of key components of the Bill. These reservations follow in the order they appear within the Bill.

Local Development Plans – general observations: Parts 1 & 2

In general terms Council is satisfied with the content of the Bill as it relates to Local Development Plans. The Programme for Government recognises the dynamic interface between enabling sustainable economic growth and development whilst promoting social and community cohesion.

The new Bill is welcome evidence of the Assembly response to the widespread frustration at the inability of the Planning system to deliver what local communities, local government and the private sector need; however, Council considers that the Bill will only effect change if there is adequate resource to support it.

Better co-operation between all the agencies involved is also essential to success and a more collegiate approach within the statutory sector is a critical component; in its current iteration the Bill does not recognise this. Members also regard the better description of 'roles' within the Bill as essential.

Local government in the new Planning process will rely on effective co-operation with the 'Department' and other actors in the public arena, notably between other statutory consultees, in addition to community consultees.[1]

Preparation of statement of community involvement by Department: Part 1.2

It is to be welcomed that local government is recognised within the Bill as best placed to determine how the community should be involved.[2] In the view of Council it is difficult to

envisage any circumstances in which the Department would be better placed to decide who should be involved and how this should happen.[3]

Sustainable development: Part 2.5

Reading of the Bill would benefit from an accepted definition of the term 'sustainable development'[4] as it is open to very wide interpretation. Helpfully the term 'Development' is defined in section.[5]

Preparation of timetable: Part 2.7

Whilst the Bill requires the production of a timetable there is no indication of appropriate timescale from a measurement perspective.[6]

Power of Department to direct Councils to prepare joint plans: Part 2.15/16/17/18

With regard to the scope for intervention by Department and the Department's default powers, Council is of the view that this power should be more tightly defined within the legislation.

Part 3: Development Management (planning control)

It is a general observation that this part of the bill is named Planning control which is moving from the original spirit of the legislation which was to facilitate a 'Development context.'

Pre-application community consultation report: Part 3.28

Council welcomes the opportunity to have more pre application work to assist in anticipating and resolving problems as early as possible.

The Bill refers to the requirement that "(2) A pre-application community consultation report is to be in such form as may be prescribed." Precision on the form, scale and range of such a report should, in Council's view be so prescribed within the legislation in order to allow applicants certainty to plan for and deliver on such a requirement. A current criticism of process is the way in which requirements emanating from Planning Service or other consultees may vary considerably and may change frequently.

Call in of applications etc. to Department: Part 3.29

Whilst Council accepts that it not the Department's intention to exercise this power routinely, Council is concerned at the lack of precision in language to describe circumstances in which this might happen.

Duration of planning permission: Part 3.60

Council welcomes the ability to oblige project promoters to deliver schemes within five years, or in a longer or shorter timescale which reflects the ambition of the local development plan or other local need.

Simplified planning zone schemes: Part 3.33

Council welcomes the concept of simplified planning zones as a key tool in local development.

Grant of planning permission in enterprise zones: Part 3.39

Existing areas which are zoned for enterprise are often in the ownership of Invest NI and are only available to Invest NI client companies. This may necessitate provision of additional zoning for Enterprise in some areas. Point 4 in this section provides for Department to intervene in approvals, this is of concern as previously the Department presumed Invest property to be adequate for local economic need.

Listed Buildings and Conservation Areas: Part 4.86

The amount of the fine (£30,000) is insufficient to act as a deterrent for unauthorised demolition.

Compensation Part 6.187

Council assumes that there will be funding mechanisms to support Councils' financial liabilities anticipated within the 'Bill.' From the date of effect Councils will not have built up resources from fees and may need to meet such financial demands without adequate resources. This could render Councils liable for substantial sums.

Further Provisions as To Historic Buildings: Part 8.196

Council, as a committed custodian of key historic assets, has some concern about the need to retain the role of the Historic Buildings Council.

It has been local experience that there are a number of officials involved as consultees on planning applications where such buildings and conservation areas are concerned. The legislation does not clarify the relationships of key agencies, such as NIEA, where a number of consultees may be involved and the Department's own 'Conservation' staff, a common approach is not evident.

Local experience of this interface has been conflicting, changing and disjointed responses from the all of the above. Major design decisions being made by staff on the basis of individual interpretation of planning policy as opposed to a more 'joined up approach'.

It is the view of Council that more clarity on the role of these consultees and how they will work together should be better defined within the Bill.

Assessment of Council's Performance or Decision Making: Part 10

Council would welcome further discussion on how this will be managed.

Financial Provisions: Part 13 - Fees and Charges

Council is concerned that the Bill will provide for the Department to set fees and charge rates in respect of services provided by Councils. Council would like some further explanation on this and all the other financial implementations for Council contained within the Bill.

Local Government can collectively agree appropriate charges in consultation with the Department and this may be developed with in the context of a business plan to support the transition process.

[1] 4. Statement of community involvement

[2] Part 1 2.2

[3] Part 2.4.1

[4] Part 2 5.1

[5] Part 3
PLANNING CONTROL
“Development" and requirement of planning permission
Meaning of “development"
23.(1) In

[6] Part 2.7.

Federation of Small Businesses Submission to the Planning Bill

Federation of Small Businesses
Northern Ireland Policy Unit
Cathedral Chambers
143 Royal Avenue
Belfast

BT1 1FH

Cathal Boylan MLA
Chairperson, Committee for the Environment
Room 247, Parliament Buildings
Ballymiscaw
Stormont Estate
Belfast
BT4 3XX 12th January 2011

Dear Mr Boylan

Re: Call for evidence on the Planning Bill

Thank you for your letter of 16 December 2010 in which you invited the Federation of Small Businesses to comment on the Planning Bill in its Committee Stage.

The Federation of Small Businesses is Northern Ireland's largest business organisation with 8000 members, drawn from across all sectors of industry. The Federation lobbies decision makers to create a better business environment and welcomes this opportunity to input to the Committee's consideration of the Planning Bill.

It is with concern that we note the comment in your letter about the Bill's size, its late introduction to the Assembly and the consequentially limited time available to the committee to conduct its scrutiny. This is a key piece of legislation to the business community and it is important that sufficient time is taken to ensure that the new legislation does not replicate the weaknesses of the current planning system that have hampered businesses for many years.

The FSB submitted its response to the consultation on the Reform of the Planning System in Northern Ireland in October 2009 and welcomes the fact that there has been notable progress to date towards reforming the local planning system. Planning issues are consistently identified by our members as a major barrier for economic development. Most often this is associated with large-scale development but it also affects small businesses, whose applications are most commonly concerned with:-

- Improved storage facilities
- Improved signage for the advertisement of the business
- Change of use of existing premises
- Minor physical improvements to retail premises
- Rural businesses applying for additional storage facilities (eg relating to farm diversification)

Characteristics of small businesses and the planning process

A significant proportion of small businesses operate from home-based premises, mainly for reasons of cost and convenience. Many, by their nature, do not require premises. A majority of small businesses serve markets in their local area and are dependent on their local market for a significant proportion of their sales.

Typically, the costs incurred by small businesses in applying for planning permission will principally comprise:-

(a) Planning application fee

(b) Professional advice/services fee

(c) Time spent in preparation stage of submission

(d) Costs attributed to delays in a planning application

Costs for small businesses applying for planning permission

In addition to the standard application fees and professional services fees when applying for planning permission, small businesses often incur further costs during the process. These costs can be defined as:-

- Time spent by owner/employees of the business in preparation for application submission, or at later stages in the application process

- Costs which frequently arise in the course of an application process

As with other business processes, small businesses by their nature tend to employ fewer people and therefore those running the business are responsible for all aspects of day to day operation, trading and regulatory administration. Thus, the burden of applying for planning permission and managing the process has a direct bearing on the running of the business; because of this the impact should be minimised to help rather than hinder business prospects.

Conclusion

The FSB welcomes the Committee's consideration of the Planning Bill and hopes that it will bring about a robust, business-friendly, swift and responsive system which reflects the flexibility and speed-led decision-making of small businesses.

The Bill introduces a number of areas which have the potential to improve the system for small businesses. Planning is an integral part of a wider economic development process and even those which are deemed to be 'smaller applications' play a part in vital economic activity and growth. Northern Ireland is a small business-led economy and will continue to be so; good planning legislation has potential to remove some of the barriers to growth for the sector in the years ahead and we hope that the Bill will achieve this.

We trust that you will find our comments helpful and that they will be taken into consideration. The FSB is willing for this submission to be placed in the public domain. We would appreciate being kept apprised of further developments.

Yours sincerely

Wilfred Mitchell OBE

Northern Ireland Policy Chairman

Fermanagh District Council Submission to the Planning Bill

Response to Consultation Document - Planning Bill

Fermanagh District Council welcomes the opportunity to comment on the Planning Bill presently being discussed by the NI Assembly and note from the overall content of the Bill that, whilst planning powers and perceived control is being devolved to Councils, the Department will retain the real powers in terms of planning policy and call-in arrangements. The ability of the Department to take back control, at any stage, means that Councils could end up paying for Planning but Central Government remaining in control.

It is the view of Fermanagh District Council that there is at present an inordinate rush with this Bill's consultation process in that it was put out to public consultation over Christmas and has a limited time for consideration by the Assembly due to the forthcoming Assembly Elections. It is this Council's view that legislation made in such a manner earns a significant risk that the outcome will not be fit for purpose.

It is noted that it was the declared intention that the Local Government Reform Bill and the Planning Bill would run in parallel but with the consultation timetable given for these Bills, it is

now obvious that, while the Planning legislation is intended to be made by the present NI Assembly, the Local Government Reform Bill will go to the NI Assembly after the May Elections.

Fermanagh District Council believes that there is a need for clarity on Governance structures and ethical standards and that Councils must be treated in an equal manner in a much improved partnership before the proposed Planning Reform is progressed.

Local Development Plans

The importance of these plans is fundamental to the future development of the District Council. It is noted that while these plans must comply with the overall Planning Policy and the Planning Policy Statements, they are subject to independent examination, with the Department having powers to “direct the Council to modify the document" (Sec 15) or indeed a power to do the work in default (Sec 16).

Under Sec 4, a statement of community involvement (the precise form of which has not yet been specified) will be required. This will require guidance, expertise and resources. Similarly, the Planning Strategy, surveys, etc all require skills and resources which Councils do not have at present.

As Planning Service presently have a substantial number of Planning Officers which are surplus to requirements, it would seem appropriate that Planning Service, in conjunction with Councils, would commence the production of new Local Development Plans. The provision of new Local Development Plans, prior to Councils being responsible for Development Control functions when decisions must be in accordance with the above, would seem to be a sensible approach.

A period when Councils and Planning Service staff would work in partnership to produce Local Development Plans would help both parties to understand each other’s culture and would be beneficial to Planning Service when they come to be responsible for independent examination, possible default action, annual monitoring, etc.

It is interesting to note that the new Bill gives the Department power to specify the time period when Councils must provide a Local Development Plan, but when the Department was responsible for Area Plans no such timetable was in existence, and despite many requests, from Fermanagh District Council, no progress was made to have a new Area Plan produced.

Development Control

Clarification and definition needs to be provided of exactly what categories of development will be processed by the Department as opposed to District Councils for eg small Wind Farms (4/5 windmills), mineral workings, etc; it is unclear whether these would be dealt with locally or centrally.

It is noted that developers providing regionally significant or major developments will be required to engage in community consultation. If the developer pays for such consultation, it is possible for manipulation of the process and hence it is suggested that a third party should be used to perform the community consultation to ensure there is no bias. This could be resourced from planning fees.

Resources

There has been no proper assessment of resources required by Local Government. There needs to be transparency in the resources transferred from Central to Local Government – budget,

premises, etc. Similarly there has been a complete absence of clarity as to the human resources transferring to Local Government. It is acknowledged that planning fees are set at levels which aim to cover Development Control activities. How will Local Development Plans, Public Inquiry costs, enforcement action, compensation claims, etc be covered? Can costs incurred by the Department of Environment over the past five years under these headings be made available to see what Local Government is taking on. To increase planning fees to cover some of these costs would certainly be to the detriment of economic development proposals and something which is a declared key priority of Government.

If it is the intention that local District Rates will have to cover costs incurred in preparation of Local Development Plans, Public Inquiry costs, enforcement costs, etc, then there must be transparency in showing how much the Regional Rate will be reduced.

Miscellaneous

1. Are there any Performance Indicators in the existing service that Local Government can benchmark against?

2. Audit and performance requirements should be agreed with Councils rather than having these imposed on them.

3. Fermanagh District Council rejects the principle that Councils should be liable for compensation for action taken either in past years by the Department of Environment or in respect of planning matters which the Department deals with centrally in the proposed new arrangement.

The Planning Bill proposes radical changes to the planning process in Northern Ireland. Fermanagh District Council is committed to improving local democracy and local decision making. However, it is concerned about the legislative position relating to compensation and its ability to mitigate against compensation liability in the insurance market. In the absence of detail pertaining to compensation claims, it is impossible for Local Government to assess the risks and costs of mitigating action. We would also seek clarity whether the cost of compensation claims in the past will be reflected in a budget transfer to Local Government. It may well be that the risk associated with compensation claims is disproportionate to the size of the existing Local Government bodies.

Friends of the Earth Northern Ireland

Friends of the Earth Submission to the Planning Bill

January 2011

Introduction

The Planning Bill needs significant improvement if it is to deliver a fair, transparent and green planning system for Northern Ireland.

As the basic instrument for planning over the next several years it is important for the future of Northern Ireland that this legislation is not rushed through the Assembly but that its key provisions are scrutinised and deliberated fully by MLAs.

This briefing analyses underlying assumptions behind the Planning Bill and reviews these assumptions against best practice. Friends of the Earth is strongly recommending that the principles of sustainability need strengthening and that people and communities must be able to effectively influence the decisions that affect them. Finally, we must use this opportunity to embrace a planning system that is capable of 'planning' rather than 'reacting' to modern challenges of the low carbon economy.

Planning Bill – the need to embrace sustainable development

Many of the assumptions behind the Bill are rooted in an outdated concept of development that fails to meet challenges of the 21st century. These assumptions are reflected in language (for example "survey of district", "orderly development of land") which defines planning in terms that are physical, reactive, technical and a model of development that is preoccupied with land use.

Modern and progressive planning goes much further. The planning system in Northern Ireland must be reshaped to meet the needs of a modern economy whilst accepting a much deeper understanding of what we mean by the environment. Planning can address the big issues, helping to create a truly sustainable economic recovery, acknowledging the benefit to people of healthy ecosystems, strengthening civic culture and creating a more balanced society. Planning is a vital public service which coordinates different partners and delivers responses to meet local challenges. This Bill moves in the right direction but in faltering unclear steps.

The following principles should be cornerstones of a vibrant, democratic planning system in Northern Ireland.

- Sustainable Development Achieving sustainable development must provide the overarching framework within which the planning system should operate. There must also be an explicit statutory duty on the planning system to secure sustainable development. This has been accepted in many other neighbouring jurisdictions, such the Republic of Ireland and Scotland. Sustainable development embraces the transition to a low carbon economy and debates around the materiality of economic weight should be assessed in this context. Commitments to sustainable development in the current draft bill are so weak as to be meaningless.
- Green Infrastructure Adopting a green infrastructure approach is a strategic way to effectively integrate biodiversity into spatial planning. By enhancing and protecting a network of green space we conserve natural ecosystem functions, wildlife and habitats and provide associated benefits to human populations. Green infrastructure also gives us the spatial evidence base which highlights the value of biodiversity and ecosystem services to the economy and society. These services include the production of food and water, the control of climate, flooding and disease, and supporting nutrient cycles and crop pollination.
- Climate Change The planning system has a major contribution to deliver effective action through decision-making on the scale, location, and mix of development. Adaptation is important but much more so is the avoidance of climate change through carbon neutral decisions. Opportunities exist to prescribe minimum standards for micro-renewables, develop carbon neutral design principles, plan for major renewable energy infrastructure and reduce the need for travel, especially by the private car. Northern Ireland is way behind other neighboring jurisdictions. The planning system has so far failed to recognise its overall approach to climate change. A legal duty on climate change is required.

- Energy Planning The narrow focus of traditional land use planning must fundamentally shift to embrace energy planning. The planning system must facilitate low carbon energy production by strongly encouraging renewable technology. Best practice in conflict resolution and participation should be developed to ensure that energy planning at community level does not end up in a consultative cul-de-sac. Planning for renewable energy and low carbon developments should be at the heart of good planning.
- Well being Real planning brings together partners to help deliver health and well being. The use and development of parks, open space and access to sports, transport, the arts, and wild space have spatial implications for the way we use land and buildings. Joined-up planning should provide services that contribute to public and private well being as well as providing amenity, a sense of place, and the shaping of convivial places to live.
- Fair and Open Participation Communities and individuals must have greater involvement in decisions that shape their lives. Unobstructed access to information, a greater spirit of openness, simple language and participation in decision making are crucial to good planning. Deprived communities must be involved as much as affluent and engaged communities. Transparency in the roles of elected member and official should include strict codes of conduct, declarations of donations to political parties and an effort made to encourage rights of redress by third parties against the grant of planning permission.
- Strategic oversight A coherency is lacking in the strategic oversight of planning policy within a clear and obvious hierarchy. Strategic planning is crucial if we are to tackle climate change and energy transition and to coordinate cross border approaches to environmental protection and strategic infrastructure such as grid improvements to secure renewable energy obligations. Greater clarity and coherence is required in understanding the roles of local and strategic planning, especially the relationship between the DoE and DRD. In other words, the overall framework for the plan-making system must have an easily understood legal status.

Three opportunities not to be missed

- Community Infrastructure Levy The Bill should include provisions to introduce a Community Infrastructure Levy. This will empower planning authorities to levy a charge on new development so that local communities are supported in the provision of public services such as public transport and environmental and social infrastructure. This levy must be seen as complementary to Article 40 agreements.
- Third Party Rights of Appeal There should be an opportunity for third parties to have a right of appeal against the grant of planning permission. The Planning Bill should make all possible effort to incorporate this essential right of redress to improve equality and democratic accountability. When a previous Minister rejected third party rights of appeal, the current Minsiter for the Environment commented: “I am very disappointed with the Minister’s response on this occasion. He must get real on this issue. People are not satisfied with what is currently on offer. He mentions the planning problems experienced by people in business. What about the problems of the individuals whose human rights are being damaged by many large businesses that have trampled and abused the planning system for years? When are those peoples’ rights going to be recognised?"
- Climate Change Duty There should be a duty on local decision makers to fully consider climate change in plan preparation and development managment. This will help ensure that decisions on applications with a significant carbon profile are informed by an understanding of carbon impacts.

Other recommendations to change the Planning Bill

Sustainable development and well being

The sections on a statutory duty for sustainable development are currently weak and confusing.

- The term ‘sustainable development’ should be defined in the Bill
- The Bill should abandon the general presumption in favour of ‘development’ and replace with a general presumption in favour of ‘sustainable development’
- Part 1 Clause 1 (1) - Remove the words “securing the orderly and consistent development of land" and replace with “delivering sustainable development and well being"
- Part 1 - Identify that the function and role of the Minister for the Environment is to oversee the delivery of sustainable development and well being
- Part 1 Clauses 1 (b) and 5 (1) - Replace “ contributing to the achievement of" with “securing"
- Part 2 Clauses 3 (2) - Include the terms climate change, well being, natural resource management and socially balanced communities
- Sustainability appraisals for all planning applications and plans should be included in the Bill and the testing criteria outlined in the Bill

Statements of Community Involvement

These sections in the draft bill are vague and confusing.

- Part 1 Clause 2 and Part 2 Clause 4 - Strengthen these sections with the following commitments: (1) there will be no charge for basic planning information, including copies of the planning application, accompanying maps, environmental statements, and draft plans; (2) established community groups should receive written notification of planning applications; (3) anyone has the right to see the planning file; (4) people directly affected by a plan policy should be notified; (5) the private sector should not be asked to organise pre application consultation – refer also to Clause 27; (6) guarantee public speaking rights at the local authority committee

Plan Hierarchy

Plans must reflect the strategic hierarchy for coherent policy implementation.

- Part 1 Clause 1 (2) (a), Part 1 Clause 1 (3), Part 2 Clause 8 (5) - Replace “general conformity", “have regard to", “take account of" with “be consistent with"
- Clearly express the links and a coherent policy hierarchy between the Regional Development Strategy, community planning and all other development plans

Simplified Planning Zones and Enterprise Zones

A more flexible planning system could help facilitate economic development through expansion of renewable energy and the spatial requirements of integrated low carbon energy planning.

- Part 3 Clause 33 - 39 - The justification for these anachronistic zones no longer exist. We are proposing these two schemes should be remodelled as Renewable Energy Zones. These zones would have presumptions in favour of renewable energy with appropriate

planning frameworks to deliver strong support for low carbon technologies and low-carbon mixed developments

Friends of the Earth, 7 Donegall Street Place, Belfast, BT1 2FN
Tel: 028 9023 3488 Fax: 028 9024 7556 Email: foe-ni@foe.co.uk Website: www.foe.co.uk/ni

Professor Greg Lloyd Submission to the Planning Bill

The Planning Bill 2010 Northern Ireland
Submission to the Northern Ireland Assembly Environment Committee
Professor MG Lloyd
School of the Built Environment
University of Ulster

January 2011

Introduction

The current modernisation of statutory land use planning in the UK commenced after the introduction of devolution in 1999. Prior to that, land use planning had evolved at different times to meet emerging issues and challenges. The introduction of provisions for public participation in the preparation of forward looking development plans is a case in point. It is particularly important to note that whilst there is a generic UK model of the statutory land use planning system, there were variations across the UK. These reflected specific issues – such as the impact of onshore developments associated with North Sea oil and gas developments in Scotland. Northern Ireland is no exception in this respect – and its present form of land use planning reflects its very specific historical and political conditions in the past forty years.

This distinctiveness is an important starting point in considering developments in Northern Ireland because the current proposals set out in the Planning Bill 2010 are not simply about consolidating the legal provisions for the regulation of land use and development in Northern Ireland (since 1991) but are potentially – and indeed are of necessity – potentially much more transformative. Indeed the planning proposals (and the associated governance arrangements) will have to be truly transformative if they are to work effectively and efficiently in Northern Ireland. Northern Ireland requires a first class land use planning system – to contribute to its economic renaissance and well-being, its social and community cohesion and stability, and to address the environmental vulnerabilities which face Northern Ireland – including flooding.

Again it is important to assert the point that the starting point for understanding the proposed planning changes is very different from elsewhere in the devolved UK. This refers to the basic planning infrastructure and the changes that have taken place elsewhere. This suggests that whilst Northern Ireland can benefit from experience elsewhere – and at this point in time it is clear that Scotland offers the most appropriate and stable benchmark – any such transfer of ideas will have to be carefully and sensitively proofed for the Northern Ireland context. Northern

Ireland is different and distinctive in its planning and governance arrangements and that has to be borne in mind at all times.

To illustrate this point – land use planning in Northern Ireland is very different to those regulatory arrangements and local government based processes prevailing elsewhere in the UK (and the zoning based system in the Republic of Ireland). The principal and defining features of the Northern Ireland land use planning system at present are: it involves a centralised system of decision making, with local authorities divorced from the essential processes around planning and development. In effect, there is a lack of a democratic foundation to planning in Northern Ireland – existing local authorities are marginalised (as a consequence of the centralised arrangements) to a consultative role. This introduces a number of operational tensions into the planning decision making process.

The Northern Ireland planning system is effectively divorced from the strategic regional planning infrastructure provided by the Department of Regional Development, the housing and regeneration functions of the Department of Social Development, the sustainable development agendas of the OFMDPM, and the rural priorities of the Department of Agriculture and Rural Development. These organisational schisms are a matter that deserves very considerable attention. Drawing on the experience of Scotland, for example, the responsibility for land use planning was placed in the Finance and Sustainable Growth department – to clarify its position (whilst drawing together the principal elements of effective planning) and to assert land use planning as a core delivery vehicle for government policy.

These organisational and governance schisms need to be factored into the discussions around the Planning Bill – as throughout its proposals reference is made on a number of occasions to the default position where the Department of the Environment (and in certain circumstances quite appropriately) assumes a leadership and interventionist role over local government. Nonetheless, this over-ride raises questions – for example, against what strategic framework will this transfer to the centre be put into effect? It suggests there will be a strategy for land use and development in Northern Ireland to trigger this decision – if not then is the strong likelihood that inconsistent decisions will permeate the new land use planning system. How can any strategic approach to land use and development incorporate the disparate and separate departments of state? Indeed the land use planning agendas go even further than the specific departments noted above. This potential strategic deficit in Northern Ireland goes further than the Regional Development Strategy – as is considered below. Again, this suggests the case for, and importance of, a basic land use strategy for Northern Ireland. Drawing on experience elsewhere this is currently being crafted in Scotland. A Consultation Paper on a land use strategy recently stated that its purposes would be to guide, support and inform all those involved in deciding how land is to be used, by setting out a vision and long term objectives for an integrated approach to sustainable land use in Scotland.

There are a number of other characteristics of the Northern Ireland planning and development domain which have a bearing on these considerations. There is a tendency, for example, to resist planning outcomes – evident in the reliance on the appeals process; there is a very marked turn to judicial review to challenge the decision making process rather than the decision – but in practice these matters become blurred in terms of effect; discussions around land development are couched in defensive terms – either by builders and developers or indeed groups representing communities of environment and heritage issues. In short there is little evidence of a positive engagement with what may be understood to be the wider public interest (and this is a contested matter) in Northern Ireland.

Indeed, and the reference to the Scottish land use strategy is also informative here – there is no real debate in Northern Ireland about the importance of land and the environment. The Planning Bill is not therefore being proposed and discussed against a level playing field – it raises a host

of issues which have to be addressed if Northern Ireland wishes to put into place a land use planning system which matches those arrangements being put into place elsewhere in the devolved UK.

There is another elephant in the room – that of time. This is a resource Northern Ireland does not have endless reserves of. On the one hand, the process of modernisation of land use planning in Northern Ireland has taken some time – and that may be seen as very appropriate as reform inevitably throws up very complex matters for resolution. Given Northern Ireland's specific circumstances this time period for modernisation was perhaps inevitable – and it is important to acknowledge it gave rise to some very positive effects. The important pilots were achieved with respect to the delegation of decision making in the Planning Service, the new understandings between local authorities and the Department of the Environment, and the innovative arrangements put into place for the management of strategic projects in Northern Ireland. These steps are to be welcomed as they demonstrate that land use planning modernisation is achievable with positive impacts.

On the other hand, as the advances in thinking have been emerging the context to Northern Ireland's land use planning reform has changed very dramatically. The economic circumstances have deteriorated, the governmental response is based on cost management and the overall effect is one of deflation. Alongside the depressed demand there is over supply in certain sectors – mainly in residential, and there have been major contractions in certain sectors – such as construction. Alongside this catastrophic transformation of the Northern Ireland economy, the previously pressing issues relating to social and community agendas, environmental vulnerability and extreme events – such as flooding, as in Fermanagh – and the evident infrastructure deficit create new questions for the land use planning system.

Yet, time is not elastic and the timely execution and implementation of the planning proposals will be critical to meet the various expectations across Northern Ireland. It is very evident, for example that the expectations of different communities of interest, place and identity vary considerably. Developers anticipate a simpler, speedier decision making process (via the new development management arrangements) to meet their own agendas; communities anticipate greater involvement with decision making (via the development planning arrangements and the opportunities for community consultation), elected members and politicians anticipate an efficient and effective system of public administration. These may run counter to one another and the land use planning regulatory arrangements will have to offer a robust and articulate means of reconciling different values and interests at different times and in different places.

Time is important also in another respect. Land use planning reform in Northern Ireland will require significant and evident behavioural changes. The importance of (what has been described as) a culture change is necessary here – a sustained programme of conversations across Northern Ireland and in different ways – through the media, meetings and within appropriate organisations – to rehearse the case (i) for an effective land use planning system and to recognise the benefits to Northern Ireland's overall well-being and quality of life; and (ii) to recognise what is being strived for through the reform of land use planning. What is required, however, in terms of that required culture change is still being worked through – in Scotland, for example, a national planning summit brought together all the key stakeholders in land use planning matters – including developers and (importantly) government agencies to consider the importance of working with the land use planning system and not against it. This is generally held to have brought about positive changes in attitudes to the new land use planning system. In brief, the proposals set out in the Planning Bill will have to challenge Northern Ireland's relatively polarised land use planning culture and then to foster and sustain a more respectful attitude by all interests.

There are various arguments around how land use planning can work to encourage economic growth and development, engineer appropriate infrastructure investment to promote Northern Ireland's quality of life and to secure more efficient cross governmental working to secure sustainable development (an established policy objective in Northern Ireland). A telling insight is again provided by Scotland – where the Council of Economic Advisers (established to advise the First Minister on Scotland's economic options) has explicitly stated (in its First and Third Annual Reports) the central and pivotal role to be played by the land use planning system as a key delivery vehicle in economic growth, development and infrastructure and sustainable development agendas. Land use planning is seen as a force for enabling a more integrated approach to public policy implementation and private sector decision making.

The Planning Bill sets out important and appropriate ambitions for a new planning regulatory framework in Northern Ireland which reflects the broader thinking around land use planning elsewhere. This is to be welcomed. Reference to the future economic and social development needs of Northern Ireland and the management of development in a sustainable way is important and significant. It will require strategic forward thinking and strategic planning. The specific focus on the need for positive planning and thinking around large, complex or strategic developments would also suggest a real awareness that there is a broader Northern Ireland public interest – and this will require specific planning processes. Work would still be needed to tease that understanding out, however, as a consequence of the different interests and expectations across Northern Ireland.

The Planning Bill reflects thinking elsewhere in the UK with respect to effecting land use planning at the appropriate scale with proportionate governance arrangements in order to address regionally significant, major, local and minor planning applications. This is to be welcomed as it suggests that the overall planning resource can then be more appropriately dedicated to realise real efficiency gains in the regulation of land and property development across Northern Ireland.

More importantly also, the planning hierarchy can serve to raise a wider civic awareness of the complex issues involved in land use planning and development across Northern Ireland. In practical terms, the hierarchy can focus appropriate media and community attention on projects that are of a wider Northern Ireland agenda. Efficiency gains can also be created through the intention to devise streamlined processes that are effective, efficient and improve the predictability and quality of service delivery; and allows full and open consultation and actively engages communities. Overall the aim is to create a planning system which is quicker, clearer, and more accessible, and with resources better matched to priorities. How to ensure these aims then becomes important.

Importantly, though the stated ambitions will require considerable support and investment in training and skills; implementation will need to be nurtured over time and will require staunch political leadership to defend land use planning at appropriate times. The parallel Review of Public Administration will involve changes which will transfer the majority of functions and decision making responsibilities relating to local development planning, development management plus planning enforcement to district councils. There is a need to jettison the prevailing politics of resistance to the land use planning system and this needs to be demonstrated through active political championship and leadership.

The proposed planning changes involve a distinction drawn below between the broader institutional context for land use planning in Northern Ireland (the rules of the game) and the organisational capacities for the implementation of land use planning.

Institutional observations

As a general observation the various elements of the Planning Bill appear to consolidate the provisions for development planning and development management and the associated procedures in the Northern Ireland land use planning process. Some observations on the principal parts are:

In Part 1: Clauses 1-2 maintain the general background authority for the Department to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development. This suggests that the crafting of strategic planning policy is a fundamental aspect of the new land use planning system. Reference to a land use strategy made above would complement the policy guidance. There remains a case for a Northern Ireland wide land use planning strategy which provides for a template for instances where the centre asserts its role in decision making – which is shown throughout the Bill itself. The duty on the Department of the Environment to prepare a Statement of Community Involvement is important in promulgating a wider appreciation of the role of land use planning and of the need for active civil engagement.

Part 2: Clauses 3-22 deals with Local Development Plans. This part provides for the preparation of local development plans by district councils for their district; these will replace the current Department of the Environment development plans. The local development plans will comprise two documents, a Plan Strategy and a Local Policies Plan which must be prepared in accordance with the relevant timetable and must take account of the Regional Development Strategy. This is very appropriate as it will allow for the statement of strategic thinking to set the context to land use planning in each area. The local policies plan will then fill in the detail. It would be appropriate for these to be succinct and where development is to be expected/ desired urgently or imminently then recourse to a master-planning role would be beneficial.

The master-planning relationship could rest on an appropriate centre-local arrangement as occurred in West Edinburgh to great effect. The relationship between the 2 sets of plans is important. The local development plan will of necessity reflect the importance of strategic planning policy guidance and will have to sustain an appropriate currency of strategic issues. The characteristics of the local development plan must include innovation as demands on the land resource change, as land and property development proposals emerge in line with broader economic conditions, and flexibility. The local development plan should be a succinct strategic statement which allows for the local policies plan to cascade within and conform with. There are issues arising in this relationship – with respect to timing of plan preparation, avoiding delay because of the necessary sequentiality, the reference to the Statement of Community and the importance of sustainability.

In this context it is important that the strategic framework is established – as referenced throughout he Planning Bill. There is a potential gap here, however, as the new local authorities discard the established development plans (prepared by the Department of the Environment, Planning Service) and seek to assert their own identities on the local development plans. If this is not carried out expeditiously then will likely be legal, operational and legitimacy concerns.

The emphasis on the strategic element of land use planning is important in the context of infrastructure. There are different facets to infrastructure provision – some is site specific, some locality specific and some strategic or pan-Northern Ireland. Whilst the local development plans will address the local aspects there is a need for a bridge (something akin to regional reports noted above or a Northern Ireland land strategy) to link up to the Regional Development Strategy. In this way the strategic consistency and cascade can be retained and enhanced.

The strategic framework is important also in providing a template against which intervention by the Department of the Environment takes effect. Under what circumstances (scale of development proposal, unsatisfactory performance, and strategic considerations) would this take

effect? There needs to be a strategic reference point to ensure consistent and robust decision making and action across Northern Ireland. Here attention needs to be paid to the consequences of incremental economic, social, environmental or organisational change – how will the impact on development management and appeals for rolling change be assessed to ensure equity in Northern Ireland.

Similarly, the proposals for the preparation of joint plans by local authorities will require open and transparent strategic justification. How will the implications be assessed and acted upon if the inter-authority relationship breaks down. There would be implications, for example, with respect to the various statements of community involvement (and the attendant expectations in different places). Joint working for development plan purposes clearly assumes coterminosity of authorities – this raises the importance of effective and efficient coalition building between the local authorities involved. It will also involve considerations of capacity building – joint working involves land use planning across political, functional and administrative boundaries. What are the implications of a single/ joint plan strategy and separate local policy plans? What is the strategic rationale for a given joint relationship? The implications for development management / appeals in relation to potential breakdowns in these joint planning arrangements will require a strategic framework to assess the Northern Ireland wide impact and redress.

Part 3: Clauses 23-78 addresses Planning Control and development management. This part re-enacts key provisions from the Planning Order 1991 which define development and sets the framework for the processing and determination of applications for planning permission. A new development management approach is introduced which includes assigning different categories of development to a new hierarchy which in turn will determine the method by which applications will be processed. The majority of applications will be dealt with by district councils with the Department determining applications which are of regional significance either through direct submission or call in arrangements. This is important as it reflects the interest in proportionate regulatory arrangements which now prevail elsewhere, as in Scotland. This reads in a very competent way – yet there are questions around, for example, the contemporary understandings of development.

Given the importance of Northern Ireland's coastal and marine environments – and given the likely trend to energy related, tourism and aquaculture projects – should the marine definition of development be embraced? Elsewhere in the devolved UK, there are deliberate attempts to extend the terrestrial definition of development (and associated regulatory and planning aspects) to include offshore infrastructures and to embrace the ideas of marine spatial planning. Again, a strategic framework for Northern Ireland as a whole would enable this to be included in the planning infrastructure.

The hierarchy of developments is to be welcomed. In Scotland, for example, this is a powerful articulation that the conventional 'one size fits all' approach to development management – it has provided a more appropriate allocation of the planning resource to a range of matters – pre-application discussions, civil engagement and consultation, decision making and enforcement. The detailed thresholds will be important and must reflect the specific circumstances of planning in Northern Ireland. A question arises for the implications for joint working between local authorities and for land and property development proposals which straddle boundaries.

It is very appropriate that the Department of the Environment takes strategic responsibility to those development proposals held to be of 'regional significance'. A set of new strategic issues arise in such circumstances including the relationships between the key government departments. The Department for Regional Development will be a key player in the context of the Northern Ireland regional economy, and the Department of the Environment will require a Northern Ireland wide land use strategy to translate that strategic vision into decisions assessing

projects of regional significance. Communication and understanding will be a key consideration in these circumstances.

In operational terms, if a project emerges that is regional significant and if this is likely to involve both the Departments of Regional Development and the Environment then what are the implications for the management of the pre-application discussions? Indeed what would take place in the context of cross-border working – say around large development schemes or infrastructure provision? These organisational arrangements assume significance if the proposed projects are highly visible – which it would be fair to assume if they are held to be regionally significant. In such circumstances the efficient handling of the proposals and the developers will become paramount. It will be important that the inter-departmental working (and not necessarily confined to Regional Development and Environment) be seamless. Any inefficient handling would attract negative attention and serve to detract from the reform of land use planning itself.

The proposals that district councils be required to draw up schemes which delegate decision-making on local developments to officer level is also important. This builds on the important innovation already secured. It is appropriate that oversight powers will require confirmation by the Department of the Environment before they take effect. This simply confirms again that even at the local level, a strategic dimension is required to secure a consistency across Northern Ireland. This measure is an important means by which resource is released to focus on the more contentious proposals. It is a means by which local legitimacy is secured as quicker, consistent decision making creates a new confidence in the land use planning system.

The introduction of pre-application community consultation is important for a number of reasons. It democratises the land use planning process and brings into play the appropriate engagement by developer and community. It may be considered an investment in planning as it should address concerns that might be articulated later in a more negative way. It should encourage greater awareness of, and confidence in, the land use planning system. Too often, planning debates are over simplified – and do not reflect the real complexities involved in planning and development decision making. It will also encourage developers to provide the appropriate information and provide a rationale for a development proposal. It will also provide context to the local authority deliberations. For all that, however, pre-application discussions need to be resource appropriately, nurtured by a planning authority and the public at large need to be introduced to the responsibilities involved.

There are also a number of practical questions – who is the community? Who represents the community? What are the respective capacities of developer and community in such engagement? There will be a learning curve involved – how will this be supported and nurtured? What are the implications for securing consistency across Northern Ireland? What happens if the community is not happy with the outcome? How will this be addressed? Is there a strategic dimension here for the Department of the Environment?

Similar comments apply to the proposed pre-determination hearings – which will potentially improves transparency and accountability – and confidence in the new land use planning system but details of what is appropriate in terms of attendance need to be published in advance as best practice. There is a learning curve here as well. There are also questions of capacity for the local authority and developer – will this improve planning outcomes?

Reference to the concept of simplified planning zones is worrying. Such zones were deployed across the UK in the 1980s in very specific political and ideological circumstances. The evidence on their designation was ambiguous and the long term benefits contestable. The concept sends out a very ‘negative’ message to Northern Ireland – just as the Planning Bill is promoting a positive and confident planning hierarchy with an emphasis on asserting economic, social and environmental benefits, the simplified planning zone idea works in reverse. In effect it introduces

a zoning device into an essentially positive regulatory planning framework. There are a number of questions - What is the evidence that simplified planning zones work? How does the community agree to the suspension of planning regulations which will form a foundational aspect of the simplified planning zones? What is the strategic vision for a zone? What strategic rationale is there for designation of a simplified planning zone? How will simplified planning zones conform to the regional development strategy and strategic planning policy statements? What will be the scope and nature of community involvement in any such designations? There is a tension and an ambiguity here with respect to this element of the Planning Bill.

Related to this is the isolated and strange reference to an enterprise zone. Again, enterprise zones were used at an earlier period (including Northern Ireland) but the evidence is not cut and dried. The Northern Ireland Affairs Committee is currently examining the potential of a Northern Ireland wide enterprise zone – and this political traffic appears to be confusing, alarming and nonsensical in the context of the Planning Bill. The Bill itself needs to spell out in more detail exactly what the strategic case is for the two deregulatory measures. They simply do not fit the ambitions and ambience of the Planning Bill.

The proposed reduction from 6 to 4 months for planning appeals is an attempt to speed up the planning system but the system needs to be appropriately resourced to ensure that the tendency to automatic appeal is nonetheless reduced. How does this proposal reflect the intended proportionality of the new land use planning system and what materials need to be submitted and in what form?

Whilst the proposal to allow an appeal against failure to take planning decision by a local authority is to be welcomed it may be too reductionist. There are 2 points: (i) the new planning authorities will need time to mature into effective planning decision makers; and (ii) what is the evidence that a prescribed time limit is the most effective way of determining what may be a very complex land and property development proposal. Would an alternative be the use of processing agreements which are tailored to fit the scale, circumstances and conditions of an individual application?

In the context of Northern Ireland, the use of planning agreements needs sensitive and careful consideration. Whilst rather more common in the remainder of the devolved UK, the use of planning agreements in Northern Ireland is relatively more restricted. The use of planning agreements has a long and complex history, involves careful handling of the inter-relationship involved, involve a mutual understanding of the financing of land and property development and considerable education in conducting any negotiations. There are issues relating also to the involvement of local community – would this form part of any initial pre-application discussions? What type of agreement would be appropriate to Northern Ireland? Would there be merit in considering the ‘tariff’ model? Certainly there needs to be considerable discussion around the purposes of planning agreements – are they intended to meet the needs of site specific infrastructure to support a land and property development proposal? Are the agreements needed at a more strategic or Northern Ireland wide scale? How are the agreements computed? What financial (social cost) element is included?

Organisational observations

The comments set out above relate to the broad ‘rules of the game’ being set down for land use planning in Northern Ireland. Apart from the specific observations raising questions, the broad planning infrastructure looks competent. There are also a number of concerns around the organisational aspects of land use planning reform. Some of these have been alluded to above but are restated here as a set of caveats which need careful consideration if the land use planning system in Northern Ireland is to work effectively, efficiently and in the well being of Northern Ireland as a whole.

First, it is important to consider the intended (and new) governance of the land use planning system to be put into effect by the Review of Public Administration. This will radically transform the land use planning in Northern Ireland by moving away from the current centrist model (with relatively limited statutory consultation) to a more balanced planning infrastructure based on local government acting within strategic and central control. There are a number of comments above relating to the nature of this relationship and the need for a strong strategic context within which the balance of central-local relations should be positioned. In moving to the new land use planning system there is a possible deficit. It is clear that there is a case for the new development plans to be that – new and up to date. This is a challenge in itself – and is to be welcomed. It is evident from the Planning Bill that the new development plan portfolio will rest on two parts – a strategic statement and the detailed policies for a given area. There will be a transition phase whilst the 'new' local authorities set about preparing the strategic plans. Whilst the Regional Development Strategy and the Planning Policy Statements may provide a safety net – this may not be locality specific enough to guide land and property developments in a strategic manner. There is a case to provide that strategic context whilst enabling the new local authorities 'find their feet'.

Here reference can be made to the Scottish experience with regional reports. These were introduced in 1975 to support the then process of local government reorganization being put into effect. As the new local authorities were introduced (a two tier system of strategic regional councils and constituent district councils) the upper tier regional authorities were required to prepare and submit within 12 months a regional report. Each regional report was to set out a strategic statement of the current and anticipated issues facing the area, the inherited policies in place, the new priorities and the available resource. In this way a succinct strategic context was established within which the development plans could be prepared. This ambition was achieved – all 12 regional reports were completed in the required time frame. This provided a strategic appreciation across the whole of Scotland (for Northern Ireland also this region wide perspective would be useful) and for each local authority it provided a corporate strategic framework for the preparation of the statutory development plans. This again could be very instructive for Northern Ireland in enabling the new local authorities prepare for their discharge of land use planning responsibilities.

Second, the new land use planning system in Northern Ireland will require a new set of oorganisational relationships and joint working arrangements. This will be required at the Northern Ireland level – between Departments – at local government level – between departments and the new local authorities, and between Departments, agencies and local authorities – and if there is joint preparation of development plans – between local authorities. This is a considerable canvas across which the cultures of joint working need to be secured. It posits challenges for both vertical and horizontal working in a variety of contexts.

There is a related question of capacity here – the introduction of land use planning at local authority level will be daunting enough – and even more so when the proposed community planning infrastructure is being devised and put into place – asking considerable questions of the capacity required. There will be new demands placed on the new local governance system as (as is to be expected) local communities seek to engage or participate. Expectations will be raised and those expectations will need to be managed in an effective and consistent manner. Reference has already been made to the convening of a national planning summit in Scotland to address this dimension to land use planning reform. This summit brought together all the key stakeholders in land use planning matters – including those appropriate government agencies to consider the importance of working with the land use planning system and not against it. This is generally held to have brought about positive changes in attitudes to the new land use planning system. In other words, inter-organisational working demands new think and practices.

Third, this leads to the related point of the necessary culture change. Reference has been made to this requirement above. Culture change will involve the rejection of current attitudes in land use planning in Northern Ireland – it will require a more positive, supportive and respectful approach by all concerned. A culture change will replace the established politics of resistance to land use planning – it recognises that the land use planning is there for a purpose. That is to secure an improved quality of life and sense of well-being for all of Northern Ireland. To achieve this will require a sustained programme of political debate and conversations in all quarters of Northern Ireland. There needs to be a basic understanding that the land use planning has an important part to play in facilitating economic recovery and sustaining economic growth and development in Northern Ireland; in ensuring that the appropriate land and property development developments, infrastructure and facilities are put in place to achieve social and community cohesion; to meet the specific needs of different groups in Northern Ireland; and to secure the appropriate management of its natural and cultural environments. That is not a simple task and it has to be advocated consistently and constantly. The reform process – set out in the Planning Bill – requires this as a de minimus step in seeking to meet its very valid and appropriate ambitions for Northern Ireland.

Fourth, to help secure these points it is necessary to reconsider the position of the land use planning system in Northern Ireland. By way of example, in Scotland, following its elections in 2007, a new Scottish National party administration came to power. It has asserted a strong sustainable economic growth manifesto – and it repositioned responsibility for land use planning from the previous Department of communities to the Department of Finance and Sustainable Growth. Reference has been made to the comments on the importance of the land use planning system to Scotland's economic ambitions above, and this simple expedient sent out a very powerful message that the land use planning system was indeed central to Scotland's overall governance and economic performance. This move on the part of the Scottish Government was a dramatic move – it can be achieved in Northern Ireland without necessarily involving administrative change but through the Northern Ireland Assembly Government demonstrating the strategic importance of the land use planning system to its own agendas. The importance is in the deliberate and active advocacy that land use planning matters to Northern Ireland.

Finally, the note above has stressed ad infinitum the need for the new land use planning system to exhibit a strategic dimension at all scales in Northern Ireland governance. This is to secure a future political vision for Northern Ireland, to promote consistency and certainty for investors and decision makers, and to facilitate a robust governance structure to argue the case when there are conflicts and tensions between policy objectives, localities and community perspectives. Again drawing on the case in Scotland, a strategic perspective was enabled through the National Planning Framework as part of the land use planning reform. The importance of the National Planning Framework was that (i) it is integral to the new planning hierarchy in Scotland – it sits at the apex of the planning levels of decision making and thresholds and provides that strategic overview; (ii) it assumed statutory status in the course of the reform of planning – thus it is a material consideration in planning decision making; and (iii) it provides a reference point to the Scottish land use strategy which is currently being devised. This suggests a real commitment to strategic integrated working at all levels of governance. Northern Ireland could draw on this and consider the case to integrate the Regional Development Strategy into the planning hierarchy in an explicit way. The constant reference to conformity is with the regional strategy is necessary but is it sufficient to secure the form of land use planning system required for Northern Ireland?

Conclusions

The Planning Bill asserts that its proposals will be cost neutral to the planning system. In other words, the new planning system will operate on the same basis as the current system i.e. a combination of income and non-income based funding. This cannot be the case. To put into

practical action a new ‘fit for purpose’ land use planning system will require investment in core skills, staff and education of new planning officers with skills to engage in the different development planning exercise, development management, enforcement and civil engagement. New relationships will be required with developers (and householders) and if planning agreements become reality – then financial and negotiating skills will also be a necessity.

To create a modern land use planning system, to enable its effective transfer to a new local government system, to engineer new central – local relations, to effect a strategic transformation of governance in Northern Ireland, to meet the expectations of all interests, to have the skills to mediate economic, social and environmental considerations, to educate elected members, MLAs, the public at large and the development and construction sectors demands considerable time, energy and financial resource. To claim otherwise is irresponsible.

The Planning Bill is clearly oriented to the effective and efficient implementation of the land use planning system to meet Northern Ireland’s needs into the future. Any advance in planning reform will require a substantial investment in the planning resource in terms of skills, education, promotion and the general acceptance in Northern Ireland that land use planning matters to our overall well-being. That is the real challenge for land use planning in Northern Ireland.

Historic Buildings Council Submission to the Planning Bill

An advisory Council to the Department of the Environment

4th Floor, Clarence Court, 10-18 Adelaide Street, Belfast BT2 8GB
Tel: 028 90541071 / 40217
secretariat-hillst@doeni.gov.uk

Alex McGarel
Clerk to the Committee for the Environment /NI Assembly
Room 245
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX 10th January 2011

Dear Alex

In reply to your call for evidence on the Planning Bill, as chair of the current Historic Building Council (HBC), I would like you to reconsider the terms of reference of the Council as set out in Schedule 5 (sect 196(3)).

The HBC is a Statutory Advisory Council appointed by the Minister after an advertising and interview process - all members give their services voluntarily. Your new Schedule 5 is virtually unchanged from Schedule 3 of Planning (Northern Ireland) Order 1991. It has been my pleasure to chair the previous Council and to have been reappointed as Chairman of the current Council which was reconstituted in March 2010.

A major break in the consistency of the advice we give to both NIEA (on listing and delisting buildings) and the Planning Service (on Conservation Area boundaries) is the maximum 3 year term, now limited to 2 terms only, by the Commissioner of Public Appointments. It takes a new

member at least 1 year to grasp all the nuances of the post, and the new member really only becomes a useful contributor at middle to close of their first term. A 3 year term meets at least 10 times per year. The competent and enthusiastic members are often asked to serve a second term, and traditionally those who feel they have expertise to offer, could apply to be interviewed and selected for a third term. An existing 10 year limit then applied, although they could reapply at a future date following a break in service. Any council/committee is handicapped by the lack of members who can refer to decisions made in earlier years (in our case prior to 3 years - now 4 at this date) instead of 6 or 7 years. Some planning/historic built environment items reoccur several times before being approved and are often delayed by years eg. Maze, Upperlands, Sprucefield etc. It is useful to have the background aspects reviewed by members who were involved in the earlier discussions.

At the end of the last Council - when the new 2 term rule was applied to HBC for the first time - there were 5 members who had served 2 terms and would have willingly have applied to go forward (a retired QC, an historian, an architectural university lecturer, a retired senior planner and an architect involved in revitalising historic structures for use as accommodation). They may not have passed the interview process, but under the new ruling cannot apply ever again, much expertise lost to the Department!

I did approach the Commissioner personally after a chairs' meeting which she was addressing, and whilst she was not prepared to change her stance regarding 2 terms, she suggested that the 3 year term could be reconsidered in the legislation governing HBC, to either a minimum (not maximum) term of 3 years or a maximum of 4 or 5 years. Either way leaves the Minister and Department in control of the reconstitution of HBC.

Please consider the above suggestion which will ease the burden on the next Chairman.

My recommendation would be to change 'maximum' to 'minimum' in Paragraph 2

or

3 (years) to 4 or 5 years.

Yours sincerely

Frank Robinson

Chairman

Institution of Civil Engineers Submission to the Planning Bill

ice
Institution of Civil Engineers

143 Malone Road
Belfast BT9 6SX

t +44 (0)28 9087 7157
f +44 (0)28 9087 7155
e iceni@ice.org.uk
www.ice.org.uk/northernireland

Mr. Cathal Boylan
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
Belfast
BT4 3XX 14 January 2011

The Institution of Civil Engineers (ICE) is an international membership organisation that promotes and advances civil engineering around the world. ICE is a qualifying body, a centre for the exchange of specialist knowledge, and a provider of resources to encourage innovation and excellence in the profession worldwide.

Our purpose is to qualify professionals engaged in civil engineering, exchange knowledge and best practice, and promote their contribution to society. Our members help to create the structures and systems that sustain society. Across Northern Ireland, and indeed throughout the world, ICE members help to create the structures and systems that sustain society. They are responsible for designing, building, maintaining and improving bridges, roads, canals, docks, office buildings, hospitals, schools, airports, power stations, railways, flood defences and water-treatment facilities.

The Institution of Civil Engineers Northern Ireland (ICE NI) has around 2,000 ICE members, employed in a variety of areas, both in both the public and private sector. ICE NI is not a trade organisation and we are therefore well positioned to provide independent comment to our elected representatives on matters pertaining to infrastructure.

Planning is indeed an issue where ICE NI can provide independent, expert comment and we thank the Committee for the Environment for this opportunity to provide written evidence on the proposed Planning Bill.

ICE NI welcomes the reform of the Planning Bill as it sees the delivery of quick, clear and concise planning decisions as essential to the delivery of the upturn in the construction industry. The delivery of any new development proposals will be dependent upon the delivery of Planning Approval before a scheme can proceed to the detailed design and construction stage and as such ICE NI supports any measure that will achieve this. The draft Bill has a significant level of detail and it is difficult to summarise all of the content, however we have highlighted a few issues to which we would provide some comments.

General observations

ICE NI note that the top priority of the Bill is to contribute to economic growth with delivery of planning approvals. However this, to date, has been constrained by a high level of design detail leading to delays in the decision making process. We note that planning approval only allows for the concept of implementing a proposal and the final detail of this is subject to various other statutory processes. For example the detail of housing development is subject to building control

approval which examines the higher level of detail of the individual units. Likewise to consider a few issues such as the principle of road access or dealing with potential contamination should be considered more as informatives similar to the way drainage is normally considered. This allows the Planning System to deal with the principle of development and allows the detail to be considered at a separate stage by the statutory consultees under their own powers. ICE NI note that this position does not appear to have changed from the previous Bill and high levels of detail may still be required.

Local Area Plans

ICE NI supports the use of Local Area Plans to set the ground rules for the development of new or brownfield sites. These Plans should set out the zoning and potential development of lands and should be kept up to date. With an up to date plan weight should be given to the potential development opportunities at the zoning stage so that Planning Approval need only deal with the style and concept of the new infrastructure / buildings. If these have already been zoned as part of the area plan process then these issues should not need to be revisited at the Planning Stage unless the land use is materially different.

Of note also is Part 2 where Councils appear to have a greater requirement to keep local data under review. The clauses within this section identify the Council as being the body required to produce the plan and run through the statutory processes. Clause 8 makes this quite clear stating “A Council must prepare a plan for its district". In the ongoing Review of Public Administration this is a notable task for the Councils and adequate resources will need to be allocated to allow this to happen, and to keep the Plans up to date.

Analysis of Relevant Clauses

Clause 25

ICE NI welcomes the class of “major developments" and the formalizing of Pre Application Discussions (PAD’s) in Clause 26. However these discussions need to be more proactive and should allow notable issues to be agreed in principle rather than just exploring options. The final outcome of a scheme is dependent on the ultimate planning application and dealing with potential objections, however more use should be made of the PAD system to agree a lot of the issues at an early stage. There is little point in having discussions if a different officer makes a different view when the application is actually submitted. There needs to be some continuity between the PAD team and those assessing the application. This issue could be further compounded if a Headquarters team deals with the PAD and the Council becomes the decision maker.

Clause 33

The introduction of Simplified Planning Zones is welcomed and supported by ICE NI. There could be potential to use such zones for social development type regeneration projects if they are clearly defined within an area plan. Such a process would be material to the delivery of quick regeneration projects avoiding issues that can hold up grant of approvals under the current legislation.

Clause 53

ICE NI supports the restoration of a site after completion of permissions such as mineral activity, but asks if this would also cover issues such as landfill? If the mineral activity, such as quarrying

is carried out by a private firm who subsequently become insolvent, how then can the restoration be delivered? Is there a mechanism outside the Planning Bill to accommodate this?

Clause 63

It is ICE NI's understanding that Clause 60-62 do not impose a time limit for the commencement of normal development were a time clause has not been included. Therefore we interpret that Clause 63 is only applicable to schemes were a time limit has been imposed, for example for mineral extraction activities or time bound car parks where a time limit is normally included.

Clause 72

Clause 72 is a reworking of the old Clause 39 of the 1991 order which in effect does not relate specifically to enforcement cases but could be used by the Planning Body to revoke a scheme that did have an approval. ICE NI assume that this would be applicable in issues such as potential vesting schemes to regenerate an area or deliver items such as a new road, thereby revoking an existing approval.

Clause 75

Clause 75 sets out clarification on Planning Agreements and allows for works or sums for works to be provided for what could relate to infrastructure requirements identified as part of the planning process to accommodate the impact of the development. Such clarification is welcomed. Could this be used to implement an infrastructure levy such as a roof top tax to deliver some much needed infrastructure required for specific proposals?

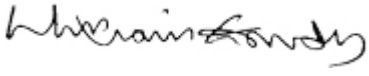
Clause 219

Clause 219 sets out the policy on fees and charges. ICE NI notes that discussion has taken place outside the Bill on the provision of higher application fees up to £250,000. This is significantly higher than the current ceiling fee and ICE NI would wish to input to the debate on fees. A higher fee can be justified with a commensurate improvement in the speed of delivery of a decision and applicants may wish to partake of this higher fee. However in the current economic climate the level of fee needs to be carefully considered to ensure that it does not deter the submission of proper and much needed applications for infrastructure.

Clause 224

Clause 224 sets out the duty to respond to consultation requests. It is essential that these are done quickly to ensure that applications proceed to decision as soon as possible and the ICE NI supports this.

Yours sincerely



Mr Bill Gowdy

Chairman, Institution of Civil Engineers Northern Ireland

Jean Forbes Submission to the Planning Bill

SUBMISSION TO THE ENVIRONMENT COMMITTEE
OF THE NORTHERN IRELAND ASSEMBLY

Comments on the Planning Bill issued December 2010

CONTENTS

From Jean Forbes BA, MSc, MEd, Dip TP, MRTPI (rat) FRSGS
1 The Courtyard, Strathern Manor, Tollymore Road, Newcastle
Co Down, BT 33 0TE
Tel 028 4372 2154 email jeanforbes2@btinternet .com

30th December 2010

TO MEMBERS OF THE ENVIRONMENT COMMITTEE
OF THE N. I. ASSEMBLY

COMMENT ON THE STRUCTURE OF THE BILL AS IT STANDS

It is my view the Bill as it currently stands is fatally flawed.
It is a morass of detail, written in gobbledegook, which has totally failed to specify the AIM and the GUIDING PRINCIPLES from which any new system design must start.

As in the Hitchhikers Guide to the Galaxy :
" the answer is 42 now what is the question "?

This entire Bill has failed to establish one of the most important founding principles of a modern planning system - **the recognition of the democratic rights of the citizen** to be involved in the Planning process- as a respected partner.

The principle of Public Participation .

Participation is not a new an idea. The Town and Country Planning (Scotland) Act of 1972, incorporated it into practice at that time. This fundamentally changed the whole nature of both Planning practice AND altered the relationship between the local authorities and local people in a positive way.

Why are we still waiting?
Think how the world has changed since 1972 in ways which empower citizens.

1 Awareness of Environmental management issues from global to local (through extensive teaching in schools and colleges).

2 Popular enthusiasm for voluntary action to help our home places

3 The concept of " Sustainable Development " in public agendas everywhere

4 Pressing relevance of " climate change"and energy supply issues

Above all

5 **The Internet** –empowering citizens everywhere to learn and to communicate in multiple ways

We have a wonderful opportunity now to jump ahead and design a new system for Northern Ireland which can be the best in the British Isles .
?
But we must

start in the right place
take time to get it right
do the work now

OUTLINE OF CHANGES REQUIRED TO THE BILL
And consequently to professional guidance of better Practice

.....

WITHIN THE BILL THESE MUST BE STATED

AIM of the new NI Planning system.

Note that this discussion refers to Spatial Planning – the topic of the Bill.

Spatial Planning deals with **PLACE** – getting appropriate social and economic and environmental policies on to the ground at the right place and the right time. Because it is place related , local people find it interesting and positive to become engaged with .

The term Community Planning connotes a more complex wider management operation led by local authorities , to co-ordinate the delivery of several local services . It must also involve partnership with representatives of local areas .

GUIDING PRINCIPLES to progress the Aim

For the new Local Government system, it must be required that

A STRUCTURE OF TECHNICAL TASKS is made clear to all
And
A STRUCTURE OF PUBLIC PARTICIPATION, is locked into it by statute

CLARIFICATION OF THESE PRINCIPLES.

Detailing tasks in due course

.....

LATER AS THE BILL PROCEEDS THE DEPARTMENT SHOULD CONSIDER

" HOW TO DO" PARTICIPATION…designs

Commission an independent committee to examine the principles and practice of various modes of participation appropriate to the various geographic scales and tasks .
(Analogous to the Skeffington Commission in Scotland following the 72 Act)

CHANGE PUBLISHED PRACTICE

Issue of a special **Planning Policy Statement** (PPS)

.....

MAKING CHANGES TO THE BILL

Getting the Guiding Principles right

QUOTATION

PART 1
FUNCTIONS OF DEPARTMENT OF THE ENVIRONMENT WITH RESPECT TO DEVELOPMENT OF LAND

As it stands now

General functions of Department with respect to development of land

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

(2) The Department must—
(a) ensure that any such policy is in general conformity with the regional development strategy;
(b) exercise its functions under subsection (1) with the objective of contributing to the achievement of sustainable development.

(3) For the purposes of subsection (2)(b) the Department must have regard to—
(a) policies and guidance issued by—
(i) the Department for Regional Development;
(ii) the Office of the First Minister and deputy First Minister;
(b) any other matter which appears to it to be relevant.

(4) The Department may undertake, or cause to be undertaken, such surveys or studies as it may consider necessary, including surveys or studies relating to any of the following matters—
(a) the physical, economic, social and environmental characteristics of any area, including the purposes for which land is used;
b) the size, composition and distribution of the population of an area;
(c) the communications, transport system and traffic of an area;
(d) any changes in relation to the matters mentioned in paragraphs (a) to (c) and the effect which the changes are likely to have on the development of Northern Ireland or any part of Northern Ireland or the planning of that development.

NO COMMENT ON THIS

Preparation of statement of community involvement by Department

2.—(1) The Department must prepare a statement of community involvement.

(2) The statement of community involvement is a statement of the Department's policy as to the involvement in the exercise of the Department's functions under Part 3 of persons who appear to the Department to have an interest in matters relating to development.

COMMENT ON THIS SECTION FOLLOWS

DELETE THE WHOLE OF THE ABOVE AND REPLACE

Requirements for public participation in planning

2

-(1) The Department must specify its policy requiring the involvement of citizens in all levels of local authority planning.

- (2) The Department must set standards and approve performance .

(COMMENTARY CONTINUES OVER.....

MAKING CHANGES TO THE BILL- continuing

Elaborating on Principles

QUOTATION

PART 2
LOCAL DEVELOPMENT PLANS

As it stands now

The part is introduced by two major sections under the heading
General…..

Survey of the District *NO COMMENT ON THIS*
And
Statement of Community Involvement
COMMENTS FOLLOW

The second of these reads
Statement of community involvement

4.—
(1) A council must prepare a statement of community involvement.

(2) The statement of community involvement is a statement of the council's policy as to the involvement in the exercise of the council's functions under this Part and Part 3 of persons who appear to the council to have an interest in matters relating to development in its district.

(3) The council and the Department must attempt to agree the terms of the statement of community involvement.

(4) But to the extent that the council and the Department cannot agree the terms of the statement of community involvement the Department may direct that the statement must be in the terms specified in the direction.

(5) The council must comply with the direction.

(6) The Department may prescribe—
(a) the procedure in respect of the preparation of the statement of community involvement;
(b) the form and content of the statement;
(c) publicity about the statement;
(d) making the statement available for inspection by the public;
(e) the manner in which—
(i) representations may be made in relation to any matter to be included in the statement; and
(ii) those representations are to be considered;
(f) circumstances in which the requirements of the statement need not be complied with.

COMMENT
This appears to have little to do with real life and a lot to do with pushing bits of paper around. This tells us nothing at all about the actual job of public involvement. The citizens get only a fleeting mention.

DELETE THE WHOLE OF THE ABOVE AND REPLACE

Obligation to ensure full public participation

4 -
--- (1)
A council must ensure that citizens of the council's area, are fully involved in the making of all `Plans which are required : (for the whole area, for towns or city sectors, and for neighbourhoods).

---- 2)
At the level of an individual site for which a development application has been made, the council must ensure that all residents most closely affected are kept fully informed and their concerns discussed with them, from the start of the process.

---(3)
It is the duty of the department to approve the models of public participation used by the council

THE GAINS FROM A NEW KIND OF PLANNING SYSTEM

The health of the new local government system will profit from a Participatory Planning sytem, since all participants will gain `CONFIDENCE AND CAPABILITY
Once such a system starts, everyone learns by doing, to go on making it more efficient. This is community learning .

SUMMARY OF GAINS

	Confidence TO	Capability FOR
Elected councillors	encourage local Partnership and local Democracy	becoming active leaders in their areas
Professionals	work directly with local people and Gain local knowledge	exercising their technical skills on complex tasks (instead of bureaucracy)
Citizens	step forward into a "seat at the table" for Plan making	demonstrating local knowledge & enthusiasm

in PLAN MAKING

Led by local councillors area by area - Plan Working Teams will work with the professionals to develop the drafts of a Local Plan and to recommend eventually an agreed Plan for each area.
Once adopted by the elected council , this Plan becomes statutory. **All development thereafter is regulated by this Plan in the Public Interest.** All members of the council are bound by it collectively.

In DEVELOPMENT MANAGEMENT

Applicants for individual site development, must follow the Plan. Led by the Professionals, there must be discussions between all parties and the residents most closely affected. Residents must be included throughout, instead of as now, treated as invisible.
Developers stand to gain in this system, because of the clear pathway through to permission, and thereafter the precision with which they can budget, hire, and deliver the development on the ground without time wasting delays.
The leadership role of the councillors is again important in ensuring the collective will of the statutory Plan.

Retrospective Planning permission can now be abolished.
This legally/illegal measure has allowed current Planning practice to be flouted with impunity. It is the one defect of the current system above all others which angers the public. The last vestiges of excuse will now be gone.

Larne Borough Council Submission to the Planning Bill

Draft Response

Our Ref: 2011/046/PT/PH

Ms Alex McGarel
Environment Committee Clerk
Northern Ireland Assembly
Stormont
Belfast 20 January 2011

Dear Ms McGarel

The Planning Bill

Larne Borough Council acknowledges the Department's intention to modernise the Planning System within Northern Ireland and welcomes the opportunity to submit its views on the Planning Bill, seeing it as progressive and instrumental in supporting reform.

The Council considers that an effective local planning function offers the potential to fully develop the new community planning role to be given to councils, enabling a much more strategic and integrated approach to be taken to the social, economic and physical regeneration of local areas and in improving the quality of life of citizens. The Council therefore welcomes the recognition of Community Planning as being fundamental in the hierarchy of the development plan formation.

The Committee will be aware that the Council had made a detailed response, in 2009, to the original Departmental consultation "Reform of the Planning System in Northern Ireland: Your chance to influence change" which set out proposals for planning reform. In cross-referencing the Council's original response (refer Appendix II) with the provisions as set out within the Planning Bill, it would appear that a number of concerns expressed by the Council have not been fully addressed and that the Bill is prematurely presented in that the role of Councils has been diluted to the extent that the local democratic accountability becomes negligible.

The comments as set out within this response therefore reinforces previous views expressed by the Council; the views are intended to be constructive and seek to ensure that the reform proposals contained within the Planning Bill enhance the delivery of planning as an efficient and effective service.

The following response sets out a high-level commentary on the proposed reform of the Planning Service and the general content of the Planning Bill.

It should be noted that in responding to the Planning Bill, the Council is conscious that much of the detail around the out-workings of this legislation (such as the definition of regional development and the criteria for both departmental intervention and call in procedures) may be set out within the subsequent subordinate legislation (regulations) arising from the Bill.

The Council would suggest that future proposals should involve full consultation on the introduction of any regulations materially affecting the future discharge by councils of any function.

Consultation Timing

As noted by the Executive at its second stage debate on the Planning Bill on 14th December 2010, the Council would be concerned that the short timescale set for the provision of written evidence regarding the Planning Bill (one of the largest to come before the Assembly), may make it difficult for many respondents to undertake any detailed due diligence review of the proposals put forward and the impact upon the future administration of the functions.

Alignment and Integration of Legislation

The Council is aware of the separate, but associated consultation underway on Local Government Reform which sets out proposals which will inevitably impact upon the future administration of planning functions by Councils (e.g. proposals in relation to governance, ethical standards, decision-making processed, performance frameworks etc). It would appear that the reform of the Planning Service, as set out within the Planning Bill, has been considered almost in isolation from these other matters. Due consideration will need to be given to the important interconnection and sequencing of these two strands of legislation.

Governance and Resource Implications

Council welcomes the references made throughout Planning Bill to the extensive range of planning duties for which Council will assume devolved responsibility. However, the scope for departmental intervention dilutes this responsibility to the extent that Councils appear to become the delivery agent for the Department rather than having the necessary powers to be considered the “planning authority".

Council is extremely concerned that there is no reference whatsoever to the significant staffing levels and resources which will be required in order for Council to effectively execute the duties set out in the Planning Bill.

The Council would be concerned that adequate consideration has not been given to the resource and financial implications for councils of implementing the new regime and would seek further engagement with the Department in this regard. If councils are to ensure the effective administration of planning function and maintain service continuity, it will be important that sufficient resources are available to support the level of transformation and additional responsibilities, processes and requirements embodied within the reform proposals. This also needs to be considered within the context of the recent proposals for significant downsizing of Planning

Service staff. The Council would advocate that the transfer of planning functions to local government should be cost-neutral and should not become an additional burden to the ratepayer.

The Council recognises that there is a critical need to ensure that there is sufficient capacity within both central and local government to ensure that the reformed planning service is delivered in an effective and efficient way both pre and post transfer of specific functions to councils.

The reform proposals as set out within the Planning Bill including, for example, the new local development plan system, preparation of community statements, a new role of pre determination hearings, annual monitoring reporting, audit and reporting of performance, are likely to have significant resource and capacity implications for councils when functions transfer. The new councils will have limited experience in statutory planning delivery requiring the development of significant capacity and expertise.

Council seeks urgent clarification on the new statutory governance framework and on the Department’s position on the significant capacity building which will be required in order to execute the provisions of the Planning Bill.

Regulations

Council is extremely concerned at the practice within the Bill of making numerous references to the possibility of the Department preparing 'Regulations' (the Department may by regulation) particularly in relation to plan strategy, local policies plan and those matters listed at Clause 22 namely :

22.(1) The Department may by regulations make provision in connection with the exercise by any person of functions under this Part.

(2) The regulations may in particular make provision as to –

(a) the procedure to be followed by the council in carrying out an appraisal under Clause 8(6) or 9(7);

(b) the procedure to be followed in the preparation of development plan documents;

(c) requirements about the giving of notice and publicity;

(d) requirements about inspection by the public of a development plan document or any other document;

(e) the nature and extent of consultation with and participation by the public in anything done under this Part;

(f) the making of representations about any matter to be included in a development plan document;

(g) consideration of any such representations;

(h) the determination of the time at which anything must be done for the purposes of this Part;

(i) the manner of publication of any draft, report or other document published under this Part;

(j) monitoring the exercise by councils of their functions under this Part.

Council seeks urgent clarification from the Department as to the commitment or otherwise to prepare regulations and the timescale for their completion. Council considers that delays in preparing regulations or uncertainty as to whether or not regulations will be prepared could seriously affect the ability of the Council to effectively execute its planning powers.

Consultation and the Role of the Department

Council is extremely concerned with the number of Clauses throughout the Bill which require Council to seek approval from the Department on a wide range of matters, most of which could and should be adequately dealt with at Council level. Council considers that the widespread requirement for consultation with and checking by the Department will add unnecessary bureaucracy and delay, and could affect the ability of Council to effectively execute the planning function.

Council is extremely concerned with the extensive level of power effectively retained by the Department across all aspects and at all levels within the planning process, and the provisions within the Bill for the Department to directly intervene in the planning process. The Bill provides little if any justification for this widespread intervention by the Department.

Whilst the Council recognises and accepts the necessity for regional oversight, it would be concerned that the proposed scope and level of intervention and scrutiny by the Department (e.g. reserve powers, monitoring, call-in, scrutiny, intervention, performance assessment, reporting and direction), of the future administration of planning functions by councils may create unnecessary tensions and potential delays in the process. It is suggested that the level of oversight/intervention is overly bureaucratic, process driven and may, in fact, mitigate against local democracy and accountability. Such intervention would effectively retain total control at Central Government level with the Department having power to provide “movable goal posts".

Given the apparent commitment of the Department to the transfer of planning powers to local government, Council is concerned that the Bill makes extensive provision for the Department to intervene with Council planning duties with little or no rationale for such intervention. Council will solely be a delivery agent for the Department.

Furthermore, Council questions the need for this level of unchecked Departmental intervention and in particular the associated financial implications both in terms of the potential duplication of functions between the Department and Council and the inevitable delays to the planning process.

Matters not Previously subject to Consultation

Council is extremely concerned with the inclusion in the Bill of a range of matters which were not included in the Reform of Planning consultation. Whilst Council welcomes the principle of provisions made in respect of Simplified Planning Zone Schemes (clauses 33 – 38), Grant of Planning Permission in Enterprise Zones (39), Land and Works of Councils (106), Hazardous Substances (107 –119), Trees (120 – 127), Review of Mineral Planning Permissions (128) and Advertisements (129) Purchase of Estates in Certain Land Affected by Planning Decisions (189 – 195) Further Provisions as to Historic Buildings (196 – 200) Application of Act to Crown Land (207 – 214) Assessment of Council’s Performance or Decision Making (203 – 206) and Application of Act to Crown Land (207 – 214), Council has not been previously consulted on these matters and as such is not in a position to make a substantive response.

Council is particularly concerned with the provisions of Clauses 178 – 188 which state that Council must pay compensation associated with a range of circumstances including those in relation to consents which are revoked or modified, and losses due to stop notice and building preservation notices. Council has not been afforded adequate opportunity to assess these provisions which require detailed consideration by the Council’s legal advisors before Council can make a substantive response.

Reform of Public Administration

Notwithstanding Council responses regarding the content of the Bill, Council recognises that there will be a transition period when Council first takes responsibility for the suite of planning powers set out in the Planning Bill. In this context Council considers that this Planning Bill should be acknowledged as an Interim Bill which will apply for a defined period (2-3years) after which time the Bill would be amended to appropriately to reflect local government change and revised Council administrations, and to significantly reduce the involvement of the Department except in exceptional circumstances where the requirement for consultation and intervention is clearly justified.

Proposed Omissions

In considering the Planning Bill, the Council would suggest that the following are potential omissions within the legislation.

i) Section 215 - Power to require proper maintenance of land.

The Council would request consideration be given to the potential inclusion within the Planning Bill of a similar provisions as set out within Section 215 of the Town and Country Planning Act, England and Wales, which would allow councils to manage the amenity of an area. The details of Section 215 are outlined below:

(1) If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.

(2) The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.

(3) Subject to the following provisions of this Chapter, the notice shall take effect at the end of such period as may be specified in the notice.

(4) That period shall not be less than 28 days after the service of the notice.

ii) Protection against dilapidations

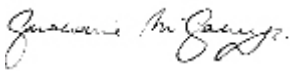
The Council would also welcome further provisions in relation to the enhancement to conservation areas, listed buildings and the like by the introduction of a section similar to Section 215 of the Town and Country Planning Act, England and Wales. This Adoptive provision would allow the Council to designate protected areas within the borough.

Conclusion

There are many positive attributes included in the proposals for this Planning Bill. However we would have concerns in relation to the actual role proposed for local Councils given the authority retained at a central level and the overall resource required to make the proposed transfer of planning powers effective. We recognise that many additional requirements will emerge as a result of the subsequent regulations and believe that the transfer and set up of this system will bring significant challenges.

Council anticipate that there will be many legal challenges to the new system and suggest that the Department, in conjunction with the Planning Appeals Commission, provide additional support in order to process these and help form the interpretations which will form the basis of the new system.

Yours sincerely



Geraldine McGahey

Chief Executive

Enc.

Appendix I

Larne Borough Council response to :

Reform of the Planning System in Northern Ireland: your chance to influence change.
(October 2009)

Larne Borough Council broadly welcomes the proposals outlined in the consultation document and strongly believes that local planning issues are best dealt at a local level. However, as stated the reforms proposed in this document represent the most far-reaching changes to the planning system in over 30 years, and as such adds to the challenges currently faced by District Councils.

As a Council we would like to draw your attention to the key areas of concern raised at the NILGA consultation event held in Craigavon on 26 August 2009. NILGA has summarised these as follows:

- Resources: particularly the sourcing of resources to implement the change and the build capacity to ensure the changes are successful;
- Timing: particularly regarding synchronisation of existing plans and development of new plans;
- Engagement: it needs to be recognised that local government is not merely another stakeholder in the planning reform process, but rather a partner who will become the future statutory owner of the function. This necessitates a changed approach and requires ongoing engagement at an operational level;
- Governance, legal, ethics and standards: must be in place prior to implementation;
- The links to community planning and the proposals around community involvement in the planning process need to be fully explored as a matter of priority;
- Agreement is needed on policy, hierarchies, and implementation methodologies as soon as possible;
- Links to existing council functions e.g. building control and regeneration should be explored fully, to ensure added value;
- The involvement of statutory consulted needs to be thoroughly explored to ensure delays are minimised in reaching decisions; and
- Capacity building – significant investment is required to meet the needs of both Elected Members and current planning and council staff to ensure they can meet the challenges of a new approach to planning, function integration, their revisited responsibilities ad the new culture which is a prerequisite to the success of the transferred and modernised service. There is a serious concern regarding the synchronisation of transfer of the planning function and the need to change current planning policy.

Larne Borough Council supports the response submitted by NILGA and would ask that the Department give full consideration to the issues raised in the document.

Limavady Borough Council Submission to the Planning Bill

Dear Sir,

Limavady Borough Council has recently considered the call for comments on the above Bill and while in general welcoming the policy move to reform planning would make the following comments:

1. Time Frame for Comments:

Limavady Borough Council believes that the time frame for a considered response for such a complex Bill with such far reaching consequences for local government has been entirely inadequate and that a longer period of time should have been afforded.

2. Resources:

Council is very concerned at the lack of detail about the resourcing issues involved. If the new planning regime is transferred over to Councils with the existing budget at the time, it will be inadequate for all the requirements of the reformed planning system. This lack of resources could result from inadequate human service resource levels, new requirements and responsibilities to be managed and the concern that Councils would be liable for compensation claims including where the fault lies with the Department. There should be a comprehensive real cost assessment of all the requirements of the service to meet expected standards to ensure the transferring budget, which should be on a “cost neutral" basis to the rate payer, is adequate.

3. There is concern that the proposed timing of the Bill with the possibility of the early transfer of the function to the existing 26 Councils is too quick to allow for adequate preparation. Adequate time shall be required for the establishment of the necessary goverance arrangements and the building of capacity amongst both elected members and officers to ensure the delivery of a professional and efficient service from the outset.

I apologise for the necessary generalisation of comments at this stage given the brevity of the consultation period. If you have any queries please come back to me.

Yours sincerely

Liam Flanigan

Chief Executive
Limavady Borough Council
Comhairle Bhuirg Léim an Mhadaidh
7 Connell Street, Limavady, BT49 0HA

T: 028 777 60300
F: 028 777 65241
W: www.limavady.gov.uk

Lisburn City Council Submission to the Planning Bill

Evidence Report on the Planning Bill

Lisburn City Council
January 2011

BDP

Evidence Report on the Planning Bill

Prepared on behalf of Lisburn City Council

Contents

1.0 Introduction

This document contains a number of parts as listed below

2.0 Overview of the Planning Bill (details summarised at Appendix 1)

3.0 Relationship of the Planning Bill to the Reform of Planning

4.0 Council response (concerns highlighted) to the Reform of Planning

5.0 Key Matters of Interest to Council in respect of the Planning Bill (including specific responses therein)

6.0 Strategic Responses to the Planning Bill

2.0 Overview of Planning Bill

The Planning Bill's Explanatory and Financial Memorandum states that,

"This Bill provides the legislative basis for these reforms (as outlined following consultation on Reform of Planning document) and also gives effect to the Review of Public Administration (RPA) changes which will transfer the majority of functions and decision making responsibilities relating to local development planning, development management plus planning enforcement to district councils. This will make planning more locally accountable, giving local politicians the opportunity to shape the areas within which they are elected. Decision-making processes will be improved by bringing an enhanced understanding of the needs and aspirations of local communities."

It continues,

“The Bill therefore establishes a new framework for a reformed and transferred planning system which will be supported with a significant and comprehensive programme of subordinate legislation and guidance which will be subject to further detailed consultation exercises."

The Bill consists of 248 clauses, 15 parts and 7 Schedules. Appendix 1 contains a complete list of the clauses and provides commentary on each.

3.0 Relationship to Reform of Planning

3.1 In November 2007 the Minister of the Environment announced a programme to reform and reshape the planning system in Northern Ireland. In July 2009 the Department published a consultation paper “Reform of the Planning System in Northern Ireland: Your chance to influence change" which sought views on the proposed. Turley Associates submitted a formal response to this document on behalf of Lisburn City Council.

3.2 The consultation document was set out in a structure and order broadly similar to the ‘Planning Bill’. The Chapters contained within the consultation document are outlined below.

- Planning Policy
- Towards a More Effective Development Plan System
- Creating a Streamlined Development Management System
- Appeals and Third Party Appeals
- Enforcement and Criminalisation
- Developer Contributions
- Enabling Reform

3.3 The ‘Reform of Planning’ consultation document was quite broad and general in its scope. Council notes that the groups of Clauses listed below are additional to those previously included in the Reform of Planning consultation and as such Council has not had the opportunity to previously comment on:

- Simplified Planning Zone Schemes (33 – 38)
- Grant of Planning Permission in Enterprise Zones (39)
- Land and Works of Councils (106)
- Hazardous Substances (107 – 119)
- Trees (120 – 127)
- Review of Mineral Planning Permissions (128)
- Advertisements (129)
- Compensation (178 – 188)
- Purchase of Estates in Certain Land Affected by Planning Decisions (189 – 195)
- Further Provisions as to Historic Buildings (196 – 200)
- Assessment of Council’s Performance or Decision Making (203 – 206)
- Application of Act to Crown Land (207 – 214)

3.4 A 'Simplified Planning Zone may be a new concept to some Councillors. SPZs are zones of land in the United Kingdom earmarked for specific development where the planning process is relaxed in order to encourage development. Clause 33 (1) of the Bill defines it as "an area in respect of which a simplified planning zone scheme is in force." 33 (4) states that a,

"Simplified planning zone shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the council for the district within which the zone is located thinks appropriate for explaining or illustrating the provisions of the scheme, and must specify –

The development or classes of development permitted by the scheme;

The land in relation to which permission is granted; and

Any conditions, limitations or exceptions subject to which it is granted;

And must contain such other matters as may be prescribed."

4.0 Council Response to Reform of Planning consultation in July 2009

4.1 Outlined below is an overview of the key concerns raised by Lisburn City Council in the response to consultation on the Reform of Planning. Note that specific detail on the plan making process is not included in the Bill and it is assumed that formal consultation on this will take place in due course through the preparation of 'Regulations'.

4.2 In response to Question 7 in relation to timescales for producing plan documents, Council made several pertinent points. It noted the difficulties and delays in producing the Lisburn Area Plan 2001 and referred to the role DoE may have, as they will retain a power to step in and take over the plan making process. Council suggested there may be risk to meeting targets due to the role of external agencies and also the potential for Departmental interference even if issues causing the delays are outside the Council's control.

4.3 The response continues asking why only sanctions against Councils are referred to and also expresses a concern about the resources available to deliver plans within very challenging timescales. These same points are re-emphasised in response to Question 9.

4.4 In response to Question 13, Council objected to the proposal that the examiner(s) should have the power to determine the most appropriate procedures to be used in dealing with representations to the local development plan. Council argued that there is a democratic right for participants to present their case.

4.5 Question 16 relates to the basis for examining plans. Of note is part of COUNCIL's response which we outline below,

"It is unclear from the paper whether the Department will have the ability to step in before examination stage if it considers a plan to be unsound or not robust, and thus prevent unnecessary expenditure of resources. At present part of DRD's function is to award a Certificate of Conformity with the RDS at pre-draft stage and presumably without this certificate a DoE draft plan would not move forward towards examination. This is a helpful check and an equivalent provision would be useful the new regime."

4.6 In response to Question 17 and how development plans should be examined, Council objected to the appointment of alternative external examiners and comments that the PAC should be fully resourced to deal with such projects.

4.7 Question 22 asks whether the Department should have the powers to intervene in the making, alteration or replacement of a local development plan by the district Council. Council stated that this sort of intervention could only be justified in the most extreme circumstance and not if the failings were found to be for reasons outside the control of the local authority. They also expressed concern that the long awaited plan making powers could be removed and requested the opportunity to comment on further guidance on this point.

4.8 Question 23 relates to joint local development plans between neighbouring Councils. Council stated that Councils may choose to cooperate with one another but that central government should not have the power to require neighbouring or agglomerations of local Councils to prepare joint plans. Council also noted that the Department should have a role to ensure that the local authority cannot devise a situation where it unfairly competes for more high value projects and redirect less desirable or lower value projects to locations outside its boundaries.

4.9 In response to Question 25 and how planning applications are processed, Council suggested that the role and engagement of consultees in the planning process needs reform. The response states, “the paper misses the opportunity to integrate key consultees into the development management process" and cites the success of the Strategic Projects Team who work in integrated teams alongside Roads Service, NIEA and Landscape Architects Branch.

4.10 Question 26 refers to the proposed categories of development and whether applications would be assessed at Council or Departmental level. Council’s response states, “given the characteristics of particularly Lisburn City itself, the balance seems to favour DoE control, particularly in respect of residential development. It may sensible, therefore, to allow some flexibility in the application of the thresholds in situations where DoE / Council are in agreement."

4.11 Question 39 refers to the call-in mechanism for development at pre-applications and planning application stages. Council agreed with the process as outlined in the consultation document and noted that they were encouraged by use of words ‘exceptional’ and ‘sparing’. (These words appear to have been omitted from the Planning Bill.

4.12 Similar to Question 17, Question 41 relates to a potential role for independent examiners in the planning application process. Council objected to the appointment of alternative external examiners and stated that the PAC should be fully resourced to deal with such projects.

4.13 Questions 49 – 51 relate to the role of statutory consultees. Council suggested that consultee responses should be issued within 21 days.

4.14 Council objected to Question 53 that proposed development should ‘enhance the character of a conservation area’. This was deemed as ‘subjective’ and there are no overwhelming arguments to suggest a more effective system or better outcomes would result.

4.15 Council objected to Question 54 which proposed the reduction in planning permission from 5 years to 3 years. (The Planning Bill states that planning permission will continue to last for 5 years).

4.16 Question 67 asked whether third party appeals should be introduced. COUNCIL stated that they should not be introduced particularly in the current economic circumstances where

investment decisions are more important than ever. (Third Party Appeals have not been included in the Planning Bill.)

4.17 Question 82 asks whether central government should have statutory planning audit/inspection function covering general or function-specific assessments. Council stated that government should fulfil this role but did not elaborate further.

5.0 Key Areas for Consideration and Comment by Lisburn City Council

In this part of the report Council 'Responses'are suggested for a number of specific 'Clauses' (also referred to as 'Sections'). The full text of the relevant Clause (Section) is provided before the 'Response' with a summary of all 248 Clauses attached as Appendix 1.

Part 2 - Local Development Plans

Survey of District

3.(1) A council must keep under review the matters which may be expected to affect the development of its district or the planning of that development.

(2) Those matters include?

(a) the principal physical, economic, social and environmental characteristics of the council's district;

(b) the principal purposes for which land is used in the district;

(c) the size, composition and distribution of the population of the district;

(d) the communications, transport system and traffic of the district;

(e) any other considerations which may be expected to affect those matters;

(f) such other matters as may be prescribed or as the Department (in a particular case) may direct.

(3) The matters also include

(a) any changes which the council thinks may occur in relation to any other matter;

(b) the effect such changes are likely to have on the development of the council's district or on the planning of such development.

(4) A council may also keep under review and examine the matters mentioned in subClauses (2) and (3) in relation to any neighbouring district to the extent that those matters may be expected to affect the district of the council.

(5) In exercising a function under subClause (4) a council must consult with the council for the neighbouring district in question.

Response (Clause ‘3’)

In order to undertake and maintain up to date surveys of the district, the Council will require ongoing co operation and support in the form of up to date information from a wide range of statutory agencies and Departments including, NISRA, DRD Roads Service, Department of Education, NIEA, NI Water and Rivers Agency. Notwithstanding the provision of Clause 222 regarding contributions by Councils and statutory undertakers, the Bill makes no provision for the involvement and support of such agencies.

Preparation of statement of community involvement by Department

2.(1) The Department must prepare a statement of community involvement. (2) The statement of community involvement is a statement of the Department’s policy as to the involvement in the exercise of the Department’s functions under Part 3 of persons who appear to the Department to have an interest in matters relating to development.

Statement of community involvement

4- (1) A council must prepare a statement of community involvement.

(2) The statement of community involvement is a statement of the council’s policy as to the involvement in the exercise of the council’s functions under this

Part and Part 3 of persons who appear to the council to have an interest in matters relating to development in its district.

(3) The council and the Department must attempt to agree the terms of the statement of community involvement.

(4) But to the extent that the council and the Department cannot agree the terms of the statement of community involvement the Department may direct that the statement must be in the terms specified in the direction.

(5) The council must comply with the direction.

(6) The Department may prescribe

(a) the procedure in respect of the preparation of the statement of community involvement;

(b) the form and content of the statement;

(c) publicity about the statement;

(d) making the statement available for inspection by the public;

(e) the manner in which

(i) representations may be made in relation to any matter to be included in the statement; and

(ii) those representations are to be considered;

(f) circumstances in which the requirements of the statement need not be complied with.

Response (Clauses 2 and 4)

Key issues noted below:

The procedure to be undertaken between the Council and the Department to agree the terms of the statement of community involvement requires clarification. As the Planning Bill is currently proposed all power rests with the Department to dictate the contents of the statement of community involvement as if agreement is not reached between the two parties.

The power of the Department to proceed and provide 'direction' on the statement of community involvement has not been qualified by the legislation. Thus the role of the Council could be undermined at the very outset of the Development Plan process. Arguably it is the Council who are better informed regarding the local community whereas the Department are removed from this local context. Further clarity on this issue is required and justification for the default role/ power of the Department to direct and control the statement of community involvement.

Council questions on the role of the 'statement of community' in the 'Local Development Plan Process' with particular regard as to how this role will interplay with the new function for Council (identified by the Local Government Reform Policy proposals Consultation Document- November 2010) to prepare a 'Community Plan' for their respective Council District and the new Council power of 'well-being.' The Department has not provided guidance on these new Council functions. Council acknowledges the 'Community Plan' function will encompass multifaceted engagement and partnership working with a full range of sectors, including public bodies, businesses and community and voluntary organisation. However, in the absence of guidance from the Department on Point 2(1) and the new functions of 'Community Planning' and 'Power of Well Being' (as contained in Local Government Reform Policy proposals Consultation Document- November 2010) Council has concerns regarding how the functions will interplay in the provision of services. Council requires clarification from the Department that the relationship between the new functions has been considered by the Department and clear guidance on how the functions inter-relate will be provided.

Sustainable development

5.(1) Any person who exercises any function under this Part must exercise that function with the objective of contributing to the achievement of sustainable development.

(2) For the purposes of subsection (1) the person must have regard to-

(a) policies and guidance issued by

(i) the Office of the First Minister and deputy First Minister;

(ii) the Department;

(iii) the Department for Regional Development;

(b) any matters which appear to that person to be relevant.

Response Clause 5

Council would like that clarify whether 'sustainable development' as outlined at 5(1) is consistent with the Office of the First Minister and deputy First Minister approach to 'sustainable development' as outlined in the policy document entitled 'Everyone's Involved: Sustainable

Development Strategy.' The strategic objectives of the Sustainable Development Strategy are as follows:

- "Building a dynamic economy that delivers the prosperity required to tackle disadvantage and lift communities out of poverty:
- Strengthening society such that it is more tolerant, inclusive and stable and permits positive progress in quality of life for everyone:
- Driving sustainable, long-term investment in key infrastructure to support economic and social development:
- Striking an appropriate balance between the responsible use and protection of natural resources in support of a better quality of life and a better quality environment:
- Ensuring reliable, affordable and sustainable energy provision and reducing our carbon footprint:
- Ensuring the existence of a policy environment which supports the overall advancement of sustainable development in and beyond Government"[1]

Preparation of Timetable

7. (1) A council must prepare, and keep under review a timetable for the preparation and adoption of the council's local development plan.

(2) The council and the Department must attempt to agree the terms of the timetable mentioned in subClause (1).

(3) But to the extent that the Department and the council cannot agree the terms the Department may direct that the timetable must be in the terms specified in the direction.

(4) The council must comply with the direction.

(5) The Department may prescribe

(a) the procedure in respect of the preparation of the timetable mentioned in subClause (1);

(b) the form and content of the timetable;

(c) the time at which any step in the preparation of the timetable must be taken;

(d) publicity about the timetable;

(e) making the timetable available for inspection by the public;

(f) circumstances in which the requirements of the timetable need not be complied with.

Response (Clause 7)

Key issues noted below

The procedure to be undertaken between the Council and the Department to agree the terms of the timetable of the Council's local development plan requires clarification. As the Planning Bill is

currently proposed all power rests with the Department to dictate the final terms of the Council's local development plan.

It is noted that the Department has the legislative capacity to disagree with the Council on the timetable and to proceed in requiring the Council to adhere to their direction on the timetable. This interventionist role by the department has not been qualified by the Planning Bill. Further clarity on this issue is required and justification for the default role/ power of the Department to direct and control the preparation of the timetable of the Council Local Development Plan.

Plan Strategy

8. (1) A council must prepare a plan for its district (to be known as a plan strategy).

(2) A plan strategy must set out

(a) the council's objectives in relation to the development and use of land in its district;

(b) its strategic policies for the implementation of those objectives; and

(c) such other matters as may be prescribed.

(3) Regulations under this Clause may prescribe the form and content of the plan strategy.

(4) A plan strategy must be prepared in accordance with

((b) the council's statement of community involvement.

(5) In preparing a plan strategy, the council must take account of

(a) the regional development strategy;

(b) any policy or advice contained in guidance issued by the Department;

(c) such other matters as the Department may prescribe or, in a particular case, direct, and may have regard to such other information and considerations as appear to the council to be relevant.

(6) The council must also

(a) carry out an appraisal of the sustainability of the plan strategy;

(b) prepare a report of the findings of the appraisal

Response (Clause 8)

It is recognised that the preparation of the 'Plan Strategy' will be a critical plan making function of the Council and as such clarification is required as to the anticipated form and content of the strategy. Whilst there is reference to this matter at (8(3)) 'Regulations under this Clause may prescribe the form and content of the plan strategy', there is no commitment made or timescale suggested for the preparation of such 'Regulations'.

Clarification is required regarding the scope of 'other matters' (8(5)(c)) which the Department may prescribe or direct and the required 'appraisal of the sustainability of the plan strategy'. (8(6)(a)).

Local policies plan

9.(1) A council must, after the plan strategy for its district has been adopted by resolution of the council or, as the case may be, approved by the Department, prepare a plan for its district (to be known as a local policies plan).

(2) The local policies plan must set out

(a) the council's policies in relation to the development and use of land in its district; and

(b) such other matters as may be prescribed.

(3) Regulations under this Clause may prescribe the form and content of the local policies plan.

(4) The local policies plan must be prepared in accordance with?

(a) the timetable set out in Clause 7(1);

(b) the council's statement of community involvement.

(5) The council's local policies plan must be consistent with the council's plan strategy.

(6) In preparing the local policies plan, the council must take account of

(a) the regional development strategy;

(b) any policy or advice contained in guidance issued by the Department;

(c) such other matters as the Department may prescribe or, in a particular case, direct, and may have regard to such other information and considerations as appear to the council to be relevant.

(7) The council must also

(a) carry out an appraisal of the sustainability of the local policies plan;

(b) prepare a report of the findings of the appraisal.

Response (Clause 9)

It is recognised that the preparation of the 'Local Policies Plan' will be a critical plan making function of the Council and as such clarification is required as to the anticipated form and content of the policies plan. Whilst there is reference to this matter at (9(3)) 'Regulations under this Clause may prescribe the form and content of the local policies plan', there is no commitment made or timescale suggested for the preparation of such 'Regulations'.

Clarification is required regarding the scope of ‘other matters’ (9(5)(c)) which the Department may prescribe or direct and the required ‘appraisal of the sustainability of the local policies plan strategy’. (9(6)(a)).

Local Development Plan Review

Independent examination

10. (1) The council must submit every development plan document to the Department for independent examination.

(2) But the council must not submit such a document unless (a) it has complied with any relevant requirements contained in regulations under this Part, and

(b) it thinks the document is ready for independent examination.

(3) The council must also send to the Department (in addition to the development plan document) such other documents (or copies of documents) and such information as is prescribed.

(4) The Department must, unless it intends to make a direction under Clause 11(2) or 15(1), cause an independent examination to be carried out by

(a) the planning appeals commission; or

(b) a person appointed by the Department.

(5) The purpose of an independent examination is to determine in respect of the development plan document

(a) whether it satisfies the requirements of Clauses 7 and 8 or, as the case may be, Clauses 7 and 9, and any regulations under Clause 22 relating to the preparation of development plan documents;

(b) whether it is sound.

(6) Any person who makes representations seeking to change a development plan document must (if that person so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.

(7) The person appointed to carry out the examination must

(a) make recommendations;

(b) give reasons for the recommendations.

Withdrawal of development plan documents

11.(1) A council may, in such manner as may be prescribed, at any time before a development plan document is submitted to the Department under Clause 10(1), withdraw the document.

(2) The Department may, at any time after the development plan document has been submitted to it under Clause 10(1), direct the council to withdraw the document.

Adoption

12.(1) The Department must consider the recommendations made under Clause 10(7) and direct the council

(a) adopt the development plan document as originally prepared;

(b) adopt the development plan document with such modifications as may be specified in the direction; or

(c) withdraw the development plan document.

(2) The Department must give reasons for a direction given under subClause (1).

(3) The council must comply with a direction given under subClause (1) within such time as may be prescribed.

(4) For the purposes of this Clause, a development plan document is adopted by resolution of the council.

Review of local development plan

13.(1) A council must carry out a review of its local development plan at such times as the Department may prescribe.

(2) The council must report to the Department on the findings of its review.

(3) A review must

(a) be in such form as may be prescribed; and

(b) be published in accordance with such requirements as may be prescribed.

Revision of plan strategy or local policies plan

14.(1) The council may at any time prepare a revision of

(a) its plan strategy; or

(b) its local policies plan.

(2) The council must prepare a revision of its plan strategy or its local policies plan

(a) at such times and in such manner as may be prescribed;

(b) if, following a review under Clause 13, it thinks that the plan strategy or the local policies plan should be revised;

(c) if the Department directs the council to do so.

(3) This Part applies to the revision of a plan strategy or a local policies plan as it applies to the preparation of a plan strategy or, as the case may be, a local policies plan.

Intervention by Department

15.(1) If the Department thinks that a development plan document is unsatisfactory it may, at any time before the document is adopted under Clause 12 direct the council to modify the document in accordance with the direction.

(2) If the Department gives a direction under subClause (1) it must state its reasons for doing so.

(3) The council must comply with a direction given under subClause (1).

Department's default powers

16.(1) This Clause applies if the Department thinks that a council is failing or omitting to do anything it is necessary for it to do in connection with the preparation or revision of a development plan document.

(2) The Department may

(a) prepare the document; or

(b) revise the document.

(3) The Department must give reasons for anything it does in pursuance of subClause (2).

4) The Department must cause an independent examination to be carried out by

(a) the planning appeals commission; or

(b) a person appointed by the Department, and Clause 10(5) to (7) applies accordingly.

(5) The Department must publish the recommendations and reasons of the person appointed to hold the examination.

(6) The Department must consider recommendations made in accordance with Clause 10(7) (as applied by subClause (4) of this Clause) and may approve the document with or without modification.

(7) The council must reimburse the Department for any expenditure the Department incurs in connection with anything

(a) which is done by it under subClause (2), and

(b) which the council failed or omitted to do as mentioned in subClause (1).

Response (Clauses 10-16)

Council notes that the powers afforded to the Department in relation to the preparation of Local Development Plans are substantive and that they over-ride the responsibilities of the Council,

whereby the actions of the Council are under constant supervision throughout the Plan-making process. It is understandable that central government wishes to retain some level of power of recovery if local Councils were genuinely failing/require support in their efforts to prepare Local Development Plans. However Council is concerned regarding the overarching power of the Department, summarised as follows:

- Level of Intervention and Default Powers Afforded to the Department: Council considers that the level of intervention (at 11, 12,13,15 & 16) accorded to the Department has the potential to effectively remove the plan-making powers from the Council. The circumstances for intervention by the Department (16) have not been clarified by the legislation. Rather the Department is given a carte blanche right to interject the Council's plan making process. Council would request that this element of the legislation should be qualified to minimise Department intervention in the preparation of Development Plans relating to key stages in the Development Plan process.
- Council considers the level of intervention and the substantive checking and consultation required by the proposed legislation between the Council and the Department represents an onerous and time-consuming constraint on the plan-making process across Northern Ireland that could further delay the provision of a suite of up to date Development Plans.
- Council notes that the Department has faced difficulties in delivering on objectives in relation to it's development plan programme on the basis of resources. It follows that if the Departments' development plan resource is to be divided between 26 (11 new?) Councils it may be difficult to resource the input required to deliver a suite of new development plans across NI especially with regard to role envisaged for the Department by the proposed legislation.
- Council seeks clarification on how the Department will manage its responsibilities outlined at Clause 10(1). Council is concerned that the Department may be inundated with Local Development Plans from up to 26 no. Councils to review and may not have the capacity to deal with this workload. This could result in the delay of the review and publication of 'Local Development Plans.' Council seeks confirmation that the Department will prepare a timetable for their responsibilities outlined at 10(1). In addition to the aforementioned Council also has reservations concerning potential 'competing interests' between Councils that will be expressed in their 'Local Development Plans.' How does the Department intend to deal with this issue in an effective and transparent manner? Councils may have envisaged different future development agendas for their area which are not consistent with the Regional Development Strategy and other policy documents.
- Role of Independent Examiners (10): The Council objects to the introduction alternative external examiners. It would be preferable to ensure the PAC are fully resourced and able to deal with all relevant Local Development Plans. If additional resources were required to allow for concurrent examination of development plans as Councils seek to bring forward the new suite of development plans, this could be brought in under current arrangements. This additional resource would work within the PAC, benefit from the administrative support of the PAC and be bound by its rules and procedures. This is an important distinction from the Department appointed external examiners.
- Intervention by the Department (15): Council seeks a definition of the term 'unsatisfactory' in relation to development plan documents as referred to at 15(1) and is extremely concerned that Council 'must comply with a direction given under sub Clause (1) and has no right of appeal to the Direction as imposed by the Department.
- Departments default powers (16),Council strongly objects to the provisions of 16 (7) regarding the requirement for the Council to reimburse the Department (in relation to the preparation/revision of a development plan document) 'for any expenditure the Department incurs in connection with anything—

(a) which is done by it under sub Clause (2), and

(b) which the council failed or omitted to do as mentioned in sub Clause (1)'.

Power of Department to direct councils to prepare joint plans

18.(1) The Department may direct two or more councils to prepare

(a) a joint plan strategy; or

(b) a joint plan strategy and joint local policies plan.

(2) A direction given by the Department under subClause (1) may relate to the whole or part of the councils' districts.

(3) A council must comply with a direction given by the Department under subClause (1).

Response (Clause 18)

Council considers it questionable as to why the Department should have the power to require neighbouring or agglomerations of local councils to prepare joint plans. This removes autonomy and the decision making powers from local councils on the future development of their local areas. Unless cooperation is manifest in councils carrying out the joint plans, delays could be inherent in the process.

Regulations

22.(1) The Department may by regulations make provision in connection with the exercise by any person of functions under this Part.

(2) The regulations may in particular make provision as to

(a) the procedure to be followed by the council in carrying out an appraisal under Clause 8(6) or 9(7);

(b) the procedure to be followed in the preparation of development plan documents;

(c) requirements about the giving of notice and publicity;

(d) requirements about inspection by the public of a development plan document or any other document;

(e) the nature and extent of consultation with and participation by the public in anything done under this Part;

(f) the making of representations about any matter to be included in a development plan document;

(g) consideration of any such representations;

(h) the determination of the time at which anything must be done for the purposes of this Part;

(i) the manner of publication of any draft, report or other document published under this Part;

(j) monitoring the exercise by councils of their functions under this Part.

Response (Clause 22)

Council is particularly concerned regarding the matter of 'Regulations', the possible preparation of which are referred to continually throughout Part 2 of the Planning Bill. Council cannot comment on this matter until such time as details of the regulations are provided. It is disappointing that crucial information pertaining to the making of Local Development Plans is not provided in the Planning Bill and is referenced as forming part of 'regulations' that the Department 'may' make provision for.

Council requires clear commitment regarding the making of 'Regulations' and the detailed requirements therein. The omission of such commitments and any associated timescale undermines the ability of the Council to comment on an informed basis on the provisions of Part 2 of the Planning Bill. Council notes the commitment given to prepare regulations in respect of other matters for example in relation to describing classes of development (25-(2)) 'the Department must by regulations describe……..'

Part 3 – Planning Control

Hierarchy of developments

25.1) For the purposes of this Act, a development belongs to one of the following categories

(a) the first, to be known as "major developments"; and

(b) the second, to be known as "local developments".

(2) The Department must by regulations describe classes of development and assign each class to one of the categories mentioned in paragraphs (a) and (b) of subClause (1).

(3) But the Department may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.

Response (Clause 25)

Council requires clarification on the types of development that will be assigned as 'local developments' and 'major developments' and is disappointed that such details are not available for review at this juncture when the key tenants of legislation are being reviewed. Details on the thresholds for different type of development categories were provided in the 'Reform of Planning- Consultation Document' and Council gave detailed comments on the thresholds. Council is in favour of allowing flexibility in the applications of thresholds in situations where the Department and Council are in agreement. Council wishes to maintain autonomy over its planning making decision powers insofar as is possible.

Council seeks a definition of the term 'class' as referred to in 25-(2).

Council seeks clarification as to the provision of 25-(3) where the Department may direct that a 'local' development is to be dealt with as if it were a 'major' development.

Council welcomes the categories of ‘development’ as set out under Clause 25 but seeks clarification as to the threshold for applications to be considered as falling within each specific category. Council wishes the Bill to explicitly reference that the Department should have reference to Local Development Plans during their assessment of Regionally Significant Planning Applications in order to address any potential issues regarding democratic accountability and the planning decision making process.

Pre – application community consultation

27.(1) Before submitting an application for planning permission for a major development (except a development to which Clause 209 applies), the prospective applicant must comply with the following provisions of this Clause.

(2) The prospective applicant must give notice (to be known as a “proposal of application notice") to the appropriate council that an application for planning permission for the development is to be submitted.

(3) A period of at least 12 weeks must elapse between giving the notice and submitting any such application.

(4) A proposal of application notice must be in such form, and have such content, as may be prescribed but must in any event contain

(a) a description in general terms of the development to be carried out;

(b) if the site at which the development is to be carried out has a postal address, that address;

(c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and

(d) details as to how the prospective applicant may be contacted and corresponded with.

(5) Regulations may

(a) require that the proposal of application notice be given to persons specified in the regulations,

(b) prescribe

(i) the persons who are to be consulted as respects a proposed application, and

(ii) the form that consultation is to take.

(6) The council may, provided that it does so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant thatit requires (either or both)

(a) that the proposal of application notice be given to persons additional to those specified under subClause (5) (specifying in the notification who those persons are);

(b) that consultation additional to any required by virtue of subClause (5)(b) be undertaken as regards the proposed development (specifying in the notification what form that consultation is to take).

(7) In considering whether to give notification under subClause (6) the council is to have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of its being carried out.

(8) In the case of an application for planning permission to be made to the Department, this Clause has effect as if any reference to a council were a reference to the Department.

Pre-application community consultation report

28.(1) A person who, before submitting an application for planning permission for a development, is required to comply with Clause 27 and who proceeds to submit that application is to prepare a report (a “pre-application community consultation report") as to what has been done to effect such compliance.

(2) A pre-application community consultation report is to be in such form as may be prescribed.

Response(Clauses 27 & 28)

Council seeks clarification as to who is responsible for prescribing the form of the pre application community consultation report (28- (2)).

Call in of applications, etc., to Department

29.(1) The Department may give directions requiring applications for planning permission made to a council, or applications for the approval of a council of any matter required under a development order, to be referred to it instead of being dealt with by councils.

(2) A direction under subClause (1)

(a) may be given either to a particular council or to councils generally; and

(b) may relate either to a particular application or to applications of a class specified in the direction.

(3) Where the Secretary of State or, as the case may be, the Department of Justice has certified that an application for planning permission or an application for any approval under this Act or a development order is an application to which Clause 230 (national security) applies, the Department of the Environment must give a direction to the council to which the application was made requiring the application to be referred to the Department of the Environment instead of being dealt with by the council.

(4) Any application in respect of which a direction under this Clause has effect shall be referred to the Department accordingly.

(5) For the purpose of considering representations made in respect of an application to which Clause 230 applies which has been referred to it under this Clause, the Department must, subject to any rules made under subClause (2) or(5) of that Clause, cause a public local inquiry to be held by

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(6) For the purpose of considering representations made in respect of an application referred to it under this Clause, other than an application mentioned in subClause (5), the Department may cause a public local inquiry to be held by

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(7) Where a public local inquiry is not held under subClause (6), the Department must, before determining the application, serve a notice in writing on the applicant and the appropriate council indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service of the notice), the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(8) In determining an application for planning permission referred to it, the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(9) The decision of the Department on an application for planning permission referred to it shall be final

Response (Clause 29)

This power afforded to the Department is over and above the legislative measures outlined in Part 3 Clause 25 of the Planning Bill. In the context of the legislative measures already afforded to the Department in the development management process this could be considered excessive. Arguably, in its current form, it has the potential to undermine the functioning of the Council and remove important decision-making powers from the Council. Council wishes to retain, insofar as it is possible, autonomy over its planning decision making process.

Council objects to the role of 'persons appointed by the Department' for the purposes of holding 'Public Local Inquiries' during the decision-making process. Council objects to the introduction of alternative external examiners. It would be preferable to ensure the PAC is fully resourced and able to deal with all relevant planning applications, as required.

Development Orders

32.(1) The Department must by order (in this Act referred to as a "development order") provide for the grant of planning permission.

(2) A development order may either

(a) itself grant planning permission for development specified in the order or for development of any class so specified; or

(b) in respect of development for which planning permission is not granted by the order itself, provide for the grant of planning permission by a council (or, in the cases provided for elsewhere

in this Act, the Department) on an application made to the council or, as the case may be, the Department, in accordance with the order.

(3) A development order may be made either

(a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land; or

(b) as a special order applicable only to such land or descriptions of land as may be specified in the order.

(4) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.

(5) Without prejudice to the generality of subClause (4), where planning permission is granted by a development order for development of a specified class, the order may enable a council or the Department to direct that the permission shall not apply either in relation to development in a particular area or in relation to any particular development.

(6) Any provision of a development order whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of other references in this Act to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.

(7) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with a local development plan, a development order may direct that any statutory provision in relation to any development specified under the order

(a) shall not apply to any development specified in the order; or

(b) shall apply to it subject to such modifications as may be so specified.

Response (Clause 32)

Council seeks a detailed definition of ‘development order ‘as referred to at Part 3, Clause 32.

Simplified Planning Zones

33.(1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.

(2) The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission for development specified in the scheme or for development of any class so specified.

(3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.

(4) A simplified planning zone scheme shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the council for the district within which the zone

is located thinks appropriate for explaining or illustrating the provisions of the scheme, and must specify

(a) the development or classes of development permitted by the scheme;

(b) the land in relation to which permission is granted; and

(c) any conditions, limitations or exceptions subject to which it is granted; and must contain such other matters as may be prescribed.

Response (Clause 33)

Council welcomes the principle of Simplified Planning Zones but strongly objects to the inclusion of legislation regarding Simplified Planning Zones (SPZ) in the Planning Bill as Council has not been consulted on this matter and as such has not been given adequate opportunity to consider this important planning function.

Council seeks clarification as to the responsibility for making, adopting and approving a Simplified Planning Zone Scheme. It appears that responsibility lies with Council (34(1), however (2(b)) refers to Council seeking consent of the Department and SPZ schemes 'approved ' by the Department.

Grant of planning permission in enterprise zones

39.(1) An order designating an enterprise zone under the 1981 Order shall(without more) have effect on the effective date to grant planning permission for development specified in the scheme or for development of any class so specified.

(2) The adoption of a modified scheme under Article 4 of the 1981 Order (as applied by Article 10(2) of that Order) shall (without more) have effect on the effective date of modification to grant planning permission for development specified in the modified scheme or for development of any class so specified.

(3) Planning permission granted by virtue of this Clause shall be subject to such conditions or limitations as may be specified in the scheme or modified scheme or (if none are specified) unconditional.

(4) Where planning permission is so granted for any development or class of development, the Department may direct that the permission shall not apply in relation to

(a) a specified development; or

(b) a specified class of development; or

(c) a specified class of development in a specified area within the enterprise zone.

(5) If the scheme or the modified scheme specifies matters, in relation to any development it permits, which will require approval by the Department, the permission shall have effect accordingly.

(6) The Department may by regulations make provision

(a) as to the procedure for giving a direction under subClause (4);

(b) as to the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in subClause (5), and such regulations may modify any provision of this Act other than this Clause.

(7) Notwithstanding subClauses (1) to (6), planning permission may be granted under any other provision of this Part in relation to land in an enterprise zone (whether the permission is granted in pursuance of an application made under this Part or by a development order).

(8) Modifications to a scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the effective date of modification.

(9) Upon an area ceasing to be an enterprise zone planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.

(10) Clause 63(2) to (6) and Clauses 64 and 65 shall apply to planning permission under the scheme where development has been begun but not completed by the time the area ceases to be an enterprise zone.

(11) Clause 62(2) shall apply in determining for the purposes of this Clause when development shall be taken to be begun.

(12) Nothing in this Clause prejudices the right of any person to carry out development apart from this Clause.

(13) In this Clause “the 1981 Order" means the Enterprise Zones (Northern Ireland) Order 1981 (NI 15) and other expressions used in this Clause and in that Order have the same meaning in this Clause as in that Order.

Response (Clause 39)

Council welcomes the principle of enterprise zones but strongly objects to the inclusion of legislation regarding enterprise zones in the Planning Bill as Council has not been consulted on this matter and as such has not been given adequate opportunity to consider this important planning function.

Council seeks clarification as to the definition of an ‘enterprise zone’, and where the responsibility lies for designating an enterprise zone, and granting planning permission in an enterprise zone.

Directions etc. as to method of dealing with applications

56.(1) Provision may be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by councils and the Department, and in particular

(a) for enabling the Department to give directions restricting the grant of planning permission by a council, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;

(b) for enabling the Department to give directions to a council requiring it, in respect of any such development, or in respect of development of any such class, as may be specified in the directions

(i) to consider, where the council is minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and

(ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Department that such consideration has been given and that such a condition either will be imposed or need not be imposed;

(c) for requiring that, before planning permission for any development is granted or refused, councils must consult with such authorities or persons as may be specified by the order;

(d) for requiring the Department before granting or refusing planning permission for any development to consult with the council for the district in which the land is situated and with such other authorities or persons as may be specified by the order;

(e) for requiring a council or, as the case may be, the Department, to give to any applicant for planning permission, within such time as may be specified by the order, such notice as may be so specified as to the manner in which the applicant's application has been dealt with;

(f) for requiring a council or, as the case may be, the Department to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning permission notice of its decision on the application, within such time as may be specified by the order;

(g) for requiring a council to give to the Department, and to such other persons as may be specified by or under the order, such information as may be so specified with respect to applications for planning permission made to the council, including information as to the manner in which any such application has been dealt with.

(2) Provision may be made by a development order

(a) for determining the persons to whom applications under this Act are to be sent; and

(b) for requiring persons to whom such applications are sent to send copies to other interested persons.

Response (Clause 56)

Council objects to and is extremely concerned at the intervention powers accorded to the Department by this part of the legislation. Council objects to the provision under Clause 56 whereby the Department can directly intervene in the Council decision making process and potentially remove planning powers or undermine the decision-making process of the Council.

Appeal against failure to take a decision

59. Where any such application as is mentioned in Clause 58(1) is made to a council, then unless within such period as may be specified by a development order, or within such extended period as may be agreed upon in writing between the applicant and the council, the council either

(a) gives notice to the applicant of its decision on the application; or

(b) gives notice to the applicant that the application is one to which Clause 29 applies; or

(c) gives notice to the applicant that it has exercised its power under Clause

46 or 48 to decline to determine the application, Clause 58 shall apply in relation to the application

(i) as if the permission, consent, agreement or approval to which it relates had been refused by the council; and

(ii) as if notification of the council's decision had been received by the applicant at the end of the period so specified, or at the end of the said extended period, as the case may be.

Response (Clause 59)

Clause 59 – Council seeks clarification on the period (as may be specified by a development order) for determining applications and the responsibility for prescribing the period.

Power of Department to serve completion notices

65.(1) If it appears to the Department to be expedient that a completion notice should be served in respect of any land, the Department may itself serve such a notice.

(2) A completion notice served by the Department shall have the same effect as if it had been served by the appropriate council

(3) The Department shall not serve such a notice without consulting the appropriate council.

Response (Clause 65)

Council seeks justification as to the provision at 65-(1) for the Department to serve a completion notice itself instead of the Council serving the notice under Clause 64.

Council notes that the Department shall consult with the Council if the Department is serving a completion notice; Council seeks clarification as to which authority has the final say on the serving of a completion notice under Clause 65.

Orders requiring discontinuance of use or alteration of buildings or works

72.(1) If it appears to a council that it is expedient in the interests of the proper planning of an area within its district (including the interests of amenity),regard being had to the local development plan and to any other material considerations

(a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or

(b) that any buildings or works should be altered or removed; the council may by order require the discontinuance of that use within such time as may be specified in the order, or impose such conditions as may be so specified on the continuance thereof, or require such steps as may be so specified to be taken within such time as may be so specified for the alteration or removal of the buildings or works, as the case may be.

(2) An order under this Clause may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order; and the provisions of Clause 67 shall apply in relation to any planning permission granted by an order under this Clause as they apply in relation to planning permission granted by the council on an application made under this Part.

(3) The planning permission which may be granted by an order under this Clause includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted to the Department under Clause 73; and planning permission for such development may be granted so as to have effect from

(a) the date on which the development was carried out; or

(b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.

(4) Where the requirements of an order under this Clause will involve the displacement of persons residing in any premises, it shall be the duty of the Northern Ireland Housing Executive in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.

(5) Subject to Clause 73(8), in the case of planning permission granted by an order under this Clause, the authority referred to in Clauses 60(1)(b) and 61 is the council making the order.

Confirmation by Department of section 72 orders

73.(1) An order under Clause 72 shall not take effect unless it is confirmed by the Department, either without modification or subject to such modifications as the Department considers expedient.

(2) The power of the Department under this Clause to confirm an order subject to modifications includes power

(a) to modify any provision of the order granting planning permission, as mentioned in subClauses (2) and (3) of Clause 72;

(b) to include in the order any grant of planning permission which might have been included in the order as submitted to it.

(3) Where a council submits an order to the Department for its confirmation under this Clause, the council must serve notice

(a) on the owner of the land affected,

(b) on the occupier of that land, and

(c) on any other person who in the opinion of the council will be affected by the order.

(4) The notice must specify the period within which any person on whom it is served may require the Department to give that person an opportunity of appearing before, and being heard by, the planning appeals commission.

(5) If within that period such a person so requires, before the Department confirms the order, it must give such an opportunity both to that person and to the council.

(6) The period referred to in subClause (4) must not be less than 28 days from the service of the notice.

(7) Where an order under Clause 72 has been confirmed by the Department, the council must serve a copy of the order on the owner and occupier of the land to which the order relates.

(8) Where the Department exercises its powers under subClause (2) in confirming an order granting planning permission, the Department is the authority referred to in Clauses 60(1)(b) and 61(4).

Response (Clause 72)

Council questions why Clause 72 Orders require confirmation by the Department.

Planning agreements

75.(1) Any person who has an estate in land may enter into an agreement with the relevant authority (referred to in this Clause and Clauses 76 and 77 as “a planning agreement"), enforceable to the extent mentioned in subClause (4)

(a) facilitating or restricting the development or use of the land in any specified way;

(b) requiring specified operations or activities to be carried out in, on, under or over the land;

(c) requiring the land to be used in any specified way;

(d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically; or

(e) requiring a sum or sums to be paid to a Northern Ireland department on a specified date or dates or periodically.

(2) A planning agreement may

(a) be unconditional or subject to conditions;

(b) impose any restriction or requirement mentioned in subClause (1)(a) to

(c) either indefinitely or for such period or periods as may be specified; and

(c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the agreement is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.

(3) Before entering into a planning agreement, the Department must consult with the council for the district within which the land which is the subject of the proposed agreement is situated.

(4) Subject to subClause (5) a planning agreement is enforceable by the relevant authority

(a) against the person entering into the agreement; and

(b) against any person deriving title from that person.

(5) The instrument by which a planning agreement is entered into may provide that a person shall not be bound by the agreement in respect of any period during which that person no longer has an estate in the land.

(6) A restriction or requirement imposed under a planning agreement is enforceable by injunction.

(7) Without prejudice to subClause (6), if there is a breach of a requirement in a planning agreement to carry out any operations in, on, under or over the land to which the agreement relates, the relevant authority may

(a) enter the land and carry out the operations; and

(b) recover from the person or persons against whom the agreement is enforceable any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(8) Before the relevant authority exercises its power under subClause (7)(a) it must give not less than 21 days' notice of its intention to do so to any person against whom the planning agreement is enforceable.

(9) Any person who wilfully obstructs a person acting in the exercise of a power under subClause (7)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A planning agreement may not be entered into except by an instrument under seal which

(a) states that the agreement is a planning agreement for the purposes of this Clause;

(b) identifies the land in which the person entering into the agreement has an estate; and

(c) identifies the person entering into the agreement and states what that person's estate in the land is.

(11) If a person against whom an agreement is enforceable requests the relevant authority to supply that person with a copy of the agreement, it is the duty of the authority to do so free of charge.

(12) Any sum or sums required to be paid under a planning agreement and any expenses recoverable by the relevant authority under subClause (7)(b) shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the person against whom the planning agreement is enforceable.

(13) The charge created by subClause (12) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the relevant authority by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the authority may exercise the powers conferred by Clauses 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgagees by deed accordingly.

(14) In this Clause

(a) “specified" means specified in the instrument by which the planning agreement is entered into;

(b) “relevant authority", in relation to a planning agreement, means

(i) where the agreement relates to land in relation to which a planning application has been made to a council, and that council has an estate in that land, the Department;

(ii) where the agreement relates to land in relation to which a planning application has been made to the Department, the Department;

(iii) in any other case, the council in whose district the land to which the agreement relates is situated.

Response (Clause 75)

Council notes that Council will be the ‘relevant authority’ in relation to all ‘planning agreements’ except those relating to applications where the Council has an estate in the land and those applications made to the Department (the Department must consult with the Council on all planning agreements for development within the Council area).

Land belonging to councils and development by councils

78.(1) The provisions listed in subClause (2) shall apply in relation to

(a) land of interested councils; and

(b) the development of any land by interested councils or by such councils jointly with any other persons, subject to regulations made by virtue of this Clause.

(2) The provisions are?

(a) Part 3;

(b) Part 4 (apart from the provisions of Chapters 1 and 2 of that Part).

(3) The regulations may, in relation to such land or such development?

(a) provide for any of those provisions to apply subject to prescribed exceptions or modifications or not to apply;

(b) make new provision as to any matter dealt with in any of those provisions.

(4) Without prejudice to subClause (2), the regulations may provide

(a) for applications for planning permission to develop such land, or for such development, to be determined by the interested council or by the Department; and

(b) for the procedure to be followed on such applications, and, in the case of applications falling to be determined by an interested council, they may regulate the council’s arrangements for the

discharge of its functions, notwithstanding anything in Clause 47A of the Local Government Act (Northern Ireland) 1972 (c. 9).

(5) The regulations must

(a) provide for any provision made by virtue of Clause 41, 42, 45(2) to (4) or by a development order, to apply to applications for planning permission to develop such land, or for such development, subject to prescribed exceptions or modifications, or

(b) make corresponding provision to those provisions.

(6) In this Clause “interested council", in relation to any land, means any council which exercises any functions of a council under this Act in relation to that land, and, for the purposes of this Clause, land is land of a council if the council has any estate in it.

(7) This Clause applies to any consent required (except a consent required under Clause 84, 104 or 107) in respect of any land as it applies to planning permission to develop land.

Response (Part 3)

Council is particularly concerned regarding the matter of ‘Regulations’, the possible preparation of which are referred to continually throughout Part 3 of the Planning Bill. Council cannot comment on this matter until such time as details of the regulations are provided. It is disappointing that crucial information pertaining to Planning Control is not provided in the Planning Bill and is referenced as forming part of ‘regulations’ that the Department ‘may’ make provision for.

Council requires clear commitment regarding the making of ‘Regulations’ and the detailed requirements therein. The omission of such commitments and any associated timescale undermines the ability of the Council to comment on an informed basis on the provisions of Part 3 of the Planning Bill.

Part 4 - Additional Planning Control (Refer to Planning Bill document)

Chapter 1 - Listed Building and Conservation Areas

Temporary listing: building preservation notices. (80)

Temporary listing in urgent cases (81).

Call in of certain applications for listed building consent to Department (87)

Duty to notify Department of applications for listed building consent (88)

Appeal against failure to take decision (96)

Conservation areas (103)

Response (Clauses 80 & 81)

Council welcomes Clauses 80 and 81 which make provision for Council to serve building preservation notices.

Response (Clause 87)

Council seeks clarification of the circumstances whereby an application for listed building consent would be referred to the Department instead of the Council.

Response (Clause 88)

Notwithstanding the provisions of Clause 89 whereby Clause 88 may not apply for some applications, Council questions the need for Council to notify the Department if it intends to grant listed building consent.

Response (Clause 96)

Council seeks clarification on the period (as may be prescribed) for determining applications and the responsibility for prescribing the period.

Response (Clause 103)

Council welcomes the provision for Councils to designate areas of special architectural or historic merit (103) but seeks clarification of the circumstances (103(2)) whereby the Department may designate a conservation area.

Chapter 2 – Hazardous Substances

Applications by councils for hazardous substances consent

119.(1) The provisions listed in subClause (2) shall apply in relation to granting hazardous substances consent to councils, subject to regulations made by virtue of this subClause.

(2) The provisions are

(a) the provisions of this Chapter;

(b) the provisions of Part 5;

(c) Clauses 181, 183, 219 and 237.

(3) Regulations made under subClause (1) may?

(a) provide for any of the provisions listed in subClause (2) to apply subject to prescribed exceptions or modifications or not to apply;

(b) make new provision as to any matter dealt with in any of those provisions.

(4) Subject to the provisions of paragraph 3(3) of Schedule 8 to the Electricity

(Northern Ireland) Order 1992 (NI 1), any regulations made under subClause (1) may in particular provide for securing?

(a) that any application by a council for hazardous substances consent in respect of the presence of a hazardous substance on, over or under land shall be made to the Department and not to the council;

(b) that any order or notice authorised to be made, issued or served under this Chapter or Part 5 shall be made, issued or served by the Department and not by the council.

Response (Clause 119)

Council notes the provisions of Clause 119 which require that Council applications for hazardous substance consent are made to the Department and follow provisions of the Chapter which apply to non Council applications.

Part 5 – Enforcement (Refer to Planning Bill document)

Power to require information about activities on land (132)

Penalties for non compliance with a planning contravention notice(133)

Temporary Stop Notice (134-136)

Response Clause (130-136)

Council welcomes Clauses 130- 136 and the provision for Council to serve Breach of Condition Notices and Temporary Stop notices.

Response Clause (130-177)

In the absence information pertaining to future staffing levels and resource management, Council has concerns that it may not be adequately staffed to carry out the required suite of enforcement functions outlined in clauses 130-177. Council wishes assurances from the Department that future staffing levels will enable Council carry out their enforcement functions as required.

Part 6 – Compensation

Compensation where planning permission is revoked or modified

178.(1) The functions which immediately before the day on which this Clause comes into operation (in this Clause referred to as “the transfer date") are exercisable by the Department under or for the purposes of the provisions of the Act of 1965 listed in subClause (2) are hereby transferred as from that day to councils.

(2) The provisions are

(a) Clause 26(1) to (6) (except in so far as Clause 26(6) applies Clause 20(2)); and

(b) Clause 27 (except in so far as Clause 27(5) applies Clause 24).

(3) In the construction of and for the purposes of any statutory provision or instrument passed, made or issued before the transfer date, any reference to, or which is to be construed as a

reference to, the Department shall, so far as may be necessary for the purpose of the transfer of functions by subClause (1), be construed as a reference to a council.

(4) The Act of 1965 has effect subject to the amendments set out in Schedule 4.

Additional Clauses (refer to Planning Bill)

Compensation where listed building consent is revoked or modified (180)

Compensation in respect of orders under Clause 72, 74 or 111 (181)

Compensation in respect of tree preservation orders (182)

Compensation where hazardous substances consent modified or revoked (183)

Compensation for loss due to stop notice (184)

Compensation for loss or damage caused by service of building preservation notice (185)

Compensation for loss due to temporary stop notice (186)

Compensation where planning permission assumed for other development (187)

Response (Clauses 178-187)

Council is concerned with the provisions of Clauses 178 – 188 which state that Council must pay compensation associated with a range of circumstances including those in relation to consents which are revoked or modified, and losses due to stop notice and building preservation notices. Council has not been afforded adequate opportunity to consider these provisions which require detailed consideration by the Council's legal advisors before Council can make a substantive response.

Part 7 - Purchase of Estates in Certain Land Affected by Planning Decisions

Part 10 – Assessment of Council's Performance or Decision Making

Part 13 – Financial Provisions

Fees and Charges

219.(1) The Department may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of

(a) the performance by a council or the Department of any function the council or the Department has under this Act;

(b) anything done by a council or the Department which is calculated to facilitate or is conducive or incidental to the performance of any such function.

(2) Without prejudice to the generality of subClause (1), regulations made under that subClause may provide for the payment of a charge or fee in respect of a function mentioned in subClause (3)(a) to be a multiple of the charge or fee payable in respect of a function mentioned in subClause (3)(b).

(3) The functions are—

(a) functions relating to the determination of an application for planning permission for development begun before the application was made;

(b) functions relating to the determination of an application for planning permission other than an application referred to in paragraph (a).

(4) Without prejudice to the generality of subClause (1), regulations made under that subClause may provide for the payment of a charge or fee in respect of a function mentioned in subClause (5)(a) to be a multiple of the charge or fee payable in respect of a function mentioned in subClause (5)(b).

(5) The functions are—

(a) functions relating to the determination of an application for an approval under a development order for development begun before the application was made;

(b) functions relating to the determination of an application for an approval under a development order other than an application referred to in paragraph (a).

(6) Clause 62(2) shall apply in determining for the purposes of this Clause when development shall be taken to be begun.

(7) The Office of the First Minister and deputy First Minister may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of

(a) an application for planning permission which is deemed to be made to the planning appeals commission under this Act;

(b) an appeal to the planning appeals commission under this Act.

(8) Regulations under this Clause may prescribe—

(a) the person by whom any charge or fee is payable;

(b) provision as to the calculation of any charge or fee (including provision as to who is to make the calculation);

(c) circumstances in which no charge or fee is to be paid;

(d) circumstances in which any charge or fee paid is to be remitted or refunded (in whole or in part);

(e) circumstances in which a charge or fee is to be transferred from one council to another.

Response (Clause 219)

Council seeks commitment from the Department to the preparation of Regulations as required under Clause 219

Contributions by councils and statutory undertakers (222)

222.(1) Any statutory undertaker may contribute towards any expenses incurred by a council for the purposes of carrying out a review under Clause 3.

(2) Any council may contribute towards any expenses incurred by any other council for the purposes of carrying out a review under Clause 3.

(3) Any statutory undertaker may contribute towards any expenses incurred by a council in or in connection with the performance of any of its functions under

(a) Part 3 (except Clause 26);

(b) Part 4 (except Clauses 103 to 105 and 119);

(c) Part 5 (except for Clauses 141, 160, 163, 175 and 176);

(d) Part 6.

(4) Any council may contribute towards any expenses incurred by any other council in or in connection with the performance of the second mentioned council's functions under any of the provisions mentioned in subClause (3)(a) to (d).

(5) Where any expenses are incurred by a council in the payment of compensation payable in consequence of anything done under any provision mentioned in Clause 223(2) (except for anything done under Clause 175 or 176), the Department may, if it appears to it to be expedient to do so, require any other council to contribute towards those expenses such sum as appears to the Department to be reasonable, having regard to any benefit accruing to that council by reason of the proceeding giving rise to the compensation.

Response (Clause 222)

Council seeks clarification on the circumstances whereby Council may be required by the Department to contribute to expenses associated with the functions of another Council.

Part 14 - Miscellaneous and General Provisions

224. Duty to respond to consultation

Response (Clause 224)

Council welcomes the provisions under 224 associated with consultations and the duty of the 'consultee' to respond before the end of prescribed or agreed period. Council seeks clarification as to the status of the consultation if the consultee fails to provide a substantive response within the prescribed or agree period. Clarification on this point is considered essential if Council is to be able to progress planning applications in an effective manner which will meet the requirements of the Department as set out in the Bill.

225. Minerals

226. Local Inquiries

227. Inquiries to be held in public subject to certain exceptions

228. Secretary of State

229. Department of Justice

230. National Security

231. Rights of entry

232. Supplementary provisions as to powers of entry

233. Supplementary provisions as to powers of entry: Crown land

234. Services of notices and documents

235. Information as to estates in land

236. Information as to estates in Crown land

237. Planning Register

238. Power to appoint advisory bodies or committees

239. Time limit for certain summary offences under this Act

240. Registration of matters in Statutory Charge Register

241. Directions

242. Regulations and orders

Response

Council would welcome additional powers, similar to those contained in Section 15 of the England & Wales Town and Country Planning Act 1990 which is as follows:

“Power to require proper maintenance of land.

(1)If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.

(2)The notice shall require such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be so specified.

(3)Subject to the following provisions of this Chapter, the notice shall take effect at the end of such period as may be specified in the notice.

(4)That period shall not be less than 28 days after the service of the notice."[2]

Section 215 (s215) of the Town & Country Planning Act 1990 provides a local planning authority (LPA) with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which they must be carried out. Lisburn City Council would welcome the addition of similar legislation to the new Planning Bill in order to give the council greater powers to further regeneration in their respective council area.

6.0 Strategic Responses

Response - Governance

6.1 Council welcomes the references made throughout Planning Bill to the extensive range of 'planning' duties for which Council will assume devolved responsibility. Notwithstanding the 'Responses' set out in this document, Council is extremely concerned that there is no reference whatsoever to the significant staffing levels and resources which will be required in order for Council to effectively execute the duties set out in the Planning Bill.

6.2 Council seeks urgent clarification on the new statutory governance framework and on the Department's position on the significant capacity building which will be required in order to execute the provisions of the Planning Bill.

Response - Regulations

6.3 Council is extremely concerned at the practice within the Bill of making numerous references to the possibility of the Department preparing 'Regulations' (the Department may by regulations) particularly in relation to plan strategy, local policies plan and those matters listed at Clause 22 namely

22.(1) The Department may by regulations make provision in connection with the exercise by any person of functions under this Part.

(2) The regulations may in particular make provision as to

(a) the procedure to be followed by the council in carrying out an appraisal under Clause 8(6) or 9(7);

(b) the procedure to be followed in the preparation of development plan documents;

(c) requirements about the giving of notice and publicity;

(d) requirements about inspection by the public of a development plan document or any other document;

(e) the nature and extent of consultation with and participation by the public in anything done under this Part;

(f) the making of representations about any matter to be included in a development plan document;

(g) consideration of any such representations;

(h) the determination of the time at which anything must be done for the purposes of this Part;

(i) the manner of publication of any draft, report or other document published under this Part;

(j) monitoring the exercise by councils of their functions under this Part.

6.4 Council seeks urgent clarification from the Department as to the commitment or otherwise to prepare Regulations (Subordinate legislation) and the timescale for their completion. Council considers that delays in preparing Regulations or uncertainty as to whether or not Regulations will be prepared could seriously affect the ability of the Council to effectively execute its planning powers.

Response - Consultation with the Department

6.5 Council is extremely concerned with the plethora of Clauses (Sections) throughout the Bill which require Council to seek approval from the Department for a myriad of matters, most of which could and should be adequately dealt with at Council level. Council considers that the widespread requirement for consultation with and checking by the Department will add unnecessary bureaucracy and delay, and could affect the ability of Council to effectively execute it's planning powers.

Responses - Role of the Department

6.6 Council is extremely concerned with the extensive level of power effectively retained by the Department across all aspects and at all levels within the planning process, and the provisions within the Bill for the Department to directly intervene in the planning process for example to the extent that the Department can restrict the grant of planning permission by a Council (Clause 56). The Bill provides little if any justification for this widespread intervention by the Department.

6.6 Given the apparent commitment of the Department to the 'development of local accountable democracy' and [3] 'putting power in the hands of locally elected representatives accountable to the people', Council is concerned with the level of accountability of the Department where the Bill makes such extensive provision for the Department to intervene with Council planning duties with little or no rationale for such intervention.

6.6 Furthermore, Council questions the need for this level of unchecked Departmental intervention and in particular the associated financial implications both in terms of the potential duplication of functions between the Department and Council and the inevitable delays to the planning process.

NI Assembly – Official Report Tuesday 14 December 2010.

Response - Matters not Previously subject to Consultation

6.7 Council is extremely concerned with the inclusion in the Bill of a range of matters which were not included in the Reform of Planning. Whilst Council welcomes the principle of provisions made in respect of Simplified Planning Zone Schemes (33 – 38), Grant of Planning Permission in Enterprise Zones (39), Land and Works of Councils (106), Hazardous Substances (107 –119), Trees (120 – 127), Review of Mineral Planning Permissions (128) and Advertisements (129) Purchase of Estates in Certain Land Affected by Planning Decisions (189 – 195) Further Provisions as to Historic Buildings (196 – 200) Application of Act to Crown Land (207 – 214) Assessment of Council's Performance or Decision Making (203 – 206) and Application of Act to

Crown Land (207 – 214), Council has not been previously consulted on these matters and as such is not in a position to make a substantive response.

6.8 Council is particularly concerned with the provisions of Clauses 178 – 188 which state that Council must pay compensation associated with a range of circumstances including those in relation to consents which are revoked or modified, and losses due to stop notice and building preservation notices. Council has not been afforded adequate opportunity to assess these provisions which require detailed consideration by the Council's legal advisors before Council can make a substantive response.

Response - Reform of Public Administration

6.9 Notwithstanding Council responses regarding the content of the Bill, Council recognises that there will be a transition period when Council first takes responsibility for the suite of planning powers set out in the Planning Bill. In this context Council considers that this Planning Bill should be acknowledged as an Interim Bill which will apply for a defined period (2-3years) after which time the Bill would be amended to appropriately reflect the Reform of Public Administration and revised Council administrations, and to significantly reduce the involvement of the Department except in exceptional circumstances where the requirement for consultation and intervention is clearly justified.

Response - Council Response to Reform of Planning Consultation

6.10 Council is extremely disappointed and concerned that there appears to have been limited regard in the Bill to the range of concerns previously raised by Council to the Reform of Planning.

Response - Hierarchy of Planning Policy

6.11 Council welcomes the devolution of planning powers and the provisions within the Planning Bill for the preparation of evidence based planning policy in the form of Local Development Plans. Council seeks clarification on the relationship between this evidenced based planning policy and the more strategic policy to be contained within a new suite of Planning Policy Statements. In particular Council considers that the strategic Planning Policy should 'have regard' to the relevant evidence based policy within a Local Development Plan for example in respect of policy relating to Waste Management.

Appendix 1

Summary of Planning Bill Clauses (Clauses)

Appendix 1 Planning Bill Parts & Clauses (as outlined in Planning Bill – Explanatory and Financial Memorandum)

Parts

Part 1: Functions of Department of the Environment with respect to development of land.

This part maintains the general background authority for the Department to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development. It also re-enacts a duty on the Department to prepare a Statement of Community Involvement.

Clause 1: General functions of Department of the Environment with respect to development of land

This clause maintains the Department's duty to formulate and co-ordinate planning policy which must be in general conformity with the Regional Development Strategy. A statutory duty is imposed on the Department in exercising these functions to do so with the objective of contributing to the achievement of sustainable development. This clause also provides for the Department to continue to undertake such surveys or studies as it considers necessary.

Clause 2: Preparation of statement of community involvement by Department

This clause maintains the requirement for the Department to produce a statement of its policy for involving the community in its development control functions.

Part 2: Local Development Plans.

This part provides for the preparation of local development plans by district councils for their district; these will replace current Department of the Environment development plans. These local development plans will comprise two documents, a Plan Strategy and a Local Policies Plan which must be prepared in accordance with the relevant timetable and must take account of the Regional Development Strategy. Public participation in formulating local development plans and progress through to adoption will be facilitated through the Statement of Community Involvement and timetables agreed between the district council and the Department. This Part also makes general provision for the preparation, withdrawal, adoption and approval of local development plans (including joint plans) and their independent examination. The Department has powers of intervention and may by regulations make provision in connection with the exercise by any person of functions under this Part.

Clause 3: Survey of district

This clause requires a district council to keep under review matters which are likely to affect the development of its district or the planning of that development. A district council may also keep matters in any neighbouring district under review, to the extent that those matters might affect the area of the district council, and in doing so they must consult the district council for the neighbouring district concerned.

Clause 4: Statement of Community Involvement

This clause defines a district council's statement of community involvement as a statement of its policy for involving interested parties in matters relating to the development in its district. It requires the district council and the Department to attempt to agree the terms of the statement and provides a power of direction for the Department where agreement is not possible. This statement will apply to the preparation and revision of a local development plan and to the exercise of the district council's functions in relation to development control.

Clause 5: Sustainable development

This clause imposes a statutory duty on any person or body who exercises any function in relation to local development plans to do so with the objective of contributing to the achievement of sustainable development. In doing so they are required to have regard to

policies and guidance issued by the Office of the First Minister and Deputy First Minister, the Department of the Environment and the Department for Regional Development.

Clause 6: Local development plan

This clause sets out the definition of a local development plan and clarifies the position in relation to potential conflicts between local development plan policies; the conflict must always be resolved in favour of the policy contained in the last development plan document to be adopted. It also confirms in law the status of a development plan in the determination of planning decisions. Where regard is to be had to the local development plan, the determination must be in accordance with the plan unless material considerations indicate otherwise.

Clause 7: Preparation of Timetable

This clause places a requirement on the district council to prepare and keep under review a timetable for the preparation and adoption of its local development plan. The district council must agree the timetable with the Department, however if the timetable cannot be agreed then the Department may direct that the timetable is in the terms specified in the direction.

Clauses 8 and 9: Plan Strategy and Local Policies Plan

Clauses 8 and 9 impose a statutory duty on the district council to prepare a plan strategy and a local policies plan. These documents taken together constitute a local development plan. The local development plan must set out the district council's objectives and policies in relation to the development and use of land in its district. The district council must take account of the matters listed in these clauses, including the Regional Development Strategy and must carry out a sustainability appraisal for the proposals in each document. The Department may prescribe the form and content of both the plan strategy and the local policies plan.

Clause 10: Independent examination

This clause requires the district council to submit its plan strategy and local policies plan to the Department for independent examination and makes provision for the Department to cause an independent examination to be carried out by the PAC or a person appointed by the Department. The purpose of the examination will be to determine whether the plan strategy or local policies plan is sound and whether it satisfies the requirements relating to its preparation. Any person who makes representations seeking a change to the plan strategy or local policies plan has a right, if they so request, to appear in person at the examination.

After completion of the independent examination, the person appointed to carry out the examination must make recommendations on the plan strategy or local policies plan and give reasons for those recommendations.

Clause 11: Withdrawal of development plan documents

This clause enables a district council to withdraw its plan strategy or local policies plan at anytime before it submits it to the Department for independent examination. However, if either of these documents has been submitted for independent examination, it can only be withdrawn by direction of the Department.

Clause 12: Adoption

This clause requires the Department to consider the recommendations of the independent examination and provides a power of direction for the Department to undertake one of three options at this stage. It can direct the district council to adopt the development plan document as originally prepared; adopt the document with such modifications as may be specified in the direction or direct the district council to withdraw the development plan document. The district council must comply with the direction within such time as may be prescribed and adopt the plan strategy or local policies plan by resolution of the council as directed.

Clause 13: Review of local development plan

This clause requires the district council to carry out a review of its development plan at such times as the Department may prescribe and to report to the Department on the findings of the review.

Clause 14: Revision of plan strategy or local policies plan

This clause empowers a district council to revise a plan strategy or local policies plan at any time (after adoption). If a review under clause 13 indicates that they should do so, or they are directed to do so by the Department, then they must carry out a revision. Revisions to a plan strategy or local policies plan must comply with the same requirements as those which apply to the preparation of a plan strategy or local policies plan.

Clause 15: Intervention by Department

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

Clause 16: Department's default powers

This clause contains default powers for the Department to prepare or revise a district council's plan strategy or local policies plan if it thinks the district council is failing properly to carry out these functions itself. The district council must reimburse the Department for any expenditure it incurs in exercising these powers.

Clause 17: Joint plans

This clause enables two or more district councils to jointly prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan. It also sets out the arrangements which are to apply in such a case. If any district council withdraws from an agreement to prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan, it will be possible for the remaining district council(s) to continue with the preparation of the plan strategy or local policies plan if it satisfies the conditions required for it to be treated as a "corresponding document".

Clause 18: Power of Department to direct councils to prepare joint plans

This clause enables the Department to direct two or more district councils to prepare (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan. In the instance of the Department issuing such a direction no district council may withdraw from the joint working and the preparation of (i) a joint plan strategy or (ii) a joint plan strategy and a joint local policies plan must continue to its natural conclusion.

Clause 19: Exclusion of certain representations

This clause allows the district council, PAC or person appointed by the Department to disregard representations in relation to a plan strategy or local policies plan if the representations are made in respect of anything that is done or proposed under certain orders or schemes made under the New Towns Act (Northern Ireland) 1965; the Housing (Northern Ireland) Order 1981; Part 7 of the Planning (Northern Ireland) Order 1991; the Roads (Northern Ireland) Order 1993; or a simplified planning zone scheme or an enterprise zone scheme under this Bill. These Orders and this Bill set out specific procedures for considering the representations and objections concerned.

Clause 20: Guidance

This clause requires that any body in carrying out any function under this part must have regard to any relevant guidance issue by the Department, Department for Regional Development or Office of First Minister and Deputy First Minister.

Clause 21: Annual monitoring report

This clause requires district councils to report annually to the Department on whether the policies in the plan strategy or local policies plan are being achieved. The clause also provides powers for the Department to make regulations prescribing what information an annual report must contain, the period it must cover, when it must be made and the form it must take.

Clause 22: Regulations

This clause gives the Department the power to make regulations in connection with the exercise by any person of local development plan functions.

Part 3: Planning Control.

This part re-enacts key provisions from the Planning (Northern Ireland) Order 1991 (the 1991 Planning Order) which define development and set the framework for the processing and determination of applications for planning permission. A new development management approach is introduced which includes assigning different categories of development to a new hierarchy which in turn will determine the method by which applications will be processed. The majority of applications will be dealt with by district councils with the Department determining applications which are of regional significance either through direct submission or call in arrangements.

Developers proposing regionally significant or major developments will be required to engage in pre-application community consultation. In addition, district councils will be required to draw up schemes which delegate decision-making on local developments to officer level. Arrangements are put in place to deal with appeals from district council decisions and provisions re-enacted which deal with the duration of planning permission. New oversight powers will mean some of the actions taken by district councils will require confirmation by the Department before they can take effect. New provisions are introduced which set out arrangements for dealing with planning applications on land belonging to councils and development by councils.

Clause 23: Meaning of “development"

This clause carries forward the broad definition of the meaning of development and clarifies what is deemed to be included under the term, “building operations". It also lists the operations or uses of land which, for the purposes of the Bill, do not involve development of land. An amendment is included to exclude (for certain buildings specified by direction) structural alteration consisting of partial demolition from the definition of development.

Clause 24: Development requiring planning permission

This clause maintains the requirement for planning permission to be sought for developing land. Permission is not required to return to a former land use after planning permission which is time bound expires. Development orders can grant planning permission without applications being required. Enforcement notices carry implicit permission for the use of the land for any purpose it could have been legally used for if the development which is being enforcement against had not been carried out.

Clause 25: Hierarchy of Developments

A new hierarchy of developments is defined and the Department can make regulations as to the classes of development which fall into either the major developments or local developments categories. The Department can require a specific application which would normally be a local development to be dealt with as if it is a major development.

Clause 26: Development’s jurisdiction in relation to developments of regional significance

This clause allows the Department to make regulations as to which applications falling within the major developments category should be submitted directly to it. Developers must approach the Department if the proposed development falls above prescribed thresholds and the Department will decide if the application is regionally significant or involves a substantial departure from the development plan, and is to be dealt with by it instead of the district council. An exception is made for urgent development by the Crown where application can be made directly to the Department. Applications under this clause follow the process similar to that previously used for Article 31 applications under the 1991 Planning Order, with the option for a public inquiry to be held by the PAC or a person appointed by the Department. If an application raises national security or security of premises issues, an inquiry route must be followed. The decision of the Department is final for these applications.

Clause 27: Pre-application community consultation

Obligations are placed on the developer to consult the community in advance of submitting an application if the development falls within the major category. This includes those major developments which the Department will determine because they are of regional significance. The minimum period of consultation is 12 weeks, and regulations will prescribe the minimum requirements for the developer. Additional requirements may be placed on the consultation arrangements for a particular development if the district council or Department considers it appropriate.

Clause 28: Pre-application community consultation report

After the community consultation in clause 27, a report must be produced and this is to be submitted with the application. Regulations can be made as to what this should contain.

Clause 29: Call in of applications, etc., to Department

This allows the Department to direct that certain applications (including those where the Secretary of State or the Department of Justice have certified that an application raises national security or security of premises issues) be referred to it instead of being dealt with by the district council. It covers applications which would not be over the thresholds specified in clause 26. The process for determination is then the same as for the regionally significant developments of that clause, with the option for a public inquiry. An inquiry route must be followed if an application raises national security or security of premises issues. The decision of the Department is final for these applications.

Clause 30: Pre-determination hearings

The Department can require the district council through subordinate legislation to provide the opportunity for the applicant to have a hearing before the district council, as part of the application process, for certain types of applications. The procedures for the hearings will be decided by the district council concerned, and it will decide on the parties which will have a right to attend the hearing.

Clause 31: Local developments: schemes of delegation

This clause requires each district council to prepare a scheme of officer delegation, stating the application types were they will allow the decision to be taken by one planning officer rather than the council. The scheme must be kept under regular review. The decision will have the same effect as one taken by the council. In individual cases the district council will be able to decide that an application which would normally fall within this scheme, be determined by the council.

Clause 32: Development orders

The Department must make a development order stating the types of development which are granted planning permission and those for which permission must be applied for to the district council or Department. The grant of permission can include permission with conditions if necessary. In the case of permitted development, the district council and Department will have the power to direct in relation to a particular case or area of land that the permission granted by the order does not apply, and an application must be made.

Clause 33: Simplified planning zones

This clause lays the basis for simplified planning zones by defining them and by prescribing their content and effect. The effect of a simplified planning zone is to grant planning permission for development specified in the scheme or for development of any specified class.

Clause 34: Making and alteration of simplified planning zone schemes

This clause enables a district council to make or alter a simplified planning zone scheme at any time in any part of its area. The exception is where a scheme has been approved by the

Department rather than adopted by the district council. In such cases, the consent of the Department is required before a scheme may be altered by the relevant district council.

In making or altering a simplified planning zone scheme district councils must take account of the regional development strategy, any guidance issued by the Department and any other matters either prescribed in regulations or contained in a direction given by the Department.

Clause 35: Simplified planning zone schemes: conditions and limitations on planning permission

This clause describes the types of conditions and limitations which may be placed on planning permission specified in a simplified planning zone scheme. It also covers the effects of a simplified planning zone on development other than that for which permission has been granted under the scheme.

Clause 36: Duration of simplified planning zone scheme

This clause provides that a simplified planning zone scheme shall last for a period of ten years from the date when it was adopted by the district council or approved by the Department. Upon expiry of the scheme, the planning permission granted by the scheme shall no longer have effect except where development authorised by it has already been commenced.

Clause 37: Alteration of simplified planning zone scheme

This clause sets out the effect of alterations to an existing simplified planning zone scheme. Such alterations range from the inclusion of additional land in the scheme to the exclusion of land previously included in the scheme and the withdrawal of planning permission.

Clause 38: Exclusion of certain descriptions of land or development

This clause provides that a number of specified types of land or development may not be included in a simplified planning zone. These include land designated as a National Park, land designated as an area of outstanding natural beauty, land declared to be an area of special scientific interest and land declared to be a national nature reserve.

The Department also has the power to make an order preventing a simplified planning zone from granting planning permission in relation to certain specified areas of land or development of a specified description.

Clause 39: Grant of planning permission in enterprise zones

This clause declares the effect of an enterprise zone designation in planning terms. It also describes the effect where modifications to an existing scheme are made. Planning permission granted under an enterprise zone scheme may be withdrawn in relation to certain developments where a direction to that effect is made by the Department.

Clause 40: Form and content of applications

The format of applications for planning permission is governed by this clause. A development order may specify information and documents which must accompany an application and the form and content of it. The provisions of the order can cover applications for any consent,

agreement or approval required by this Bill. This clause requires certain applications for planning permission and consent to be accompanied by a statement about the design principles and concepts that have been applied to the development and a statement about how issues relating to access to the development have been dealt with. Powers are also provided to enable the applications to which this is intended to apply to be prescribed in subordinate legislation.

Clause 41: Notice, etc., of applications for planning permission

The publicity requirements for applications previously contained in the 1991 Planning Order have been amended. Instead of replicating the previous provisions, this clause reflects the situation in England, Wales and Scotland, where the power to specify the publicity requirements is contained in subordinate legislation. This will allow the requirements to be regularly reviewed to keep up to date with changing media.

Clause 42: Notification of applications to certain persons

This clause carries forward the requirement for one of four certificates to be submitted with each application to satisfy the district council or Department that the owner has consented to or is aware of the application for development of their land. It covers land held in tenancy, and makes it an offence to issue a false certificate. The form of these certificates can be prescribed by development order.

Clause 43: Notice requiring planning application to be made

The district council may serve a notice on an owner or occupier requiring them to apply for planning permission for development which has been carried out without this having been granted in advance. It is an offence not to comply with this in the time specified within the notice. Provisions are included for a change of ownership and withdrawal of notices.

Clause 44: Appeal against notice under Clause 43

The notices served under clause 43 can be appealed, and the three grounds for this are set out in this clause. Appeals are made to the PAC and the appellant has the opportunity to appear before and be heard by the Commission, as does the district council.

Clause 45: Determination of planning applications

The procedure for determining a planning application requires the district council or the Department to have regard to the local development plan and any other material considerations. Representations made must be taken into account when determining the application.

Clauses 46 to 49: Power to decline to determine subsequent or overlapping applications

These clauses clarify and expand the cases where a district council or the Department may decline to determine subsequent, repeat or overlapping applications. Existing powers within the 1991 order are expanded to allow district councils to decline to determine a repeat application where the PAC has refused a similar deemed planning application within the last 2 years. District councils may also decline to determine overlapping applications made on the same day as a similar application and where similar applications are under consideration by the PAC.

Clause 50: Duty to decline to determine application where Clause 27 not complied with

If the pre-application community consultation requirements in clause 27 have not been complied with, the district council or Department must decline to determine the application. The district council or Department can request additional information in order to decide whether to decline the application.

Clause 51: Assessment of environmental effects

Regulations may be made by the Department requiring the environment effects of development to be a consideration when determining a planning application. This allows the EU requirements to be exceeded in Northern Ireland legislation, as is the case in England, Wales and Scotland.

Clause 52: Conditional grant of planning permission

Planning permission can be granted by the district council or Department with conditions. These can relate to regulation of the land use, or restoration of the land at the end of a specified period of time.

Clause 53: Power to impose aftercare conditions on grant of mineral planning permission

The power to impose aftercare conditions is made available to district councils and the Department to ensure mineral sites are restored to the required standard once development has finished.

Clause 54: Permission to develop land without compliance with conditions previously attached

A person who has been granted planning permission with conditions can apply under this clause to have them removed, provided the time has not expired on the planning permission. The form and content of applications will be set out in the development order. The district council or Department can amend or replace the conditions or remove them completely if it considers appropriate.

Clause 55: Planning permission for development already carried out

This clause allows the district council or Department to grant planning permission retrospectively on application. This can cover development which has no planning permission or which did not comply with conditions attached to a permission, including a time condition.

Clause 56: Directions etc. as to method of dealing with applications

The Department may make a development order to specify how applications are to be dealt with. It can direct that the district council is restricted in its power to grant permission for some developments, and require it to consider conditions suggested by the Department before granting permission on an application. A development order may require district councils and the Department to consult specified authorities or persons before determining applications. A development order can also specify who applications need to be sent to under the Bill, and who should in turn be sent copies.

Clause 57: Effect of planning permission

This provision states that once planning permission is granted it has effect for the benefit of the land and of anyone who has an interest in the land at the time. If the permission includes the erection of a building, it can specify the use to which this building should be put. If the permission does not specify a use, then it is assumed to be the use associated with the purpose for which the building was designed.

Clause 58: Appeals

If an application made to a district council is refused or granted subject to conditions the applicant may appeal to the PAC. The previous time limit for lodging an appeal is reduced from 6 months to 4 or such other period as may be prescribed by development order. If the applicant or district council wish, they may appear before and be heard by the Commission.

Clause 59: Appeal against failure to take planning decision

An applicant may ask the PAC to determine their planning application if a district council has not done so within a specified or agreed time (a “non determination appeal").

Clause 60: Duration of planning permission

Every planning permission granted or deemed to be granted, will continue to be subject to the condition that the development must begin within 5 years of the date on which permission is granted (or such other period as considered appropriate by the Department or district council which granted the permission).

Clause 61: Duration of outline planning permission

Outline planning permission establishes for the applicant whether a proposal is acceptable in principle before embarking on the preparation of detailed plans (“reserved matters"). Unless provided otherwise reserved matters must be submitted for approval within 3 years of the grant of outline planning permission and development must be begun within 5 years of the grant of outline permission or 2 years from the final approval of reserved matters.

Clause 62: Provisions supplementary to Clauses 60 and 61

This clause includes ancillary provisions required for the working of clauses 60 and 61 above. These include defining planning authority as a district council, the Department, the PAC (when planning permission is granted on foot of an enforcement appeal) and the Department of Enterprise Trade and Investment when planning permission is deemed to be granted under Schedule 8 of the Electricity (NI) Order 1992 (NI 1). Those operations which establish the time of commencement of development are also defined.

Clause 63: Termination of planning permission by reference to time limit

This clause allows a district council to issue a “completion notice" to require a development which has a time bound planning permission, and which has been begun, to be completed. The district council must give at least one year for the completion. Notices can be withdrawn by the district council if appropriate.

Clause 64: Effect of completion notice

Completion notices issued by the district council under clause 63 must be confirmed by the Department before they take effect. The person on whom it is served can request a hearing before the PAC, as can the district council. Once it takes effect the planning permission expires at the end of the period allowed for the development's completion.

Clause 65: Power of Department to serve completion notices

This allows the Department to issue completion notices which have the same effect as those issued by the district council. It must consult the district council before doing so.

Clause 66: Power to make non-material changes to planning permission

District councils may make a change to a planning permission already issued on application. The change must not have any material effect on the permission, and it includes the power to amend or remove conditions or impose new ones.

Clause 67: Revocation or modification of planning permission by council

This clause allows a district council to revoke or modify any planning permission, provided the operations have not been completed or change of use has not yet occurred.

Clause 68: Aftercare conditions imposed on revocation or modification of mineral planning permission

This clause permits a district council to impose aftercare conditions where a mineral planning permission has been modified or revoked via an order served under clause 67.

Clause 69: Procedure for Clause 67 orders: opposed cases

This clause requires that an opposed modification or revocation order served under clause 67 by a district council must be confirmed by the Department before it can take effect. The person on whom it is served can request a hearing before the PAC, as can the district council. The Department may confirm an order with or without modification.

Clause 70: Procedure for Clause 67 orders: unopposed cases

This clause allows for an expedited procedure for clause 67 cases in that the confirmation of the Department is not required.

Clause 71: Revocation or modification of planning permission by the Department

This gives the power for the Department to revoke or modify planning permission itself, after consulting the district council. The district council has the opportunity to request a hearing prior to its issue. The notice has the same effect as if it were issued by the district council, and applies to mineral permissions.

Clause 72: Orders requiring discontinuance of use of alteration or removal of buildings or works

The district council can issue an order requiring a particular land use to stop or require buildings to be removed or altered. The NIHE has a duty to house anyone whose place of residence is displaced if there is no reasonable alternative.

Clause 73: Confirmation by Department of Clause 72 orders

The Department must confirm orders issued by the district council in clause 72 before they take effect. They may modify it before they confirm it. Notification requirements for the district council are contained in this clause, which take place at the same time as the notice is submitted to the Department for approval. The person on whom the notice is served has the opportunity to appear before and be heard by the PAC.

Clause 74: Power of Department to make Clause 72 orders

This allows the Department to issue an order under clause 72 instead of the district council, and it has the same effect. It must first consult the district council.

Clause 75: Planning agreements

This clause enables any person who has an estate in land to enter into a planning agreement with either the district council or the Department (whichever is the relevant authority). A planning agreement may facilitate or restrict the development or use of the land in any specified way, require operations or activities to be carried out, or require the land to be used in any specified way. An agreement may also require a sum or sums to be paid to the relevant authority or to a Northern Ireland department on a specified date or dates or periodically. The relevant authority has the power to enforce a planning agreement by entering the land and carrying out the operations itself. Any expenses incurred through doing so are recoverable from the person or persons against whom the agreement is enforceable.

Clause 76: Modification and discharge of planning agreements

This clause provides that a planning agreement may not be modified or discharged except by agreement between the relevant authority and the person or persons against whom the agreement is enforceable. It sets out the conditions under which a planning agreement may be modified or discharged and enables regulations to be made with respect to applications under subClause (4) and determinations under subClause (7).

Clause 77: Appeals

This clause enables a person who applies for the modification or discharge of a planning agreement to appeal to the planning appeals commission where the relevant authority fails to give notice of its determination to the applicant within such period as may be prescribed, or determines that a planning agreement shall continue to have effect without modifications.

Clause 78: Land belonging to councils and development by councils

This clause introduces new powers setting out the procedure for dealing with district councils' own applications for planning permission. The new powers are introduced to ensure district

councils do not face a conflict of interest in dealing with their own proposals for development. The principle remains that district councils will have to make planning applications in the same way as other applicants for planning permission. Provisions are introduced for district councils to grant planning permission for their own development or for development carried out jointly with another person and for development to be carried out on land owned by district councils.

Specifically, the new powers enable the Department to make regulations modifying the application of Parts 3 (Planning Control), 4 (Additional Planning Control - apart from Chapters 1 and 2 of that Part) and 5 (Enforcement) of the Planning Bill in relation to land of interested district councils; and the development of any land by interested district councils jointly with any other persons. The regulations will deal with governance arrangements and will ensure that conflicts of interest are avoided.

Part 4: Additional Planning Control.

This part is subdivided into chapters on listed buildings and conservation areas, hazardous substances, trees, review of mineral permissions and advertisements controls. The bulk of these functions are re-enacted from the 1991 Planning Order and transferred to district councils, although some, for example, the listing of buildings of special architectural or historic interest, are retained by the Department. Arrangements are also put in place to allow applications to be called in by the Department for its determination. New oversight powers will mean some of the actions taken by councils will require confirmation by the Department before they can take effect. New provisions are introduced which set out arrangements for dealing with consent applications on land belonging to district councils and development by council.

Clause 79: Lists of buildings of special architectural or historic interest

This clause will ensure that the Department will continue to compile lists for buildings of special historic or architectural merit. The Department will continue to consult with the Historic Buildings Council and the appropriate district council before it compiles or amends any list.

Clause 80: Temporary listing: building preservation notices

Under this clause the district council can issue a building preservation notice served on the owner or occupier, to protect a building in its area which is not a listed building and which is in danger of demolition or alteration which would affect its character. The notice remains in force for 6 months or until the Department either lists the building under clause 79 or notifies the district council that it does not intend to do so.

Clause 81: Temporary listing in urgent cases

This clause enables the district council, where it appears urgent that a building preservation notice should come into force, to fix the notice conspicuously to an object on the building instead of serving the notice on the owner or occupier.

Clause 82: Lapse of building preservation notices

This clause applies where a building preservation notice ceases to be in force after the 6 month expiry period has lapsed or by departmental notification. A person who commits an offence under clause 84 “Control of works for demolition, alteration or extension of listed buildings" or clause 146 “Offence where enforcement notice not complied with" while the notice is current can

still be prosecuted and punished even after the notice has ceased to be in force under clause 82. However, any applications for listed building consent – or any consent granted - while the notice was in force shall lapse. Likewise, any listed building enforcement notice served while the notice was in force shall cease to have effect.

Clause 83: Issue of certificate that building is not intended to be listed

This clause describes the circumstances in which the Department can issue a certificate that it does not intend to list a building. This also precludes the Department from listing that building for a period of 5 years or for the district council to issue a building preservation notice during that period.

Clause 84: Control of works for demolition, alteration or extension of listed buildings

This clause provides that carrying out unauthorised works on a listed building will be an offence, and sets out the penalties and the circumstances when works on a listed building may be defended from prosecution. It further establishes when works for demolition, alteration or extension are authorised and excludes ecclesiastical buildings from the workings of this provision.

Clause 85: Applications for listed building consent

This clause specifies that applications for listed building consent must be made in a manner and format which will be specified in regulations. The regulations shall specify that applications for consent must include statements about design principles, access to the building, publicity for the application and requirements as to consultation. Regulations must also specify requirements for the district councils to take account of responses from consultees.

Clause 86: Notification of applications for listed building consent to certain persons

This clause sets out the requirements to be satisfied before a district council will entertain an application for listed building consent.

Clause 87: Call in of certain applications for listed building consent to Department

Under this clause the Department may direct that certain applications (including those where the Secretary of State or Department of Justice have certified that an application raises national security or security of premises issues) be referred to it instead of being determined by the district council. The direction may relate to individual applications or to a class of buildings as may be specified in the direction. The clause also allows the Department to call a public local inquiry to be held by the PAC or a person appointed by the Department. An inquiry route must be followed if an application raises national security or security of premises issues.

Clause 88: Duty to notify Department of applications for listed building consent

This clause places a duty on the district council, where it intends to grant an application for listed building consent, to first notify the Department providing details of the works for which consent is required. This allows the Department to decide if it wishes to call the application in.

Clause 89: Directions concerning notification of applications, etc.

This clause enables the Department to direct, in applications for listed buildings consent which it may specify, that clause 88 does not apply. Thus, while such a direction is in force, district councils may determine applications of the type specified in the direction in any way they think fit. The Department may also direct district councils to notify the Department and other specified persons of any listed building consent applications and district council decisions on those applications.

Clause 90: Decision on application for listed building consent

This power ensures that an application for listed building consent may be refused, granted without conditions or granted subject to conditions. It also establishes the factors a district council or the Department must consider when deciding to grant listed building consent or any conditions that it wishes to attach to the consent.

Clauses 91 and 92: Power to decline to determine subsequent or overlapping application for listed building consent

These clauses clarify and expand the cases where applications for subsequent (repeat) or overlapping listed building applications may be declined.

Clause 93: Duration of listed building consent

This requires that listed building consents must be granted subject to a condition that the works must begin within 5 years of the grant of consent or any other such time as the district council or Department may direct.

Clause 94: Consent to execute works without compliance with conditions previously attached

This clause relates to applications for listed building consent for the execution of works to a building without complying with conditions subject to which a previous consent was granted. An applicant can apply to a district council - or the Department if it granted the original consent to have the conditions (other than those relating to time limits) to which a previous listed building consent was subject changed or set aside if it is considered that they are no longer appropriate.

Clause 95: Appeal against decision

Under this clause an applicant can appeal to the PAC where their application to a district council for listed building consent or approval is refused or where they object to any conditions that have been imposed. As with appeals under clause 58 for planning applications, the appeal must be lodged with the Commission within 4 months or such other period as may be prescribed by development order. If the applicant or district council wish, they may appear before and be heard by the Commission.

Clause 96: Appeal against failure to take decision

An applicant may appeal to the PAC if a district council has failed to determine an application for listed building consent within a specified period or extended period as agreed in writing between the applicant and the district council.

Clause 97: Revocation or modification of listed building consent by council

A district council may revoke or modify listed building consent in a manner similar to clause 67 that is used for the revocation and modification of planning permission. Such action can only be taken before authorised works are completed.

Clause 98: Procedure for Clause 97 orders: opposed cases

Under this clause Clause 97 orders made by a district council but which have been opposed by the parties specified in the clause, shall not take effect unless confirmed by the Department (following a hearing by the PAC if requested by an opposing party).

Clause 99: Procedure for Clause 97 orders: unopposed cases

This clause applies where a district council has made an order under Clause 97 revoking or modifying a listed building consent and the owner or occupier of the land and all persons who the district council think will be affected by the order have notified the district council in writing that they have no objections. The Department's confirmation is not required in such cases.

Clause 100: Revocation or modification of listed building consent by the Department

This clause enables the Department to make an order revoking or modifying the consent to such an extent as it considers expedient but the Department must consult with the relevant district council before doing so.

Clause 101: Applications to determine whether listed building consent required

Under this clause if a person proposing to execute any works to a listed building wishes to have it determined as to whether the works would involve the alteration or extension of the building in a manner which would affect its character as a building of special architectural or historic interest, they may apply to the district council to determine the question.

Clause 102: Acts causing or likely to result in damage to listed buildings

This clause establishes that anyone carrying out unauthorised works on a listed building will be guilty of an offence. It also establishes that a person who fails to prevent damage or further damage resulting from this offence is guilty of a further offence.

Clause 103: Conservation areas

This clause enables and sets out the procedures whereby a district council can designate areas within its remit which it decides are of special architectural or historic interest with the objective

to preserve or enhance its character or appearance. The clause also enables the Department to designate a conservation area but it must consult with the relevant district council before doing so. The district council or the Department must pay special regard to enhancing the character or appearance of these areas where the opportunity to do so arises. This amendment is the Department's response to the House of Lords "South Lakeland" ruling and allows its policy for the enhancement of conservation areas to be maintained.

Clause 104: Control of demolition in conservation areas

This clause prevents the demolition of unlisted buildings in conservation areas without consent. Such buildings should not be demolished without the consent of the appropriate district council or Department. The Department may specify by direction buildings to which this clause does not apply. An addition to this clause provides (following the House of Lords "Shimizu ruling") that structural alteration of buildings to which this clause applies, where the alteration consists of partial demolition, will also require consent. This effectively creates a new offence of partial demolition of an unlisted building in a conservation area without consent.

Clause 105: Grants in relation to conservation areas

This clause permits the Department to continue to make grants or loans to offset expenditure incurred in the promotion, preservation or enhancement of the character or appearance of any conservation area.

Clause 106: Application of Chapter 1, etc., to land and works of councils

This clause introduces new powers setting out the procedures for dealing with district councils' own applications for listed building consent. The provision of the Bill which apply are listed with an enabling power taken to allow the Department by regulations, to modify and to make exceptions from certain provisions of the Bill in their applicability to district councils.

Clause 107: Requirement of hazardous substances consent

This clause continues the basis of control over hazardous substances and the requirement for hazardous substances consent.

Clause 108: Applications for hazardous substances consent

This clause is a regulation making power making provision for the form and content of consent applications and makes it an offence to supply false information. Regulations made under this clause may also require a district council to consult the Health and Safety Executive (HSENI) before determining an application for hazardous substances consent.

Clause 109: Determination of applications for hazardous substances consent

This clause gives the district council the power to grant or refuse hazardous substances consents, outlines certain factors that the district council shall have regard to and gives the district council the power to attach conditions to any consent. A new amendment requires a district council to have regard to the advice given by the HSENI during the consultation required

by clause 108. A district council may only grant consent if the conditions are consistent with HSENI advice.

Clause 110: Grant of hazardous substances consent without compliance with conditions previously attached

This clause confers power for a district council or the Department to review the conditions subject to which the consent had previously been granted. Thus a person making a fresh application for hazardous substances consent can apply to have the conditions attached to the original consent reviewed.

Clause 111: Revocation or modification of hazardous substances consent

Under this clause where it appears to a district council that there has been a material change of use of land, or planning permission has been granted for development and the carrying out of which would involve a material change of use of such land, and the development to which the permission relates has been commenced, it may revoke the consent. The district council may revoke the consent if it relates to only one substance or, if it relates to more than one substance it may revoke it or revoke so far as it relates to a specified substance. Any person on whom a notice is served, by the district council, must be afforded an opportunity of appearing before, and being heard by, the PAC.

Clause 112: Confirmation by Department of Clause 111 orders

This clause confirms that an order under Clause 111 will not take effect unless it is confirmed by the Department. The Department may confirm the order either without modification or subject to such modification as it thinks fit. When the district council submits a Clause 111 order for confirmation it must also notify the landowner, any person who appears to it to be in charge of the land or any other person who, in its opinion will be affected by the order. This notice must also specify that any person on whom the notice is served can appear before and be heard by the PAC. The Department must give such an opportunity to both that person and the district council.

Clause 113: Call in of certain applications for hazardous substances consent to Department

Under this clause the Department may direct that certain applications (including those where the Secretary of State or Department of Justice have certified that an application raises national security or security of premises issues) be referred to it instead of being determined by the district council. The direction may relate to individual applications or to a class of buildings as may be specified in the direction. The clause also allows the Department to call a public local inquiry to be held by the PAC or a person appointed by the Department. An inquiry route must be followed if an application raises national security or security of premises issues.

Clause 114: Appeals

This clause gives a right of appeal when an application for hazardous substances consent is refused or granted subject to conditions. The appeal is made to the PAC.

Clause 115: Effect of hazardous substances consent and change of control of land

This clause ensures that hazardous substances consent ceases to have effect if there is a change in the control of part of the land and requires that anyone taking control of the land must make a fresh application, unless an application for the continuation of the consent has previously been made to the district council. The district council is responsible for the grant of an application for the continuance of the consent and the Department will have no role in this regard.

In dealing with an application the district council must have regard to any advice given by the HSENI in relation to the application.

Clause 116: Offences

Under this clause if there is a contravention of hazardous substances control the appropriate person will be guilty of an offence. This is the case when a quantity of hazardous substance (equal to exceeding a controlled quantity) is present on or has been present on, over or under land and there is no hazardous substances consent for the presence of that substance. Alternatively, an offence is committed if the quantity exceeds the maximum permitted by the consent or there has been a failure to comply with any conditions attached to the consent. The person guilty of the offence is the person knowingly causing the substance to be present, any person who allows it to present or the person in control of the land. It shall be an defence for the accused to prove that they did know that the substance was present (or was present in quantities that contravened the consent), of if they can prove that all reasonable precautions were taken or that commissioning of the offence could only be avoided by taking action amounting to a breach of a statutory duty.

Clause 117: Emergencies

This clause ensures that this power will be retained by the Department only. The Department may make a direction that the presence of a hazardous substance specified in the direction is necessary for the effective provision of that service or commodity if it appears that the community is likely to be deprived of an essential service or commodity.

Clause 118: Health and safety requirements

This provision prevents conflict between any action that may be taken under the hazardous substances provisions and any relevant statutory provision. Where such conflict arises, any consent which allows these actions shall be void. There is a requirement to consult the HSENI when a consent or hazardous substances contravention notice is believed to be void in this manner and the consent must be revoked if HSENI advise that the consent or notice has been rendered void.

Clause 119: Applications by councils for hazardous substances consent

This clause introduces new powers setting out the procedures for dealing with district councils' own applications for hazardous substances consent. The provisions of the Bill which apply are listed with an enabling power taken to allow the Department by regulations, to modify and to make exceptions from certain provisions of the Bill in their applicability to district councils.

Clause 120: Planning permission to include appropriate provision for trees

This clause places a duty on a district council and the Department to make provision for the preservation or planting of trees when granting planning permission.

Clause 121: Tree preservation orders: councils

This clause allows district councils to make tree preservation orders (TPO). TPOs prohibit the cutting down or damaging of protected trees and can also secure the replanting of felled trees. TPOs can apply to an individual tree, a group of trees or woodland. The Department may make regulations as to the form of TPOs and the procedure to be followed in the making of such orders. No TPO shall apply to the cutting down, uprooting, topping or lopping of trees which are dying or dead or have become dangerous.

Clause 122: Provisional tree preservation orders

This clause allows a tree preservation order to be made with immediate effect by a district council, in circumstances which they deem to be urgent, and does not require previous confirmation.

Clause 123: Power for Department to make tree preservation orders

Under this clause the Department, after it has consulted the relevant district council, can decide to make a tree preservation order or amend or revoke an order.

Clause 124: Replacement of trees

This clause gives the district council the power to require the owner of land where a TPO is in force to replace any trees that have been removed.

Clause 125: Penalties for contravention of tree preservation orders

This clause provides for penalties to be imposed in respect of the contravention of a TPO. It also makes it an offence to cut down or destroy a tree in contravention of a tree preservation order, or to top or lop a tree in such a way as is likely to destroy it.

Clause 126: Preservation of trees in conservation areas

This clause applies the protection given by a TPO to trees within conservation areas. Thus it is an offence to carry out works to a tree within a conservation area unless notice was served of the intention to carry out works to the tree, consent was given or the works were carried out 6 weeks after the notice was issued and before the end of 2 years.

Clause 127: Power to disapply Clause 126

The Department can make regulations under this provision to disapply the requirement to preserve trees in conservation areas: Clause 126). This can relate to specified conservation areas, trees of specified species or size, trees belonging to specified persons or bodies or specified acts that may be carried out on the trees.

Clause 128: Review of mineral planning permissions

This clause and the provisions introduced by the schedules enable district councils to start a process resulting in an initial review of all mineral permissions granted in Northern Ireland thereby ensuring that their conditions meet modern expectations and current environmental standards. The provisions also prevent dormant sites from reopening without a review of the conditions attached to their permissions. A further duty is placed on district councils to instigate additional periodic reviews of all mineral sites. Although the majority of these functions will fall to the district councils, the Department will be able to require that certain applications for review are referred to it.

Clause 129: Control of advertisements

This clause enables the Department to make regulations for controlling the display of advertisements in the interests of amenity or public safety. These allow the regulation of the dimensions, appearance and position of advertisements and also require that the consent of the relevant district council is obtained before the advertisement can be displayed. The regulations may prohibit the display in any area of special control (which may be defined by means of orders made or approved by the Department) of all advertisements except advertisements of such classes as may be prescribed. Finally, planning permission is deemed to be granted where the display of advertisements, in accordance with regulations made under this clause, involves the development of land.

Part 5: Enforcement.

This part deals with enforcement powers which may be invoked where development has been carried out without the requisite grant of planning permission or consent under Part 3 or 4 of the Bill or a condition attached to a planning permission or consent has been breached. Enforcement powers within the 1991 Planning Order are re-enacted and transferred to district councils who will be responsible for enforcement for all breaches of planning control. The Department, however, will retain certain powers e.g. to issue an enforcement notice or stop notice where, after consultation with the district council, it appears expedient to do so. All enforcement functions transferred to councils will be restricted to their council district. The Department's powers will cover all district council areas of Northern Ireland. This part also introduces new powers for district councils to issue Fixed Penalty Notices for the offence of failure to comply with an enforcement notice or breach of condition notice.

Clause 130: Expressions used in connection with enforcement

This clause defines a breach of planning control and sets out that enforcement action constitutes the issuing of an enforcement notice or breach of condition notice.

Clause 131: Time limits

This clause sets out the time period within which action may be taken in respect of breaches of planning control, by establishing two different limitation periods for enforcement action i.e. the 4 year rule and the 10 year rule. Where the breach consists of carrying out without planning permission of building, engineering, mining or other operations no enforcement action may be taken after 4 years beginning with the date on which the operations were substantially completed.

If the breach consists in the change of use of any building to use as a single dwelling-house no enforcement action may be taken after 4 years beginning with the date of the breach. In the

case of any other breach of planning control no enforcement action may be taken after the end of 10 years beginning with the date of the breach.

Clause 132: Power to require information about activities on land and Clause 133: Penalties for non-compliance with planning contravention notice

Clause 132 provides for the issue of a planning contravention notice, giving the district council power to obtain information prior to taking enforcement action, to encourage dialogue with any persons thought to be in breach of planning control and to secure their co-operation in taking corrective action. Failure to comply with a notice issued under clause 132 within 21 days of its service is an offence, liable on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1,000). In addition any person who makes a false or misleading statement in respect of a notice is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £ 5,000).

Clauses 134, 135 and 136: Temporary stop notices including restrictions and offences

A district council may serve a temporary stop notice to halt a breach of planning control for a period of up to 28 days as soon as the breach is identified, without first having had to issue an enforcement notice. The district council has up to 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue. The provisions also impose certain limitations on activities on the land in question. Temporary stop notices issued under clause 134 are not applicable to residences, or to other activities which the Department can specify in regulations. They cannot be issued for development or activities whose time limits for enforcement have passed. Only one notice can be issued unless further enforcement action is taken. Clause 136 specifies that contravention of a notice issued under clause 134 is a criminal offence, punishable on summary conviction by a fine of up to £30,000 or on indictment by an unlimited fine.

Clause 137: Issue of enforcement notice by councils

This clause provides the district council with the power to issue an enforcement notice to remedy a breach of planning control. An enforcement notice must be served within defined time periods on the owner or occupier of the land to which the notice relates and on any other person with an estate in the land.

Clause 138: Issue of enforcement notice by Department

This clause provides the Department with the power to issue an enforcement notice, however the Department must consult the district council for that area before doing so.

Clause 139: Contents and effect of enforcement notice

The enforcement notice has to be sufficiently clear to enable any recipient to understand exactly what breach of planning control is alleged and what action is required to remedy this. A timeframe must be stated in the notice during which time all actions to remedy the breach must be completed. The district council or Department have the flexibility to require only partial remedy of a breach of planning control where, at the time of enforcement, a total remedy is not considered necessary.

Clauses 140 and 141: Variation and withdrawal of enforcement notices by councils or Department

These clauses allow for the withdrawal or variation of an enforcement notice by the district council or Department without prejudice to their power to issue a further notice.

Clause 142: Appeal against enforcement notice

This clause includes provisions which specify the grounds on which an appeal against an enforcement notice can be made and the procedures for making a valid appeal. Before determining an appeal under these provisions the PAC must provide all appellants, the relevant district council or the Department the opportunity to appear before and be heard by the Commission.

Clause 143: Appeal against enforcement notice – general supplementary provisions

This clause provides that the PAC must quash an enforcement notice, vary it or uphold it on appeal. The Commission may correct any mistakes in the notice or vary its terms as long as the correction or variation can be made without injustice to either the appellant, the district council or the Department.

Clause 144: Appeal against enforcement notice – supplementary provisions relating to planning permission

When determining an appeal under clause 142 the PAC can grant planning permission for the matters the notice refer to, change the conditions of an existing permission or issue a certificate of lawfulness of existing use or development. The PAC must notify the appellant of the amount of the planning application fee and specify the period within which it must be paid. If the fee is not paid within that period then the appeal on the planning merits will lapse and the Commission will be barred from considering or determining the deemed planning application.

Clause 145: Execution and cost of works required by enforcement notice

This clause includes provisions which allow the district council or the Department to enter land and carry out steps to ensure compliance with an enforcement notice and to recover from the land owner any reasonable expenses in doing so. It is an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale, to wilfully obstruct anyone authorised to carry out those steps.

Clause 146: Offence where enforcement notice not complied with

This clause deals with offences for not complying with an enforcement notice. The maximum level of fine, on summary conviction, is £30,000. A person can be convicted and fined on indictment for this type of offence. The courts when determining the level of fine shall have regard to any financial benefit, which has accrued or appears likely to have accrued, in consequence of the offence. The clause also provides that a person found guilty of an offence, and who continues not to comply with a notice, may be guilty of a further offence, and subsequently, of still further offences until there is compliance with a notice.

Clause 147: Effect of planning permission etc., on enforcement or breach of condition notice

If planning permission is subsequently granted to development mentioned in an enforcement notice or a breach of condition notice, the notice ceases to have effect in relation to the part or parts of the development which has permission. This does not remove any previous liability of a person for non-compliance with either notice.

Clause 148: Enforcement notice to have effect against subsequent development

Once an enforcement notice has been complied with the requirements within it continue to stand for future use of the land to which it relates. Discontinuance of use must be permanent, as must alteration or removal of buildings. To breach this requirement is punishable by a level 5 fine (currently £5,000).

Clause 149: Service of stop notices by councils and Clause 150 Service of stop notices by Department

These clauses allow the district council or the Department to issue a stop notice requiring that an activity for which an enforcement notice has been issued should cease. The Department must consult the appropriate district council before serving a stop notice. A stop notice has immediate effect unless the district council or Department state otherwise. The contravention of a stop notice is an offence; the maximum level of fine for contravention of a stop notice is £30,000 on summary conviction; a person may be convicted and fined on indictment for this type of offence; and courts are required to take account of any benefits accrued or which appear likely to accrue as a result of the offence.

Clause 151: Enforcement of conditions

This clause provides for the district council to issue a breach of condition notice for breaches of conditions attached to a planning permission. It may be served if there is clear evidence that a planning condition has not been complied with. Non-compliance with a breach of condition notice shall be an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Clause 152: Fixed penalty notice where enforcement notice not complied with and Clause 153: Fixed penalty notice where breach of condition notice not complied with

Clauses 152 and 153 enable an authorised officer of a district council, to issue a fixed penalty notice for the offences of failure to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court. The amount of the penalty can be such amount as may be prescribed. The fixed penalty payable is reduced by 25% if paid within 14 days.

Clause 154: Use of fixed penalty receipts

This clause enables district councils to use the receipts from fixed penalty notices issued under clauses 152 and 153 for the purposes of enforcement functions or other functions specified in regulations.

Clause 155: Injunctions

This clause gives the district council a power to apply to the Courts for an injunction to prevent any actual or threatened breach of planning control. This power also applies in relation to unauthorised demolition or works to a listed building, breaches of a tree preservation order and certain acts in respect of trees in a conservation area; and, any actual or apprehended breach of hazardous substances control.

Clause 156: Issue of listed building enforcement notices by councils

This clause enables a district council to issue a listed building enforcement notice where the requirement to obtain listed building consent for works to a listed building has not been complied with. This includes if conditions associated with that consent are not being adhered to. The notice must set out the steps to be taken to remedy the breach and the timeframe allowed.

Clause 157: Issue of listed buildings enforcement notices by Department

The Department may issue a listed building enforcement notice, after consulting the appropriate district council, and this has the same effect as a notice issued by a district council.

Clause 158: Appeal against listed building enforcement notice

Notices issued under clauses 156 or 157 may be appealed and this clause sets out the timings and possible grounds for appeal. Appeals are determined by the PAC, and the Commission can grant listed building consent or discharge/substitute any condition attached to previous consent.

Clause 159: Effect of listed building consent on listed building enforcement notice

If listed building consent is subsequently granted to development mentioned in a listed building enforcement notice, the notice ceases to have effect in relation to the part or parts of the development which has consent. This does not remove any previous liability of a person for non-compliance.

Clause 160: Urgent works to preserve building

The district council or the Department may carry out and recover the costs of urgent works to either a listed building or one which the Department has directed that this clause shall apply. The Department may direct this clause applies to buildings in a conservation area. A notice issued to the owner can be appealed to the PAC on the grounds specified in this clause.

Clauses 160 and 161: Hazardous substances contravention notice (including variation)

These clauses enable district councils to issue a hazardous substances contravention notice for a contravention of hazardous substances control. Service requirements and specifics to be contained within the notice are outlined in clause 160. A notice can be withdrawn, and the Department is required to make regulations to cover appeals provisions and may make further regulations as to the specific requirements of the notice. Clause 162 allows the district council to vary a notice which it has already issued, regardless of whether the notice has taken effect.

Clauses 163 and 164: Enforcement of duties as to replacement of trees and appeals against Clause 163 notices

These provisions include enforcement measures in respect of the protection of trees that are subject to a TPO with a power for the district council to enforce the duty to replace trees subject to a TPO. They also set out (in clause 164) specific grounds and method of appeal against enforcement notices issued under clause 163 in relation to trees.

Clause 165 and 166: Execution and cost of works required by clause 163 notice and enforcement of controls as respects trees in conservation areas

Clause 165 enables the district council to enter onto land to replant trees subject to a TPO, and to recover any costs incurred as a civil debt. Clause 166 places a duty on an owner to replace trees that are removed in a conservation area.

Clause 167: Enforcement of orders under Clause 72

This clause includes provisions dealing with enforcement of orders (issued under clause 72) requiring the discontinuance of use or alteration or removal of buildings or works. The district council or the Department is permitted to enter the land and carry out any works required by the order, and recover the costs as a civil debt. Provisions cover change of ownership of land and the failure to comply being attributed to a third party.

Clauses 168 and 169: Certificate of lawfulness of existing use or development and Certificate of lawfulness of proposed use or development

Clause 168 enables a person to apply to the district council for a certificate to establish whether any existing use or development, or non compliance with a condition on a planning approval is lawful. Provisions cover the circumstances for issue and actual requirements of the certificate. Clause 169 enables any person to apply to the district council to establish whether any proposed use or development, or any operations to be carried out in, on, over or under land is lawful. Again, provisions cover the circumstances for issue and actual requirements of this certificate.

Clauses 170 to 173: Certificates under Clauses 168 and 169, supplementary provisions, offences, appeals against refusal or failure to give decision on applications, further provision as to appeals under clause 172

Clause 170 covers supplementary provisions associated with procedures for obtaining/revoking the certificates under clauses 168 and 169 to be specified by development order. Clause 171 deals with offences and sets out that any person who makes a false or misleading statement in respect of procuring a certificate will, on summary conviction, be liable to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both. Clause 172 provides a right of appeal to the PAC against a district council's refusal or failure to give a decision on applications for a certificate. The PAC can grant the appellant the certificate or dismiss the appeal if it considers the district council's decision appropriate. In relation to appeals clause 173 provides the opportunity for all appellants and the district council to appear before and be heard by the commission.

Clause 174: Enforcement of advertisement control

This clause allows a district council to deal with enforcement of advertisement control. On conviction for display of an advertisement contravening regulations, made under clause 129 for the control of advertisements, a person is liable to a maximum fine up to level 4 on the standard scale (currently £2,500). The defendant may be a landowner / occupier or those whose advertisement is being displayed.

Clauses 175, 176 and 177: Rights to enter without warrant, under warrant and supplementary provisions

Clause 175 allows any person authorised by the district council to enter land without a warrant to carry out enforcement functions under this Bill. The provisions also enable the Department to enter land prior to issuing an enforcement notice, listed building enforcement notice, stop notice, following consultation with the district council. Clause 176 provides that if entry to land has been refused or the case is urgent, the district council or Department can obtain a warrant to enter the land. Clause 177 covers administrative arrangements for the entering of land either with or without a warrant, and includes offence provisions e.g. an offence of obstructing the entry of authorised persons.

Part 6: Compensation.

This Part carries forward the compensation provisions contained in the Land Development Values (Compensation) Act (NI) 1965, The Planning (NI) Order 1972 and the Planning Reform (NI) Order 2006.

The responsibility for certain compensation functions which previously fell to the Department is now transferred to district councils. These functions are:

- Compensation where planning permission is revoked or modified. Note that compensation may also be payable when listed building or hazardous substances consent is revoked or modified. Furthermore, there may be a compensation liability when there has been a change to the person in control of part of some land where a hazardous substances consent applies and an application for continuation of the consent has been modified or revoked.
- Compensation where an order is made discontinuing the use of land, or conditions imposed upon the continuation of its use, or when the removal or alteration is required of any buildings or works on the land.
- Compensation in respect of tree preservation orders whereby loss or damage may be caused by the refusal of consent (or the grant of consent subject to conditions) to fell, lop or top a tree protected by a preservation order.
- Compensation is also payable when there is loss or damage directly attributable to the prohibition contained in a stop notice or a temporary stop notice.
- Compensation for loss or damage caused by the service of a listed building preservation notice.

The Department will continue to discharge some planning functions under the new Planning Bill. In such cases any orders made by the Department will be regarded as if they had been made by the relevant district council. This means any compensation liability arising from the Department's decisions will fall to that district council. Provision is provided elsewhere in clause 223 to allow a government department to contribute to the compensation costs of a council if those costs were

incurred by a council decision or order made in the interest of services provided by that government department.

Clause 178: Compensation where planning permission is revoked or modified

Clause 178(1) transfers the functions under Clauses 26 and 27 of the Land Development Values (Compensation) Act 1965 (“the 1965 Act") from the Department to district councils on the day of transfer. This excludes certain functions to be retained by the Department, namely setting the time within which the compensation claim is to be lodged (Clause 20(2) as applied by Clause 26(6)) and compensation recovery (Clause 24 as applied by Clause 27(5)). Clause 178(3) ensures that references to the Department in any relevant statutory instrument or provision passed before the transfer date will be construed as references to a district council.

Clauses 26 and 27 of the 1965 Act provide for the payment of compensation by a council when planning permission is revoked or modified. Clause 26(5) applies Clause 29 of the 1965 Act which makes provision for how compensation is measured in instances where it relates to new development or “Schedule 1 development". Schedule 1 development, so called because it is specified in schedule 1 of the 1965 Act, includes a number of relatively minor types of development (more generally known as existing use) which might be expected to receive planning permission as a matter of course. New development is development not specified in this schedule. Clause 26(6) applies Clause 22 specifying how compensation is to be paid. Clause 27 allows a district council to apportion compensation between different parts of the land to which the claim relates and also to register details of the apportionment.

Clause 179: Modification of the Act of 1965 in relation to minerals

This clause makes provision corresponding to Article 97 of the Planning (Northern Ireland) Order 1972. It modifies Clause 26(1) of the 1965 Act so that a claim for expenditure or loss when planning permission for the winning and working of minerals is revoked or modified shall not be entertained in respect of buildings plant or machinery unless the claimant can prove that they are unable to use them except at the loss claimed. The reason is that such machinery can often be moved and the provision ensures that only the net loss is paid on revocation.

Clause 180: Compensation where listed building consent revoked or modified

This clause provides that compensation is payable when listed building consent is revoked by a district council under Clause 97 or by the Department under Clause 100. The clause specifies that a claim may be made for abortive expenditure or loss or damage, but not for expenditure on work carried out before the grant of listed building consent nor for other loss or damage arising out of anything done or omitted to be done before the grant of consent. Clause 180(4) applies the provisions from the 1965 Act relating to revocation and modification to this provision.

Clause 181: Compensation in respect of orders under Clause 72 or 74

This clause provides for compensation when a discontinuance order is made by a district council under Clause 72 or by the Department under Clause 74. Clause 181(5) ensures that no compensation is payable if a purchase notice has been served in respect of an estate in the land or if the estate has been purchased by the district council under Part 7.

Clause 182: Compensation in respect of tree preservation orders

Under this clause a tree preservation order may make provision for the payment of compensation if consent is refused to fell, lop or top a tree which is the subject of a tree preservation order with a consequent loss to the owner of the value of the timber. The compensation is not related to the development value of the land. Thus a claim for compensation could not include an item for loss of development value if refusal to allow felling of the tree means that the land cannot be developed. A claim may also be made for any loss or damage caused by a consent granted subject to conditions.

Clause 183: Compensation where hazardous substances consent modified or revoked

This clause provides that compensation is payable when there is a change to the person in control of part of the land to which a hazardous substances consent relates and the district council revokes or modifies the consent upon an application for its continuation under Clause 115(2).

Clause 184: Compensation for loss due to stop notice

Compensation is payable when a stop notice is served by a district council (under clause 149) or the Department (under clause 150). A person who has an estate in or occupies the land is entitled to compensation if the enforcement notice is quashed on grounds other those mentioned in clause 142(3)(a) (planning permission granted for those items contained in the stop notice on appeal); if the enforcement notice is varied, other that that mentioned in clause 142(3)(a), so that the activity prohibited by the stop notice ceases to be relevant; if the notice is withdrawn for reasons other than the grant of planning permission where it is assumed that there was a withdrawal because the notice was invalid or was not warranted; or if it was withdrawn (and by implication should never have been served).

Clause 185: Compensation for loss or damage caused by service of building preservation notice

This clause provides that compensation is payable when a building preservation notice ceases to have effect without the building being included on the list of buildings of special architectural or historic interest compiled by the Department under clause 79.

Clause 186: Compensation for loss due to temporary stop notice

This clause applies if a temporary stop notice is issued to halt an alleged breach of planning control and the activity specified is subsequently authorised either by a planning permission or development order, if a certificate in respect of the activity is issued under clause 168 (Certificate of lawfulness of existing use or development - CLUD) or granted by virtue of an appeal against a decision not to issue a CLUD under clause 172 or if the district council withdraws the temporary stop notice. The clause provides for compensation for any loss that may have occurred under these circumstances.

Clause 187: Compensation where planning permission assumed for other development

A claim for compensation following modification or revocation of planning permission can be made to a district council under article 26 of the 1965 Act. It may, however, appear to the district council that planning permission could have been granted for development other than that which gave rise to the claim. In such cases the district council may direct that it shall be assumed that permission for that other development would be granted either unconditionally or conditionally when assessing the amount of compensation payable.

Clause 188: Interpretation of Part 6

This clause provides that Part 6, “compensatable estate" has the same meaning as in the 1965 Act.

Part 7: Purchase of estates in certain land affected by planning decisions.

This part deals with purchase notices. These provisions carry forward provisions within the 1991 Order and enable a land owner, who claims their land is left without any reasonable beneficial use by virtue of a planning decision, to issue a purchase notice to seek to have the district council acquire it from them and be paid compensation as on a compulsory acquisition.

Clause 189: Service of purchase notice

This clause enables a land owner, who claims their land is left without any reasonable beneficial use by virtue of a planning decision, to issue a purchase notice to seek to have the district council acquire it from them. A purchase notice must be served within the time and manner specified by a development order.

Clause 190: Purchase notices: Crown land

This clause sets out the conditions whereby a purchase notice may be served in respect of Crown land only.

Clause 191: Action by council following service of purchase notice

Under this clause after a purchase notice is served on the district council it may respond in a number of ways. The district council may serve a notice that it is willing to comply with the purchase notice or it may serve a counter-notice by way of objection. A counter-notice must state the reasons why the district council does not wish to comply with the purchase notice.

Clause 192: Further ground of objection to purchase notice

This clause allows the district council to object to development of land which although incapable of beneficial development in its existing state, ought to remain undeveloped in accordance with a condition attached to a previous planning permission.

Clause 193: Reference of counter-notices to Lands Tribunal

This clause empowers the Lands Tribunal to decide if either the purchase notice or the district council’s counter-notice should be upheld.

Clause 194: Effect of valid purchase notice

This clause states that when a purchase notice has been accepted, the district council is deemed to have entered into a contract to purchase the land to which the notice applies. It also sets out arrangements for payment.

Clause 195: Special provision as to compensation under this Part

Under this clause if compensation is payable in respect of expenditure incurred in carrying out any work on land under Clause 26 of the 1965 Act, then, if a purchase notice is served on that land, it is payable in respect of the acquisition of that estate in pursuance of the purchase notice and shall be reduced to an appropriate value.

Part 8: Further provisions as to historic buildings.

This part re-enacts powers within the 1991 Planning Order for the continuance of the Historic Buildings Council, for the making of grants by the Department towards the maintenance and repair of listed buildings and the acquisition of listed buildings.

Clause 196: Historic Buildings Council

This clause authorises the continuance of the Historic Buildings Council which is unique to Northern Ireland within the UK. It also outlines the functions of the Council as keeping under review the general state of preservation of listed buildings, advising the Department on the preservation of such buildings as the Department may refer to it and such other functions as conferred on it by statutory provision.

Clause 197: Grants and loans for preservation or acquisition of listed buildings

Under this clause the Department has the option to make a contribution for expenditure (through grants or loans) incurred in the repair or maintenance of a listed building, or in the upkeep of land comprising any such building or repair or in the maintenance of objects kept in the building. The Department, in conjunction with Department of Finance and Personnel, can make grants or loans to the National Trust towards the cost of acquiring; a listed building; any land associated with any such building; or any objects which are usually kept in the building.

Clause 198: Acquisition of listed buildings by agreement

Under this clause the Department may acquire a listed building or land comprising such a building by agreement, purchase, lease or otherwise or by gift. The Department may also acquire objects which have been kept in a listed building or an estate vested in the Department or in a listed building under its control or management. The Department may at its discretion make arrangements for the management, custody and use of property acquired or accepted by it.

Clause 199: Acceptance by Department of endowments in respect of listed buildings

This clause sets out arrangements for the acceptance by the Department of endowments in respect of listed buildings.

Clause 200: Compulsory acquisition of listed buildings

Under this clause the Department may intervene and compulsorily acquire the listed building and any land associated with the building if the Department determines it necessary to preserve the building or for its proper control or management. Compulsory acquisition procedures are set out within the clause.

Part 9: The Planning Appeals Commission (PAC).

This part re-enacts existing powers within the 1991 Planning Order which provide for the continuance and procedures of the PAC which is an independent appellate body established under statute to deal with a wide range of land use planning issues and related matters.

Clause 201: The Planning Appeals Commission (PAC)

This clause describes the continued governance arrangements of the PAC including its senior structure, impartiality and administration. These provisions were transferred to OFMdFM by the Departments (Transfer of Functions) Order (NI) 2001, SR 2001, No. 229.

Clause 202: Procedure of appeals commission

This clause describes the internal procedures of the PAC, including appointment of members of the appeals commission to hear appeals, inquiries / independent examinations or hearings and after consultation with the commission and the Department (OFMdFM), the appointment of assessors to sit with the members appointed to advise the member on any matters arising.

Part 10: Assessment of Council's performance or decision making.

This part introduces new provisions for the Department (or other appointed person(s)) to undertake audits or assessments in respect of the planning functions that will transfer to district councils. It also includes powers about the reporting of the audits or assessments.

Clause 203: Assessment of council's performance

This clause introduces new powers for the Department to conduct an assessment of a district council's performance, or to appoint a person to do so. The assessment may cover the district council's performance of its planning functions in general or of a particular function.

Clause 204: Assessment of council's decision making

This clause gives the Department or an appointed person the power to conduct an assessment of how a district council deals with applications for planning permission. In order to capture long term trends, this power is limited to exclude decisions made within the year preceding the date that the district council are notified of the assessment. The assessment may cover the basis for determinations, the processes by which they have been made and whether they were in accordance with the local development plan or conformed with advice given by the Department.

Clause 205: Further provision as respects assessment of performance or decision making

This clause details the arrangement for assessments of district councils' performance or decision making. The Department is required to notify the district council of its intention to carry out an assessment, and to indicate its intended scope, and where it appoints a person to carry out the assessment it is to advise the district council who the appointed person is. The Department will

have powers to determine that the scope of an assessment under clause 204 may relate to a type of application, a period of time or a geographical area. For the purposes of any assessment the Department or the appointed person may require access to any premises of the district council and any documents which appear to be necessary for the purposes of the assessment. The clause allows the Department or the appointed person to require a person to give them such information as necessary and to attend in person to give the information or documents and requires the district council to provide the Department or the appointed person with every facility and all information which may reasonably be required. The Department or the appointed person must give 3 clear days notice of any requirement under this Clause and produce a document of identification if required to do so.

Clause 206: Report of assessment

The Department or the appointed person is required to prepare a report (an assessment report), and issue it to the district council. The report may recommend improvements which the district council should make. The district council is required to prepare and submit a response report to the Department within 3 months of receipt of the assessment report. This report will set out the extent, the manner and the period within which it proposes to implement the recommendations or reasons for declining to implement recommendations. Both reports must be published. The Department may issue a direction specifying actions where the district council declines to implement recommendations or appears not to be carrying out what it proposes in its response report. The Department must publish any such direction or variation of a direction.

Part 11: Application of Act to Crown Land.

Part 11 re-enacts provisions within the 1991 Planning Order which apply planning legislation to the Crown subject to certain exceptions (notably enforcement powers). New powers are introduced to deal with urgent Crown development applications.

Clause 207: Application to the Crown

Clause 206 applies the provisions of the Bill to the Crown with the exception of enforcement functions covered by clauses 145, 155, 160 and 165 of the Bill, subject to express provisions detailed in the remainder of Part 11. This means that the Crown requires planning permission or consent as required by the Bill and relevant subordinate legislation.

Clause 208: Interpretation of Part 11

This clause deals with the interpretation of Part 11 and includes various definitions.

Clause 209 on Urgent Crown development and clause 210 on Urgent works relating to listed buildings on Crown land

Clause 209 covers instances where development by Crown bodies will be considered to be of significant public importance and require the processing of applications more quickly than permitted by the processing procedures of district councils. The new powers aim to streamline the process and provide for the direct submission of planning applications to the Department. A similar procedure is introduced for urgent works to a listed building on Crown land.

Clause 211: Enforcement in relation to the Crown

This clause provides that the Crown should remain immune from prosecution for any offence under the Bill. A district council or the Department is able to initiate enforcement action by, for example, serving enforcement notices but is not able to enforce them by entering land or making applications to the court without the consent of the appropriate authority (appropriate authority is defined in clause 208 of the Bill). In granting such consent the appropriate authority may impose such conditions as it considers relevant. This might mean, for example, that any site visit by the Department has to be accompanied, to take place at a pre-arranged time and/or to exclude certain parts of the site.

Clause 212: References to an estate in land

This clause deals with references to an estate in land and states that references to an “estate" in land includes a Crown estate.

Clause 213: Applications for planning permission, etc. by Crown

This clause sets out that, through subordinate legislation, the Department may modify or exclude any statutory provision relating to the making and determination of applications for planning permission or consent etc by the Crown.

Clause 214: Service of notices on the Crown

This clause deals with the service of notices on the Crown and states that notices under the Planning Bill must be served on the appropriate authority. In addition Clause 24 of the Interpretation Act (Northern Ireland) 1954 in relation to the service of notices has been disapplied.

Part 12: Correction of Errors.

Part 12 re-enacts provision from the Planning Reform (NI) Order 2006 to correct errors in decision documents including omissions. The provisions have been amended to enable the district council to correct errors, which are minor and / or typographical, in planning decision documents without the consent of the applicant / landowner.

Clause 215: Correction of errors in decision documents

The power to allow the Department to correct minor typographical errors in its decision documents/notices was introduced by The Planning Reform (NI) Order 2006 (No. 1252 NI 7). This power has now been amended by the current Bill. Firstly, the power to correct errors is now transferred to district councils and secondly, the requirement to first obtain the written consent of the applicant (or the landowner if that is not the applicant) has now been removed. The clause also allows a district council to correct an error if requested in writing by any person and if it sends a written statement to the applicant explaining the error and stating that it intends to make a correction.

Clause 216: Correction notice

Under this clause the district council must after making any correction or deciding not to make any correction, issue a notice in writing specifying the correction of the error or giving notice of its decision not to correct such an error.

Clause 217: Effect of correction

This clause describes the impact where a correction is made or where a correction is not made.

Clause 218: Supplementary

This clause defines a decision document and a correctable error for the purposes of this Part

Part 13: Financial Provisions.

This part deals with financial provisions and re-enacts powers for the payment of fees and charges and as well as new specific powers to charge multiple fees for retrospective planning applications. Powers for the Department to pay grants for research and bursaries to bodies providing assistance in relation to certain development proposals are also re-enacted from the 1991 Planning Order. New powers are introduced to allow statutory undertakers or other councils to contribute to a council's costs when carrying out specified functions under the Bill. Further new powers to allow government departments to contribute to compensation costs of a council if those costs were incurred in the interests of services provided by that department.

Clause 219: Fees and charges

This clause contains provisions for the payment of both charges and fees relating to planning and consent applications. The provisions enable the Department to make regulations for the payment of charges or fees for the recovery of the costs of performing district council or departmental functions. OFMDFM may also make regulations for the payment of a charge or fee in respect of deemed planning applications or planning appeals. This clause also introduces new provisions for charging multiple fees for retrospective planning applications.

Clause 220: Grants for research and bursaries

This clause allows the Department to make grants to research or education institutions relating to planning and design of the physical or built environment. Students undertaking particular courses may be awarded bursaries.

Clause 221: Grants to bodies providing assistance in relation to certain development proposals

These provisions allow the Department to award a grant to an organisation which is assisting the community with particular applications for development, or which is providing technical expertise to allow an application to be easily understood. Grants may also be made to organisations which aim to further the preservation, conservation and regeneration of historic buildings. The organisations being funded must not be profit making bodies.

Clause 222: Contributions by councils and statutory undertakers

This clause creates a discretionary power to allow statutory undertakers or other district councils to contribute to the costs of a council carrying a review under clause 3 – matters affecting development. Also available is a discretionary power allowing statutory undertakers or other district councils to contribute to another council's costs when discharging specified planning functions under the Bill. Finally, the Department will be able to require councils to contribute to another council's compensation costs when that council is carrying out certain specified functions under the Bill.

Clause 223: Contributions by departments towards compensation paid by councils

This clause provides a discretionary power whereby a government department can contribute to the compensation costs of a district council if those costs were incurred by a council decision or order made in the interest of services provided by that government department.

Part 14

Deals with a number of miscellaneous and general provisions including the introduction of powers for persons or bodies which are required to be consulted in the determination of applications for planning permission, approval and consents to respond to consultation requests within a specified timeframe. This part also covers the re-enactment of powers relating to the application of the Bill in special cases, for example, minerals development.

Further miscellaneous powers are re-enacted from the 1991 Planning Order, amended where necessary to reflect the proposed two-tier planning system. These include, inquiry powers - including powers in relation to the determination of applications which raise national security or security of premises issues, powers for rights of entry, powers relating to the service of notices and documents (electronically), powers relating to information as to estates in land including Crown land, planning register powers, powers to appoint advisory bodies or committees, powers relating to the time limit for certain summary offences under this Bill, powers relating to registration of matters in the Statutory Charges Register and powers to make regulations and orders.

Clause 224: Duty to respond to consultation

This clause introduces a requirement that those persons or bodies which are required to be consulted by a district council or the Department before the grant of any permission, approval or consent must respond to consultation requests within a prescribed period. The clause also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

Clause 225: Minerals

This clause provides for the application of the Bill to development consisting of the winning and working of minerals, subject to modifications. The circumstances under which mining operations are considered to be a “use" of land are stipulated.

Clause 226: Local inquiries

This clause allows the Department to hold a public inquiry when carrying out any of the functions of this Bill. The provisions of the Interpretation Act (NI) 1954 apply to these inquiries. The Department may make rules for the procedures to be followed during the inquiry process.

Clause 227: Inquiries to be held in public subject to certain exceptions

Given the changes in the role of the Secretary of State and the new role of the Department of Justice, following devolution of policing and justice, these provisions clarify the responsibilities of the Secretary of State and the Department of Justice in relation to inquiries. The provisions deal with procedures for planning applications, etc, where, in the opinion of the Secretary of

State/the Department of Justice, the consideration by the council or Department of objections or representations received in relation to the application raise issues of national security or the security of Crown or other premises and that the disclosure of related information would be contrary to the national interest. The Secretary of State will have responsibility for issuing a relevant direction under clause 227 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information relating to:

(a) national security; or

(b) the measures taken or to be taken to ensure the security of any premises or property belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department; or

(c) measures taken or to be taken to ensure the security of any premises or property which is used for the purposes of the armed forces of the Crown or the Ministry of Defence Police.

The provisions also set out that the Department of Justice will have responsibility for issuing the relevant direction under clause 227 in instances where the giving of evidence of a particular description or the making it available for inspection would be likely to result in the disclosure of information (contrary to the public interest) relating to the measures to be taken to ensure the security of any premises or property other than premises or property mentioned above.

Clause 228: Directions: Secretary of State

This clause sets out that the Secretary of State may direct that certain evidence may only be heard by, or be open to inspection by, certain persons. If the Secretary of State is considering giving such a direction, the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

Clause 229: Directions: Department of Justice

This clause sets out that the Department of Justice may direct that certain evidence may only be heard by, or open to inspection by, certain persons. If the Department of Justice is considering giving such a direction, the Advocate General for Northern Ireland may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting such evidence. Powers provide for the appointment, payment and functions of a person (the appointed representative) to represent the interests of those people who are prevented from seeing the restricted material.

Clause 230: National security

This clause contains the procedures for planning applications, consents and approvals where, in the opinion of the Secretary of State or as the case may be the Department of Justice, the consideration by a district council or the Department of objections or representations received in relation to the application raise issues of national security or matters relating to the security of Crown or other properties and the public disclosure of such information would be contrary to the national interest. Procedures will enable decisions to be made where, for security reasons, details of the development cannot be revealed but where to withhold such details would impact on the ability of interested parties to fully participate in the planning process. The Department

will be required to hold a public local inquiry in such circumstances. The roles of the Secretary of State and the Department of Justice in relation to certification under this clause are split. The Secretary of State will have responsibility for the making of rules in circumstances where he has certified under this clause, the Department of Justice will have responsibility for the making of corresponding rules where that Department issues the relevant certification under this clause.

Clause 231: Rights of entry

This clause gives district councils and the Department the powers of entry they require to discharge their functions under this Bill. Powers of entry are also given to the Department of Social Development, Department of Finance and Personnel and the PAC in respect of their functions under this Bill.

Clause 232: Supplementary provisions as to powers of entry

This clause sets out the obligations on a person exercising powers of entry under clause 231 to provide notice to occupiers and, if required, identification on arrival. Provisions covering trade secrets and damages to property are addressed.

Clause 233: Supplementary provisions as to powers of entry: Crown land

Additional provisions for the exercise of the powers of entry under clause 231 when the land is owned by the Crown are contained in this clause. Advance permission must be obtained from the appropriate authority.

Clause 234: Service of notices and documents

This clause allows for the service of notices to be completed via electronic communication where the recipient has agreed to this. Provisions are contained for permission to be withdrawn and a list of notices to which this cannot apply is listed in paragraph (3).

Clause 235: Information as to estates in land

This clause allows a district council or the Department to require occupiers of premises to provide information to them on the owner, to enable them to serve a notice or other document on them. Failure to give this information within the stipulated timeframe is an offence.

Clause 236: Information as to estates in Crown land

This clause disapplies clause 235 when the land is Crown land. Powers are given to the district council or Department to request the same information as that in clause 235, and the authority must comply with this request.

Clause 237: Planning Register

This clause requires all district councils to keep and make available a planning register containing copies of the items listed, which includes all applications for planning permission. A development order may require the Department to populate the register of the relevant district council when an application is submitted directly to it, or it issues a notice under departmental reserved powers.

Clause 238: Power to appoint advisory bodies or committees

This clause allows the Minister to appoint bodies to assist the Department in any of its functions under this Bill.

Clause 239: Time limit for certain summary offences under this Act

This clause gives jurisdiction to the Magistrates' court to hear complaints on offences relating to breaches of tree preservation orders and breach of condition notices if the complaint is made within 3 years from the time when the offence was committed or ceased to continue.

Clause 240: Registration of matters in Statutory Charges Register

This clause sets out the matters which are a permanent encumbrance on land or property and must be registered in the Statutory Charges Register.

Clause 241: Directions

This clause confirms that any directions which may or must be given by a district council or the Department may be withdrawn, varied or revoked by a subsequent direction.

Clause 242: Regulations and orders

This clause details the Assembly controls which will apply to regulations and orders under the Bill.

Part 15

Is Supplementary and covers the interpretation, further provision, minor and consequential amendments, repeals, commencement provisions and the short title.

Clause 243: Interpretation

This clause contains interpretation provisions and defines a number of terms used throughout the Bill.

Clause 244: Further provision

This clause allows the Department to make subordinate legislation to give full effect to the Bill including transitional or transitory provisions and savings in connection with the coming into operation of any provisions. A draft of such an order must be laid before and be approved by resolution of the Assembly.

Clause 245: Minor and consequential amendments

This clause provides for the amendments set out in Schedule 6 to have effect.

Clause 246: Repeals

This clause provides for the repeals set out in Schedule 7 to have effect.

Clause 247: Commencement

This clause concerns the commencement of the Bill and enables the Department to make Commencement Orders.

Clause 248: Short title

This clause provides a short title for the Bill.

SCHEDULES

Schedule 1: Simplified planning zones

Schedule 2: Review of old mineral planning permission

Schedule 3: Periodic review of mineral planning permission

Schedule 4: Amendment to the Land Values Development (Compensation) Act (Northern Ireland) 1965 (c.23)

Schedule 6: Minor and Consequential Amendments

Schedule 7: Repeals

[1] Strategic Objectives identified in Everyone's Involved: Sustainable Development Strategy 2010- Office of the Minster and deputy First Minister

[2] Section 215 of the Town & Country Planning (England & Wales) 1990

[3] NI Assembly – Official Report Tuesday 14 December 2010.

Ministerial Advisory Group Submission to the Planning Bill

MINISTERIAL ADVISORY GROUP
FOR ARCHITECTURE AND THE BUILT
ENVIRONMENT FOR NORTHERN IRELAND

PLANNING BILL NORTHERN IRELAND 2010/2011
MAG RESPONSE
14 JANUARY 2011

PLANNING BILL NORTHERN IRELAND 2010/2011

COMMENTS BY THE MINISTERIAL ADVISORY GROUP FOR

ARCHITECTURE AND THE BUILT ENVIRONMENT NORTHERN IRELAND

CONTENTS

1.0 COMMUNITY INVOLVEMENT

1.1 Northern Ireland's Planning Reform Order 2006 states:

"Statement of community involvement

3. After Article 3 of the principal Order insert—

"Statement of community involvement

3A.—(1) The Department shall prepare a statement of community involvement.

(2) The statement of community involvement is a statement of the Department's policy as to the involvement in the exercise of the Department's functions under Article 4 and Part IV of persons who appear to the Department to have an interest in matters relating to development in the area in which they live."

1.2 "Shall" means "must", but by 2011 the Department has not produced the statement of community involvement. The Department's policy on community involvement has not been published or consulted upon and when attempts were made during the Planning Reform consultation process to suggest means to genuinely involve the local communities, these were dismissed as being left to the Councils to produce. Now the new Bill again requires the Department to produce its statement based on its policy:

Preparation of statement of community involvement by Department

2.— (1) The Department must prepare a statement of community involvement.

(2) The statement of community involvement is a statement of the Department's policy as to the involvement in the exercise of the Department's functions under Part 3 of persons who appear to the Department to have an interest in matters relating to development.

1.3 "in the area in which they live" has been omitted. This suggests that local people's views are less important in 2011 than they were in 2006.

1.4 The new Bill also requires all district Councils to produce statements of community involvement, based on Councils' policies:

> **"Statement of community involvement**
>
> 4.— (1) A council must prepare a statement of community involvement.
>
> (2) The statement of community involvement is a statement of the council's policy as to the involvement in the exercise of the council's functions under this Part and Part 3 of persons who appear to the council to have an interest in matters relating to development in its district."

1.5 "in the area in which they live" has also been omitted from the Council's obligation, yet people living in localities have the greatest knowledge of their places and the most significant and continuing interest in plans and proposals for change.

1.6 The new Bill also requires the Councils and the Department to "attempt to agree" the terms of the statement of community involvement and then requires that if no agreement can be reached, the Department has powers to direct the Councils:

> (3) The council and the Department must attempt to agree the terms of the statement of community involvement.
>
> (4) But to the extent that the council and the Department cannot agree the terms of the statement of community involvement the Department may direct that the statement must be in the terms specified in the direction.
>
> (5) The council must comply with the direction.
>
> (6) The Department may prescribe
>
> (a) the procedure in respect of the preparation of the statement of community involvement;
>
> (b) the form and content of the statement;
>
> (c) publicity about the statement;
>
> (d) making the statement available for inspection by the public;
>
> (e) the manner in which
>
> (i) representations may be made in relation to any matter to be included in the statement; and
>
> (ii) those representations are to be considered;
>
> (f) circumstances in which the requirements of the statement need not be complied with.

1.7 The Department has not produced the statement of community involvement as required by the 2006 Planning Reform Order. Nor has it produced or consulted on the necessary underlying policies. The Department is unlikely to be in a position to "attempt to agree" with a council the terms of a council's statement of community involvement.

1.8 Following the presentation by the DoE Deputy Secretary for Local Government / Chief Executive of Planning Service at the RTPI Northern Ireland Branch Annual General Meeting in December 2010, answers to questions from the floor indicated that the Northern Ireland Housing Executive Strategy on Community Involvement, including the Housing Community Network, http://www.nihe.gov.uk/community_involvement_strategy.pdf and associated documentation (Community Handbook) etc. had been examined as a suitable model in relation to community involvement and community planning. The NIHE provides administrative and secretarial support for the Housing Community Network and the strategy is assisted by Supporting Communities Northern Ireland (SCNI). It continuously involves some 600 local neighbourhood groups linked directly to district, area and central functions and policies and is comprehensively reviewed every three years. The current review is due for implementation from April 2011 – March 2014. The NIHE Strategy for Community Involvement should be referred to in the Planning Bill as a suitable model for the Department and Councils to use to create genuine and continuing community involvement.

1.9 The framework of the existing Housing Community Network is outlined in the Community Handbook:

THE HOUSING COMMUNITY NETWORK

Introduction

"The Housing Executive has always been keen to involve tenants and their local Community Associations in discussing and developing their local services, and addressing housing issues generally. By being more involved, communities will be better informed, can contribute to better decision-making, improve services and standards locally, and develop their own skills and opportunities."

The Housing Community Network operates at four levels:

About 600 Local Community Groups relate to the 35 Districts, which in turn relate to 5 Area offices and a Central office. In addition, there is an Intercommunity Network (ICN) which was established to consider Good Relations issues from the tenant's perspective.

Terms of Reference

"Terms of Reference have been drawn up for each of the above levels of tenant and community involvement, with the advice and agreement of the Central Housing Community Network and SCNI. They describe their respective purposes, membership and the support provided by the Housing Executive and SCNI." http://www.nihe.gov.uk/housing_community_handbook.pdf

1.10 The framework, described in the NIHE Community Handbook, has been constructed during a period of over 20 years of community involvement in Northern Ireland. It is a robust and continuously updated strategy which would require only minor modifications to produce a model for community involvement for the planning authorities in Northern Ireland. To include a suitably amended version of this model in the legislation would be more effective in terms of cost, time and resources than stating that each "council and the Department must attempt to agree" a strategy.

1.11 Whilst the NIHE Community Involvement Strategy is not perfect, it does form an excellent basis for community involvement and is significantly better than the current proposal in the Bill about a council and Department attempting to agree about something unspecified.

1.12 A NEW PLANNING COMMUNITY NETWORK

It is proposed in the interests of comprehensiveness and efficiency that the Housing Community Network should evolve to include planning and community planning functions. There could initially be a shadow (or pilot) Planning Community Network, based upon the Housing Community Network, but including all other parts of Northern Ireland, using electoral wards, for example, as the working areas. It is efficient, logical and effective to consider these community involvement aspects in an integrated system in future rather than as three separate

and disconnected functions in relation to community involvement with one for housing, one for planning and another for community planning.

1.13 There would be efficiencies if the existing Housing Community Network could be developed and expanded to include all parts of Northern Ireland and to involve planning and community planning as well as housing matters. The expanded Network could be called the Housing and Planning Community Network or simply the Community Network. Much administrative work has already been carried out by the Housing Executive in regard to advisory, administrative and secretarial services, membership, constitutions, election of office bearers, local, district, area and central framework, etc. which could be expanded to include additional areas beyond public sector housing communities and estates. The following table shows parallels between the current Housing Community Network and a proposed Planning Community Network which would include community involvement in planning and community planning, coming together between 2011 and 2014 to form a Community Network.

Level of Community Involvement	Current NIHE Strategy for Community Involvement	Current SCNI and NIHE Involvement in existing Housing Community Network	Proposed DoE & Council Statements of Community Involvement & Community Planning activities	Proposed DoE and Council involvement in a new Planning Community Network to include Planning and Community Planning
Local Community	Approx 600 Community Groups	Help to set up bona fide groups that meet at least 4 times per year	Approx 582 Electoral Ward Groups, proposed to change to 462	Help to set up bona fide groups that meet at least 4 times per year
District	35 Districts	6 to 16 local reps (+ co-optees) meet district officers at least 5 times per year.	26 District Councils (proposed to change to 11)	6 to 16 local reps (+ co-optees) meet district officers at least 5 times per year
Area	5 Areas	2 local community reps from each district meet area officers at least 5 times per year	6 Divisional Planning Offices (proposed to change to 5)	2 local community reps from each district meet area offices at least 5 times per year
Headquarters	1 Central Office	15 reps meet and advise SCNI / NIHE centrally and send 3 reps to SCNI management board	DoE Planning & Local Government Headquarters	15 reps meet and advise DoE / Councils centrally and send 3 reps to Planning & Local Govt management board

SEPARATE COMMUNITY FUNCTIONS-
INEFFICIENT AND FRUSTRATING FOR ALL

INTEGRATING COMMUNITY FUNCTIONS-
INITIAL WORK 2011 - 2014

INTEGRATING AND EFFICIENT COMMUNITY FUNCTIONS - 2015

1.14 There may be significant overlap between the existing Housing Community Network and a new Planning Community Network, which could be prevented by the modest transformation of the Housing Community Network into a future Community Network, including housing, planning and community planning. This could be designed during the present review of the NIHE Strategy for Community Involvement, 2011 – 2014 and would thus, over the three year strategy, embrace places with backgrounds originating from public sector housing areas and from all other areas – thereby becoming inclusive of all residents of Northern Ireland who wish to participate.

> "If you are a member of a local community association, or are interested in setting one up, or in becoming more involved with the Housing Executive on behalf of your community, please contact your local District Office or SCNI who will be happy to assist you."

http://www.nihe.gov.uk/housing_community_handbook.pdf page 12.

1.15 Protocols for community involvement have already been published and the new Planning Bill can require adherence by community groups and representatives to the Code of Good Governance for the Voluntary and Community Sector which was launched by the then Minister for Social Development, Margaret Ritchie MLA, on behalf of the Developing Governance Group at a special seminar in the Northern Ireland Council for Voluntary Action on the 6 June 2008.

1.16 A Community Network should be included in the Planning Bill.

2.0 COMMUNITY PLANNING & THE POWER OF WELL-BEING

2.1 Legislation for community planning and the power of well-being is included in a separate Local Government Bill as noted in the current consultation document "Local Government Reform Policy Proposals Consultation Document" dated 30 November 2010, Section 6 and 7.

2.2 Applying an efficient and effective approach to these new aspects of local government, it is recommended that the "Community Network" for housing and planning proposed in 1.12 – 1.15 should include Community Planning. There should be cross-referencing between the Planning Bill and the Local Government Bill.

2.3 A Community Network should be included in the Planning Bill.

3.0 BUSINESS IMPROVEMENT DISTRICTS

3.1 Neither this Planning Bill nor the current Local Government Bill includes any mention of Business Improvement Districts – which have been included in Scottish Planning legislation since 2006 and in England and Wales through the Local Government Act since 2003.

3.2 Business Improvement Districts are an internationally recognised means to encourage local people to add value to their places, creating opportunities for regeneration. Business Improvement Districts require specified local business ratepayers to contribute additional funds for the management of their places for a renewable five year period if a majority of the specified ratepayers in the Business Improvement District agree to it in a ballot. The Association of Town Centre Management recognises the value of Business Improvement Districts.

3.3 By contrast, the Bill offers significant guidance on simplified planning zones and enterprise zones, neither or which appears to be currently either promoted or in demand by government or local people.

3.4 Business Improvement Districts should be included in the Planning Bill.

4.0 AREAS OF TOWNSCAPE CHARACTER

4.1 Areas of Townscape Character, which control demolition as well as development, have been declared in recent Area Plans.

4.2 Areas of Townscape Character are not mentioned in the proposed Planning Bill.

4.3 This omission may make it difficult to enforce control of demolition in an Area of Townscape Character.

4.4 These areas are also not included in the exclusions in relation to simplified planning zones in Article 38 except under "land of such other description as may be prescribed".

4.5 Areas of Townscape Character, different from but complementary to Conservation Areas, should be specifically included in the Planning Bill. The Planning Bill should include methods to ensure the continuing involvement of members of the proposed Community Network in proposing, maintaining and managing areas of Townscape Character in their places, with assistance from the relevant planning authority (currently the Department and later the Councils).

5.0 REGENERATION & LOCAL MASTERPLANNING

5.1 The Department for Social Development and the Department of Agriculture and Rural Development currently have programmes encouraging local masterplanning for regeneration of areas of Northern Ireland including certain villages, town centres and neighbourhoods.

5.2 It would be appropriate for the Planning Bill and the Local Government Bill to include reference to these important aspects of the built environment in Northern Ireland to indicate how they are to be integrated within the planning system, in terms of both development plans and development management.

5.3 Local Masterplanning should be included in the Planning Bill.

6.0 SUMMARY

6.1 A Community Network should be included in the Planning Bill.

6.2 Business Improvement Districts should be included in the Planning Bill.

6.3 Areas of Townscape Character, different from but complementary to Conservation Areas, should be specifically included in the Planning Bill, together with means for designation, maintenance and management to continuously involve the Community Network (1.16 and 2.3).

6.4 Local Masterplanning should be included in the Planning Bill.

Arthur Acheson BSc MArch ARAIA RIBA MRTPI
Chair

Ministerial Advisory Group for
Architecture + the Built Environment Northern Ireland

13 January 2011

Mobile Operators Association

Submission to the Planning Bill

Reform of Planning System In Northern Ireland

Consultation response

Mobile Operators Association 2nd October 2009

The Mobile Operators Association (MOA) represents the five UK mobile network operators – 3, O2, Orange, T-Mobile and Vodafone – on radio frequency health and safety and associated town planning issues.

The following is the response of the MOA to the questions asked in the consultation document. Some of these are questions which relate to broad elements of reform or to specific planning issues that would not be relevant to our members as developers and statutory undertakers and we have noted these as Non-Applicable. There is also an assumption that the telecommunications development will be classified as 'local' development (as they have in the planning hierarchy in Scotland) should these reforms come to pass and the responses are predicated on this assumption.

Planning Policy

Question 1

Do you agree that, in future, planning policy statements should provide strategic direction and regional policy advice only, which would then be interpreted locally in development plans?

On balance, and for most development, we consider this to be appropriate and will help to achieve the aims of the reforms, however;

- telecommunications development can be seen to be both regional and local. Each application is generally very local with a low level of physical development impacting on very few people. It is also part of a national, or regional, network and its provision to help NI meet its aspirations in terms of economic and social development is vital. Under the new planning hierarchy in Scotland, telecommunications development is classified as 'local' development. We consider it important therefore that PPS10 (and any replacement) continues to provide a link from the regional importance to the local delivery. This could be done, as it is through NPPG19, PPG8 and TAN19 (In Scotland, England and Wales respectively), by setting out clearly the national and regional benefits of such development and giving guidance on what any local policies should seek to achieve; and
- we consider that it will continue to be important that the role of the planning system, in relation to how health and the perceived impacts on health, is set out clearly. Experience from Scotland and England has demonstrated that some Local Planning Authorities (LPAs) can seek to include local policies which seek to re-interpret Government the guidance, which is based on scientific advice, on a case-by-case basis. It is an underlying principle that the planning system should neither seek to replicate controls that exist elsewhere or seek to introduce controls on complex scientific matters that are better dealt with elsewhere. It is therefore important that PPS10 (and any replacement) continue to make this explicit.

Question 2

Do you consider there are any elements of operational policy which should be retained in planning policy statements?

Our concerns in relation to telecommunications development and the proposals are set out in answer to question 1. As long as the proviso in paragraph 2.9, that any policy is aligned with central government plans policy and guidance, is adhered to then there should be no need for operational policy to retained in the PPS. However, to reiterate our previously made point, it is vital that the regional context of what is often seen as a local development remains explicit in the PPS and that the PPS retains clear guidance on how health, and any perceived impacts thereon, be dealt with.

Question 3

Do you think it appropriate to commence a 'plan led' system in advance of the transfer of the majority of planning functions to district councils under the Review of Public Administration?

We can see no reason to consider it inappropriate.

Question 4

Do you agree that the objectives contained in paragraph 3.6 are appropriate for local development plans?

Yes

Question 5

Do you agree that the functions contained in paragraph 3.7 are appropriate for local development plans?

Yes

Question 6

What are your views on the proposal that a district council's statement of community involvement must be in place before any public consultation on the local development plan?

We consider this to be appropriate and follows the approach taken to Local Development Frameworks in England. This is with the proviso that it does not slow the process unduly.

Question 7

What are your views on the proposal for a programme management scheme?

This builds on what has been done elsewhere in the UK and consider it to be a useful tool in the development plan process.

Question 8

Do you agree that a preferred options paper should replace the issues paper?

This builds on what has been done elsewhere in the UK and should help front-load the development plan process hence reducing the time taken later on. It is, however, perhaps too early to judge the success, or otherwise, of this in the UK.

Question 9

Do you agree with the proposal to introduce a local development plan process that comprises two separate but related documents to be published, examined and adopted separately and in sequence?

Yes

Question 10

What are your views on the proposal to deal with amendments to the local development plan?

The proposed system should deliver a faster and more responsive framework. It is important that the process can deal with any unexpected changes in an efficient manner. The proposals should achieve this.

Question 11

What are your views on the proposal that representations to a local development plan will be required to demonstrate how their proposed solution complies with robustness tests and makes the plan more robust?

We consider it important that representations to plans are evidence based. This is specifically so when dealing with telecommunications development - often the emotive topic of impacts on health can be conflated with other land use objectives. The MOA make evidence-based representations, based on national guidance, on development plans throughout the UK and consider that these representations add value to the process and make plans more robust. We therefore welcome this proposal.

Question 12

What are your views on the proposal that representations to a local development plan will be required to demonstrate how their proposed solution meets the sustainability objectives of the local development plan?

We welcome this proposal.

Question 13

Should the Department give the examiner(s) the power to determine the most appropriate procedures to be used in dealing with representations to the local development plan?

Yes

Question 14

Do you agree that the representations to the plan should be submitted in full within the statutory consultation period, with no further opportunity to add to, or expand on them, unless requested to do so by the independent examiner?

Faced with a number of representations relating to a certain topic such as telecommunications, we consider that it may be useful for the plan-making body to be able to seek further expansion on certain points so as to add clarity to any points of dispute or these which need further explanation. Whilst we agree with the aims of this aspect of the proposal i.e. a quicker and more efficient system, we also consider that it should be flexible enough to produce the right outcomes.

Question 15

What are your views on the proposals for counter representations?

We agree with the proposals in this regard.

Question 16

Do you agree that the basis for examining plans should be changed from an objection-based approach to one which tests the 'robustness' of plans?

Yes

Question 17

What are your views on the recommended approach for examining local development plans?

Whilst the changing governance throughout NI could provide complications for the process moving forward, we consider that the general approach is sound and will complement the aim of testing the robustness of the plans.

Question 18

What are your views on the proposals to ensure regular monitoring and review of local development plans?

These appear to be evidence based and proportionate and appropriate in relation to the other changes being proposed.

Question 19

Do you agree with the proposed content of local development plans as set out in paragraph 3.44?

Yes

Question 20

Do you consider that the topic areas contained in paragraph 3.46 are appropriate for inclusion in local development plans?

Yes

Question 21

Do you agree that district councils should be required to prepare sustainability appraisals as part of their local plan preparation process?

Yes

Question 22

What are your views on the proposal that the Department should have the powers to intervene in the making, alteration or replacement of a local development plan by the district council?

We agree that the Department should have these powers.

Question 23

a) Do you agree that district councils should be given the power to make joint local development plans if they so wish?

Yes

b) Do you consider that such powers would adequately deal with instances where neighbouring district councils would consider it beneficial to work together?

Yes

Question 24

What are your views on the proposed transitional arrangements for development plans?

These arrangements appear to be sufficient to ensure an efficient transition and mirror some of the transitional provisions put in place elsewhere in the UK as those plan-making systems were modified.

Development Management

Question 25

Do you agree with the proposed introduction of a new planning hierarchy to allow applications for the three proposed categories of development to be processed in proportion to their scale and complexity?

Scotland has introduced a planning hierarchy in relation to development proposals in 2009, however with the main provisions of the changes only coming into effect on August 3rd, it is premature to make any assessment as to their effectiveness as yet. However, we are in agreement with the rationale behind this approach. By taking this approach it should see a realignment of resources to better reflect the complexity of the development proposed and so the time an application should take to be processed. This should help all types of development regardless of where they sit within the hierarchy.

Question 26

Do you agree with the 3 proposed categories of development (regionally significant, major and local) and their respective definitions?

Yes. Telecommunications development sits within 'local' development in the Scottish hierarchy. We are comfortable with this, however there needs to be an acknowledgment within the new development plan process that whilst mobile telecommunications development is invariably local, it forms part of a national (or regional) network. The significance of this to the economic and social prosperity of NI should not be underestimated. As set out in the answer to question 1 above, it is important that this aspect is captured through the changing function of the PPS and the emergence of local development plans.

Question 27

In relation to applications for regionally significant development, do you consider that the 4 legislative criteria (see paragraph 4.14), in association with a pre-application screening requirement, are sufficient to identify relevant potential developments?

Yes

Question 28

Do you have any comments on the proposed thresholds for the different types of development categories, particularly in relation to the classes of major development described in table 2?

No

Question 29

Do you agree with the proposed approach to urban/rural variation in setting the proposed housing thresholds for major development?

N/A (assuming mobile telecommunications development proposals are considered 'local developments.)

Question 30

Do you agree that performance agreements should be in place before the submission of regionally significant applications?

N/A (assuming mobile telecommunications development proposals are considered 'local' developments.)

Question 31

What are your views on the suggested elements contained within a performance agreement, and setting a timescale specific to each individual application?

N/A (assuming mobile telecommunications development proposals are considered 'local' developments.)

Question 32

Do you agree that this should be a voluntary (i.e. non-statutory) agreement?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 33

Do you agree that developers should hold pre-application consultation with the community on regionally significant developments?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 35

Do you have any views on what the form and process for verifying and reporting the adequacy of pre-application consultation with the community should involve, particularly in relation to the elements indicated at paragraph 4.32?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 36

Do you agree with introducing the power to decline to determine applications where pre-application community consultation has not been carried out or the applicant has not complied with the requirements of pre-application community consultation?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 37

Do you agree that the Department should determine applications for regionally significant development in association with the proposed statutory screening mechanism?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 38

Do you agree with the proposal to designate a district council as a statutory consultee where it is affected by an application for regionally significant development?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 39

Do you agree with the proposed notification and call-in mechanism, including the pre-application and application stages indicated in diagram 2, for applications for regionally significant development?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 40

Do you agree that if the Department decides not to call–in a notified application it should have the option to return the application to the district council, either with or without conditions, for the district council to grant permission subject to conditions that may be specified by the Department?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 41

Do you agree with the proposal giving the Department the option to appoint independent examiners to hold a hearing or inquiry into applications for regionally significant development?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 42

Do you agree that the Department should prepare hearing and inquiry procedure rules for use by independent examiners?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 43

Do you agree that the processes for performance agreements should also apply to applications for major development?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 44

Do you agree that the processes for statutory pre-application community consultation should also apply to applications for major development?

N/A (assuming mobile telecommunications development proposals are considered ‘local’ developments.)

Question 45

Do you support a power for district councils to hold pre-determination hearings, with discretion over how they will operate, where they consider it appropriate for major developments?

N/A (assuming mobile telecommunications development proposals are considered 'local' developments.)

Question 46

Do you consider that there are other circumstances in which district councils should have the scope to hold such hearings?

N/A (assuming mobile telecommunications development proposals are considered 'local' developments.)

Question 47

Where a performance agreement has not been reached, do you consider it appropriate to extend the non-determination appeal timescale for applications for major development to 16 weeks?

N/A (assuming mobile telecommunications development proposals are considered 'local' developments.)

Question 48

Do you agree that district councils, post-RPA, shall be required to introduce schemes of officer delegation for local applications?

A scheme of delegation allows decisions to be made by council officers under delegated powers. A lot of telecommunications development falls under these schemes. The schemes work effectively if they are clearly set out and applied consistently. Assuming no changes in the permitted development regime in NI, then a large number of telecommunications applications are for very small scale changes, such as swapping antennas or adding a small ground based cabinet. Such applications are best dealt with under delegated powers freeing up both officer time and elected officials to deal with the larger applications, which will require more scrutiny. However, it is important to note that the schemes in the UK set up under the Local Government Act allow delegated decisions on behalf of council, recent changes in Scotland allow delegated decisions from a third party. This has been necessitated to allow appeals to be heard by local review bodies i.e. it creates a 'separation' between a council as review body from the third party who made the original decision. Our concerns over this are set out below, suffice to say, we do not consider that this is a sufficient level of separation and councils will be, in effect, reviewing their own decisions. Obviously this creates a problem of conflict of interest and undermines the present impartially that the planning process is seen to have i.e. the right of appeal to a disinterested party (e.g. Planning Appeals Commission, PAC, Planning Inspectorate, PINS, or the Dept. of Environmental and Planning Appeals, DPEA).

Do you agree that, post-RPA: a) the list of statutory consultees should be extended; and

b) categories of development, linked to the development hierarchy, that require consultation (including pre-application consultation) before applications are determined by the planning authority, should be introduced?

a) There is often a balance between consultation and the expedient management of development and planning applications. If consultees are statutory then these consultees need to have the resources to engage with the process in a timely manner. If not, applications can be delayed and/or complicated by, potentially, matters not material to the determination of the application. However, in principle, we consider it important that applications can be scrutinised by as wide a range of interested parties as possible. ICT is seen, rightly, by most LPAs throughout the UK as being an integral part of new large scale development. It is important therefore the mobile telecommunications industry, through the MOA, are aware of new large-scale development so that the ICT needs of future inhabitants or businesses are met and they have access to the latest mobile ICT provision.

b) The telecommunications sector has been at the forefront of pre-application discussion since the publication of the Stewart Report and the introduction of the MOA's 10 Commitments to Best Siting Practice. This approach has allowed the mobile operators to engage with local communities before planning applications have been submitted. This consultation has been independently audited and provides reassurances to government that the industry has 'built-in' consultation to its processes. We therefore agree in principle with the proposals however, before anything was made statutory e.g. a planning authority could decline to determine an application, then a further consultation must take place to establish what categories of development are involved and what the extent of consultation should be.

Question 50

Do you agree, post-RPA, that statutory consultees should be required to respond to the planning authority within a specified timeframe?

Yes

Question 51

If so, what do you consider the specified timeframe should be?

We agree that 21 days should provide enough time for a statutory consultee to understand the nature of the application and its impacts and provide a response to the planning authority.

Question 52

Do you agree that the existing legislation should be amended and clarified to ensure that anyone wishing to demolish any part of an unlisted building in a conservation area/ATC/AVC requires conservation area consent or planning permission?

N/A

Question 53

Do you agree that the planning authority should be able to require that, where possible, proposed development should enhance the character of a conservation area?

It is considered that this provision already exists under the legislation set out in paragraph 4.87 and in PPS6 as set out in paragraph 4.88. As the paper also sets out, case law demonstrates that planning authorities need to exercise such provisions with care. Adding this, a more nuanced, approach, we believe would add uncertainty to any development proposals, especially where

there are often increased costs in order to ensure the preservation of the character and appearance of conservation area. Disagreement over what is and what is not 'possible' could ensue with more recourse to planning appeals and ultimately potential court challenges. The planning outcomes can be derived from the current legislation and guidance and so we would not agree with these proposals.

Question 54

Do you agree that the normal duration of planning permission and consent should be reduced from five to three years?

In principle we agree with this and this would bring permission and consent into line with that of England. However, what recent economic events have demonstrated is that often development can be postponed or halted due to circumstances outwith the developer's control. On that basis we consider it important that the provisions exist for this time to be altered during the course of the application, through discussion between the stakeholders, and/or afterwards via an amendment to condition application, rather than a further full planning application.

Question 55

Do you agree that a statutory provision should be introduced to allow minor amendments to be made to a planning permission?

Yes.

Telecommunications development is rapidly evolving and new technological improvements are happening continually and incrementally e.g. it is not as simple as a single development step from 2G to 3G. It is important for the efficient rollout of networks that small scale changes can be captured by the planning system in a manner which does not unduly compromise the ability of the industry to operate at a level which best serves its customers. Often these changes[1] can mean that a slightly different antenna is proposed or that a small transmission dish is added. These changes which will not fundamentally alter the physical appearance of the existing or proposed development and so would benefit from this proposal.

Question 56

Do you have any comments on the details of such a provision as outlined at paragraph 4.101?

These details seem appropriate. We would caution that if it is to be at the discretion of the planning authority as to whether or not a proposal is non-material, then there needs to be a clear framework put in place to manage the expectations of potential consultees (fifth point). Telecommunications development can prove to be very contentious. It is doubtful that if an application which had been approved, and had garnered a significant degree of local opposition, were to be subject to a minor amendment, that all the parties would necessarily consider any changes to be non-material. Of course this relates primarily to perceived health impacts even although the physical development may be inconsequential. This may place case officers in difficult circumstances and we would suggest that any such power to prescribe, form of application, consultation and publicity is managed consistently and that those consulted are made aware exactly what is being applied for. For those not well versed in the planning system, it can appear opaque and confusing and we would be wary raising the expectations of stakeholders without those expectations being managed by the system.

Question 57

Would you be in favour of enabling the planning authority to correct errors in its planning decision documents without the consent of the landowner or applicant?

It is in everybody's interest that a decision notice issued is correct and error free. However, the decision notice relates to land and will also be relevant to the applicant who made the planning application. We would therefore have some misgivings about the principle of a legal document being amended without either the landowner's or the applicant's consent.

Any amendments to the legislation would need to be clear and proportionate. The principle of consent should remain paramount however, should this not be able to be achieved, then, and only then, should a planning authority have any power to amend a planning decision document. This should also be in line with what is a clear definition of 'error'.

Planning Appeals

Question 58

Do you agree that the time limit to submit appeals should be reduced?

If so, what do you think the time limit should be reduced to – for example, 4, 3 or 2 months?

No. The experience from England and Wales placed an intolerable workload on the Planning Inspectorate and increased just the registration time for appeals to over 6 months in some cases. It did not give developers time to review their options post refusal and lead to appeals being submitted where perhaps there were more appropriate planning options available. The reduced time frames then had to be reversed and has now returned to 6 months. We consider that the uncertainty engendered by the time between a refusal and appeal is most acutely felt by the developer and can usually be measured in £s i.e. it is in their interests to submit an appeal quickly. Delays are by definition not vexatious. Developers may wait until close to the deadline before submitting an appeal however this is generally because they do not wish to undergo the uncertainty and expense of an appeal when there may be a more suitable route to achieve their aims. We therefore do not see 6 months as being unnecessarily long.

Scotland has recently enacted regulations that see the time frame for planning refusals to be appealed reduced from 6 months to 3 months. Representations were made by the numerous industry representatives, including the MOA, to these changes based on the problems encountered in England and Wales. With the regulations only coming into effect on August 3rd, it is too early to judge the success or otherwise of this change. It should however be borne in mind that the number of planning applications (and hence refusals and appeals) has dropped significantly due to the economic downturn and that any impacts would need to be judged on a time frame which saw development levels back at their long term average.

Question 59

Do you agree:

a) that the PAC should be given the powers that would allow it to determine the most appropriate method for processing the appeal; or

b) that appellants should be allowed to choose the appeal method?

a) Yes. As the question is worded (and as indicated in paragraphs 5.5-5.7), it inferred that the PAC would have the final say on which method is used, rather than the only say. It leaves open the possibility that the method is suggested by the appellant and the planning authority with an endorsement coming from the PAC if it agrees or by imposing a method if it does not. This is the approach we would suggest is taken.

It is rare that a public inquiry would be necessary and the presumption should still be that the vast majority of appeals can be dealt with by written representations and a site visit by the PAC

b) In the vast majority of instances appellants will request that an appeal be dealt with under the written representations procedure. In some cases there will be an overriding reason why a different method of appeal would be necessary and an appellant should be able to make this case when lodging the appeal.

Question 60

Do you agree that parties to appeals should not be allowed to introduce new material beyond that which was before the planning authority when it made its original decision?

The appeal process should not be used to secure amendments or such a radically different development than that originally proposed during the application. As we understand it there are some amendments that can be made at appeal and that those are of a minor nature. We consider this to be a pragmatic and proportionate response to this issue. If there had been any injury or prejudice caused then there would be recourse through the Courts.

Telecommunications development is somewhat unique in that the actual location of a proposed pole/mast or antennas is determined by a number of often competing factors e.g. coverage requirements, neighbouring cell, land use designations, willing landowners etc. In addition within a typical cell there may be hundreds, if not thousands, of locations where a pole/mast/antennas could be located. Presenting all but the most pertinent of these would be an expensive and time consuming exercise which would not protect anybody's interests. Often planning applications are, however, refused for the lack of a suitable investigation of alternative sites. This issue must then be reviewed post refusal. We understand that the aim of the reforms is also to engender a culture change from development control to development management however, experience elsewhere in the UK suggests that often dialogue between applicant and case officer could be improved. Applications are still being refused for this reason when discussion between planning authority and applicant should have this resolved. In these cases it is often necessary to produce information inferred in the application but perhaps not explicitly set out. We would therefore be uncomfortable with any moves to restrict this ability to present information. Another example might be where a landowner's intentions (or indeed the landowner) change between application and appeal. We consider that the appeal system can still be flexible enough to take account of such instances without requiring the need for a further planning application (and potential appeal) with the resulting time delays and cost.

This reform has been was established in Scotland as of August 3rd and as yet it is too early to make any real assessment of the implications.

Question 61

Do you agree with the proposal that the planning authority should be able to refuse to consider a planning application where a 'deemed application' associated with an appeal against an enforcement notice is pending?

The presumption underpinning this specific proposal is that the appeal system is being used to delay enforcement action. It also presumes that the issuing of enforcement proceedings by the planning authority is correct (in a legal sense) i.e. paragraph 5.11 talks of "...the breach of planning..." rather then the alleged breach of planning. We know from experience that often this is not the case and we know that enforcement cases can be also brought due to political pressures. As a matter of principle, we consider that nobody should be denied the right for their planning application to be considered by a planning authority, irrespective of any enforcement proceedings.

It is considered that the loss of such a right to an individual or business outweighs any injury to amenity caused by the current legislative and regulatory framework.

Question 62

Do you agree that the planning authority should have the power to decline repeat applications where, within the last two years, the PAC has refused a similar deemed application?

No. We consider that planning authorities should only have the power to decline repeat applications where the PAC has dismissed an appeal, after the refusal of a planning application. This is in line with the principles of justice that underpin the planning system throughout the UK that an independent body can review the determination of the planning authority as public body. A deemed application will not allow full consultations to be undertaken nor allow full responses from neighbouring properties and business etc i.e. it may not, by virtue of process, be able to look at all material considerations.

Question 63

Do you agree that a time limit of 2 months should be introduced for certificate of lawful use or development appeals?

No. We consider that if a time limit is to be introduced it should be the same as for other types of appeal i.e. 6 months

Question 64

Do you agree that the PAC should be given a power to award costs where it is established that one of the parties to an appeal has acted unreasonably and put another party to unnecessary expense?

Yes. With powers for determining applications being devolved to the local planning authorities, experience elsewhere in the UK tells us that decisions can often be made for reasons other than sound planning reasons. In relation to mobile telecommunications development, this usually involves the disregarding of national guidance in regard to health and perceived concerns over health. Seeking costs in these cases can help both parties as it helps reimburse the appellant for the unnecessary cost and delay, and can help focus the mind of a planning authority for its future decision-making. Clear guidance as to what is and what is not 'unreasonable' could be set out in accompanying guidance/circular.

Question 65

Do you think the new district councils should be able to establish local member review bodies to determine certain local planning appeals?

No. Scotland has recently introduced such a measure although as yet there has been no 'review' undertaken as the regulations only came into effect on August 3rd. There is an inherent problem with such a proposal as it compromises the integrity and impartiality of the planning system in its widest sense i.e. the review body will be reviewing its own decision. This is not compatible with the system as it has been run up until now and the one which has withstood challenges in the European Court of Human Rights. Scotland has squared this circle by introducing a new scheme of delegation under the Planning etc Act (not under the previous Local Government Act) which creates a new position of an 'appointed person'. This appointed person is meant to act independently of the Council thereby allowing the review body to review the decision of a third party. Of course the 'appointed person is in fact a Council planning officer, who remains so in all other aspects their work. Indeed, should the number of objections reach a certain level, that same 'appointed person' will move seamlessly back to being a member of the Council. We do not consider that this is a sufficient level of 'separation' for the integrity of the system to continue.

Question 66

If so, what types of applications should this apply to?

See answer to 65

Question 67

Should provision for third party appeals be an integral part of the NI planning system or not? Please outline the reasons for your support or opposition.

No. Third party representations are fully addressed via the consideration of planning applications and the associated decision making process. The introduction of statutory consultations for more complex regional or major developments can ensure that 3rd party concerns can be addressed at an earlier stage. The introduction of a 3rd party right of appeal will seriously impede development by introducing significant uncertainty to the process as well as the time delays associated. Such delays and uncertainty would affect the rollout of telecommunications infrastructure and thereby adversely impact on service provision within NI, ultimately affecting the important economic and social benefits of having an up-to-date and modern mobile telecommunications system.

Question 68

If you do support the introduction of some form of third party appeals, do you think it should an unlimited right of appeal, available to anyone in all circumstances or should it be restricted?

Even although we do not support the introduction of a third party right of appeal, should one be introduced then we would wish the opportunity to have some input to that aspect at that time. We would however strongly resist such a proposal as per the answer to Question 67.

Question 69

If you think it should be a restricted right of appeal, to what type of proposals or on what basis/circumstances do you think it should be made available?

See answers to Question 67 and 68

Enforcement

Question 70

Do you agree that a premium fee should be charged for retrospective planning applications and, if so, what multiple of the normal planning fee do you think it should be?

No, the planning application fee should be based on the complexity of the application and the resulting workload rather than be used as a punitive measure. Legislative powers are in place to deal with unauthorised development and these powers can be extensive if used to their full extent. We would consider that the right to make a retrospective application is now an established part of the planning system in the rest of the UK and that NI should not seek to break from this approach at this time.

Question 71

Do you think the Department should consider developing firm proposals for introducing powers similar to those in Scotland, requiring developers to notify the planning authority when they commence development and complete agreed stages?

We would agree with the thoughts outlined in paragraph 6.7 i.e. it is too early to judge the full impacts from the Scottish experience. It would be wise therefore to wait and assess this after some time has elapsed before making any such change in NI.

Question 72

Do you think the Department should consider developing firm proposals for introducing Fixed Penalty Notice powers similar to those in Scotland?

We would agree with the thoughts outlined in paragraph 6.9 i.e. it is too early to judge the full impacts from the Scottish experience. It would be wise therefore to wait and assess this after some time has elapsed before making any such change in NI.

Question 73

Do you think the Department should give further consideration to making it an immediate criminal offence to commence any development without planning permission?

No. Whilst we have had regard to the arguments for and against set out, we consider that the current enforcement proceedings are the correct forum for these matters to be resolved (before any criminal proceedings are brought). Courts are not the place for potentially complex planning issues to be resolved if satisfactory arrangements currently exist to explore these issues before moving them into the criminal realm. We note that this is not a current proposal but would strongly urge NI not to adopt such a proposal in the future.

Question 74

Do you agree that there is a case for seeking increased contributions from developers in Northern Ireland to support infrastructure provision?

N/A

Question 75

If so, should any increase be secured on the basis of extending the use of individual Article 40 agreements with developers on a case by case basis?

N/A

Question 76

Alternatively, should a levy system of financial contributions from developers be investigated in Northern Ireland to supplement existing government funding for general infrastructure needs, e.g. road networks, motorways, water treatment works etc., in addition to the requirements already placed upon developers to mitigate the site-specific impact of their development?

N/A

Question 77

What types of infrastructure should be funded through increased developer contributions, e.g. should affordable housing be included in the definition?

N/A

Question 78

If such a levy system were to be introduced in Northern Ireland should it be on a regional i.e. Northern Ireland-wide, or a sub-regional level?

N/A

Question 79

If such a levy system were to be introduced should all developments be liable to make a financial contribution or only certain types or levels of development e.g. residential, commercial, developments over a certain size?

N/A

Enabling Proposals

Question 80

The Department invites views on how we (and other stakeholders) might ensure that all those involved in the planning system have the necessary skills and competencies to effectively use and engage with a reformed planning system.

Clear guidance through the use of PPS and circulars as well as a clear Code of Conduct for elected Council officials would be the starting point. With reform as radical as being proposed here, it will take all stakeholders time to adapt to the new system. Consistency of guidance on its operation will be key so that the system can bed in. Perhaps when it is more mature, further power can be incrementally be devolved and stakeholders can bring forward more ‘local’ suggestions and solutions based on the experience to that point.

Question 81

Post-RPA, do you agree that central government should continue to set planning fees centrally but that this should be reviewed after 3 years and consideration given to transferring fee setting powers to councils?

Yes. Fees should be based on service and developers and stakeholders should expect a similar level of service across council areas. This is the system as applied in Scotland, England and Wales.

Question 82

Do you agree that central government should have a statutory planning audit/inspection function covering general or function-specific assessments?

We agree that there must be at least some sort of benchmarking and audit. However, there should be a note of caution about adopting central targets rather than dealing with local issues. Most KPIs are by definition quantitative rather than qualitative and yet it is the quality which is important. Certainly the proposed planning hierarchy should help make any quantitative analysis more nuanced.

[1] We understand that there is a review of permitted development rights due to take place in the near future (paragraphs 4.69-4.70) and we would hope that a number of developments which currently require a planning application can in future be considered as permitted development.

National Trust Submission to the Planning Bill

National Trust Diane.ruddock@nationaltrust.org.uk
Direct line: 028 9751 2301

14 January 2011

Clerk to the Environment Committee
Room 274
Parliament Buildings
Stormont
Belfast
BT4 3XX

Dear Committee Clerk

Response to the Consultation on the Planning Bill

The National Trust welcomes the opportunity to respond to the Environment Committee's invitation to submit evidence at the Committee Stage of the Planning Bill. In the time available it is not possible for us to give a detailed, clause by clause response, but we would like to comment on some key issues which we feel are particularly in need of the attention of the

Committee. Our response comprises an overview of the National Trust, the rationale for our interest in the planning system in Northern Ireland, and commentary on some of the key areas of concern. We would be very happy to follow up this response with oral evidence to the Committee, either individually or in concert with other environmental and community organisations.

Overview of the National Trust

1. The National Trust is the largest conservation charity in Northern Ireland and actively promotes the protection of our natural, built and cultural heritage. The Trust protects and provides access to some of the finest coast and countryside, historic houses, gardens and industrial heritage in Northern Ireland.

Our interest in the planning system

2. The National Trust has a keen interest in the planning system in Northern Ireland. A robust effective planning system, understood and respected by all participants, is an essential mechanism to deliver sustainable development. Our interest extends beyond the impact planning policies have on the special places in our ownership, to a broader concern for the overall management and use of land and resources in Northern Ireland and the need to protect our natural, built and cultural heritage. We are also increasingly conscious of the important role the planning system must play in promoting patterns of development and lifestyles which are more efficient and sustainable, in terms of the use of energy, transport, water and other resources and in preparing society to face up to the challenges of climate change. It is essential that the Planning Bill is rigorously tested to ensure that the legislation meets these needs.

National Trust
Northern Ireland Regional Office
Rowallane House, Saintfield
Ballynahinch
County Down BT24 7JA
Tel: +44 (0)28 9751 0721
Fax: +44 (0)28 9751 1242
www.nationaltrust.org.uk

President: HRH The Prince of Wales
Regional Chairman: Roy Bailie OBE
Regional Director: Hilary McGrady
Registered office:
Heelis, Kemble Drive, Swindon, Wiltshire SN2 2NA
Registered charity number 205846

3. The National Trust strongly supports a planning system which would assure high quality sustainable development in, and only in, the right places. We fully recognise the social, economic and environmental importance of development. We are not opposed to development. Our concern about the planning system in Northern Ireland prompted us to establish an independent Planning Commission which produced its report and recommendations: 'A Sense of Place: Planning for the Future in Northern Ireland' in March 2004. We are pleased to see that some of the recommendations of that report are now reflected in the Planning Bill.

Summary of our key points

4. The Planning Bill should set out clearly the Department of the Environment's responsibility to 'secure proper planning, community wellbeing and sustainable development'.

5. While we welcome the references to sustainable development, the wording should be strengthened to reflect the objective of 'securing sustainable development' and this responsibility should be reflected in relation to all levels of planning identified in the Bill.

6. We welcome the commitment to Statements of Community Involvement and the promotion of community participation in the preparation of development plans and in the development management process. However, the Bill should provide a statutory link between a Council's Local Development Plan and its responsibility for Community Planning.

7. We urge the Committee to press for the inclusion of Third Party Rights of Appeal in the Planning Bill.

8. The Committee should challenge the Department to provide a timetable for the preparation of guidance and subordinate legislation, as it is a major source of concern that much of the detail of how the Bill would be given effect in practice – and how it would be applied consistently across all Council areas in Northern Ireland – is deferred to guidance which has yet to be produced. In particular a new Planning Policy Statement 1 should follow as soon after the introduction of the Bill as possible.

9. We are concerned that the Planning Bill does not impose a duty to fully consider climate change in planning policy, which is a serious omission and missed opportunity.

Our more detailed comments are set out below.

Part 1

10. Functions of the Department

We believe the Bill would be strengthened by a much clearer articulation at the outset of the functions of the Department of the Environment, which would set out the purpose of the planning system. We therefore recommend that Clause 1 (1) should set out the Department's responsibility as being to 'secure proper planning, community wellbeing and sustainable development' and to formulate and co-ordinate policy to secure these objectives in an orderly and consistent way.

11. Clause 2 (b) on Sustainable Development – is welcome in its inclusion, but we feel the wording 'with the objective of contributing to the achievement of sustainable development' – is weak as currently drafted. We believe the requirement here should be for the Department to exercise its functions 'with the objective of securing sustainable development.' The same comment applies to Clause 5 in relation to local development plans which should have the objective of securing sustainable development. However, it is important that the principle of securing sustainable development should apply to all parts of the Planning Bill, and not only to local development plans.

12. At Clause 2 (1) we suggest the Department's responsibilities in relation to Statements of Community Involvement should be clarified, and suggest the following wording: 'The Department must specify its policy requiring the involvement of communities/citizens in all levels of planning.' Clause 2 (2) could simply state: 'The Department must set standards and approve performance for citizen involvement.'

Part 2 – Local Development Plans

13. Clause 3 – Survey of District – should make explicit reference to climate change and potential future climate change impacts, so that these can be taken into consideration in planning decisions. We believe this section should also reflect the Council's responsibilities for community wellbeing and community planning and explicitly take into account social and demographic issues. It would be appropriate at this point to ensure there is a statutory link

between a Council's Local Development Plan and its responsibility for Community Planning. This is an essential step, given the parallel process for the reform of local government.

14. We strongly support the requirement for a Statement of Community Involvement (Clause 4) but we are concerned that it is still not clear what this process will involve or what will be the mechanisms to ensure consistency of approach across all council areas. It is also unclear how (and by whom) the SCI will be monitored or tested. Similarly, in Part 3, Clauses 27 and 28, in relation to pre-application community consultation and reports, we urge the Committee to satisfy itself that these processes are robust, set at a sufficiently high standard, and consistently applied across all council areas.

Part 3 Planning Control

There is considerable detail in this section on which we do not offer specific comment.

15. However, we are very disappointed that the Bill does not take the opportunity to introduce Third Party Rights of Appeal. We believe that a very strong case has consistently been made for the introduction of Third Party Rights of Appeal, and the opportunity to do at this stage should not be lost. Such a right would significantly increase public confidence in the planning system, which is essential at a time of significant change, and would also provide an additional mechanism to ensure sound and consistently high standards of decision making. The case for TPRAs is set out in more detail below:

The case for Third Party Rights of Appeal

- TPRA will be a key means of contributing to transparency in planning procedures and enhancing the credibility of the planning system.
- At present only applicants have recourse to an appeal and therefore only applicants have the opportunity to hold the decision makers to account for a decision to refuse permission; TPRA enhances accountability by allowing third parties to challenge and hold decision makers to account for their decisions to grant planning permission. This introduces balance and fairness to a system which is currently weighted against the objector.
- The requirement of the decision-making body to defend approvals as well as refusals will have a positive impact on the quality of the initial decision, removing the risk that approval is the easier option as it cannot be challenged and tested at a further hearing.
- It then follows that the quality and standards of design and application will be driven upwards by the pressure for better decisions in the first instance.
- Concerns in relation to the potential addition to decision-making timescales by the availability of TPRA can be addressed by the fact that:
- many other mechanisms to streamline the process will be in place;
- pre-application consultation and other 'front loading' should ensure many third party issues will have been addressed, greatly reducing the number of times a third party will deem it appropriate to go to appeal;
- awards of costs and other mechanisms can be put in place to safeguard against frivolous or vexatious appeals.

Part 4 Additional Planning Control

16. We note without further detailed comment the provisions in Part 4 of the Bill, and we particularly welcome those in relation to listed buildings, conservation areas and trees.

Part 4 Chapter 8 – Further Provisions as to Historic Buildings

17. We particularly welcome the inclusion of Clause 197 in relation to grants and loans for the preservation or acquisition of listed buildings, in which specific reference is made to the National Trust. This reflects earlier legislation which has served the built heritage of Northern Ireland well in the past and will continue to do so in future. We also fully support the other provisions of Chapter 8.

General comment

18. Throughout the Bill, a great deal of the detail is still deferred to subsequent guidance or subordinate legislation. We are concerned about the length of time it may take for the necessary guidance to be in place, especially in the context of extreme pressure on DoE funding and staffing resources. We therefore urge the Committee to challenge the Department to provide a timetable for the provision of guidance, subordinate legislation or regulations, and the provision of a full suite of planning policy statements.

We believe it is essential that guidance should provided as quickly as possible and that a programme of subordinate legislation should be a high priority in the next Assembly. In particular, we recommend that a new Planning Policy Statement 1 should be prepared as a matter of urgency to support and articulate the purpose of the planning system to deliver sustainable development.

Conclusion

19. The Planning Bill is one of the most significant pieces of legislation to come before the Assembly, and scrutiny by the Environment Committee has the potential to considerably improve the impact of the legislation. We wish the Committee well in its deliberations and confirm that we are happy to discuss our comments in further detail at the Committee's convenience.

Yours sincerely

Diane Ruddock

External Affairs Manager

Newry and Mourne District Council Submission to the Planning Bill

Comhairle an Iúir Agus Mhúrn

Ref: SB/13

Report of Special Committee Meeting of the Council, to which all Councillors were invited to attend, held on Tuesday 11 January 2011 at 2.00pm in the Boardroom, District Council Offices, Monaghan Row, Newry to consider the Council's response to the Planning Bill.

In the Chair Councillor A Williamson

In Attendance Councillor W Burns
Councillor M Carr
Councillor C Casey
Councillor G Donnelly
Councillor J Feehan
Councillor F Feely
Councillor A Flynn
Councillor T Hearty
Councillor A Moffet
Councillor P McGinn
Councillor M Murphy
Councillor S O'Hare
Councillor J Patterson
Councillor H Reilly
Councillor A Williamson

Officials in Attendance: Mr T McCall, Clerk and Chief Executive
Mr E Curtis, Director of Administration
Mr J Farrell, Director of Environmental Health
Mr K Scullion, Assistant Director of Environmental Health
Mrs E McParland, Assistant Director of Administration (General Services)
Mrs C McAteer, Committee Administrator

Apologies: Councillor K McKevitt
Mr J McGilly, Assistant Director of District Development

Mr McCall gave the background to the Minister's announcement to introduce the Planning Bill into the Assembly and said the Minister would see this piece of legislation working very much in tandem with the launch of the Consultation on Local Government Reform. He said the Planning Bill would lead to a fundamental overhaul of the Planning System and would impact on virtually every aspect of the current system.

Mr McCall said that Members had been circulated with a summary of the issues which NILGA had identified in relation to the proposed introduction of the Planning Bill.

Councillor Carr said he had very deep concerns about the whole process which he believed was ill thought out. He said no details had been given on how the new changes would be funded and Councils, who would now have a lot more responsibility, had been given no indication of the funding they would receive to finance this new function.

Councillor Carr also referred to a paragraph in NILGA's response stating that Councils will be responsible for determining planning applications and will be the decision makers. They will have the recommendations of their professional planners but they will make the decisions and live with the consequences. He said this, in effect, summed up what impact the new changes would have on Councillors.

Councillor Carr said currently Councillors got involved in planning applications and either supported them or in some cases supported those who were objecting to a particular application. He said this role would be taken away from Councillors and ultimately they would have to declare an interest if they strongly supported or objected to a particular application.

Councillor Carr said Councillors would be duty bound to listen to professional advice and he could not see how they could become personally involved with an application.

Councillor Carr said Newry and Mourne District Council were now waiting 11 years on the publication of the Council's Development Plan. He also said that those people who had the responsibility of introducing RPA had failed to reach a decision and yet it was the same people who were now forcing this new Planning Bill on Council. He said he could not understand how they could write legislation when they did not know if they were writing it for 11 or for 26 Councils.

Councillor Carr also said that a consultation process had been undertaken by the Boundary Commissioner and agreement had not been reached at the end of it. He said the goal of the 11 Council Model had not been achieved and the planning reforms which would work for 11 Councils might not necessarily work for 26.

Mr McCall referred to discussions at the December Planning meeting of the Council in relation to proposals to transfer Planning Service Staff from Craigavon to Downpatrick. He said the Council had agreed to write to the Chief Executive of the Planning Service and ask that consideration be given to Planning Service staff being located to an office in Newry.

Mr McCall said that Mr E Curtis and himself had met with the Chief Executive of the Planning Service on 10 January 2011 and had been advised that no decision had yet been made on moving Planning Service to the Downpatrick office in April 2011. He said the Chief Executive of Planning Service had indicated that they would be willing to listen to the views of Newry and Mourne and Down District Councils about where staff should be based and that these would be taken into account. However he said if the option to relocate some of the Planning Staff to the Newry area was taken, even on a temporary basis, Planning Service had indicated that they would not be responsible for any increase in costs such as rental of office space, equipment, heating etc.

Mr McCall said if reorganisation progressed, with the establishment of 11 new Councils, then at that stage they would have to work together and decide how planning would be delivered. For example a decision would need to be taken as to whether each Council would work separately or perhaps planning functions could be undertaken by a Central Organisation which all Councils could buy into.

Mr McCall said that the legislative framework of the Planning Bill was intended to be in place by April 2011 and thereafter a small number of pilot programmes would be run to test the proposed consultative arrangements in a working environment. He said these pilot programmes would allow Planners to consult with Council earlier than under the current system to enable Councillors to get involved at an earlier stage in planning applications and to have Councillors input in building up to a decision on planning applications. Mr McCall said by April 2012 all Council areas would be involved in this pilot work

Mr McCall indicated that Newry and Mourne, together with Down District Council, could be involved in a pilot project from April 2011 and, if not, would certainly be involved by April 2012. He said Councillors would not have statutory authority at this stage but would be getting used to the process and how it was going to work.

Councillor Reilly said the Minister had made it clear that any major planning decisions would still remain with his Department. He said in Great Britain planning had been very successfully devolved out to District and Parish Councils.

Councillor Reilly said this was a fundamental review and hopefully the outcome would be that Planning would be delivered closer to the people on the ground. He said an office in Newry was a necessity and added that in his view the current planning with its numerous site visits and office meetings was an inefficient system.

Councillor Reilly said if sub offices were established it would bring planning to the people who were involved in the process and the Council should support something which suited them and the people they represented.

Councillor Hearty said he could see dangers in Councils becoming responsible for making planning decisions. He said currently planning opinions were made by professional people and the Council could work with planners and an applicant and if there were sufficient grounds could overturn a decision. He asked if this opportunity would still be available for Councillors.

Mr McCall said Councillors could still overturn a recommendation made by professional planners but would be doing so at their own risk. He said if the Council decided to reject an opinion from professional planning staff then they would be open to judicial review.

Councillor Hearty said if planning powers were transferred to Councillors he could see Councillors becoming the focal point of serious lobbying from constituents who would be of the view that the Council could grant planning applications. He said Councillors dealt with people they knew and could be put in a difficult position if an applicant, for example, believed they should have a dwelling on their own farmyard. He said under the current arrangements the Council did not have to make the ultimate decision on planning applications and he believed there needed to be some protection for Councillors under the transfer of planning powers.

Councillor Hearty also said that if planning was being transferred to Councillors then a financial package would have to be made available for any associated increase in costs and the financial burden should not be put onto the rate payers.

Councillor Hearty said that so much change had happened within the Planning Service recently that staff had lost all heart in the process. He said Planning Service officials did not know if their jobs were safe or if they were being moved to a completely different office and this was extremely unfair on them.

Mr McCall confirmed that at present the Council was a consultee on planning decisions but with the transfer of powers the Council would be taking the decisions. He said currently professional planning decisions were presented on a schedule to Councillors on a monthly basis and it would be hard to see that this schedule would be much different if powers were transferred to Councils as the decisions were made on the basis of professional advice. He said Councillors could not change such decisions unless they had good clear grounds for doing so.

Councillor Feehan referred to page 4 of the NILGA document which stated that the staffing arrangements at most offices would remain unchanged as a consequence of the process. There will be some changes in the southern area offices in Downpatrick and Craigavon. The Craigavon side will be maintained as a main office, while Downpatrick will be a sub office and some staff in the Downpatrick office may transfer to Craigavon while others may transfer to Belfast because certain Councils will be affected under the new Belfast office proposal. He said this statement contradicted what the Clerk had said earlier following an update from his meeting with the Chief Executive of Planning Service.

Mr McCall said the Downpatrick office would be a sub office of Craigavon. He said at his meeting with Mr Ian Maye it had been clearly stated that Planning Service were not going to dictate to Newry and Mourne and Down District Councils where staff should be located but rather they would be flexible on this matter.

Mr McCall said that Planning Service would be happy to go with whatever arrangements suited the Councils but had said that they would not bear any increase in costs.

Mr McCall said it might be that Newry and Mourne and Down District Council could decide that they wished to retain both offices but perhaps when the new Council was formulated they could decide that they could not afford such an arrangement.

Councillor W Burns said the Council had lobbied on previous occasions for the Government to decentralise functions and now this was happening with the planning function but no finance was being made available by Central Government to cover costs which Councils would incur.

Councillor Burns said when the new E-PIC planning system was up and running and teething problems had been ironed out, there would be no need for applicants to attend offices in Craigavon or Downpatrick as they could follow all planning applications online.

Councillor W Burns said planning authority would transfer to Councils and staff would be employees of the Council. He said if the Council were of a view to overturn a decision on the back of professional planning advice then they would need very good evidence and relevant information to be able to stall the process.

Mr McCall said there were currently delays in progressing planning applications but this was not the responsibility of the Council. He said the longest delays were incurred during consultations with different groups and in County Louth a timetable system was in operation which meant consultees had to respond by a certain time and if they did not the planning application was moved on.

Councillor Feely said it was very difficult to work out what was happening in relation to planning powers. He said he did not believe the Executive knew entirely what they wanted and if planning powers were transferred to the Council then they would only come with a small amount of funding which would not be adequate to meet the increased costs.

Councillor Feely said it would be Councillors who would be left with the problems and people would terrorise Councillors in an attempt to get planning approval and yet at the same time Councillors would have no real powers as they could not go against advice from professional Planners.

Councillor Feely said that if planning powers were being transferred then it should be the role of the Council to make decisions as a result of consultation with professional planning staff and Planners should not have the final say.

Councillor Feely said this was a very serious issue and could lead to an additional burden on the ratepayers. He said if Councillors took a decision against planning advice then they were in danger of breaking the law and he could not see how the system would work.

In response Mr McCall said that Council would eventually have a statutory duty in relation to the planning process but along with that duty they would still have all the planning policy statements and regulations which were in force at present and on which professional planning staff based their opinions.

Mr McCall also said under the Review of Public Administration new Governance Arrangements for Councils would be put in place, together with a new Code of Practice and a new Code of Conduct. He said whilst these were voluntarily at present they would become mandatory under the new system.

Councillor Patterson said he hoped there would be a lot of restraints put on Councillors with regard to their ability to make a decision on planning applications and said professional Planners should still be responsible for making planning decisions.

Councillor O'Hare said if the Council and Councillors had the final say in planning applications then how could a Councillor lobby on behalf of one particular planning application.

Mr McCall said that when the new Governance Framework and Mandatory Code of Conduct and Ethical Standard Regime were put in place, then it could very well be the case that if a Councillor lobbied in a particular way on a particular planning application, they could not take part in making a decision on this application. However he said these matters would only become clearer later in the process.

Councillor Carr said the DOE had just published its budget proposals and had indicated that a further 150-200 jobs would be going in the system and he believed that most of these would be planning jobs. He said his opinion was that planning authority powers were being given to Councils so that they could be funded by the ratepayer. He also said if the Council were to receive responsibility for planning then the new Governance Framework and Ethical Standards should be put in place before authority is transferred to Councils.

Councillor Carr said in his opinion the changes would mean that Councillors would be taken out of the equation and they would not be able to represent their constituents.

Councillor Feely said that planning was not an exact science and that is why on some planning applications Planners and Councillors could discuss issues which would lead to a change of opinion. He said in his view decision making powers must be given to the Council.

Mr McCall said the Council could take whatever decision it wanted in relation to planning applications but Councillors would have to be aware that if the wrong decision was taken then it could be open to judicial review.

Councillor McGinn said planning was, at times, a political issue and there would have to be capacity building for local elected representatives before anything changed, to give them confidence to deal with the new process. He also said it was essential that adequate safeguards and checks were put in place as part of the new process and that the transfer be properly funded.

Mr McCall said the proposed pilot programmes were very important as these would give Councillors an opportunity to get involved in the process without being responsible for it.

Councillor Williamson said in his view Councils were being handed a poisoned chalice. He said the Department had undertaken a massive cost cutting exercise within the Planning Service and were now going to transfer the costs from Central Government to Local Government and ultimately the ratepayers.

Councillor Donnelly agreed that local Councils would have to pick up the tab for this transfer of function. She said Planning Service was already on a go slow because of all the job losses and changes which had happened within the system. She referred to office meetings which she attended on Monday 10 January 2011 and said Councillors, applicants and agents seemed to be going round and round in circles with Senior Planning Officials and she did not know how long it would take to process these applications.

On the proposal of Councillor Donnelly, seconded by Councillor O'Hare it was agreed the Council seek a meeting with the new Divisional Planning Manager to discuss the planning process.

Councillor Reilly said it was important that Planning Service remain accessible to the general public and he said many older people and indeed ordinary families still did not have access to a computer and would not be able to track planning applications on the new E-PIC planning system.

Councillor Reilly referred to planning applications which had been deferred under PPS21 and which had now been in the system for perhaps 2-3 years. He asked if the new planning reforms were implemented who would be responsible for making the decisions on these applications.

Mr McCall said that from April 2011 the Council would have greater involvement in the planning process although the outcome of planning applications would still remain with Planning Service. He said authority for planning matters may be transferred to Councils in advance of RPA but the expectation would be that this would be a few years down the road and applications such as the ones referred to by Councillor Reilly would hopefully have been dealt with at that stage.

Mr McCall referred to the changes which had recently happened in Planning Service and in particular the Craigavon Division and said no account had been taken of the volume of work which was generated from the Newry & Mourne area when the decision had been taken to reduce the number of staff.

Councillor Carr said before any powers on planning were transferred to Councils it was important that the new Governance Framework should be published and also the funding package to allow Councils to deliver this service.

Councillor Carr referred to the introduction of the E-PIC computerised planning programme and said this had been discussed about 7-8 years ago and whilst it was now being implemented, it was still not working properly. He said the Area Plan was 11 years late and given the way these issues had been handled he had grave doubts about the transfer of the planning process to Councils.

Councillor Carr said over the years he would have welcomed an authority from Councils on some of the more inappropriate planning decisions which had been made for e.g. the development of apartment blocks in Warrenpoint.

Mr McCall said the views which were being expressed by Councillors at this meeting would no doubt be shared by other Councils. However he said the Executive had taken a decision that this legislation would be put in place before the next elections.

Councillor Carr said in his opinion this legislation was being rushed through and should be left for a new incoming Minister for the Department of Environment to consider and for the new Assembly to agree on following the elections. He said he would propose that the sentiments expressed by Councillors at this meeting should be brought together and presented to NILGA and to the Committee for the Environment who were seeking comments on the Planning Bill.

Councillor Casey said he believed there was a meeting in the Assembly on Wednesday 12th January 2011 and if Councillors were entitled to attend, an email should be sent to all Councillors advising of details of the meeting.

It was agreed officials investigate if Councillors could attend the meeting in the Assembly regarding the Planning Bill and if they were entitled to attend that authority be given to them to do so and that they be advised of the details of the meeting by text.

There being no further business the meeting ended at 3.20pm.

For consideration at the Monthly Meeting of the Council to be held on Monday 7th February 2011.

Signed: _____

Thomas McCall

Clerk & Chief Executive

Northern Ireland Housing Executive Submission to the Planning Bill

Housing

Acting Chief Executive
Stewart Cuddy
B.A. (Hons), C.P.F.A

2 Adelaide Street
Belfast BT2 8PB

Cathal Boylan
Chairperson of the Committee for the Environment
Room 247
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

10th January 2011

Dear Mr. Boylan,

Housing Executive's Response to the Planning Bill

The Housing Executive welcomes the opportunity to respond to the proposed Planning Bill. The Housing Executive has the following comments:

General Comment:

1. The Housing Executive will continue to strengthen its role as a key stakeholder at all levels of the planning system and to assist planning authorities with the enactment of the Planning Bill. The Housing Executive looks forward to having a strong and central relationship with the new planning authorities within the new councils.

2. The Housing Executive considers it essential that resources, and a suite of planning guidance and planning policy and procedures is firmly in place by the time the Planning Bill is enacted, for its successful implementation. For example, new Statements of Community Involvement are to be mandatory in the Development Plan process to ensure that the public and stakeholders are fully engaged. The procedures for the preparation and guidance on the content of these Statements should be in place so that these can be carried out in a systematic way by all councils and without delay. Fundamentally a revision of Planning Policy Statement 1 'General Principles' will need to be in place when the Planning Bill is enacted.

Telephone 03448 920 900 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: stewart.cuddy@nihe.gov.uk

Part 1 - Functions of the Department of the Environment with Respect to the Development of Land

3. The Housing Executive supports Section 1, which states that the Department will retain responsibility for formulating Planning Policy and that Policy should be in general conformity with the Regional Development Strategy (RDS). The Housing Executive also supports that all Planning Policy should contribute to the achievement of sustainable development.

4. The Housing Executive supports Section 2, which requires the Department to prepare a Statement of Community Involvement (SCI) to involve those who have an interest in policy matters relating to development, in carrying out its planning functions. The Housing Executive looks forward to a continued role as stakeholder in this planning policy and review process.

Part 2 - Local Development Plans

5. The Housing Executive supports Section 4 and Section 5, which require the Council to undertake a Statement of Community Involvement and to contribute to the achievement of sustainable development when preparing development plans.

6. The Housing Executive welcomes the fact that the development plan should contain two parts: a plan strategy and a local policies plan; and that the plan strategy should be adopted before the local policies plan is prepared (Sections 6, 8 & 9).

7. The Housing Executive would like clarification of the clause under Section 6 and sub section (3). This clause appears to state that where there is a conflict between two plan policies within one development plan, the previous adopted plan should be referred to for a resolution. The Housing Executive considers that the previous plan may not always provide a coherent or an appropriate resolution if it is at variance with the newer plan strategy. The Housing Executive is also concerned that the previous adopted plan may have been prepared prior to the RDS and would not incorporate RDS principles. There could also be confusion in new council areas where there may be more than one previously adopted plan. Therefore, in some situations where there is conflicting policy, it might be preferable to defer to the Department in its monitoring role to resolve the conflicting matters.

8. The Housing Executive would like to see Section 8 (5) amended. This states that the council must 'take account' of the RDS when preparing the plan strategy. The Housing Executive supports the retention of the requirement for development plans to be in 'general conformity' with the RDS . This would ensure that district councils' development plan strategies are prepared with regard to the regional planning framework. Similarly, the Housing Executive would also like to see Section 9 (6) amended to state that local plans should also be in 'general conformity' with the RDS.

9. Sections 13 and 14 provide legislation for the council to review and revise the local development plan at such a time the Department describes or when the council deems necessary. The Housing Executive would expect that standard time frames for the life span of a development plan and plan revision should be set in regional planning policy, such as a review of PPS 1 – General Principles.

10. The Housing Executive welcomes Section 17, which facilitates Joint Working of two or more councils working on a joint development plan.

11. The Housing Executive welcomes legislation supporting the Department's role of monitoring the production, examination and review of development plans. This should ensure consistency in approach across all council areas.

Part 3 – Planning Control

12. The Housing Executive would like Section 24 (2) clarified. This sections states that where planning permission is granted to develop land for a limited period, planning permission is not required for the resumption, at the end of this period, for the use for which it was normally used. The Housing Executive is unclear under what circumstances this section would apply. For example, does this clause suggest that on land where housing has been demolished and an application for temporary open space has been granted; that housing could be built on this land without planning permission or could a brownfield site, resume an industrial use without planning permission? The Housing Executive would also like 'normally used' to be defined.

13. Section 25 (1) states that development belongs to two categories: major developments and local developments. The Planning Reform paper proposed three categories of development: local development, major development and regionally significant development. The Housing Executive would like the Bill to clarify that major developments now also include regionally significant developments.

14. The Housing Executive expects that a definition and further details of what constitute local and major development will be set out in regional policy, such as in a review of PPS 1. For example, there may be different site sizes, unit numbers or floorspace thresholds to determine whether the application is local or major development.

    The NIHE would like to highlight that an agreement was made with Planning Service that planning applications for social housing would be defined as major development and therefore Pre Application Discussions and Performance Agreements would be made available for all social housing applications. The Housing Executive would like confirmation that this agreement is still in place and will be addressed in secondary legislation and policy guidance.

15. The Housing Executive supports sections 46, 47, 48 & 49, which provide powers to decline to determine applications. The planning authority will be able to send back applications in cases where there has been a previous application refused within two years and where there have been no significant changes to material considerations. These Sections also provide powers to decline to determine an overlapping application, which is similar to another application already under consideration by the Department or council. These sections will facilitate the delivery of speedier planning decisions and efficient working practises.

16. Section 58 states that an applicant may appeal a planning decision if their application is refused planning permission or to remove a planning condition. The Housing Executive would like to see Section 58 amended to introduce third party appeals. This would produce a more equitable planning system as local communities would be afforded the same opportunities as developers to question and scrutinise planning decisions. The Housing Executive would like the issue of third party appeals revisited as stated within the Planning Reform Consultation Paper, (Oct 2009).

17. Section 60 (1) states that where planning permission has been granted, development must be started within five years of the date on which permission is granted or another period which may be longer or shorter as the council or department considers appropriate. The Housing Executive has concerns with permitting a longer duration of planning permission as this could encourage land banking, leading to a shortage of development land and the consequent price inflation etc. This could also result in a lack of revenue for planning authorities, if there is a long lead in time and therefore no requirement to reapply or renew permission.

18. The Housing Executive welcomes clause (1) (e) in Section 75 which allows a planning agreement to require a sum or sums to be paid to a Northern Ireland department. This clause will allow developers to pay commuted sums in lieu of affordable housing to DSD, if a developer contribution policy for affordable housing is brought forward (draft PPS 22).

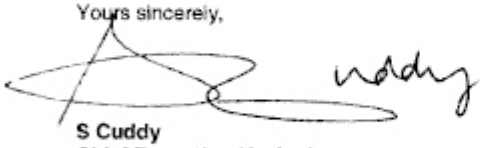
19. The Housing Executive, however, would also like to see an additional clause in Section 75 (1) which requires the transfer of land from a developer to a Northern Ireland department. This would further facilitate the delivery of draft policy PPS 22.

Developer Contributions

20. The Housing Executive notes that the Planning Bill is silent on developer contributions. In The Reform of the Planning System in Northern Ireland (July 2009), the Department argued that it is right that developers contribute to the provision of infrastructure. The Housing Executive would wish to see the inclusion of a section in the Planning Bill, which introduces further powers for developer contributions. The Housing Executive believes legislation for developer contributions should be brought forward in the near future.

I trust this information will assist you,

Yours sincerely,



S Cuddy
Chief Executive (Acting)

Northern Ireland Local Government Association Submission to the Planning Bill

NILGA Evidence to the Environment Committee
on the Planning Bill - January 2011

The following is the NILGA written evidence to the Environment Committee in the Planning Bill as introduced to the Assembly in December 2010. This paper was drafted further to a large local

government engagement event, held in Cookstown on 18th January 2011, which was attended by 90 councillors and local government officers, and which was used to develop local government views on the Bill. 24 of the 26 district councils were represented at this event. No representatives from the Department were available to attend.

Given the timescale involved, it has been necessary to submit this evidence as draft. There has not been time for the NILGA Executive to consider the response. It is likely, however, that given the strategic importance of this Bill to local government, there will be ongoing engagement with the Committee over the coming weeks, and indeed with the newly constituted Committee subsequent to the May election. NILGA would be keen to facilitate substantive Assembly engagement with local government on the issues of concern.

The Bill represents the proposed enactment of the policies for the reform of the planning system. It makes proposals for changes to development planning and management, appeals, enforcement and planning policy, which represent the most wide-ranging changes to the planning system in over 30 years. The key issue for councils is the enactment of the transfer of most aspects of the planning system to local government. NILGA and our member councils are keen to ensure that this transition is effective and well-managed, and that the Department works closely with councils prior to and during transfer.

For further information or to discuss any of the issues highlighted, please contact Karen Smyth at the NILGA Offices: Email: k.smyth@nilga.org Tel: 028 9079 8972

Introduction

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties. Planning is a key issue for local government due to the huge impact it has on the shaping of local communities, the economy, and sustainability. NILGA is pleased to be able to have an opportunity to comment on the Planning Bill, and we trust that our comments will be taken into account when developing the final legislation. This response was developed in liaison with the NILGA Planning Working Group and SOLACE.

NILGA would like to thank the Environment Committee for the opportunity to give evidence, and for the extra time given to submit this response.

It is intended that this response will largely follow the form of the Bill, and will comment on the 15 Parts, referring to specific clauses where necessary. Prior to this, there are a number of strategic key issues of major concern to councils that we wish to highlight.

Key Issues

Timing: Local government is deeply concerned by the timeframe in which this Bill is expected to pass through the Assembly. Time is required to undertake a comprehensive and detailed study of the Bill. Many of the reforms proposed in the Bill may be good reforms, but the extreme time pressures are hampering the ability of the Committee, stakeholders and the public to properly scrutinise and examine the implications of this legislation, increasing the risk that large parts of this legislation will need to be amended in the early stages of the next Assembly. Local government would value the opportunity to go through the Bill in greater detail, but time has not permitted this.

An additional concern is the introduction of this Bill while the Local Government Reform policies are merely out for initial consultation. This matter will be considered in more detail under the heading of 'Governance'.

We would also highlight our concern regarding the potential for consistency issues between this Assembly and the next, potentially impacting on the reform programmes for both planning and local government.

Local government does not believe that this legislation should be rushed, and would propose that if the Environment Committee shares this concern, at the very least, a review mechanism should be built in to the Bill as a safeguard.

Lack of Communication: A major worry for local government is the lack of communication that there has been between the Department and councils on the detail that will be needed to ensure smooth transfer. This lack of communication has resulted in a high level of uncertainty within local government

- No plan for transfer is in place.
- No assessment has been made of the resources required. Local government has no information on costs and other vital information, despite repeated requests over the last few years.
- No joint work has taken place to agree lines of demarcation between councils and the department post transfer.
- No joint project plan has been drawn up
- No clear strategy has been communicated for drawing up new development plans.
- No plans have been communicated or agreed for transfer of staff, resources or buildings.

It is the view of local government that the Department continues to display a lack of commitment to the practical work required prior to transfer, and to devolving authority to local government. If local government was viewed as a partner by the Department, then the resulting full transparency, engagement and cooperation would build trust and allow for a more effective transition.

Resources: Local government is deeply sceptical regarding the intention to transfer of resources to enable councils to deliver the planning function satisfactorily. We do not believe that satisfactory work has taken place to estimate costs or develop a business case and we believe that fees, even if increased, will be insufficient to cover costs. We note that enforcement and local development planning will not be covered by fees, and are left to wonder how these services will be paid for. NILGA would argue strongly that the transfer of this service should be cost neutral to the citizen, although we would value discussions with both the Department and the Environment Committee as to how cost neutrality is to be assessed. Much greater transparency is needed on the finances of the planning system. We need an evidence base as a matter of priority to ensure we build a sustainable system.

Governance: Local government considers governance as a key issue, in ensuring confidence in the planning system post-transfer. It is vital that an appropriate council governance model, a mandatory code of conduct and other safeguards are in place before the transfer of planning to councils. It is difficult to understand why this Bill was introduced prior to the Local Government Reorganisation Bill, for which the policy proposals are at initial consultation stage.

NILGA cannot overemphasise the importance of the new governance policy to local government, and is concerned as to how the proposed pilots are to operate in the absence of appropriate governance, codes and legal protections being in place. We are also concerned regarding the lack of clarity on the demarcation of responsibility between the Department and councils, and indeed, how issues such as the development planning system and staffing responsibilities are to operate if councils agree to work in clusters. There has not been enough engagement on these issues between local government and the Department and we are deeply worried at this time.

NILGA would also value engagement with the Department to develop regulations, guidance and protocols to ensure a consistency of approach across local government is achievable, and in operation from the date of transfer. We are not able to assume that this engagement will automatically take place.

Post-Transfer Role of Department: More clarity is needed on the role of the Department post-transfer. It is clear from the Bill that it will retain a great deal of power, and even gain a great deal of power over councils and an ability to intervene in some areas of working. Again, engagement with the sector is necessary to obtain clarification on issues of concern. We must ensure that this legislation strengthens democratic accountability, and for councils to be the 'driver' within the new system. There appears to be no right of appeal against Departmental decisions, and some kind of check on Departmental powers is required, particularly given the financial implications for councils.

Local Government would be keen to ensure that Planning Service determinations, rulings and their outcomes and any associated liabilities will be retained as the sole authority and liability of the Planning Service as a government department and believe that this can be enshrined in legislation. It is worth noting that in the previous 1972-3 handover, from councils to the Planning Service, liability was passed onto the Service for incomplete planning determinations, not finished determinations.

Preparedness: It is vital that local government begins to prepare for the transfer of planning to councils. As a sector we need to begin to work out practicalities at local level, which we cannot do with the current lack of information. A huge capacity building exercise is also needed for elected members, officers transferring and existing local government officers, to develop understanding and expertise in running the new system. A training programme and scenario/role-playing events are needed at the very least. It is not known where funding will come from to facilitate this very necessary aspect of transfer. It is also the feeling of many of our members that when the Planning Officers transfer, it may be difficult for them at first to prioritise council requirements, and to get used to working more directly with elected representatives at local level, and a substantial induction training programme will also be required.

Part 1: Functions of the Department with Respect to Development Land

NILGA is broadly satisfied with the Clauses in Part 1 of the Bill, however, we would comment that we believe some serious issues could develop with regard to the development of the proposed new suite of planning policies, particularly during the transitional period of transfer. NILGA believes that there is potential for a serious vacuum or inconsistent application of policy to develop, and would value early engagement with the Department on the methodology and programme management approach to be used to transform the existing suite of PPS's.

The concept of introducing shorter, more strategic documents is supported, but there are concerns that the move to local decision-making might lead to increased litigation for councils. There is a need for clarity on the primacy of Planning Policy Statements in relation to development in the local development plans, how prescriptive they will be, and what latitude individual councils will have, if any. Policy needs to be firmly embedded in local plans, and

agreed between councils and the central planning service and department. In addition, the linkages between the development plans and planning policy statements require further consideration in regard to flexibility versus local interpretation.

There may be a need to change the naming system of policy documents (for example to Planning Policy 'Guidance') to reinforce the changing ethos, and to signal the move to local interpretation. There must be significant input from local government into the development of new Planning Policy. Local government holds a strong view that a 'one size fits all' style of planning policy system has restrictions, and may not be appropriate, going forward. Further consideration of this issue will be necessary.

Part 2: Local Development Plans

General: The main concern of local government is the current condition of the area planning system. We have plans at many different stages, and a number of council areas for whom the need for a new plan has become critical. Clarity is needed as to the status of existing plans, how the new development planning system is to be introduced, and how the local policies plan is to integrate with regional policy. Local government is deeply worried regarding the practicality of introducing a stringent new regime into a system that is in such serious arrears. We would suggest that the Department direct additional resources into the area planning team in the run up to transfer to ensure that plan development is expedited.

NILGA would caution against all new plans being developed at the same time due to the resource implications for the Department, so would seek clarity on if and how 'staggering' is to take place and how councils with plans at different stages can work together in clusters. Guidance is needed urgently on this particular issue. We anticipate that there will be huge hidden costs for councils in this area of work, which we understand is not currently covered by fees. This will include costs of the required survey of the district, the annual monitoring report

Development planning must be integrated with local government reform, and particularly with the community planning process. We would seek clarity as to how the department sees this working when the two key pieces of legislation have not been launched in tandem.

More information is needed from the Department as to the shape of the future system, and how it is likely to operate. Understanding of the new system must be developed prior to transfer.

Community Planning: One of the frustrations of providing evidence on the Planning Bill is the evident link to the local government reform consultation, and the inability to compare and contrast two 'like' pieces of legislation to ensure we have 'all bases covered'. We are responding in a partial vacuum and as a result, may ask more questions than we give answers on some issues. We are keen to ensure that the community is well-represented and that engagement is meaningful and holistic.

There is concern about 'buy-in' from other stakeholders, and we would query if government departments will be compelled to co-operate without charging. Will this be dealt with in more detail through the community planning legislation?

Also, with regard to community involvement, it is noted that the requirement to engage with communities is more stringent than at present and that more information will be required. There is also increased potential for disagreements and legal action, and we would therefore value early guidance on community engagement, on which we would be keen to liaise with the department.

(10)Independent Examination: NILGA would agree that there is a need for independent examination of the new local development plans (LDPs), and the need for consistency of approach across council areas has been identified as necessary. Local government agrees that the LDPs must be relevant to the regional development and transport strategies, and that an independent overview can assist in achieving this. Clarity is needed therefore on costs attached to the independent examination, and who will be responsible for covering these costs. Will councils incur costs to maintain the PAC? It would also be useful to obtain some clarity as to who the department could appoint to carry out the independent examination as an alternative to the PAC.

Potential legal costs and legal liabilities are a major worry for councils and we would highlight to the Committee that most councils do not have the financial backing to pursue court cases. In addition, we believe that the PAC will need to complete a scoping exercise on the new regime, to assess the cost implications.

(15)Intervention by Department: Guidance is urgently required regarding the Department's ability to intervene as this is currently very unclear and is causing grave concern e.g. regarding the Department's ability to change a plan prepared by a council. Council decisions should stand providing the council is not acting ultra vires. We would request that the Committee ensure the Department liaises with local government in the preparation of this guidance.

(17)(18) Joint Plans: NILGA broadly welcomes the ability within the Bill for councils to work together on LDPs, but would note that clarity is needed on the recourse against a council who might begin to work towards development of a joint plan then exit the process. Is the departmental direction to be exercised in such a case? NILGA believes that jointly prepared conflict resolution guidance may be valuable, for cases where there are serious inter-council disagreements on specific areas. Local government notes the potential for competitive behaviour between councils rather than working together as a sector and early clarity on the shape of the system will assist in overcoming this. Team-building or similar may be needed to overcome rivalries and the temptation to plan to existing council boundaries.

The ability to work together in a sub-regional approach should be a good fit with the local government ICE programme, but clarity is needed on the practicalities and governance prior to local government reform. There is a strong view in local government that the new governance model needs to be tried and tested as the top priority, and we would value the creation of a 'road map' to choreograph our approach to the subsequent transfer. This will obviously require in-depth discussion with the department.

(21) Monitoring: There is some concern regarding the resources required to submit and annual monitoring report, and NILGA would therefore value an opportunity for local government to work with the Department to agree a format. We are keen that some flexibility is built into the system and this should be reflected in the monitoring and review arrangements

Parts 3 and 4: Planning Control and Additional Controls

General: In general, transfer of the planning control function to councils is to be welcomed however there are a number of issues to be highlighted.

Capacity building for members and officers is a major concern. An understanding of the new role needs to be developed within local government, particularly for members, who need to develop a new approach, in the shift from advocate to strategist. An understanding also needs to be developed of officer as decision-maker. Protocols and the code of conduct will play a particularly important part in the new regime and must be developed and communicated as a priority. Governance arrangements will need to be very robust. NILGA understands its role in this

exercise, but would highlight the lack of capacity building resources available to the sector at present and for the foreseeable future.

Pilot Schemes: At present there is no detail on the proposed pilot schemes other than the Minister expects them to begin in March. There are serious governance, resource and timing concerns, and local government believes that there will be a need for clear agreed guidelines to be produced prior to commencement, as well as time to properly evaluate and give feedback on the schemes. It might be possible for all to participate through the development of a 'virtual' council, role-playing or testing/mapping exercise, to identify any problems and develop necessary policy. There is currently no indication of how these schemes are to be resourced.

Communication: Good communication is key to a successful planning control system, and this can be resource intensive. This will include more robust application validation procedures, regular and timely conversations with applicants, better systems for dealing with agents and the development of a consistent and easily understood approach. A well-articulated policy must be developed between the Department and councils regarding the Department's ability to step in otherwise confusion may be caused for the citizen.

Handover Issues: An agreed methodology must be developed between councils and the Department regarding a procedure for circumstances where earlier Departmental decisions are to be varied.

Development management

(25)Hierarchy: NILGA would agree that a hierarchy of development is needed, but that this could have practical difficulties for representatives. Agreed definitions are required for the different types of application, and clarity is required in any potential appeal procedures required.

(29)Call-in Procedures: This aspect of the Bill needs to be more clearly defined and guidelines agreed as to how it should work. There is a strong feeling in local government that many of the controls in the legislation, including this one, are designed to erode the powers being transferred to councils and that there is no recourse available to them to challenge the Department on its decisions.

(33) Planning Zones
There is a lack of clarity on the proposals for simplified planning zones, and guidance will therefore be necessary.

(58) Appeals
The cost of appeals and their potential impact on timelines is noted. A communications exercise will be needed regarding the reduction of time for submitting appeals.

(103) Conservation Areas
Members would value clarity on the relationship between conservation areas and greenbelts; and the Department's involvement in these issues.

104 (4) Councils will require a power to vary older orders.

(128) Mineral Planning permissions
Officers to deal with these issues are currently in a specialist unit within the Department. It may be wise to retain this as a Departmental function, or as a regional local government unit (e.g. based in a host council through the ICE programme).

(129) Advertisements
NILGA would encourage flexibility in control of advertising, to ensure practices are appropriate for different areas (e.g. urban/rural), and trusts that the forthcoming regulations will afford this flexibility at local level.

Parts 5 and 6: Enforcement and Compensation

Enforcement

Councils have a great deal of experience in enforcement at local level, and NILGA would highlight that adequate and appropriate enforcement powers are vital if the planning function is to be delivered satisfactorily. Our elected members in particular are concerned by the perceived gaps in enforcement at present, and are keen to ensure that councils will be able to address issues throughout the planning process as they arise. Our members are of the view that there will be an additional burden on officers, and would value communication with the Department on enforcement figures. They are keen to communicate requirements to applicants from the start of the process, and to ensure that e.g. landscaping takes place as agreed further to the development being built. Local government believes that there must be a ban on retrospective applications

Local government is aware that enforcement is not covered by fees, and is keen to ensure that this aspect of planning is cost neutral. While we welcome the proposed fixed penalty system, we would remind the Committee of the “Magistrates’ Rules" limiting cost recovery, should a case reach the courts system, and would again request that this legislation is either exempted from the Rules or that the Rules be changed in light of the reforms taking place and the current economic circumstances. Very few local authorities could fund the cost of an injunction, and it is unlikely that council costs will be covered by fixed penalties.

(133)Contravention Notices

Local government is of the view that a level 3 fine is too low for non-compliance with a contravention notice, and that this should instead be set at level 5.

(152) Fixed Penalties

Local government believes that councils should be able to set the penalties, on a sliding scale. The fines need to be significant to be effective.

(154) NILGA is of the view that although it is likely that councils will wish to use fixed penalty receipts to cover costs of enforcement, fixed penalty receipts should remain non-hypothecated i.e. the decision should be available to the council to use the receipts to discharge any of its functions.

(178 – 188) Compensation
Some of the strongest views expressed at the NILGA policy event on 18th January 2011 were reserved for this section of the Bill.

Local government totally rejects clauses such as 184 (7) which leave councils liable for bad decisions of the Department.

Local government is adamant that it should not be held responsible for Departmental errors, either prior to or following transfer of the planning function. In their normal course of business councils do everything they can to ensure they make decisions right first time, as few have the

resources to cope the compensation claims. Many are rightly proud of the accredited systems they have for dealing with businesses and the public and it would be a severe frustration to be held liable for mistakes of another organisation. Planning Service determinations, rulings and their outcomes and any associated liabilities should be retained as the sole authority and liability of the Planning Service as a government department.

Councils would also query the implications of the changes that are approaching regarding area and local development plans and whether they will be held liable for compensation due to changes in status.

Again, due to the current lack of communication between the department and local government, we have been unable to quantify amounts of compensation paid in the past and have no clear idea of the amounts involved, leaving councils unable to budget or prepare a reserve fund for this eventuality.

It is the section on compensation which particularly highlights the difficulty inherent throughout this piece of legislation; that the Department can take decisions on behalf of councils, but it is councils that will be held liable for these decisions. In addition, local government appears to have no course of action to appeal Departmental decisions. This is a serious concern.

Part 7: Purchase Notices

(189) Councils should not have to pay for the decisions of the Department in relation to refusals and the loss of beneficial use. In addition better clarification is required of reasonable beneficial use.

Part 13: Finance Issues

(222) NILGA would seek clarity on the provisions in this clause, enabling the Department to require a council to contribute to another councils expenses or compensation costs.

Other Issues

Given the timeframe available in which to consider the Bill, we have focussed on the sections of the Bill which we believed to be the areas of greatest concern to local government. A number of other concerns have been highlighted, as follows:

Performance Management: NILGA would value an opportunity to discuss the proposed performance management clauses with the Department to assess how it is likely to fit with the new system for performance management being introduced as part of the local government reform programme.

Legal Issues: Local government would value the opportunity to seek advice regarding legal cover for councillors in the decision-making process, and reserve comments on this aspect until guidance has been obtained. The potential for legal ‘wrangles’ is of major concern to our members, and we are currently seeking advice on the issues.

(224) Statutory Consultees: NILGA welcomes the requirement for statutory consultees, and would be keen to work with the Department to develop a methodology for reducing response times. We would value a response time set in legislation, of less than 21 days.

Specialist Advice: More clarity is required as to how specialist advice is to be obtained, where these specialists will be based and costs of obtaining this advice.

Northern Ireland Electricity Submission to the Planning Bill

regard to determining whether plans made by local councils are satisfactory from an energy perspective.

(ii) There should be central government responsibility for dealing with planning applications associated with new infrastructure development.

There is to be a distinction between 'major developments' and 'local developments' with the DOE dealing with major developments. Clause 25 of the Bill requires the DOE to describe in subordinate regulations which developments are 'major developments'. Electricity infrastructure projects should be regarded as 'major developments' and the DOE should be advised accordingly. However clause 26 of the Bill also requires that for the DOE to deal with a 'major development' it must (a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or (b) involve a substantial departure from the local development plan for the area to which it relates.

It will be difficult to apply this test to electricity infrastructure development. For example, could it be said that the proposed extension of the current transmission network to facilitate wind generation is of significance to the whole or a substantial part of Northern Ireland and if so what is the nature of that significance? Given that the Bill does not specify the manner in which a 'major development' must be of significance to a particular part of Northern Ireland there is scope for confusion as to whether a development is to be considered by a local council or the DOE. Indeed it would be preferable if electricity infrastructure development was dealt with in the same way as urgent development by the Crown. This could be done by the Bill expressly permitting NIE to make direct applications to the DOE for all transmission network development and in those cases involving distribution development which affect more than one local council. The Bill does not deal with electricity network development which may affect more than one local council and there is therefore the possibility that different local councils will take different approaches to such development. It would be preferable for clause 18 of the Bill to specify that electricity network development will be the subject of a joint plan to be followed by all district councils at the direction of DETI. It is not clear whether the discretion on the DOE in clause 29 to deal with certain applications will be applied to NIE and in what circumstances, or the extent to which NIE will be the subject of a direction to local councils by the DOE under clause 56.

(iii) Infrastructure development should not be impeded by an extended consultation or appeals process.

Clause 19 of the draft Bill allows representations with regard to a local council plan/strategy to be disregarded in certain circumstances of a public nature e.g. public housing or roads development. The development of the electricity network should be treated in the same manner and it would be preferable if clause 19

was amended accordingly. Given the requirements to further develop the electricity network as identified by DETI this development should not be frustrated by legal challenges to those local district plans dealing with network development.

Clause 27 requires pre-application community consultation for major developments. While the DOE is to specify the minimum requirements in subordinate regulations it is noted that additional requirements may be imposed by a local council or the DOE if appropriate. Given that electricity infrastructure development may impact more than one local council NIE would not want to be subject to differing requirements imposed by different councils. The difficulties associated with community consultation in relation to electricity network development should also be recognised. It would therefore be preferable for community consultation in relation to electricity network development to be limited to such consultation as has been agreed in advance with the DOE and clause 27 should be amended accordingly.

While the draft Bill gives local councils additional responsibilities with regard to planning matters there is no indication that the council's performance will be measured against defined targets. The power in Part 10 of the Bill for the DOE to assess and report on the district council's performance does not provide any assurance that poor performance will be remedied or benchmarks for good performance set. It is noted that if the Department recommends improvements which the council should make then the council has 3 months in which to decline to implement the recommendations. Given the strategic importance of the electricity network it is necessary for local councils and other statutory consultees to treat applications for electricity network development with importance and this should be reflected in Part 10 and clause 224.

Yours faithfully

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David de Casseres
Director, Transmission Projects

Reform of the Planning System in Northern Ireland:
Your chance to influence change – Consultation Paper (July 2009)

NIE Response 02 October 2009

Executive Summary

- There needs to be co-ordination between the overarching aims of the NI Executive and the planning framework under which those implementing the aims will operate. NIE recommends that the Department give consideration to a streamlined Environmental Impact Assessment process for proposed infrastructure works that arise directly from policy implementation targets.

- NIE feel that part of the remit of the Strategic Project Division should include monitoring of major infrastructure projects such as water, gas and electricity as these will make a significant contribution to the achievement of the Executives' wider objectives and targets for the growth of Northern Ireland.

- NIE support the central government retention of responsibility for planning as defined in the consultation paper. Furthermore, where a significant linear development such as an overhead line crosses council boundaries we feel that the planning application should be dealt with centrally.

- NIE support the use of Performance Agreements and believe that there should be some level of published performance measurement detailing parties not complying with performance agreements

- NIE do not believe that pre-application public consultation should be a statutory requirement, primarily, because the level and type of public consultation needs to be tailored to match the project being proposed.

- Statutory Consultee responses need to be both substantive and time-bounded. We feel there should be penalties for missing the consultation date.

- It is imperative that the permitted development rights consultation is moved forward as quickly as possible and that serious consideration given to the changes put forward by NIE. This is an area where improvements can be made in the overall planning processes by bringing our legislation more in line with GB, whilst retaining the robustness of the planning process.

- NIE would be concerned at the introduction of Third Party Appeals. We consider that such a provision would add further delays to overall planning application cycle times and introduce additional costs and uncertainty

- NIE would fully support a statutory audit/inspection function and would recommend that the Department develop a performance measurement regime that measures key meaningful targets across the new district councils and that these targets should be benchmarked annually against GB and ROI to ensure that the NI planning system is performing as required. Furthermore, NIE believe that this information should be published NI-wide.

Northern Ireland Electricity Submission to DOE Planning Consultation 2009

Reform of the Planning System in Northern Ireland:
Your chance to influence change

Consultation Paper

Response from

Northern Ireland Electricity plc
Mr Billy Graham,
Chief Operating Officer, NIE Oct 2009

Reform of the Planning System in Northern Ireland: Your chance to influence change – Consultation Paper (July 2009)

02 October 2009

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1.0 Introduction

Northern Ireland Electricity plc welcomes publication of the Consultation Paper on the Reform of the Planning System in Northern Ireland and the opportunity to respond. It is noted that the reforms proposed in this paper represents the most far reaching changes to our planning systems in over 30 years and its publication lays the foundation for transforming the current planning system in order to support the Executive's top priority, which is to grow the NI economy.

Although the responsibilities of NIE can range across most aspects of the planning process we have decided to concentrate our response to the specific aspects of the consultation that impact most directly on NIE's activities. Therefore, our response will focus on five key areas

- Management of planning applications for major infrastructure projects
- Statutory consultees
- Permitted development rights
- Third Party Appeals
- Audit and Inspection

2.0 Management of planning applications for major Infrastructure projects

The Planning System reform programme has stated amongst its aims "promotion of economic growth" and "enabling sustainable development". NIE welcomes these aims and are supportive of the Development Management Process.

However, it must be recognised that electricity infrastructure development is required to facilitate the delivery of social and economic aims. Prolonged consents processes will delay expansion of the electricity infrastructure which is obviously required to support wider economic developments. We would, therefore, draw attention to the need to ensure that infrastructure development is delivered in parallel to the Executive's economic and social aims through an efficient planning process. Such a process will also need to consider the policy and implementation targets of other government departments. In line with this, and in order to avoid duplication of effort and excessive delays in the delivery timeframe, NIE recommends that the Department give consideration to a streamlined Environmental Impact Assessment process for proposed infrastructure works that arise directly from policy implementation targets and for which a Strategic Environmental Assessment has previously been prepared.

We also feel that part of the remit of the Strategic Project Division should include monitoring of major infrastructure projects such as water, gas and electricity (as well as those listed in paragraph 1.12 of the consultation paper) as these too will make a significant contribution to the achievement of the Executives' wider objectives and targets for the growth of Northern Ireland.

It is stated that "Central government will retain responsibility for regional planning, planning policy, determination of regionally significant applications, …." NIE supports the proposal to retain infrastructure projects deemed to be applications under Article 31 within the Department. This provides one point of contact for projects which impact on large geographical areas across council boundaries or, indeed, for projects which are sited within a single council boundary but which are deemed a strategic development e.g. a new NIE substation to supply a new factory. NIE would also suggest that where a significant linear development such as an overhead line crosses council boundaries it should also be dealt with centrally.

NIE support the use of Performance Agreements and believe that there should be some level of published performance measurement detailing parties not complying with performance agreements.

We currently engage in pre-application public consultation. However, this should not be a statutory requirement, primarily, because we feel that the level and type of public consultation needs to be tailored to match the project being proposed. Making pre-application public consultation has the potential to introduce an unnecessary level of process complexity. NIE feel that the Department should be able to determine from the application and the Environmental Statement whether the applicant has consulted and taken account of alternatives adequately.

There can, on occasions, be difficulty identifying who the 'community' are when inviting consultation. In addition, applicants should not be disadvantaged if community representatives have not responded to genuine efforts to consult. Regardless of whether public consultation becomes a statutory requirement, or not, NIE would welcome a clear set of guidelines setting out what is expected from a pre-application public consultation process.

3.0 Statutory Consultees

We understand that the Department propose, post-RPA implementation, to (1) extend the list of statutory consultees, (2) introduce a statutory obligation on the statutory consultee to reply within a specified timeframe and (3) require the consultees to complete an annual monitoring report which would detail their performance over the previous 12 months.

NIE are supportive of these proposals but the responses need to be substantive and there should be penalties for missing the consultation date. NIE propose the following timescales for various applications:

- Minor applications – 14 days
- Major applications - 21 days
- Regionally significant – 42 days

4.0 Permitted Development Rights

We understand that the Department has engaged consultants to advise it on the scope for widening existing householder, minor and non-householder permitted development rights, together with a consideration of the scope for introducing additional categories of permitted development, with the intention of reducing the number of minor applications in the system, while protecting the interests of neighbours, the wider community and the environment. Furthermore, the Department expects to consult on the outcome of the work in 2009 and, therefore, no consultation questions have been asked in this paper.

Although, NIE welcome this belated consultation we would like to emphasise at this stage that (1) there is no specific reference to 'single-user electricity customers' which NIE have been discussing with the Planning Service, for some considerable time and (2) this is an area where improvements can be made in the overall planning processes by bringing our legislation more in line with GB and/or ROI, whilst retaining the robustness of the planning process.

NIE anticipate that the Department will consult on this very important aspect of planning policy and NIE will respond, in detail, accordingly.

5.0 Third Party Appeals

We understand that the Department, at this stage, is not proposing to make provisions for third party appeals in the current package for reforms to be brought forward by 2011. However, it is keen to take this opportunity to obtain the views of all the stakeholders on this issue and will fully consider those views before a final decision is reached.

NIE would be concerned at the introduction of Third Party Appeals. We consider that such a provision would add further delays to overall planning application cycle times and introduce additional costs and uncertainty. We recognise the right of third parties to object to proposals but consider that this can be facilitated through the existing provisions. These include objections to applications and development plans and opportunities to comment upon planning policy statements and other policy instruments.

6.0 Audit and Inspection

We understand that the Department recognise that a key way to demonstrate the effectiveness and integrity of the planning system will be through governance and performance management arrangements. The Department is also proposing that central government should have a statutory audit/inspection function and that this approach would help to provide further assurance to the public that the planning system is open, fair and transparent. Finally, the Department recognises that there is clear merit in central government collating, analysing and possibly publishing NI-wide planning information on performance etc.

NIE would fully support a statutory audit/inspection function and would recommend that the Department develop a performance measurement regime that measures key meaningful targets across the new district councils and that these targets should be benchmarked annually against GB[1] and ROI to ensure that the NI planning system is performing as required. Furthermore, NIE believe that this information should be published NI-wide. Specific key performance indicators (KPIs) could include:

- Out-turn process cycle times for the three proposed categories
- Out-turn process cycle times for the consultees to respond
- Costs of planning applications by the three proposed categories

Conclusion

NIE is well aware of the impact and timeliness of its activities on the social and economic development of NI. However, an effective consenting regime on which much of our infrastructure development relies, is an essential precursor to NIE's ability to deliver that infrastructure.

[1] The Consultation Paper (Page 124 – section 8.22) states that in the rest of the UK there is a statutory requirement on local authorities to provide performance information to central government in a range of areas, including planning.

Northern Ireland Environment Link Submission to the Planning Bill

environment link
Northern Ireland

Consultation on the Planning Bill

Committee Stage

Comments by
Northern Ireland Environment Link 14 January 2011

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 58 Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are agreed by Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

Prof Sue Christie, Director
Northern Ireland Environment Link
89 Loopland Drive
Belfast, BT6 9DW
P: 028 9045 5770
E: Sue@nienvironmentlink.org
W: www.nienvironmentlink.org

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We welcome the opportunity to participate in the Committee stage of this very important

Bill. We echo others' concerns that this is both a very important and very long Bill and worry that the need for speed at this stage could undermine the ability of this Bill to make the fundamental changes necessary to improve the existing planning system. However, the over-riding need is to progress this Bill in the time available and urge that the Committee consider it carefully but within the required timescale.

While this Bill does cover many areas where the planning system of Northern Ireland requires improvement, there are also substantial aspects which it does not address and which will need further development in the very near future if the planning system is to be improved to the extent necessary to make it fit for its purpose of delivering a truly sustainable urban and rural environment. We therefore welcome the basic structural reforms proposed in the Bill (with the provisos listed below) but would strongly recommend that this is not seen as addressing all the important issues and that additional work on guidance and supplementary legislation is taken forward as quickly as possible to fully deliver the necessary reforms. This Bill is still a tentative reform of many necessary aspects, but what is actually needed is a fundamental change in the whole purpose and process of planning. A move to Spatial Planning with a proactive and integrative approach is required. There is an urgent need for comprehensive guidance to be issued at the same time as transfer of powers to Local Authorities. A clear baseline of expected procedures and local practice is required across all Local Authorities, but which allows innovative and exemplary performance to rise above this base to set new standards which can then be replicated across all of Northern Ireland.

We believe the Bill would be strengthened by a much clearer articulation at the outset of the functions of the Department of the Environment, which would set out the purpose of the planning system. We therefore recommend that Clause 1 (1) should set out the Department's responsibility to 'secure proper planning, community wellbeing and sustainable development' and to formulate and co-ordinate policy to secure these objectives in an orderly and consistent way.

We are extremely disappointed that the Planning Bill makes no provision for Third Party Rights of Appeal. We believe that we have consistently made a very strong case for the introduction of limited Third Party Rights of Appeal and the opportunity should not be lost at this stage. Such a right would significantly increase public confidence in the planning system, which is essential at a time of significant change, and would also provide an additional mechanism to ensure sound and consistently high standards of decision making. Concerns about TPRA introducing delay can be addressed by having those eligible to make such appeals limited in various ways, including to only those people who have objected to the original proposal, specified types of organisations and the proviso that appeals can only be made on planning grounds.

Throughout the Bill much of the detail is deferred to subsequent guidance or subordinate legislation. For example, in Part 2 the Bill requires Councils to set out a Statement of Community Involvement but it is not clear how this intent would be translated into reality in a consistent manner across all local council areas. There is a danger of different policies and delivery between council areas, and a balance between local responsiveness and flexibility compared to regional standards needs to be struck and overseen by the Department. We are concerned about the length of time it may take for the necessary guidance to be put in place, especially in the context of extreme pressure on DoE funding and staffing resources.

We believe it is essential that guidance should provided as quickly as possible and that a programme of subordinate legislation should be a high priority in the next Assembly. In particular, we recommend that a new Planning Policy Statement 1 should be prepared as a matter of urgency to support and articulate the purpose of the planning system to deliver sustainable development.

Clauses I and 5; 20— Statutory Duty for Sustainable Development

We strongly welcome the explicit Statutory Duty for contributing to the achievement of sustainable development. However, there are major issues around how this is defined, how it can be delivered in practice, how it is assessed (and by whom) and how it can be enforced. Guidance will be critical in addressing these issues, and this guidance needs to be available to coincide with the introduction of the Duty or planning officers will be left in an untenable situation of having a Duty which they do not know how to fulfil.

While we welcome the reference at section (2) (b) to sustainable development, we are concerned that the current wording – 'with the objective of contributing to the achievement of sustainable development' – is weak as currently drafted. We believe the requirement here should be for the Department to exercise its functions 'with the objective of securing sustainable development.'

Clauses 2 and 4; 20, 27, etc. — Community Involvement

This is in many ways the most important aspect of this Bill in its aim to facilitate greater community involvement and control over their lives and communities. As with sustainable development, there is much more detail required around how his is to be delivered, and the urgent development of appropriate guidance is required. The two main aspects of this are involving the community in preparation of the local plans and the facilitation of their involvement

in significant applications affecting their areas. There is a serious danger that 'front loading' consultation without having the 'check and balance' of Third Party Appeal will mean that developers will still have the ability to push through their plans without taking full account of the communities' wishes; there is a major difference between holding an exercise and modifying plans on its outcomes. The crucial role of the authorities in assessing the quality and quantity of community involvement by developers cannot be overstated. Guidance is required, capacity building of all involved in the planning process (developers, architects, communities, councillors, council officers) is vital, and this all needs to be in place before it is needed.

Clauses 15, 16, 31, 40, 45, - Powers of Department; Integration of Process and Outcome

These changes are fundamental, and it is vital that the Department retain its ability to provide a unifying base for quality of decision making as the councils take on new roles. This is made clear throughout the document and we feel that, until the process is embedded and those with the new powers fully understand them, the Department will continue to have a major role to play in planning, specifically to ensure that policy, practice and enforcement do not vary unacceptably between council areas. Retaining the integrity of the process across Northern Ireland is essential, and this role must fall to the Department. Process and outcome should not vary in any major way depending on which side of a political border an application is made. However, the need for local response to local conditions must also be maintained; this can hopefully be done through the local plans.

Clauses 17 and 18— Local Plans and Joint Plans

The local development plans are critical to this entire process, within the overall framework of the Regional Development Strategy and PPSs. This 'plan led' process allows full community involvement in the development of the local plans which then provide a structured framework within which development can proceed, with clarity on the part of citizens and developers as well as planners on what is and what is not acceptable in a specific area. The ability of councils to work together is essential; developing a plan is a major and time and resource intensive process and working in groups can decrease the overall costs as well as delivering a more coherent and integrated outcome. As the RPA is still likely in some form, it is essential that the councils are encouraged and facilitated to work together to develop plans which work towards that eventual change. Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.

Part 2 of the Bill sets out some detail in relation to Local Development Plans. Given that the reform of planning is intended to take place in parallel with the reform of local government, we believe it is essential that there should be a statutory link between a Council's Local Development Plan and its responsibility for Community Planning. We are concerned that the Planning Bill does not provide for this crucial link and this should be addressed.

Clauses 23—25— Hierarchy of Development

It must be clear to all what development is and what processes apply to different types thereof. There can be a tendency to 'work to the boundaries', with development proposals just below the 'next level' and therefore the clarity of definition needs to be tempered with discretionary ability on behalf of planners to assign a different category where the development demands it due to its scale or type.

Clauses 33 — 38 — Simplified Planning Zones

While overall welcome, the exclusion of designated land is vital if these are to exist (Clause 38). Consideration should be given as to where land designated for the archaeological heritage is in these matters; should it be included here, or specifically sited within the built heritage sections?

Clauses 43— 50, 52. 54, 55, 80, 130 - 177 - Enforcement, Conditions, Penalties and Stop Notices

The effectiveness of the planning system will be in the extent to which it delivers on its goal of a more sustainable countryside. Any system is only as good as the willingness of those impacted to follow the decisions. Without enforcement, including monitoring, of development, including conditions, the system will fail. Penalties for not following the procedure (e.g. inadequate community consultation), for not delivering on planning conditions, or for developing without permission must be sufficiently severe to act as a major financial deterrent (criminal deterrent in the worst instances). Paying a fine for 'developing without permission' must never be seen as just an additional cost of development. This is an area which requires a great deal of work to ensure that penalties are truly deterrent in nature, and graduated with severity of the offence (and the degree to which it was intentional). Consideration should be given to requiring 'bonds' or deposits by developers which are returned if all conditions are complied with, but held if not, and these need to be of sufficient size to ensure compliance. Granting of 'retrospective' planning permission or removal of conditions should be an extremely rare outcome, only under truly exceptional circumstances. Otherwise this becomes just another 'cost of development' and is seen as an accepted way to speed the development without the 'delay' of proper planning procedures.

There are many examples of where trees or buildings have been in theory protected through conditions or listing, but have disappeared or been irreparably damaged during other operations on site. This must,not continue to happen. Clauses 149 and 150 on Stop Notices and their contravention are particularly welcome in their specificity of penalties; however, for some larger developments, even this level can be too low to serve as an effective deterrent. It does not appear that Stop Notices can be applied to small developments, and this exclusion does not seem to be desirable so should be removed. We strongly welcome the ability to use receipts from penalty notices for enforcement (Clause 154).

Clause 51, 66— Environmental Assessment

EIAs and SEAs are a crucial aspect of ensuring that the planning system is functioning effectively. These are time and resource intensive operations, and the outcome is only as good as the EIA or SEA itself. Guidance must be provided on quality and quantity of assessments, they must be standardized across councils and they must be independently assessed to ensure that they fulfil their role. The acceptability of changes to planning permission, or granting of permission in the first place, can often be severely impacted upon by cumulative impacts of development on land, air or water, in particular in proximity to designated sites.

Clauses 75 and 76- Planning Agreements

This power appears to offer extremely useful powers to protect land and buildings and we support this.

Clauses 79— 106 — Listed Buildings and Conservation Areas

We support these clauses as important to protecting the built heritage; Clause 102 is particularly important, as is the facility for Stop Notices. We welcome the inclusion in Clause 103 of

procedures whereby district councils can designate areas as Conservation Areas. The designation would be valuable where there are many significant trees of special interest in an area of multiple ownerships that is not specifically under threat and therefore not a priority for a TPO.

Clauses 107— 119 — Hazardous Substances

We support these clauses.

Clauses 121 —127, 182— Tree Preservation Notices

We strongly support these clauses. In Clause 121 we recommend amended wording for areas of trees to be protected by TPOs to read: 'with respect to trees, groups or areas of trees or woodlands as may be specified in the order.' Definitions and guidance are particularly important for these clauses, and we welcome the shift to 'dying or dead or have become dangerous' but even this could be interpreted too generously to allow destruction. Again, the need for a substantial penalty is fundamental if developers are to heed these conditions. Examples with penalties will need to be publicised and promoted to ensure that developers understand the seriousness with which breaches of these notices will be taken. We welcome the clarity of Clause 182 limiting value of compensation for TPO5 to the timber value.

Clause 221 — Grants

We welcome the provision of the facility to grant aid groups to help communities in the planning process. This is extremely important as these new processes come into effect and the major impacts they have on communities and their ability to influence planning, become more apparent.

Northern Ireland Federation of Housing Associations Submission to the Planning Bill

Response to Consultation

Consultation: Call for Evidence on the Planning Bill Date: 14 January 11

Introduction

The Northern Ireland Federation of Housing Associations (NIFHA) represents registered and non-registered housing associations in Northern Ireland. Collectively, our members provide 34,000 good quality, affordable homes for renting or equity sharing. Further information is available at www.nifha.org

General Comments

The Northern Ireland Federation of Housing Associations welcomes the opportunity to respond to this consultation document. We agree that the transfer of planning functions to local councils

will bring improvements to the decision making process and through this there should be greater understanding of the needs of local communities in Northern Ireland, with respect to the approach taken to planning.

Our members, when developing schemes, undertake a range of consultation exercises within the surrounding locality. The Federation and its members recognise and welcome the valuable contribution that consultation and involvement of the community can bring to the development or acquisition of dwellings in a particular location. We are therefore broadly supportive of this aspect of the draft bill.

I hope you find these comments useful please do not hesitate to contact me if you require any further information.

Submitted on behalf of NIFHA by:

Maire Kerr, Housing Policy and Research Manager
NIFHA – Working Together for Better Housing
Join today as an Associate of NIFHA

A: 6c Citylink Business Park, Albert Street, Belfast, BT12 4HB T: 028 9089 7695 F: 028 9023 8057

E:MKerr@nifha.org W: www.nifha.org

? Consider the environment; please don't print this email unless you really need to.

Office of the First Minister and deputy First Minister Response to the Planning Bill

Committee for the Office of First Minister
and deputy First Minister
Room 435
Parliament Buildings

Tel: +44 (0)28 9052 1448
Fax: +44 (0)28 9052 1083

From: Cathie White
Clerk to the Committee for the
Office of the First Minister and deputy First Minister

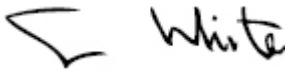
Date: 20 January 2011

To: Alex McGarel
Clerk to the Committee for the Environment

Subject: Planning Bill

At its meeting of 19 January 2011, the Committee considered correspondence from the Committee for the Environment regarding the Planning Bill. The Committee agreed to write to the Committee for the Environment to inquire if the legislation will allow local councils to insert social clauses in procurement contracts.

A response by 10 February 2011 would be appreciated.



Cathie White

Committee Clerk

Omagh District Council Submission to the Planning Bill

DANIEL McSORLEY Chief Executive

Omagh
DISTRICT COUNCIL

Your Ref:
Our Ref: MS/6/1
Date: 21st January 2011
Being dealt with by: Chief Executive
Email: daniel.mcsorley@omagh.gov.uk

Mr Cathal Boylan
Chair of the Environment Committee
Northern Ireland Assembly
Room 245, Parliament Buildings
Stormont
BELFAST BT4 3XX

Dear Mr Boylan

DRAFT PLANNING BILL

After discussion of the issues in the Bill, the comments below will be submitted for endorsement by Omagh District Council at its meeting on 31 January 2011:-

1. **WELCOME:**

   The Council welcomes the transfer of Planning to Councils. Local representatives know their areas and therefore understand the needs, demands and views of their local communities. The Council seeks to develop and shape its District to promote the social, economic and environmental growth. Planning is a critical tool in this development.

2. **TIMESCALE:**

   While the Council can understand the tight legislative timescale the consultation period with a key stakeholder ie Local Government has been very short and inadequate for such a detailed and critical piece of legislation.

   The proposals need to be considered within the context of the cross cutting issues that arise from the Local Government Reform Proposals, the Finance Bill and Planning Fees consultation. Additional time is required to fully consider the implications and provide a strategic, meaningful and informed response.

   The objective of the consultation is to lay a strong foundation for the future transfer of the Planning function and the detail in this enabling legislation, therefore, requires careful consideration e.g. legal liability, proposals relating to compensation, governance issues, resourcing, implications of the power of intervention and the inherent liability that could arise from the overlapping central/local government roles.

   From a council perspective, it is also essential that the governance requirements of the corporate body are met and as such the Bill which was released in December 2010 will need to be considered within council committee structure prior to agreeing a response by the full council.

Council Offices, The Grange, Mountjoy Road, Omagh, Co. Tyrone, BT79 7BL
Tel: (028) 8224 5321; Fax: (028) 8225 2380; Textphone: (028) 8225 6216; Website:www.omagh.gov.uk

3. FIT FOR PURPOSE:

While much improvement has been achieved within Planning Service the Council still believes there are major improvements required to make it fit for purpose. For example we still have many out-dated Area Plans, delays in major applications and delays in Appeals. The Council would require Planning Service to engage in meaningful dialogue to ensure that when the service transfers, it is fit for purpose.

4. RESOURCES:

There are major resource shortfalls within Planning Service currently; any transfer of Planning should be cost neutral to Councils. Therefore, a review of fees and staff complement to ensure that when the transfer occurs that it will not be at additional cost to the Council.

5. ETHICS AND STANDARDS:

There needs to be thorough and comprehensive costs of the new regime. This has not been provided.

A robust agreed ethics and standards regime is required prior to transfer of Planning to Councils. These proposals are contained within the Local Government Transfer Bill. These Bills need to be synchronized to ensure that the reformed Planning system can work with the confidence of the public

6. OPERATIONAL ISSUES:

With the eventual transfer of Planning to Councils, it would be important that Councils have an effective input into the governance and management arrangements of the streamlined divisional offices. These will transfer to Local Government, and therefore any long term financial or structural commitments should be agreed with Local Government in advance.

Detail on the pilots due to commence in 2011 is still not available with three months to go. The Council is not aware of the pilot proposal or how the pilots will operate.

7. CAPACITY BUILDING AND TRAINING:

Sufficient capacity within both central and local government sectors is vital to ensuring emerging service delivered in cost effective/efficient manner. New proposals eg. new local development plan system, preparation of community statements, pre-determination hearings, annual audits/monitoring are likely to have significant resource and capacity implications for councils upon transfer. Substantial investment to develop capacity and skills is necessary. There is scope for duplication resulting in inefficiencies eg. planning agreements, designation of conservation areas, TPOs and issuing enforcement notices.

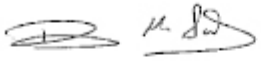
8. COUNCILS AS EQUAL PARTNERS:

The Council is concerned that local authorities have had only a minimal role to date in shaping the proposed planning system. If the sector is to assume responsibility for a new

[redacted]

system, it must have confidence that it will be a workable arrangement. Only by embracing the sector will the Department help engender the necessary trust to ensure the future success of the system.

Yours sincerely



D McSORLEY
Chief Executive

Planning Appeals Commission Submission to the Planning Bill

pac
Planning Appeals Commission

Park House
87/91 Great Victoria Street
BELFAST
BT2 7AG

Tel: (028) 9025-7229 (direct line)
Tel: (028) 9024-4710 (switch board)
Fax: (028) 9031-2536

E-mail : selina.quinn@pacni.gov.uk
Website: www.pacni.gov.uk

Mr Cathal Boylan MLA
Chairperson, Committee for the Environment
Northern Ireland Assembly
Room 247, Parliament Buildings
Stormont Estate
BELFAST BT4 3XX

Your Ref:

Our Ref:

Date: 12 January 2010

Dear Mr Boylan

THE PLANNING BILL

Thank you for your letter of 16th December 2010. I welcome the opportunity to set out the Planning Appeals Commission's views on the Planning Bill which, as and when enacted by the Assembly, will set the context for the future work of this tribunal.

Many of the changes proposed in the Planning Bill were foreshadowed in the Department of the Environment's July 2009 consultation paper "Reform of the Planning System in Northern Ireland: Your Chance to Influence Change". The Commission commented on those proposals at the time and I enclose a copy of our response for the Committee's information.

Those clauses in the Bill which are of key concern to the Commission are identified below.

Clauses 10(4) and 16(4) would empower the Department to cause an independent examination of development plans to be carried out either by the Commission or alternatively by a person appointed by the Department. For nearly 40 years, this type of work has been done exclusively by the Commission. We believe that over that time a high level of public confidence in our independence has accrued. At present, 10 of our 21 full-time Commissioners are engaged in writing up reports on three area plans and are considering 12,400 objections in total. The Commission notes that, in his winding-up speech at the second stage of the Bill, the Minister stated that "the PAC will and should remain the first port of call for those types of inquiries" (Official Report, Vol.59, No.2, p.157, Col.2). We emphasise that we will continue to give priority to this function.

The Commission queries whether Departmental appointees would be generally accepted as independent, given the very significant continuing role in the planning system ascribed to the Department in the Bill and especially in respect of those cases where the Department would

itself be exercising default plan-making powers under Clause 16. We consider that consistency of approach between Commissioners and Departmental examiners would be difficult to achieve and in consequence participants might receive different treatment depending on who was carrying out the examination.

The proposal for the Department to appoint examiners seems to stem from concern that the Commission might not be able to cope with its workload. This concern could be overcome by OFMDFM using existing powers to appoint additional Commissioners for a temporary period or for a specific task; or alternatively by a provision empowering the Commission itself to appoint persons to conduct independent examinations. This would not be a novel statutory provision. The Chief Commissioner currently has the power to appoint an assessor to sit with and advise Commissioners in particular cases and Clause 202(2) of the Bill proposes to continue that arrangement. The Commission also has powers to appoint persons for specified purposes under the Private Streets (Northern Ireland) Order 1980.

Clauses 26(9) to (11) and 29(5) to (7) would provide the Department with the power to appoint persons other than the Commission to hold public inquiries or hearings in relation to major planning applications and called-in applications. The Commission has been conducting such inquiries and hearings since 1974. In line with the Programme for Government, we give high priority to economic development proposals. The Commission is currently dealing with five major planning applications which requires the resources of six Commissioners.

The Commission doubts that Departmental appointees would be accepted by participants or by the public as being independent of the Department, especially where they were conducting hearings arising from notices of opinion issued by the Department. This perception problem could be overcome by a provision empowering the Commission, where it did not have sufficient Commissioners available, to appoint persons to conduct such proceedings.

Clauses 43 and 44 concern notices requiring planning applications to be made. Such notices are often referred to as "submission notices". Paragraph 1.4 of the Department's Planning Policy Statement 9 - The Enforcement of Planning Control (PPS 9) lists submission notices among the main enforcement powers available to the Department. Paragraph 4.2 of PPS 9 indicates that the Department uses submission notices in preference to issuing an enforcement notice where its objective is to bring unauthorised but acceptable development under planning control. It would therefore improve the structure of the Bill if Clauses 43 and 44 were transferred to Part 5 entitled "Enforcement".

Clause 44(2) sets out the grounds of appeal against a submission notice. Save in relation to time limits, these are identical to those currently set out in Article 24(2) of the Planning (Northern Ireland) Order 1991. In response to a judicial review application by the Department, the High Court ruled in September 2004 that there was no right of appeal to the Commission against a submission notice on any grounds other than those specified in Article 24(2).

The grounds of appeal available to the recipient of a submission notice under Clause 44(2) are much narrower than those available to the recipient of an enforcement notice under Clause 142(3). In the Commission's view, it ought to be possible for a recipient of a submission notice to appeal on the ground that he/she is not the owner or occupier of the

land or that the notice has not been served as required by Clause 43(3). Ground (a) should be widened to say that the matters alleged in the notice do not constitute a breach of planning control. This embraces the possibility that planning permission has already been granted or that the development is permitted under a development order made under Clause 32. If the proposed provisions stand, a recipient wishing to make those arguments could only do so by applying to the courts for judicial review, resulting in trouble and expense.

Clause 75 provides for planning agreements. The Commission recommends that consideration be given to widening the scope of the clause to include provision for planning obligations which are not the subject of an agreement but provided unilaterally by a person who has an estate in the land. Section 106 of the Town and Country Planning Act 1990, as amended in 1991, makes provision for planning obligations and it would be a relatively straightforward matter to amend Clause 75 to make similar provision.

The introduction of planning obligations would overcome the logjam that sometimes occurs in planning appeals, where the Commission concludes that permission could be granted only if some requirement were met that could not be imposed by a planning condition. At present, the only alternative to refusal is to recommend that a planning agreement be entered into. But this is unsatisfactory since an agreement is a matter for negotiation between the parties concerned and there have been instances where resolution of an appeal has been delayed for several years while negotiations went on. Under the unilateral obligation procedure, a developer could present a draft planning obligation to the Commission and if we find it acceptable, we could allow the appeal.

Finally, the **omission from the Bill** of any provision for the Commission to award costs in cases where one party has been put to unnecessary expense by the unreasonable behaviour of another is surprising. It was noted at Paragraph 4.29 of the Government response dated March 2010 to the public consultation on the reform proposals that there was overwhelming support for this proposal, comprising 90% of those who responded. It was stated at Paragraph 4.30 that the Department intended to introduce the award of costs into Northern Ireland. The Commission believes that such a provision would provide an important restraining influence on parties' behaviour and encourage all concerned to approach appeals in a responsible, cost-conscious manner. This power is available to the equivalent appellate bodies in Great Britain and the Republic of Ireland. In England, relevant provisions are found in Section 250(5) of the Local Government Act 1972 and Section 322 of the Town and Country Planning Act 1990.

I trust the Committee will find this response of assistance in its deliberations. If you would like to Commission to elaborate, or comment on anything else, please let me know.

Yours sincerely

Maire Campbell

MAIRE CAMPBELL
Chief Commissioner

Enclosure

sq M-MC-003

PLANNING REFORMS 2009 - PLANNING APPEALS COMMISSION (PAC) COMMENTS

Introduction

To avoid prejudice to its role as an independent appellate body, PAC generally avoids comment on documents published by DOE. As the proposed reforms relate to the process of and procedures for considering development proposals and draft development plans, PAC offers the following comments on the sections of the document as identified below.

Chapter 2 - Planning Policy

PAC finds the proposal as stated in the first sentence of paragraph 2.9 to be lacking in clarity. What is meant by "strategic direction" and "regional policy advice" should be explained. In drawing up local development plans, District Councils should be aware, in advance, of the extent of local interpretation permissible to them while maintaining alignment with government policy. Whether local development plans are aligned with Government policy should not be left to be a matter of interpretation during Government scrutiny of those plans as part of the development plan process.

The RDS provides strategic guidance and not operational policies. Planning Policy Statements (PPSs) should not duplicate the role of the RDS but, by definition, should provide clear Government policy direction and therefore need to include an appropriate level (regional) of operational policy which should not be duplicated in local development plans. As at present, PPSs will be required to focus on the range of planning issues (eg countryside, nature conservation, flood risk etc) and a range of types of development (eg industrial, retailing, residential etc). There is a danger that PPSs could be so generalised that they are of limited assistance in determining planning applications and appeals; reliance on complementary documents will result in arguments about the weight which should be attributed to those documents if the policy statement is so generalised that it is vague.

Clear policy statements in PPSs will enable District Councils to interpret Government policy and to focus on locational interpretation of policy in the local development plans. PAC does not agree with the statement in paragraph 2.5 that, in other parts of UK and ROI, detailed operational policy is found in local development plans. If, in NI, detailed operational policy were confined to local development plans, this could be inconsistent with the objective set out at paragraph 3.6 for such local plans that they should be more strategic in vision and approach.

In the context of the current proposal, how the system would operate if new PPSs are not in place before the development plans that are intended to provide detailed operational policy (or vice versa) is not clear. Clear transitional arrangements to apply as policy (drawn up by central Government) and new plans (drawn up by District Councils) are being produced should be considered.

Paragraph 2.7 raises the issue of the historic time periods to produce and review PPSs. There are no proposals to address this issue. PAC suggests that the Programme Management Schemes proposed for development plan preparation should be applied, in some form, to the review and preparation of PPSs.

PAC response to question 1 is no.

Chapter 3 - Development Plans

PAC agrees that the current process to prepare, amend and adopt plans takes too long. A more streamlined system commensurate with the scale of settlements in Northern Ireland is required. It also agrees that the existing plans, in draft and adopted form, are so detailed that the strategic vision and direction is lost; the plans are not easily understood or easily applied to the determination of proposals. PAC therefore supports the objectives (paragraph 3.6), functions (paragraph 3.7) and topic areas proposed. PAC notes that the proposal for site specific policies and proposals, which are subject to representations and counter-representations, could be inconsistent with the objective that plans should be strategic in vision and approach.

PAC does not accept that delays in the development plan process have been primarily attributable to the examination/public inquiry stage. PAC considers it critical that, in the proposed new process, the overall time allocated to test the robustness of the plan is not so constrained that it becomes a meaningless exercise.

The Programme Management Schemes - this is proposed as a first step in the process with timescales to be agreed with central Government. At this stage the District Council could have no knowledge of the likely response to the preferred options or the draft plan. The number of representations will directly affect the time required for the preferred options and examination stages. In any case, it is unclear if the statutory process is the requirement merely to have a Programme Management Scheme or to agree one and meet its terms. As the timescales for the scheme will include the process for examination, there should also be consultation with PAC to allow for future programming of workload as a number of District Councils could be involved in the production of local development plans at the same time.

PAC supports:-

- the Preferred Options Paper approach.
- plan documents comprising Plan Strategy and Site Specific Policies and Proposals. PAC also considers that, for some areas, there could be a number of plan documents to deal with specific topics and/or specific areas. Existing examples of these plans are, in the Belfast plan area, the HMO Subject Plan, the Lagan Valley Regional Park Plan and the Belfast Harbour local plan. Not all plan documents need be produced at the same time and the number of plan documents need not be restricted to two. The provision for additional plan documents as above could avoid the need to alter the plan as proposed at paragraph 3.27.

- the proposals for dealing with representations. PAC recommends that representations should be required to be specifically related to identified policies and proposals of the plan. In addition multiple representations on a single submission should not be permitted.

- the proposal to examine the robustness of plans provided "robustness" is clearly defined and related to the merits of the policies and proposals. The procedural tests applied in Wales (Annex 5) should be avoided to allow the examination to concentrate on the policies and proposals rather than the administrative process of producing the plan.

Approach to examining Local Development Plans - the proposal involves scrutiny of the District Council's Local Development Plan by DOE, Examination of the plan, report by Examiners, consideration of report and issue of binding report by DOE within restricted periods. As the Independent Examination will consider the robustness of the plan as raised by representations (and counter-representations for site specific zoning issues) the following matters should be considered -

- DOE scrutiny is proposed to ensure plans are aligned with central Government plans, policy and guidance. This could also be one of the tests of "robustness" considered at the Examination and it is important that this public process is not undermined. PAC is aware that, in England and Wales, draft plans are scrutinised by regional Government offices but it notes that this process involves the issue of a binding report on the plan by the Planning Inspectorate, not the Government office involved in the initial scrutiny. Scrutiny by DOE before and after the Examination is a duplication of work that will extend the process unnecessarily.

- Is DOE scrutiny of the plan submitted by the District Council a separate exercise from the Independent Examination, carried out prior to the Independent Examination; if so, will that scrutiny be presented to the Independent Examination?

- Will the robustness of the plan be defended by the District Council or by DOE at the Independent Examination?

- Should there be a role for DOE at the Independent Examination, particularly in the context of it issuing a final binding report to the District Council? Central Government plans, policy and guidance should be set out in regional policy statements. The Examination of the plan will test conformity with the approach of central Government. Provision could be made for DOE or other central Government departments to participate in the Examination process. In this context is it appropriate that a binding report is issued by DOE and not by those who examine the plan.

- Are the timescales indicated realistic, specifically:-

  - Is the timescale for the preferred option stage adequate for consideration of the options, including public participation, prior to production of the draft plan strategy?

- Are the timescales to examine and report on the plan (9 months for the strategy and 13 months for site specific policies and proposals) realistic? Within this timescale, Examiners could not provide a full report (as defined by PAC procedural documents) and in the absence of a full report and/or attendance at the Examination could DOE properly consider the report if it were not familiar with the evidence?

- A period of 3 months is indicated for the publication of site specific policy and proposals. The time period must include the District Council's scrutiny of the report on the Strategy, the drafting of site specific policies and proposals and representations and counter-representations on these proposals. Is the time period adequate in itself and, in particular, is it adequate to allow meaningful account to be taken of the binding report on the Plan Strategy?

- How is it proposed to address the hiatus between adoption of the plan strategy and publication/adoption of the site specific proposals in dealing with development proposals. Transitional arrangements would appear to be required.

PAC notes that a number of the existing draft and adopted plans were not referred to it within the timescales originally proposed, resulting in extended delays in the overall development plan process. When draft plans have been referred to PAC, despite workload pressures, the development plan work has been prioritised as development plans are material in determining proposals for development and it is therefore important that all plans are up to date. PAC will continue to allocate resources to development plan work. The proposal for DOE to appoint Examiners raises the following issues.

- Consistency of approach between PAC examination of draft plans and that by DOE Examiners would be difficult to achieve; and

- The process for examination of plans in Northern Ireland would be out of step with the same process in England, Wales and Scotland.

PAC does not support the proposal for DOE to appoint external Examiners.

The question of how the Examination of development plan documents is funded should be considered.

Chapter 4 - Development Management

Paragraphs 4.44 and 4.45 and question 41 - PAC does not support the proposal for DOE to appoint Examiners for the following reasons:-

- As the final decision on regionally significant applications is taken by DOE, such Examiners could not be "independent" .

- The proposal is unlikely to speed up the process, given the time required for participants to prepare for the hearing or inquiry and the time required to consider the issues and draft a report.

- There could be inconsistencies between the approach of PAC and that of DOE appointees. Procedural rules drawn up by DOE are unlikely to resolve but could exacerbate the differences.

- The proposal is out of step with the process in UK and ROI.

Paragraph 4.57 and question 47 - PAC supports the proposal to extend the time period for District Councils to determine major developments.

Paragraph 4.80 and question 50 - PAC supports the proposal to require a timely response from consultees. This should also apply to further information/responses sought from consultees during the processing of appeals and regionally significant applications. Consultees responses should also be focussed and should specifically address the relevant issues.

Paragraph 4.94 and question 54 - the reduction in the normal duration of planning permission which took place in England under the 2004 Planning Act has caused significant difficulty now that economic boom has turned to recession. This is confirmed by the Government's recent proposals to allow permissions to be extended beyond the normal 3 years. Land banking has historically been more of a development plan problem and could be addressed by de-zoning land that has not been developed in plan reviews.

Chapter 5 - Appeals

Paragraphs 5.3 and 5.4 and question 58 - the time period for lodging a planning appeal has self-evidently not resulted in delays in the processing of appeals. PAC considers that the proposed reduction from 6 to 2 months will result in an increase in the number of appeals as potential appellants will have limited time to properly consider an alternative proposal/application or to have meaningful discussions with the District Councils. They will therefore submit an appeal to maintain their position. While many of these appeals might eventually be withdrawn, they will all have to be processed by PAC and withdrawals, particularly if at the last minute, will result in abortive work for PAC, the District Council and third parties. Accordingly, PAC sees no benefit in this proposal and does not support it. In any event, if the time limit is to be reduced, it should be reduced to no less than 4 months.

Paragraphs 5.55 - 5.57 and question 59 - PAC supports this proposal.

Paragraphs 5.8 - 5.10 and question 60 - the issue of the amendment of proposals at application and appeal stage has been considered in a number of decisions issued by the Courts. These judgements allow a proposal to be amended if the amendments do not result in a substantially different proposal and if no relevant person is prejudiced by the amendments. These principles have been applied by PAC in processing appeals. PAC discerns no flaw in this approach which allows sensible amendments to be considered and which avoids unnecessary delay, uncertainty and additional work which would result from the processing of a new application/appeal to include the amendments. An appellant's willingness to amend his scheme to overcome objections to it would constitute a material consideration which, in accordance with Article 25(1) of

The Planning (NI) Order, the PAC would have to have regard to. In BT -v- Gloucester City Council [2002] JPL 993 Mr Justice Elias said that:-

"It is inevitable in the process of negotiating with officers and consulting with the public that proposals will be made or ideas emerge which will lead to a modification of the original planning application. It is plainly in the public interest that proposed developments should be improved in this way. If the law were too quick to compel applicants to go through all the formal stages of a fresh application, it would inevitably deter developers from being receptive to sensible proposals for change".

The final statement in paragraph 5.8 is incorrect. In determining an appeal PAC could not and does not adopt a procedure which would leave any participants or group of participants at a disadvantage. All participants are given a reasonable opportunity to respond to amendments. In addition, the caveats to the proposal suggested in paragraph 5.10 would create the following additional problems:-

- In determining any appeal PAC must comply with Article 25(1) of The Planning (NI) Order. The relevance of this requirement to this specific issue of amendments is not understood.

- There could be endless reasons why additional material could not have been submitted earlier. All would have to be considered by PAC, thereby unnecessarily lengthening the process of determining an appeal. In the context of the reform proposal, the relationship between any additional material which could not have been submitted earlier and the principles in regard to amendments set down by the Courts is not clear.

- Operation of both these caveats would create further uncertainty and delays in determining appeals, thereby undermining the implied objective of the proposal.

At present, in determining appeals, PAC will also address new and amended reasons for refusal introduced by DOE. If the reform proposal is pursued such new and amended reasons for refusal by District Councils should, in the interests of fairness, also be restricted.

PAC does not support this proposal.

Paragraphs 5.11 - 5.18 and questions 61 - 64 - PAC supports these proposals. The time period for submitting an appeal against a Certificate of Lawful Use or Development should be the same as for most appeals to PAC.

Local Member Review Bodies - the current appeal system allows independent review of decisions. Local Member Review Bodies would not be independent. Currently appeal decisions may be scrutinised by the Courts on the application of any appeal participant; the proposal envisages a challenge to a decision by a Local Member Review Body only by the appellant not by officers of the District Council. Decisions on appeal must include reasons in writing; in view of this requirement, experience in Scotland should be observed prior to the introduction of any proposal. It should be noted such reform proposal was not pursued in England and Wales.

Chapter 7 - Developer Contributions

PAC suggests that consideration be given to the introduction of unilateral planning obligations. This reform , introduced in England in 1991, would overcome the log jam that sometimes occurs in planning appeals, where PAC concludes that permission should be granted only if the development meets some requirement that could not be imposed by planning condition. At present, the only alternative to refusal is to suggest that a planning agreement might be entered into. This is unsatisfactory since an agreement is a matter of negotiation between the parties concerned and the resolution of an appeal can be delayed for several years (4 years in a recent appeal) while such negotiations go on. Under the unilateral obligation procedure, a developer could present a draft legal instrument to PAC, which can then adjudicate on its acceptability. Accordingly substantial delays in the determination of such appeals would be avoided.

General

Given the extent of the legislative amendments proposed, consolidated versions of The Planning (NI) Order 1991 and The Planning (General Development) Order 1993 should be published.

MAIRE CAMPBELL
Chief Commissioner
August 2009

sq M-MC-218

Planning Task Force Submission to the Planning Bill

Mr Cathal Boylan MLA, Chairman
Parliament Buildings
Stormont
Belfast BT4 3XX 14 January 2011

Dear Chairman

I am writing on behalf of the Planning Task Force/ Planning Reform Group which is a group of environment and community organisations with an interest and expertise in planning. We welcome the opportunity to submit evidence to the Environment Committee at the Committee Stage of the Planning Bill. The organisations on the group are listed below, and several individual organisations will be submitting detailed responses to the consultation.

On behalf of the group I would like to draw the Committee's attention to a small number of key issues which are reflected in our individual responses and which, we believe, require particular intervention by the Committee at this stage. Representatives of our group would very much welcome the opportunity to meet with the Committee to discuss these issues in further detail. Our key areas of concern are set out below.

1. Definition and purpose of planning

We believe the Bill would be strengthened by a much clearer articulation at the outset of the functions of the Department of the Environment, which would set out the purpose of the planning system. We therefore recommend that Clause 1 (1) should set out the Department's responsibility to 'secure proper planning, community wellbeing and sustainable development' and to formulate and co-ordinate policy to secure these objectives in an orderly and consistent way.

2. Sustainable development

While we welcome the reference at section (2) (b) to sustainable development, we are concerned that the current wording – 'with the objective of contributing to the achievement of sustainable development' – is weak as currently drafted. We believe the requirement here should be for the Department to exercise its functions 'with the objective of securing sustainable development.' At present it appears that this power only applies to Development Plan provisions; this Duty should apply to planning at all levels, including Development Control. Many of the powers in the Bill, particularly with regard to natural and cultural heritage and tree protection, are most welcome in their role in promoting sustainable development. The Committee should consider the need for a Climate Change Duty, either separately or incorporated within the Sustainable Development Duty, requiring local decision makers to fully consider climate change in planning policy. This will also help ensure that decisions on applications with a significant carbon profile are informed by an understanding of carbon impacts (consistent with most GB policy).

3. Links between Local Development Plans and Community Plans and Wellbeing

Part 2 of the Bill sets out some detail in relation to Local Development Plans. Given that the reform of planning is intended to take place in parallel with the reform of local government, we believe it is essential that there should be a statutory link between a Council's Local Development Plan and its responsibility for Community Planning. We are concerned that the Planning Bill does not provide for this crucial link and this should be addressed. The utility of a Community Infrastructure Levy should be considered at this stage to ensure the potential benefits it would provide are incorporated within the Bill.

4. Third Party Rights of Appeal

We are exceptionally disappointed that the Planning Bill makes no provision for Third Party Rights of Appeal. We believe that a very strong case has consistently been made for the

introduction of limited Third Party Rights of Appeal, and the opportunity to do at this stage should not be lost.

Such a right would significantly increase public confidence in the planning system, which is essential at a time of significant change, and would also provide an additional mechanism to ensure sound and consistently high standards of decision making. Risks involved would be reduced by including a power for the PAC to award costs for vexatious appeals.

5. Urgent requirement for guidance

Throughout the Bill, a great deal of the detail is still deferred to subsequent guidance or subordinate legislation. For example, in Part 2, the Bill requires Councils to set out a Statement of Community Involvement but it is not clear how this intent would be translated into reality in a consistent manner across all local council areas. We are concerned about the length of time it may take for the necessary guidance to be in place, especially in the context of extreme pressure on DoE funding and staffing resources. We would request that the Committee ask the Department exactly how long this legislation and guidance will take to produce, given their current staffing and budgetary constraints.

We believe it is essential that guidance should provided as quickly as possible and that a programme of subordinate legislation should be a high priority in the next Assembly. In particular, we recommend that a new Planning Policy Statement 1 should be prepared as a matter of urgency to support and articulate the purpose of the planning system to deliver sustainable development.

We wish the Committee well in its deliberations on this important Bill which will have a lasting impact on the communities and the landscapes of Northern Ireland for generations to come. We would be happy to discuss these points with the Committee at your convenience and would like to request an opportunity to present oral evidence and answer Members' queries. We can be contacted through Northern Ireland Environment Link

Yours sincerely

Sue Christie, NIEL

On behalf of PTF/PRG members:

Claire Ferry, RSPB
David McCann, NIEL
Diane Ruddock, National Trust
Geoff Nuttall, WWF
James Orr, FoE
John Wright, Green Action
Jonna Monaghan, Belfast Healthy Cities
Lee Bruce, Woodland Trust
Mark Bryson, Ecoseeds
Neil Johnston, Council for the Countryside NI
Rita Harkin, Ulster Architectural Heritage Society

Professor Deborah Peel Submission to the Planning Bill

Northern Ireland Planning Bill (Bill 7/10)
Observations to the Northern Ireland Assembly Environment Committee

Professor Deborah Peel, MRTPI, FHEA
School of the Built Environment
University of Ulster
January 2011

Introduction

The sheer scale of the Bill - 248 clauses, 15 Parts and 7 Schedules – is indicative of the complexity of the proposed planning regime. This is a sizeable bill and the time-frame for reflection, comment and debate would appear to underestimate this complexity. Building a shared understanding about the purpose of planning necessitates deliberation because how it serves the Northern Ireland public interest will depend on how its remit and intent are construed. As my comments are inherently systemic, I wish to make some general remarks about the Bill as I see these relating to the fundamental purpose of planning, the constituent parts, and the holistic complementarities of the system as a whole.

Purpose of planning

The effects and consequences of good (or bad) planning affect each of us every day; its statutory basis is therefore of paramount importance for securing clarity, certainty and consistency. These ambitions are important for all interests in Northern Ireland's system - developers, builders, households, individuals, and bodies concerned with social, economic and environmental matters. The system is critical for the protection and long-term wellbeing of resources, such as biodiversity, historic and archaeological heritage, and architectural and ecological value. From this perspective, planning serves environmental justice ambitions. An appropriate management of the land resource has the potential to contribute positively to community relations, personal health, human development and quality of life. At a detailed and practical level, for example, the requirement for a statement in relation to design and access has the potential to promote equality of opportunity and is to be welcomed. This is an example of how planning contributes to social justice.

Inherently forward looking, the planning system nevertheless also affords a vital mechanism for how society responds to the negative effects of earlier development decisions and how previously used land, for example, is restored in productive ways. Planning enables the regeneration of individual places and cities. Itself an ongoing and vision-based activity, regeneration is part and parcel of the broader remit of planning since it is concerned with the reuse and rehabilitation of the existing fabric of the built environment, in parallel with the integration of new development. Regeneration also concerns the restoration of land so that it might serve new uses and purposes. Planning is concerned with the management of a finite and potentially fragile resource; planning and regeneration are thus inherently complementary activities which enable communities to cope, for example, with economic restructuring, and to renew and reinvigorate places to maintain and sustain quality of life. The purpose of the regulatory framework is to provide the metrics against which change can be targeted, connected and managed. The extent to which the institutional arrangements are empowered to facilitate this is then critical to the overall effectiveness of the system.

A discretionary planning system

The Planning Bill represents an important milestone in the evolution of planning thinking in Northern Ireland and offers an extremely important opportunity to facilitate its future economic and social development needs. This involves developing, enhancing and protecting existing and future natural and built assets. Securing this balance is no easy task; indeed, where there are competing policy ambitions, interpretation of policy falls to the decision maker. Professional discretion and judgment are fundamental principles of the UK planning tradition. This in-built flexibility is key to the need to be able to respond to specific circumstances and conditions and in order to respect, and indeed positively exploit, local distinctiveness. Consistency and certainty, transparency and accountability are nevertheless essential if we are to enable necessary development in equitable, timely and appropriate ways. These essential attributes of planning need to be clearly explained to ensure greater understanding of the role of the statutory land use planning system and to create a greater legitimacy for its decisions. Civic engagement in forward planning and in relation to individual planning applications turns on the mechanisms put in place to support greater understanding of the issues and how site specific decisions around place have wider neighbourhood, strategic and spatial impacts. Confidence in this system depends on a clearer understanding of where authority and responsibility ultimately lie, and the checks and balances put in place to secure stated objectives.

Technological and scientific context

The reform of the statutory planning framework is to be particularly welcomed as society confronts new challenges in relation to, for example, food and energy security, demographic change and an ageing population, and migration and cultural diversification. This is in addition to a range of impacts associated with climate change and sea level rise. Technological and scientific advances bring new pressures and demands on the land resource, as experienced through the physical consequences of controlling the effects of mobile telephony, for example. In facilitating the management and development of the land and property resource, the proposed legislation affords important opportunities for enhancing public engagement in plan preparation and development management. The emphasis on early and active involvement is to be welcomed. Nonetheless, it is essential that the system accommodates opportunities for on-going communication and feedback as modifications and revision occur or as opportunities for planning agreements arise. New technologies – 'egovernment' – have a potentially central role to play, although this requires being alert to issues of access and the potential digital divide.

Meaning of development

Planning is fundamentally about the management of change; it is necessarily proactive in intent. This responsibility for the management of change extends to the quality of the legacy of the land resource to future generations. Planning involves anticipating change and considering how best to create the conditions necessary to nurture innovative economic development so that Northern Ireland can remain competitive internationally and attractive to investors. There is scope to reinforce responsibilities for land and coastal management. The evolving international interest in marine spatial planning invites consideration of the extension of the meaning of 'development' to extend beyond the coast, as has been the case in relation to aquaculture in Scotland. This is illustrative of the need to be alert to the changing developmental needs of coastal and rural communities and the evolution in farming practices. This builds on the established interconnections between urban and rural locales which was encapsulated in the original concept of town and country planning.

European dimension: Integrated Planning

From an international perspective, it is pertinent to note that statutory planning systems in several jurisdictions continue to be the focus of considerable reform and modernisation, offering

potential for international lesson-drawing in relation to the proposed Act's content and implementation. A central feature of these processes of reform has been to improve the efficiency and effectiveness of the respective planning system and this is core to the principles underpinning this Bill. Two principal aspects are important: improving the process in terms of inclusiveness, democratic engagement, accountability and overall efficiency; and securing appropriate planning outcomes, that is, ensuring the system's overall effectiveness.

How this effectiveness is construed, however, is contested. Embedding certain European principles in relation to territorial cohesion, good governance, subsidiarity and the promotion of civic engagement are critical aspects of the planning system if the spirit and purpose of the Bill / Act are to be delivered in practice.

Creating a clear and integrated legislative framework for the regional and local aspects of the spatial planning and management of Northern Ireland are critical if efficiencies in the delivery and the quality of services are to be secured. This view is based on insights from an evolving pool of evidence around European spatial planning experiences which emphasises the strengthening of vertical and horizontal linkages between different levels. The work around the development of the National Planning Framework in Scotland is illustrative of the pivotal role of the regional strategic planning context. An integrated and active scalar perspective is paramount if both the use and development of the land resource is to be planned and managed in an efficient and joined up way.

A proportionate and scalar planning system

Articulating scalar distinctions between major and local development within the Bill is therefore appropriate in terms of how expectations of the planning system and resources are to be allocated and managed in a proportionate way. For clarity these distinctions need to be qualified in terms of thresholds. A concern with major developments should not, however, diminish the potential sensitivities that can arise at the local level and between neighbours. Some form of mediation in planning may be appropriate here. In practical terms, the introduction of a concordat approach between developers and local planning authorities in Scotland appears to have offered an innovative and constructive approach in supporting the objectives of efficiency and effectiveness in relation to major development and in creating the conditions for a culture of joint working between developers and local planning authorities. This may be an approach that needs to be considered in terms of the scope for joint working across and between authority boundaries and to ensure that the proposed Statements of Community Involvement mesh with the new arrangements. Clear schemes of delegation offer an important way of ensuring that the arrangements for planning allow for the appropriate use of professional expertise and judgment in accordance with the effective use of the plan-led approach, releasing elected members to concentrate on contentious issues and applications of relatively more strategic import for a locality.

The essential pillars of planning

It is generally acknowledged that the principal pillars of the planning system – development planning, development management, and enforcement – have mutually inter-dependent roles in ensuring that the system as a whole enjoys public trust and confidence. Whilst it is then to be expected that these individual elements form the core of this Bill, the wider reorganisation of the control and delivery of planning as a consequence of the Review of Public Administration means that planning reform in Northern Ireland is substantially different from that which has taken place in other parts of the devolved UK. Indeed, whilst further experimentation in England continues, Scotland, for example, has maintained a progressive and managed approach to planning reform. It has nevertheless done this against a background of relatively stable local

government. Notwithstanding this relative institutional stability, the preparation, dissemination and building of a shared expectation of planning reform – and, importantly, what this means for new working relations between developers, government and communities - has been a major feature of the on-going communication and delivery of the Planning, etc Scotland Act.

In short, capacity building, upskilling, resourcing, time, iterative learning and professional planning expertise will be critical to the effective explanation and implementation of the proposed legislation. In Scotland this involved a clear participation and communication strategy, including use of a range of media, geographical coverage and targeted communication with specific interests. This was central to the Act's introduction and remains core to the working through of the legislation in practice. It also involved the consideration of development plan model policies as a means of sharing planning intelligence. The anticipated transformation of institutional, political and working arrangements in Northern Ireland will require what has been referred to elsewhere as a culture change.

Interpretation

How the spirit and purpose of the future Planning Act in Northern Ireland is interpreted will be critical to its success. Articulating the underlying meaning of the core concepts of this Bill is therefore of paramount importance if the system is to be a workable and efficient vehicle for facilitating change and appropriate economic development. Lack of clarity will not aid the planning and management of Northern Ireland if it only serves to incur unnecessary legal costs. Anticipated time-frames and the necessary harmonisation of plans, relationships of conformity, central-local and strategic-site specific relations, and the management of boundary/cross-border relations will require careful elaboration if those with responsibility for plan preparation and development management are to fulfill their statutory duties and facilitate quality, sustainable development. This will involve working with a range of different stakeholders with different needs and expectations. Moreover, it is clearly stated that a significant and comprehensive programme of subordinate legislation and guidance is also proposed which itself will be subject to further detailed consultation exercises. This is resource intensive. As a consequence, resourcing of the statutory, plan- and policy-making components to effect this cascade of legislative and policy change will be critical if the appropriate consultation, scrutiny and deliberation of plans and policies is to occur and public faith in the process secured.

Relationship with community planning

In principle, restoring powers to the local level has the potential to enable local communities and locally elected representatives to shape their areas using the professional expertise of the planning and allied professions. Whilst these aspirations are of themselves important, securing these objectives requires resourcing, mediation and consensus building. The checks and balances need to be proportionate to the ambitions, but the mechanisms and professional planning expertise need to be in place. Here clarity is required with regard to the relationship between community planning and statutory land use planning if consultation fatigue is to be avoided. A Core Script approach as in Scotland offers perhaps an initial device for clarifying the inter-relations between these separate but complementary activities.

Transition Phase

There are imperative questions about the transition phase for the implementation of the proposed Act so that the planning resource is not overloaded. The project management of the introduction of the different elements of the Bill and briefing of all involved in order to minimise the potentially negative consequences of premature development applications will be vital. A professional planning resource is essential to the maintenance of public trust in a fair and

equitable system. This is not only to ensure that elements of the 'old' system are phased out appropriately but that the 'new' system is resourced to cope. Whilst the Bill's intended destination is a streamlined planning system, the journey to this new system entails a multitude of tasks based on enhanced community and developer engagement. For example, the preparation and analysis of evidence, research, active and iterative community involvement and consultation, deliberation, feedback and tests of conformity require appropriate phasing and co-ordination if planned synergies are to be achieved.

It is obvious, but nevertheless worthy of note, that the proposed institutional arrangements will not impact evenly on the wider planning community – nor across Northern Ireland's communities. For certain groups their fundamental purpose remains similar – but within a new governance and regulatory regime. On the one hand, for example, lawyers will be able to assist in the interpretation of the new legislation, and developers will put forward development proposals, whilst nevertheless adapting to the requirements of the new system. On the other hand, local communities and voluntary organisations with a specific interest in

planning may require support to appreciate the opportunities afforded under the new rules. Critically, however, the proposed format and the new local planning regime demand significant resourcing in order to build the framework, decision making capacity and working relations necessary to make the system work in an integrated way.

The fundamental principles of planning and its discretionary character remain, at heart, the same. These principles nonetheless are being reformulated to address contemporary issues. Emerging statutory duties are explicitly concerned with sustainability, wellbeing, healthy and safe communities, and with ensuring that the system is – and is seen to be - democratically accountable and locally driven. Essentially, community needs and expectations remain relatively unchanged: homes in which to raise families, jobs, access to educational, leisure, cultural and sporting facilities, and equitable access to opportunities for personal growth and development. The planning and management of the land resource – the planning system - facilitates these desires. Significantly then it falls primarily to the planning authorities and planning professionals to convert the statutory expectations into a workable and user-friendly system. The interpretation, preparation and implementation of the new arrangements will therefore impact most heavily on the regional and local planners and elected members who will translate the proposed Act into meaningful action. The preparations and crafting of the transition phase and the time-tabling of the secondary legislation cannot be underestimated.

Role of the planning profession

Expectations for an improved planning system in Northern Ireland are at their highest. Yet, the established planning resource has sadly been weakened by recent decisions to reduce the capacity of the Planning Service. In contrast, university provision of planning education in Northern Ireland has been expanded in recognition of the critical role that statutory land use planning can play in supporting regeneration, and regional economic and social development in full appreciation of the environmental and community context in which land use and development take place. Both the University of Ulster and Queen's University Belfast offer professionally accredited planning degrees. This is testimony not only to the acknowledged importance of planning internationally but to young people's concerns about sustainable development and the type of future they wish to help to create. The professional planning resource involved in making the legislative provisions work in practice will likely prove critical and should not be underestimated. Politicians, the planning community in all its forms, and local communities will require considerable staying power to see this process through.

Quary Products Association Northern Ireland Submission to the Planning Bill

Quarry Products Association
(Northern Ireland) Limited
Unit 10, Nutts Corner Business Park
Dundrod Road Crumlin

County Antrim BT29 4SR

Tel 028 90 824078
Fax 028 90 825103
info@qpanLorg www.qpanLorg

Committee for the Environment
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST BT4 3XX 14th January 2011

Sent via email: doecommittee@niassembly.gov.uk

Dear Cathal

Re. QPANI Response to Committee for the Environment – Call for Evidence on the Planning Bill

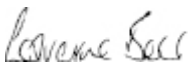
Thank you for the chance to provide written evidence on the proposed Bill. Planning permissions are the principle element of the “Permit to Work" of quarry operations. They are vital to our industry; no planning means no business (for a legitimate operator anyway). Obtaining and maintaining those permissions represents a significant part of operating cost to the extractives industry. Our members therefore have a strong interest in the outcome of this Bill and the transfer of powers to district councils.

We acknowledge our industry also needs to play its part in helping deliver planning reform by engaging meaningfully in development plan preparation and submitting high quality applications informed by community views. In tune with this, I personally have expressed the opportunity to include nature conservation in this Bill as it is key a part of quality restoration goals of many mineral sites and for Northern Ireland attaining its Biodiversity Action Plans for Habitats and Species.

Outlined in the following pages are our comments and suggested amendments to a small number of clauses in the Bill. We have only dealt with key issues of concern that we would like to see addressed, suggestions to each concern is concluded and highlighted in italics. All our comments are pertinent to the minerals industry and take into account our response to the Department’s Planning Reform Consultation back in 2009.

QPANI welcomes the opportunity to comment on the Planning Bill and trust that you find the above response useful and informative.

Yours Sincerely,



Laverne Bell

Environment, Planning & Sustainability Officer

The Planning Bill – response to the Environment Committee

Part 2
Local Development Plans

General

Comment 1

Clause 5: Sustainable Development

Conformity across the board is required on the interpretation of what meets the balanced definition of Sustainable Development.

Suggest that a definition should be included in the Interpretation section 243 - (1) In this Act – “Sustainable Development" means ... .

Local Development Plans

Comment 2

Clauses: 6-22 Local Development Plans

QPANI have concerns that Local Development Plans do not include minerals or safeguarding of minerals. An Aggregates Mapping Programme for Northern Ireland followed by an analysis of the supply/demand and zoning to safeguard minerals is also of paramount priority for the Department to complete.

The rationale: Mineral deposits are not evenly distributed and there are often imbalances between where the demands for aggregates arise and where the resources are located. This means that minerals have to be moved from where they are found to where they are required and that Local Development Plans and policies in one area may need to reflect the demands of areas some distance away. Moreover, even where suitable resources exist in apparent abundance, their extraction may be constrained by consideration of such matters as landscape, amenity, nature conservation or agriculture. Therefore, QPANI support powers that would adequately deal with instances where neighbouring district councils would consider it beneficial to work together. Minerals are a significant illustration, and a steady supply of aggregates needs to be safeguarded on a regional level.

A Regional Policy on Minerals (PPS19) needs to be published in advance of the transfer of planning functions to district councils and is essential to the introduction of a 'plan led' system.

Suggest that Minerals Mapping and Mineral Safeguarding should be included in Local Development Plans.

Part 3
Planning Control

Development Management

Comment 3

Clause 27: Pre-application community consultation

Clause 28: Pre-application community consultation report

QPANI would welcome a definition of 'community' as sometimes it can be difficult identifying who the deemed community are and the Bill should assist with this. QPANI consider that the 'community' should be limited to the immediate area where the proposed development is located.

Suggest that a definition should be included in the Interpretation section 243 - (1) In this Act – "community" means ... .

Comment 4

Clause 32: Development Orders

QPANI would like clear assurances in the Bill that it puts in place the necessary procedures for the Department or Councils to publish Permitted Development Rights for the Minerals Industry (as supported in the Review of Non-Householder Permitted Development Rights Consultation Paper October 2009.)

Planning Applications

Comment 5

Clause 40: Form and content of applications

There is no mention in the Bill about Performance Agreements and Pre- Application Discussions. This was a core element of the Planning Reform Consultation Paper that QPANI supported.

Performance Agreements should be in place before submission of an application and be a central part of the Pre-Application Discussions. The underlying principle is to support the 'front loading' of the development management system and formalise the communication between the Department and/or the respective Council, the developer and other parties.

Suggest that Performance Agreements alongside Pre-Application Discussions for Major and Regional Significant Projects in included in the Planning Bill.

Determination of planning applications

Comment 6

Clause 45: Determination of planning applications

Clause 52: Conditional grant of planning permission

QPANI believes that in the interests of good planning practice that the Department and Council initiate the practice of informing developers/agents of the 'draft' planning conditions which are to be imposed on the planning permission. This system is operation in England and Wales. This practice is beneficial to the Industry and the Department/ Council in the processing of mineral planning applications in so far as it would highlight, before the decision notice is issued, any unworkable conditions or conditions which the operator would find impossible to comply with.

We have evidence of such matters occurring in the present system of mineral planning, whereby member operators have been issued with mineral planning permissions with conditions attached which do not necessarily comply with the six tests for conditions e.g. necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects. As a matter of course our members are reluctant to go to appeal regarding such conditions as it means time and money for both them and the Department which could be so easily avoided by the introduction of official good planning practice of informing developers and/or their agents of the draft conditions which are intended to be imposed on grant of planning permission. In support of this practice we have observed that Article 31 applications are dealt with by "Notice of Opinion", indicating that the Department proposes to either grant or refuse planning permission, a similar procedure could be recognised in this Bill.

Suggest that a clause is made the Bill that allows for the Department or Council to consult the developer of conditions prior planning approval.

Comment 7

Clause 53: Power to impose aftercare conditions on grant of mineral planning permission

QPANI consider the timing of this Bill is an excellent opportunity to modernize aftercare conditions to ensure mineral sites are restored to the required standard with the means to enhance the long-term quality of land and landscapes taken for mineral extraction. The Department and Councils must take its contents into account in preparing their development plans and in decisions on individual planning applications. It is now well recognised that restored mineral workings throughout Europe contribute to areas of new wetland and heathland, going some way towards replacing primary habitat lost through other forms of development (intensification of agriculture); while many sites provide important refuges for wildlife. In many cases it may be appropriate to look towards multipurpose uses of the land, combining for instance agriculture, forestry, nature conservation and other amenity uses within single schemes.

There is considerable opportunity and scope for the minerals industry to make contributions to conserving and enhancing Northern Ireland's biodiversity and geodiversity through restoration led schemes. This has been widely endorsed by Government Departments and NGOs in "QPANI's Our Nature with Aggregates A Strategy to Conserve and Enhance Biodiversity and Geodiversity for the Aggregates and Quarry Products Industry in Northern Ireland."[1] One of the key objectives in this strategy is to assist the industry in optimising biodiversity and geodiversity

opportunities on aggregate sites in Northern Ireland within the relevant strategic frameworks, for example the Review of Old Minerals Permissions (ROMPs), Mineral Planning Policy Statement 19, the Northern Ireland Biodiversity Strategy and Local Biodiversity Action Plans. As mentioned in the outset, the opportunity to have nature conservation (meaning biodiversity and geodiversity restoration and aftercare objectives) included in this Bill.

The quarrying industry and their respective Planning Agents are already adopting biodiversity and geodiversity conservation management into their applications. Recent mineral planning approvals have seen multipurpose after uses of a site with core objectives of nature conservation in the restoration schemes that deliver ecological benefits proposing phased approaches to restoration to ensure protection of habitats and achieve acceptable overall restoration.

Considering the geographical location of many of our quarries and sand pits, especially those in the uplands, aftercare conditions set for agriculture and forestry are not appropriate uses because of landscape, poor soil quality, upland farming economics where hill farms find it difficult to exist without Cross-Compliance payments, Less Favoured Area and Agri-environment Scheme payments. DARD Forest Service's own objectives are shifting away from upland forestry plantations of that scene in the post-war period. Therefore whilst agriculture remains an appropriate after use in terms of management of that land, other uses such as forestry (native woodland planting) and forms of amenity including nature conservation (e.g. heathland, wetlands or unimproved grassland) should also be considered on land which was originally in agricultural use. The RSPB is leading an innovative "nature after minerals project" in Northern Ireland with QPANI, Planning Service and GSNI. Its aim is to provide an online resource for the minerals industry that would demonstrate the potential of habitat restoration of a site. Councils will also benefit for this new resource when it is launched. Therefore, the argument is reinforced again to position 'nature conservation' as an aftercare condition into the Planning Bill.

Suggest that the wording 'including nature conservation' is added to 53-1 (iii) use for amenity, or, it is added as a fourth after use e.g. (IV) nature conservation.

Suggest a definition is given for 'nature conservation' in the Interpretation section 243.

Suggest wording in this section that supports multipurpose uses of a site.

Suggest that the developer takes advice from DARD (Agriculture after use), DARD Forest Service (Forestry after use) and NIEA, Council and/ or a respective NGO (amenity including nature conservation after use).

Comment 8

Re. 53-5) "The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land."

Restoration of mineral sites for biodiversity gain provides opportunity to address some of this loss by creating new habitats, enlarging existing patches and to reinstate habitat linkages, connecting remaining patches to form sustainable ecological networks. The value of natural regeneration is underestimated in restoration schemes. From a nature conservation perspective, natural regeneration from bare soils can provide habitat of high ecological value, and which is often more appropriate and suited to a site. Restoration and aftercare conditions should aim to create habitat which is suitable to the geology, hydrology and topography of the site, appropriate to the surrounding landscape and safety issues, and can make a positive contribution to existing local habitat networks. Therefore by working with nature, natural

regeneration and natural processes of succession should be encouraged where appropriate. Also, flexibility is required. Restoration plans and conditions should remain flexible enough to allow amendments should opportunities for further wildlife gain come to light, e.g. a particular species colonises or useful habitat develops.

Suggest that the wording 'natural regeneration' and/or 'natural succession' is included in 53-(5) steps that may be specified in an aftercare condition or scheme.

Duration of planning permission

Comment 9

Clause 66: Power to make non-material changes to planning permission

Clause 67: Aftercare conditions imposed on revocation or modification of mineral planning permission

Clause 71: Revocation or modification of planning permission by the Department

Any changes the Department or a Council makes must be agreed with the applicant and the landowner. They may change something fundamental that could impact on the value of the granted permission. If they do not consult with the developer sections 66, 67, 71 would not in the ethos of the Reform of Planning.

If conditions are made in error by the Planning Authority there should be no fee to change them as it is their mistake.

QPANI would like to raise again our suggestion on imposing conditions – Planning authorities should be made aware that it is good practice to make an applicant aware of the conditions that they intend to attach to a planning permission well in advance of the determination date. Agreement between the authority and the applicant on the conditions should be the objective and where agreement has not been reached, the Council/ Department should be made aware of that at the time of determination.

Part 4
Additional Planning Control

Chapter 4
Review of Mineral Planning Permissions

Comment 10

Clause 128: Review of mineral planning permissions

We have read Schedule 2 and Schedule 3 and consider that the legislation introduced in May 2006 through the Planning Reform (Northern Ireland) Order 2006 has been followed. Guidance should be issued by the Department or Council to the industry and general public.

One key concern is that there is no mention of timescale for delivery.

Part 13
Financial Provisions

Comment 11

Clause 219: Fees and Charges

QPANI support increased fees for retrospective planning permissions. Though, what does the Bill mean by a charging 'multiple fee'?

Suggest that a clause is added that if any new fee and charges regulations or amendments are made to an existing regulation, that there should be public consultation.

Part 14
Miscellaneous And General Provisions

Duty to respond to consultation

Comment 12

Clause 224: Duty to respond to consultation

Statutory Consultees should be required to respond to planning authorities within a specified timeframe. Any extension to the timeframe has to be agreed with the applicant. We also consider that Consultees should have one opportunity to respond to consultation and that responses must be substantive and not just 'holding responses'. Their response times should be part of a public reporting duty and applicants should be kept informed of progress with the consideration of their proposals by Consultees at all times. There is mention in the Bill of a specified timeframe, QPANI suggest 21 days.

Suggest an amendment to the Bill to set a specified timeframe, with one opportunity to respond. Any extensions to the timeframe should be agreed with the applicant.

Application of Act in special cases

Comment 13

Clause 225: Minerals

We are content with the guiding principles in this section.

Laverne Bell
Environment, Planning & Sustainability Officer
QPANI

January 2011

[1] http://www.qpani.org/ournaturewithaggregates_biodiversitygeodiversity_strategydoc.pdf.pdf

Royal Town Planning Institute Submission to the Planning Bill

Royal Town Planning Institute
PO Box 578
Craigavon

BT65 9A

Tel +44(0) 2892 613355
Fax +44(0) 2892 613355
Email nipolicy@rtpi.org.uk
Website: www.rtpi.org.uk
Registered as a charity in
England (number 262865) and
Scotland (SC 037841)
Patron HRH The Prince of Wales KG KT PC GCB

Cathal Boylan
Chairperson
Committee for the Environment
Room 247
Parliament Buildings
Stormont Estate
Belfast BT4

Date: 13th January 2011

Our ref: BS/Planning Bill/1

Dear Mr Boylan

Subject: Planning Bill – Proposals for Change Consultation.

Thank you for the opportunity for the Royal Town Planning Institute in Northern Ireland to submit evidence on the proposed Planning Bill.

It is noted that the Bill is on an accelerated process and that consultation has been limited, however, the Institute is concerned that due to the call for evidence coming just before the Christmas/New Year holidays it has not been possible to allow a fuller consultation with the members of the Institute. A number of members have complained abut the restricted timescale, given the importance of the Bill and the impact it will have directly to the members of the planning profession.

The Institute is the largest professional body representing spatial planning and represents over 22,000 professional planners in the public and private sectors. The Institute has over 500 members in Northern Ireland and we would like the professional response of these members to be taken into account in respect of the consultation on Planning Bill.

It is important that the Institute has access to the Committee for the Environment during the passage of this Bill through the Committee Stage. The Royal Town Planning Institute, therefore, requests an opportunity to present oral evidence to the Committee to fully express the views of this important group of professionals.

The Northern Ireland Branch of the RTPI met to discuss the content of the Planning Bill and has compiled a number of key issues that have arisen from inputs by members of the Executive Committee of the Branch. The attached document is as an initial response that the Institute would like the Committee to consider in advance of any formal representation that the Institute would hope to make to the Committee in the near future.

I hope you find the attached response useful. If you require any clarification, or feel you need further comment, please contact me at the above address. .

Yours sincerely,

(Unsigned email copy)

Brian Sore

Northern Ireland Policy Officer

Planning Bill Northern Ireland
Call for Evidence
Northern Ireland Assembly Environment Committee

A Response by the Royal Town Planning Institute Northern Ireland

January 2011

Introduction

This document forms the Royal Town Planning Institute's (RTPI) initial response to the Committee for the Environment regarding the proposed Planning Bill for Northern Ireland.

The RTPI is the leading professional body for spatial planners in the United Kingdom. It is a charity with the purpose to develop the art and science of town planning for the benefit of the public as a whole. It has over 22,000 members who serve in government, local government and as advisors in the private sector and over 500 members are based in Northern Ireland.

The RTPI offers this response from the point of view of a diverse and policy neutral professional body committed to supporting devolved government in Northern Ireland.

This response has been formed drawing together internal discussion and the results of submissions from members, including debates within the RTPI generally. In addition the Northern Ireland Branch of the Institute had published its own submission regarding Planning Reform in 2009 and some of the comments made in this report reflect the principles of reforming the way planning is delivered in Northern Ireland that were made to the Minister at the time. The culmination has helped to establish a collective professional view intended as constructive comment on the proposed Planning Bill.

Royal Town Planning Institute (NI)
PO Box 578,
Craigavon,
Northern Ireland
BT65 9A

A charity registered in England (262865) and Scotland (SC 037841)
Contact: Brian Sore, Policy Officer nipolicy@rtpi.org.uk
Web:www.rtpi.org.uk

1. General Issues

The Royal Town Planning Institute is supportive to the principle of reforming the planning system in Northern Ireland and generally welcomes the proposals contained within the Bill.

The Institute has always promoted the move to local level planning and the devolvement of the planning function to Councils. However, the Institute is extremely disappointed that such an important piece of legislation is being accelerated through the Assembly during the current mandate, at the expense of meaningful consultation at the Committee stage.

The Institute expects that there will be further opportunity for its members to influence and refine the content of the Bill at later stages of its implementation and the Institute will want to represent its members in doing so.

It is essential that the proposals in the Bill have public confidence and the Institute is supportive of open and transparent processes. However, it is not clear how the mechanisms for transference to councils, identified in the Bill, relate to the Local Government Reforms currently drafted by the Minister. The Institute would urge the Committee members to continue to seek clarification from the Minister on this point.

2. Resource Issues

The question of adequately resourcing the requirements of the Planning Bill has been raised by a number of members. Several clauses in the Bill refer to the transference of responsibilities to Councils as well as the scrutiny and challenge functions of the Department. This suggest that Councils need a 'fit for purpose' planning unit, to carryout the duties as prescribed in the Bill, as well as professional planners advising the council and councillors on planning functions. The Department also needs to retain 'fit for purpose' planning units that can oversee the functions of the Councils, as well as delivery of the regional planning functions. All of these units and functions require adequate resourcing by professional and administrative staff.

The Institute would urge the Committee to seek assurances from the Minister that the Planning Bill will be properly resourced. The Institute has already warned that planning fees cannot be seen to be the single source of funding, and that planning functions, such as plan development, must have a public funding base, either centrally, or through the rates. The Planning Bill makes no reference to funding routes and yet this is important to establish early and effective implementation.

3. Community Planning and Involvement

Community planning is important to any modern planning system as it gives ordinary people the opportunity to help shape their environments. The Institute is concerned about the lack of detail in the Planning Bill around the interface and interrelationship between community planning and

the proposed new planning system. It is crucial that the two are considered together, to appropriately design how they interact and avoid any further fragmentation in governance and service delivery in Northern Ireland.

Community planning and the return of planning powers to Councils offers a new era of people focused public services and opportunity to bring planning down to local level, even to ward areas within Councils. Community planning will also be an important mechanism to ascertain local needs and aspirations, and will enable communities to develop a sense of ownership in the plan making process, which they never had before in Northern Ireland.

The Institute is encouraged to see clauses that establish community planning, and community involvement and consultation. However, the Institute is also aware that Northern Ireland does not have a well developed community planning ethos. Much needs to be done to develop a new culture of community planning and involvement before the proposals in the Bill could be effective. The new approach, identified in Part 2 of the Bill, will still need further discussion in the context of the ongoing reform of planning. The Institute supports the idea that local people should be involved in setting the vision and framework for planning decisions, rather than engaging with the community piecemeal on a case by case basis.

The Institute would wish to see more training in place for councillors, planning staff and voluntary groups. The Minister should be urged to develop training over the next few years before the Bill's implementation.

While clauses in the Bill have referred to "community" there is nothing defined in the Bill and the Committee is encouraged to seek more clarity from the Minister about definitions around this area of the Bill.

Pre-application consultation has been referred to in a number of clauses. The Institute would again seek clarification of how in practice this is to be carried out, bearing in mind that developers and applicants in general have little or no experience of carrying out community consultation and involvement. The Institute would like to see professional planning input to these consultation exercises and the Minister should be pressed on the need to provide a professional support service.

Clause 4 refers to the need for Councils to prepare a statement of community involvement and the planning profession will be able to assist in this, including the need to train councillors and retrain some planners, a service that the RTPI would offer its involvement and expertise.

4. Plan Led System

The Institute supports the principle that integrates community planning, local plans, and regional planning, strategic and policy guidance. However, the Institute is concerned about the interrelationship of community and land use plans and the proposed sequencing of publications. There is also a concern about the introduction of a plan led system when the area plan framework that is to be inherited by the Councils is largely obsolete.

The Institute would suggest to the Committee that this should be held back to allow the introduction of the new generation of area plans that the Department has initiated as part of the reforms. These were promised to be developed within 40 months. The Committee may want to monitor this promised development and seek assurances from the Minister on its delivery.

5. The Role of the Department

The Institute understands the need to include clauses in the Bill that reinforce the principle that the Department carries the overriding responsibility for planning in Northern Ireland, and that regional planning remains with the Department. However, the Bill has been drafted in an over-cautious manner, to the point that some members feel that Councils are not being given the freedom to plan their own areas and are not trusted to carry out the planning function on their own.

The RTPI has supported the principle of devolvement of planning to local levels across the UK. The Institute would not want to see devolved planning functions over-administered by the Department. Professional planners located at Councils would not want to see their professional functions constantly dissected or vetoed by the Department, and the Department must not become over-bureaucratic in duplicating functions at local level.

The Institute would encourage the Committee to challenge those clauses that refer to the need for Department intervention. Clause 16 adequately covers the Department's default powers in respect of development plans, this has a general effect where Councils are failing to deliver these plans to a standard. However the Planning Bill keeps reinforcing the default function and in Clause 10 (1) becomes over-bureaucratic, requiring Councils to submit every development plan document to the Department for independent examination.

A similar indulgence in scrutiny is seen in Clause 21, where Councils must make an annual report to the Department. Some members feel that this will increase the workload of both the Council and the Department, and is a costly exercise with limited benefits

6. The Role of the RTPI

Capacity building and adequate resourcing of the reforms are two areas the Institute would further require dialogue with the Department. Already the RTPI has engaged with the Planning Service and NILGA on the development of professional training sessions for planners and councillors. However, the Bill contains proposals that clearly require major cultural change and additional funding. The later point on funding is critical; if the reforms are not affordable then the planning system could end up in a worse position than at present, with a devolved administration, but without the resources to implement the function of planning. The Institute seeks further clarity on theses two issues.

The Planning Bill must not be viewed as a static response and it is important that the Institute, on behalf of its members in public and private positions in Northern Ireland, maintains a balanced view to the Committee, the Minister and the Department. Lessons learnt from the recent Northern Ireland reforms in Health and Education, have shown that dialogue with professional bodies has been beneficial in shaping and helping to eventually deliver the reforms on the ground. The Royal Town Planning Institute, therefore, looks forward to a participatory role with Government on the implementation of the Planning Bill.

The Institute is active in working with the Minister progressing the reforms. In February the RTPI is organising a one day conference "Place Matters", examining the issues around spatial planning. The Minister will be opening the conference and the RTPI look forward to what the Minister has to say on the topic. Also the Institute is helping to influence the reform process as a member of the Minister's recently established Planning Forum.

7. Final Comments

A factor that is more prevalent in Northern Ireland is the recourse to Judicial Reviews. The Institute would ask the Committee to review the Planning Bill in the light of challenges that are

likely over legal issues. The large number of clauses and the complexity of the Bill increase the chances for challenges where procedures or clauses have not been adhered to the letter. Final drafting of the Bill needs careful attention to this point.

The uniqueness of the current reform process in Northern Ireland is that planning reform and the devolution of powers to new councils is occurring at the same time. Changes to the way health, housing and education are on-going and the Assembly is currently tackling important economic, policing and justice issues. All of these factors are aligning at roughly the same time. In effect Northern Ireland is about to experience a rare opportunity to radically reform the way the nation functions for the good of the community here. The community is ready for reform after years of conflict and direct rule. The Institute is also aware that, because of this unique set of circumstances, there are many observers, national and international, who are following with great interest the virtual rebirth of government in Northern Ireland, and the Planning Bill will be seen as the most significant piece of legislation in 40 years to devolve functions back to local levels.

Brian Sore MRTPI

NI Policy Officer
Royal Town Planning Institute

January 2011

Royal Society for the Protection of Birds Submission to the Planning Bill

a million voices for nature

Executive Summary

The RSPB welcomes the publication of the Planning Bill for Northern Ireland. We are pleased that the Bill introduces the new structures for a more effective planning system with sustainable development at its heart, but we are concerned that so much still relies on the production of secondary legislation and guidance. This has serious resource implications for the Department to deliver this within a reasonable timescale.

We strongly welcome:

- The sustainable development duty for authorities preparing development plans, but this must include delivery“within environmental limits";
- Stronger enforcement powers; and
- Increased opportunities for, and clarity on, public engagement with the planning system including a right to be heard at inquiries and hearings.

We urge the Committee to recommend:

- A stronger definition for the function of the Department, to include reference to sustainable development and wellbeing;

- The application of the sustainable development duty to development management;
- A definition of sustainable development in an urgently-needed PPS1;
- The inclusion of a climate change objective for planning;
- A statutory link between the local development plan and community planning;
- Additions to the detail of pre-application community consultation;
- That international wildlife sites be excluded from Simplified Planning Zones;
- The inclusion of nature conservation as an after use for mineral workings;
- and The inclusion of limited third party rights of appeal alongside the ability of the Planning Appeals Commission to award costs to prevent vexatious appeals.

We ask the Committee to seek more information on:

- The timescales and opportunity for public consultation on the development of secondary legislation and guidance;
- The status the guidance will have – as good practice guidance, supplementary planning guidance, or simply advice to the new local authorities;
- What steps will be taken if local authorities do not meet the plan timetable;
- How sustainability appraisals will include environmental assessment;
- A definition of, and more information on, 'soundness' of plans;
- Whether non-binding examination reports could lead to delays in plan adoption;
- Why performance agreements have not been included;
- What progress has been made by the Executive on progressing developer contributions;
- and The resource needed within Planning Service and/or the local authorities to deliver the additional legislation and guidance in a timely manner.

Introduction

The RSPB is UK's lead organisation in the BirdLife International network of wild bird conservation bodies. It is Europe's largest voluntary nature conservation organisation with a membership over 1 million. Of these more than 11,000 live in Northern Ireland. Staff in Northern Ireland work on a wide range of issues, from education and public awareness to agriculture and land use planning. We have considerable expertise as a user of planning systems across the UK, both as applicant and consultee. In Northern Ireland we show our commitment to promoting good planning through the joint RTPI/RSPB Northern Ireland Sustainable Planning Awards, and by involvement with developers and the public on proposed development from wind farms to housing.

RSPB Northern Ireland comments on the Planning Bill

Our comments are numbered by clause; we do not comment on all clauses. Many of our comments are to find out more about proposed secondary legislation and guidance. We have not compiled a list of all the cases where these are mentioned, but the list is lengthy and we are concerned about the resource available to the Department to deliver all of this within a reasonable timescale.

There is no reference to spatial planning as a whole. Spatial planning of all land uses, not just those delivered by development management, is the way to bring economic, environmental and

social objectives together. We urge the Government to consider how it will integrate the delivery of sustainable development using spatial planning as a tool that can be used by all Departments.

Our key points for the Committee are underlined.

Part 1. Functions of the Department

Clause 1. General function of the Department

There has been no change to the general function of the Department with respect to development. This is a missed opportunity and we urge a change of wording.

The purpose of planning must be to achieve sustainable development. The UK Sustainable Development Strategy recognises this must be done through development within environmental limits[1]. Planning is an essential tool for managing the use of our natural resources and for minimising the impacts of development on the environment. To be effective, this means bringing environmental, economic and social objectives together and making sure they are integrated to bring about genuine improvements in wellbeing.

The Departmental function should be to deliver public wellbeing and sustainable development. At the least we recommend amending 1(1) to ‚...securing the orderly and consistent development of land and the planning of that development within environmental limits" and extending the sustainable development duty to development management functions.

In the Republic of Ireland, the purpose of the Planning & Development Act 2000 (as amended) is to provide, in the interests of the common good, for proper planning and sustainable development. This is required of both development plans, and planning authorities are restricted to “considering the proper planning and sustainable development of the area" (34(2)(a)) when making decisions.

We seek a definition of sustainable development. This is urgently needed so that Departmental and council officials know what duty they are required to fulfil, and should come with PPS1.

Climate change must be recognised as a key part of sustainable development and the planning system. Key issues such as climate change and flooding could also be mentioned under for example 1(4)(a). We ask that development plan documents include policies “designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change" (§182 of the Planning Act 2008 in England).

Clauses 2. and 4. Statement of Community Involvement (SCI)

SCIs are a welcome first step to effective public consultation. However, without the counterpoint of a (limited) public right of appeal, the SCI means little in itself. There is no requirement to take community views into account, only to carry out the consultation, and no guarantee that ‘community’ includes non-government organisations (NGOs). There is no way for the public to object if the SCI is not met on development management cases, without recourse to legal action, thereby paving the way for long-winded legal processes to slow the system further. We have similar comments in relation to clauses 26-27.

Under 4(6) the Department is yet to prescribe what SCIs will look like and how they will work. We would like to know when this will happen.

Part 2. Local Development Plans

Clause 5. Sustainable development duty for plans

We welcome the application of the sustainable development duty to Part 2 (local development plans). As detailed under clause 1, we would like to see this duty extended to those undertaking development management functions, and to refer to development within environmental limits.

Clause 6. Local development plans (LDPs)

The Government Response to Planning Reform Consultation Paper (the “Government response") said the Department would make a statutory link between local development plans and community plans and that plans would have the role of contributing to / enhancing a quality environment[2]. We believe the development plans should spatially express outcomes of the community planning process, where these are sustainable and fit with national and regional planning and environment policy. Where this is not done correctly, problems arise where community plan aspirations conflict with the development plan, and there is the potential for community consultation fatigue.

Although both community planning and a local authority power of wellbeing are included in the current Local Government Reform consultation issued by the Department, the statutory link should be made in the Planning Bill.

Clause 7. Preparation of timetable

This replaced the proposal for the programme management scheme in the consultation. We support its inclusion, but there should be both encouragement to achieve its objectives, as well as enforcement or compensatory measures against the planning authority if reasonable timescales are not met, where the delay is the fault of the planning authority. The timetable should be published on a website and regularly updated.

Clauses 8 and 9. Plan strategy and Local Policies Plan (LPP)

Clauses 8(3) and 9(3) state that Regulations are still to prescribe the form and content of the plan strategy and local policies plan. We would like to know when this will happen, and how third parties (including ourselves) can comment on the proposed Regulations. The process should include a preferred options paper, as consulted on. In the Government response, §2.105 states there would be a statutory requirement for district councils to take account of community plans in the preparation of their local development plans. This has not been included in either clause 8 or 9.

8(5) For the plan-led system to be comprehensive, the plan strategy should be ‘in conformity with’ the regional development strategy.

8(6) and 9(7) The RSPB remains concerned that sustainability appraisals “...as currently applied cannot be considered an effective tool for supporting environmentally sustainable decisions"[3]. We would like to see Strategic Environmental Assessment (SEA) applied to development plans and seek reassurance that this will be the case. There is no detail in the Bill about links to SEA or appropriate assessment (AA) under the Conservation (Natural habitats etc) Regulations (NI) 1995 (as amended) – also called Habitats Regulation Assessment (HRA).

Clause 10. Independent examination

10(5) There is as yet no detail on the definition of ‘soundness’ of a plan. We would like to know how and when guidance on this will be developed, and whether it will follow guidance and case examples from other parts of the UK[4]. We would also like to know if objectors to development plans will have to show that their proposals are also sound/sustainable, as discussed in the Government response.

Clause 12. Adoption

We note that the Examination report is not binding, but we agree that the Department must consider the recommendations and must give reasons for its decision. A non-binding report may have advantages for democratic accountability, but it may have implications for the speed of adoption. Our key concern is if an independent examiner makes recommendations to rectify a draft plan s/he considers unsound, but the Department does not adopt the recommendations. This may give rise to legal challenge and we would like to know whether the Department believes this is a risk.

Clause 13. Review of LDP

We welcome that LDPs will be regularly reviewed, but we would like to know how often this will occur and what the review will encompass.

Clause 16. Department’s default powers

We welcome these powers.

Clauses 17 and 18. Joint plans

We welcome these powers but we would like more detail from the Department about when it might consider this appropriate. For example, it might be appropriate to have criteria to help determine whether a joint plan is necessary.

Clause 21. Annual monitoring report.

We support the need for an annual monitoring report. This should include monitoring of environmental impacts.

Clause 22. Regulations

This introduces another power to make regulations. These are likely to be important and where many of our concerns would be addressed. We would like to know when these will be produced and how we can get involved.

Part 3. Planning Control

Clause 23. Meaning of ‘development’

We support the additional of a definition of ‚building operations? in 23(2).

Clause 25. Hierarchy of development

This legislation puts in place the structure for regionally significant, major and local developments, but we await detail on the categories and how they will be defined.

Clause 26. Pre-application discussions

We support pre-application discussions but we would like to see the detail on how these will work and how they will be enforced. The overall effect is that all major applications will be filtered by the Department. This will have implications for Departmental planning resource as well as resources needed in councils.

Under 26(4) there is no mention of environment in determining whether something is of regional significance or not. Regional developments should include developments affecting Natura 2000 sites. Note that even 'small' developments can have wider implications, eg through having an adverse impact on a Special Protection Area (SPA) or Special Area of Conservation (SAC) (otherwise called Natura 2000 sites). We would like to know when the Department would intervene in such decisions.

Under 26(10) it is stated that the Department may cause a public inquiry to be held for regionally significant or major developments under its power. We would like to know what criteria will be used to determine whether or not an inquiry is held. We note that the inquiry outcomes are not binding - the Department must only take them into account – with potentially similar implications we indicate under clause 12.

There is no mention of performance agreements, as indicated in §3.18 of Government response. These would also help the new district councils (staff and councillors) to be clear about the system and their responsibilities.

Clause 27. Pre-application community consultation

We support the introduction of pre-application community consultation, but the reliance on form and content "as may be prescribed" and under later Regulations means that there is little detail. Clause 102 in the English Localism Bill amends English legislation to give more detail on pre-application community consultation. In particular 61W(2) specifies more particularly the people who should be consulted ("a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land"), while (4)(b) requires information about consultation timetables to be published. We recommend these as additions to clause 27.

Importantly, there is no information on the status of pre-application community consultations. In the Localism Bill, it is proposed that the applicant must "have regard to" any consultation responses (61X(2)). We recommend that this be included in the Planning Bill.

Pre-application consultation is a key stage for communities and their NGO representatives, and for the RSPB particularly with regard to ensuring an appropriate evidence base for environmental assessment. This proposal will help to resolve problematic issues early and, should there be a public inquiry, save inquiry time.

With no third party right of appeal (TPRA), there are still no consequences if pre-application consultation is not done properly. In the absence of TPRA, we recommend clear processes to govern pre-application consultation, to ensure its effectiveness and quality:

- statutory requirement for pre-application consultation for both regional and major developments;

- statutory requirements for advertising (neighbour notification, on-site notices);
- statutory minimum duration periods for consultation;
- good practice advice on consultation techniques;
- procedures on the evaluation of the consultation report (quality, effectiveness and feedback to participants).

Some of these would still be necessary, even with limited TPRA, and would reduce the likelihood of objectors resorting to TPRA.

Nevertheless, we believe the case for TPRA has been well-argued, not least by Mr Poots MLA in his role as MLA in the Assembly June 2001[5]. We strongly urge the Department to bring forward a limited third party right of appeal.

Clause 29. Call-in of applications

We support the introduction of these powers.

Clause 30. Pre-determination hearings

We note that procedures for these are for councils to define. We believe there should be a minimum standard to guarantee some level of consistency but to reward innovation where councils wish to take this further.

Clause 31. Schemes of delegation

We support this and appreciate the pilots have worked to date.

Clause 33-38 and Schedule 1. Simplified Planning Zones (SPZs)

Sch 1, 2(2). We agree that the public should be consulted on the making or altering of SPZs.

Clause 38. International sites (SPA, SAC and Ramsar) should be included, as not all of these sites are underpinned by ASSIs. Any SPZs near these sites (or upstream or which in any way may affect an international wildlife site) should be carefully scrutinised for compliance with the European Habitats and Birds Directives.

Clauses 40-44. Planning applications

We recommend that the form and content of planning applications include sufficient information on environmental impacts, to assure compliance with relevant legislation, including the ability of the local authority to fulfil the forthcoming biodiversity duty.

Clauses 45-57. Determination of planning applications

Clause 45. We support this clause, as it effects a plan-led system in that authorities must have regard to the local development plan when considering applications.

We support the powers to decline subsequent and overlapping applications, and where the pre-application consultation has not taken place.

Clause 53. We strongly urge the inclusion of ‘nature conservation’ as a use for closed mineral works (53(1)(b)). The RSPB and the quarry industry amongst others have shown how important afteruse for nature conservation can be in achieving biodiversity targets and we believe this should be facilitated wherever possible. This would be inline with sustainable development and biodiversity duties, and builds on good practice already in place[6]. In addition, the steps in 53(5) do not include all steps that might be needed for nature conservation afteruse, so we suggest the wording is changed to “The steps….may consist of but are not limited to….."

Clauses 58-59. Appeals

We support these provisions.

Clauses 60-77. Duration of planning permission

Under 69(2)(c), this must include people who originally made representation, but also others who may be affected but who didn’t know about first application, or who represent a wider interest (e.g. NGOs).

Planning agreements (75) should be able to require green infrastructure and habitat management, restoration or creation where appropriate.

This should be related to a community infrastructure levy or similar, as available in England, which would bring money into the local area to pay for infrastructure (including green infrastructure) for those communities affected by the proposed development. §6.9 of the Government response reported that several Departments identified developer contributions and that this should be discussed at Executive level in relation to funding and infrastructure responsibilities. We ask the Committee to find out what progress has been made on this, if any.

To aid building control and enforcement of conditions, we believe it would be useful to require ‘commencement of development’ notices and we would like this to be added in subsequent legislation. The Government response said this would considered after monitoring the approach in Scotland.

Part 4. Additional Planning Control

The RSPB does not comment on the legislation relating to listed buildings, conservation areas, hazardous substances and advertisement (chapters 1, 2 and 5).

Chapter 3. Trees

We welcome the duty of the landowner to replace trees under Tree Preservation Orders (TPOs) (124(1)), but we believe it would be more appropriate for the offender to do this (which may not be the landowner). We support the financial penalty for contravention of TPOs (125).

Chapter 4. Review of Mineral Planning Permissions

ROMPPs has great potential to ensure that mineral sites are restored to the best afteruse, and we would like to see more sites being returned to nature conservation afteruse (see clause 53 comments). Our key concern about the ROMPPs process is that there are no timescales for delivery, and guidance is awaited on how the process will work, including public consultation (Sch2 9(7) and Sch3 7(7)).

Part 5. Enforcement

We support the improved enforcement powers including planning contravention, temporary stop, enforcement, breach of condition and stop notices.

Relevant persons may appeal enforcement notices to the PAC. Under 142(5) the PAC must afford the appellant or the relevant authority an opportunity to appear before the PAC. In such a case, we believe it would be useful to invite relevant third parties, for example those who may have objected to the original application, who may have relevant evidence for the PAC.

For certificates of lawful development (CLUDs), we agree that councils should include some public consultation (170(3)), but this will be required by a development order yet to be drafted.

Parts 6-8 & 10-12.

The RSPB does not comment on these Parts.

Part 9. The Planning Appeals Commission

The key to successful delivery of PAC functions will be the production of the relevant guidance and rules for regulating procedures, and we would comment on those when available.

We believe it would be useful for the PAC to have the power to award costs, which could be introduced alongside limited third party right of appeal to reduce the likelihood of vexatious or poorly justified appeals. The Department has said it would proceed with this (§4.30 Government response).

Part 13. Financial provisions

Clause 219 provides for a 'multiple' fee for retrospective planning applications. We support increased fees for such applications, but would like to know what 'multiple' means.

We support the inclusion of clauses 220-221.

Part 14. Miscellaneous and General provisions

We support the duty to response to consultation, although we recognise the detail is not yet available (timescales, procedures etc). This should make clear whether a 'holding response' fulfils the duty or not.

We agree that councils should keep planning registers (237) available to public view.

Part 15. Supplementary

Clause 243. Interpretation

- "reserved matters" is missing ("outline planning permission" is included)
- - ,nature conservation" should be included (see clause 53 comments)

Claire Ferry, Senior Conservation Officer, RSPB Northern Ireland, January 2011

[1] UK Sustainable Development Strategy at http://www.defra.gov.uk/sustainable/government/gov/strategy/index.htm

[2] §2.28 in http://www.planningni.gov.uk/index/news/news_other/government_response_final.pdf

[3] Morrison-Saunders A., Fischer T.B., What is Wrong with EIA and SEA Anyway? A Sceptic's Perceptive on Sustainability Assessment, Journal of Environmental Assessment Policy and Management, Vol 8, No 1, March 2006, pp. 19-39, Imperial College Press

[4] E.g. §4.51-4.52 in PPS12creating strong safe and prosperous communities through Local Spatial Planning (DCLG)

[5] http://archive.niassembly.gov.uk/record/reports/010619d.htm

[6] For example www.afterminerals.com

SOLACE Northern Ireland Submission to the Planning Bill

SOLACE Northern Ireland
Unit 5B
Stirling House
Castlereagh Business Park
478 Castlereagh Road
Belfast BT5 6BQ
Northern Ireland

Tel: 028 9079 6966
Fax: 028 9079 1248

Mr Cathal Boylan
Chair of the Environment Committee
Northern Ireland Assembly
Room 245
Parliament Buildings
Stormont
BELFAST
BT4 3XX 21 January 2011

Dear Mr Boylan

Draft Planning Bill

The SOLACE Executive, following its meeting today, has asked me to submit the following comments in relation to the draft Planning Bill:-

1. Welcome:

The Council welcomes the transfer of Planning to Councils. Local representatives have a close relationship with their elected areas and therefore understand the needs, demands and views of their local communities. The Council seeks to develop and shape its District to promote the social, economic and environmental growth. Planning is a critical tool in this development.

2. Timescale:

While the Council can understand the tight legislative timescale the consultation period with a key stakeholder ie Local Government has been very short and inadequate for such a detailed and critical piece of legislation.

The proposals need to be considered within the context of the cross cutting issues that arise from the Local Government Reform Proposals, the Finance Bill and Planning Fees consultation. Additional time is required to fully consider the implications and provide a strategic, meaningful and informed response.

The objective of the consultation is to lay a strong foundation for the future transfer of the Planning function and the detail in this enabling legislation therefore requires careful consideration e.g. legal liability, proposals relating to compensation, governance issues, resourcing, implications of the power of intervention and the inherent liability that could arise from the overlapping central/local government roles.

From a council perspective, it is also essential that the governance requirements of the corporate body are met and as such the Bill which was released in December 2010 will need to be considered within council committee structure prior to agreeing a response by the full council.

3. Fit For Purpose:

While much improvement has been achieved within Planning Service the Council still believes there are major improvements required to make it fit for purpose. For example we still have many out-dated Area Plans, delays in major applications, delays in Appeals. The Council would require Planning Service to engage in meaningful dialogue to ensure that when the service transfers it is fit for purpose.

4. Rsources:

There are major resource shortfalls within Planning Service currently. Any transfer of Planning should be cost neutral to Councils. Therefore a review of fees and staff complement to ensure that when the transfer occurs that it will not be at additional cost to the Council.

5. Ethics and Standards:

A robust agreed ethics and standards regime is required prior to transfer of Planning to Councils. These proposals are contained within the Local Government Transfer Bill. These Bills need to be synchronized to ensure that the reformed Planning system can work with the confidence of the public

6. Operational Issues:

With the eventual transfer of Planning to Councils it would be important that Councils have some input into the governance and management arrangements of the 5 streamlined divisional offices.

They will transfer to Local Government and therefore any long term financial or structural commitments should be discussed with Local Government in advance.

Detail on the pilots due to commence in 2011 is still not available with three months to go. The Council is not aware of the pilot proposal or how the pilots will operate.

7. Capacity Building and Training:

Sufficient capacity within both central and local government sectors is vital to ensuring emerging service delivered in cost effective/efficient manner. New proposals eg. new local development plan system, preparation of community statements, pre-determination hearings, annual audits/monitoring are likely to have significant resource and capacity implications for councils upon transfer. Ssubstantial investment to develop capacity and skills is necessary. Scope for duplication resulting in inefficiencies eg. planning agreements, designation of conservation areas, TPOs and issuing enforcement notices.

8. Councils as Equal Partners:

The Council is concerned that local authorities have had only a minimal role to date in shaping the proposed planning system. If the sector is to assume responsibility for a new system, it must have confidence that it will be a workable arrangement. Only by embracing the sector will the Department help engender the necessary trust to ensure the future success of the system.

Yours sincerely

Liam Hannaway

Secretary

Sport Northern Ireland Submission to the Planning Bill

Date: 14th January 2011

Our Ref: PS/PB/SMcI/2011

Your Ref:

sport Northern Ireland
The lead agency for developing sport in Northern Ireland

Mr Cathal Boylan
Chairperson, Committee for the Environment
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
Belfast
BT4 3XX

14th January 2011

Dear Mr Boylan,

RE: Call for evidence on the Planning Bill

Sport Northern Ireland (SNI) thanks you for the opportunity to consult on the proposed Planning Bill for Northern Ireland. The new legislation appears to deal largely with the transferring of planning powers and related administrative procedures to District Councils.

SNI is interested in obtaining more information relating to the proposed arrangements for 'zoning', in particular land zoned for sport and physical recreation, as per Part 3 of the proposed Planning Bill.

I would be grateful if you could confirm that the contents of Planning Policy Statement 8 (PPS 8); Open Space, Sport and Outdoor Recreation, will continue to be relevant to the planning process? It is SNI policy to oppose the loss of any facility provision for sport and physical recreation, unless:

- The planned development will not effect the use of existing sports facility provision;
- The planned development includes appropriate and enhanced sports facility provision to replace the loss of existing provision;
- The planning applicant can demonstrate why there is no need for existing sports facility provision.

Following the proposed transfer of planning powers to District Councils, SNI would like to ensure that we continue to be consulted on all planning applications for proposed sport and recreation provision, and applications that will positively/negatively impact on existing sport and recreation provision.

sport Northern Ireland
The lead agency for developing sport in Northern Ireland

SNI has developed a facilities database that currently stores over 6000 records (relating to location, quality, condition, accessibility and specification) on approximately 2000 sports facilities throughout Northern Ireland. The information from this database can be made available to the Department for the Environment or the District Councils to assist with processing any planning application in relation to sport and physical recreation.

Thank you once again for considering SNI in the consultation exercise. Please do not hesitate to contact me if you have any queries.

Yours sincerely,

Stephen McIlveen
Facilities Development
Sport Northern Ireland

Tesco Submission to the Planning Bill

TESCO

Ben Train
Town Planning Manager – Scotland & NI
Tesco Stores Limited
Property Acquisitions
Carnegie Road

Livingston

EH45 8QX

Direct Line: 01506 779 425
Mobile: 07515 196 387
Email: ben.train@uk.tesco.com

Mr Cathal Boylan
Chair Committee for the Environment
orthern Ireland Assembly
Room 247
Parliament Buildings
Ballymiscaw
Stormont Estate
BT4 3XX 21 January 2011

Dear Mr Boylan

Northern Ireland Assembly Committee for the Environment: Planning Bill - Call for Evidence

I write in relation to the recently introduced Planning Bill and the Committee for the Environment's call for evidence. Tesco is a regular user of the planning system in Northern Ireland and welcomes the opportunity to comment on this important piece of legislation. We support efforts to speed up the planning process, to make it more responsive to the needs of stakeholders and ensure greater democratic accountability. The changes proposed by the Planning Bill should assist in achieving these objectives, although legislative changes must be supported by a change in culture to improve the efficiency of decision making processes, reduce the burdens on developers and encourage economic development. Tesco plan to create over 13,000 jobs in the UK in 2011/12.

Specific comments on the Planning Bill are set out below:

Clause 9: Plan Strategy and Local Policies Plan

Development plans should be quick to produce, manage and review (avoiding lengthy periods of uncertainty) and be proactive and flexible. The Planning Bill separates the local development plans into two sections – the plan strategy and the local policies plan. We believe it should be possible for a Council to take forward these two sections of the local development plan at the same time. This approach would result in a single local development plan document which in turn would allow decision makers to consider both the criteria based policies and the detailed zoning of site at the same time. It would also significantly increase the speed of local development plan preparation and make it easier for developers and communities to engage with the process. This approach would also reduce costs for all involved, including the relevant public sector bodies. We therefore recommend that clause 9(1) is amended to delete "after the plan strategy for its district has been adopted by resolution of the council or, as the case may be, approved by the Department,". The legislation should also be amended to allow the plan strategy and the local policies plan to be considered at the same Inquiry.

Clause 23: Meaning of "development"

The Bill will bring demolition within the definition of development (Clause 23 (2)(a)). This is a significant change and brings additional uncertainty for developers. We believe that an application should only be required for demolition when it lies within a conservation area or where it affects a listed building. An unintended consequence of this section as currently drafted could be that some developers demolish buildings before the change is enacted.

Clause 25: Hierarchy of Developments

Clause 25 (3) allows the Department to direct that a local development is to be dealt with as if were a major development. This clause adds uncertainty to the planning process. It is our view that an application should be either local or major and that the interpretation of this should rest with the Council. There is also no time restriction on this clause so in theory the Department could at any stage require this change in an application's position in the planning hierarchy.

Clause 26: Development's jurisdiction in relation to developments of regional significance

This section has the potential to introduce significant delays into the planning process for major applications. It will require a consultation process with the Department prior to even commencing the 12 week consultation period required under Clause 27. Consultation with the Department on this matter in theory should be a quick process, but there is no guarantee within the Planning Bill and in practice there is potential for this process to last several months. We believe that an amendment should be introduced to require the Department to make a decision on this matter within 14 days otherwise it reverts back to the Council to determine the application and allow applicants to start the formal pre-application consultation process. Such an amendment will provide the Department with specific timescale targets and reduce the potential for significant delays in the planning process.

Clause 27: Pre-application community consultation

We fully support the requirement for pre-application consultation on major applications. We already engage with local communities on a regular basis and recognise the benefits that flow from the consultation process. Similar legislative provisions were introduced in Scotland and the Scottish Government is currently consulting on legislation to correct the process and ensure that applications for amendment to conditions associated with major applications do not require the fully 12 week consultation process – see Consultation on Amendments to the Modernised Planning System (October 2010). Requiring full consultation on minor changes to 'major' planning consents causes confusion and adds costs and delay into the planning process. An amendment should be introduced into the Northern Ireland Planning Bill to ensure that pre-application consultation is not required for applications for amendment to conditions.

Clause 29: Call in of applications, etc., to Department

Clause 29 provides substantial call in powers for the Department in the absence of criteria setting out when this would be applicable. This brings an additional level of uncertainty hence criteria should be clearly set out for when a call in could be triggered, such as limiting it to cases that are of genuine significance to the whole or a substantial part of Northern Ireland.

Clause 66: Power to make non-material changes to planning permission

Clause 66 permits councils to make non material changes to planning permissions. This provision should also be allowed for the Department. It also extends beyond the ability of the Department in the Reform Order to correct errors given the applicant can only be made by or on behalf of a person with an estate in the land to which the permission relates. The current power to correct errors applies to an application by any person and this should be retained in the case of non material changes to consents.

Clause 121: Tree preservation orders: councils

Clause 121 sets out the facility for confirmation of a tree preservation area (TPO's) however we are against the removal of the provision to appeal to the PAC against the decision to designate a TPO on a persons land. While we accept that decisions such as this must be made promptly to avoid stalling develop through the uncertainty a pending decision can bring, landowners must have the recourse of an appeal should they be dissatisfied with the decision reached in respect of a TPO.

Finally, we see potential issues with the proposal that in temporary listings in urgent cases the Department can place the notice to the building rather than having to serve on the owner or occupier – this runs to risk of the notice being removed and the owner/tenant being unaware of the listing. We welcome the provisions that place a duty on consultees to respond to applications and provides the Department with the power to require reports on the performance of consultees in meeting their response deadlines.

I trust the above information is of assistance. Please contact me should you require any clarification.

Yours sincerely

For and on behalf of

TESCO STORES LIMITED

Ben Train

Town Planning Manager – Scotland & NI

CC – Ian May, Chief Executive Planning Service

Turley Associates Submission to the Planning Bill

TURLEYASSOCIATES

Montgomery House
29-31 Montgomery St
Belfast
BT1 4NX

T: 028 9089 7400
F: 028 9089 7401

www.turleyassociates.co.uk

Our ref: DF 110119

E: dfitzsimons@turleyassociates.co.uk

19 January 2011

Delivered by Email

Mr Cathal Boylan MLA
Committee for the Environment
Room 247
Parliament Buildings
Stormont Estate
Belfast BT4 3XX

Dear Mr Boylan

PLANNING BILL CONSULTATION

Background

I am responding to the consultation on the Planning Bill on behalf of Turley Associates, Planning and Urban Design Consultancy. With a team of fourteen planners and urban designers in our Belfast Office we work across a wide range of sectors throughout Northern Ireland , including housing, retail, town centre, health, employment, masterplanning, education, finance, energy and waste. In addition to the Belfast office, our company has 9 other offices across the UK and thus we are knowledgeable about planning systems in all the other jurisdictions.

I intend to keep comments to a minimum as we have already given our input to the extensive consultation process that led up to the drafting of the Bill. In broad terms we welcome and support reform of the planning system in Northern Ireland but note that the difficulties that are likely to be experienced over the next few years as changes take place in advance of the local government reform process being completed. Given the recent reduction in staff numbers in Planning Service and the loss of experienced planners, we fear a period where effective decision making will not take place at the speed that is required in order to encourage recovery from the recent economic downturn. It is essential that good quality planners with vision and a 'can do' attitude are retained and encouraged in the next few years so that we have a firm professional base on which to build the type of planning system that we so badly need.

The proposed planning system has some very good aspects which we support but we also have some concerns, namely:

Plan making

We support the return of most plan making activity to elected Councils, with a greater emphasis being placed on maintaining a relevant and frequently updated suite of plans (plan strategy and local policies plan) looking 15 years into the future; the requirement for Councils to prepare a Statement of Community Consultation and to consult appropriately on options during the plan making process; and

the provisions for an independent examination of the 'soundness' of the plan. We would further request bringing in the village, local regeneration and town centre type of plans currently prepared by the Dept for Social Development (DSD) into the hierarchy of plans prepared by the Councils, as the current situation can lead to disillusionment by those who have participated in the DSD plan making process when it becomes clear that such plans are not used by DoE for decision making on planning applications.

We fully endorse the concept that the suite of plans making up the Local Development Plan are drawn up within the context of the Regional Development Strategy and the Regional Policy Statements, as well as European obligations. This will ensure the logic and consistency within the suite of plans which is required for clear decision taking on planning applications.

We are concerned that Councils have adequate resources and that Councillors receive appropriate training to enable them to do a job which is very different from their current consultation role in planning. The development industry needs certainty in order to make investment decisions and it is thus important that the Councils have sufficient expertise and resources to prepare the required suite of plans very soon after they are granted planning powers and for Council officials to carry out public consultation effectively without jeopardising the timeliness of plan production. Programme Management Schemes for the preparation of plans by Councils and the power of DoE to take over such plan making where a Council has failed to deliver are both essential. Planning Service's continuing work with the Transitional Committees is thus vital as is an ongoing programme of training for those Councillors who will be taking an active part in the new planning process post RPA.

We are also concerned that the concept of 'Community Planning', highlighted in the previous consultation about planning reform and also in the consultation about local government reform, is still being evolved. There are many questions to be asked and answered about the relationship between a Council's Community Plan and the statutory suite of plans that will be produced to make up the Local Development Plan. The important thing is to balance the desirability of effective community involvement in planning with the requirement of timeliness in the production of realistic development plans – this 'balance' has been an ongoing issue since the inception of the planning system in the UK. We would also query whether or not the prospect of the joint preparation of plans by adjacent Councils by direction of the Department will work in practice.

Simplified Planning Zones and Enterprise Zones

We do not understand why these have been included in the draft legislation as they have not, in the past, resulted in any significant benefit to N Ireland.

Management of Development

We support the concept of introducing decision making mechanisms which are appropriate to the scale of development being applied for and the categorisation of applications into local or major developments. Thus we support the majority of planning applications being processed and decided by the new Councils (with some delegation to officers) and that major planning applications of regional

significance are dealt with by the Department of the Environment, with appropriate expert resources being put in place to ensure this decision making is effective. For example it is not acceptable that renewable energy is high on the government's agenda yet decisions on windfarm applications are often taking 3 to 4 years to process. In this particular case there is a need for a very highly skilled and expert team who are dedicated to these types of renewable energy applications across N Ireland and benefit from frequent upskilling on the latest technologies so that they work on a par with the energy providers.

We also support the requirement that applicants submitting 'regionally significant' and other 'major planning' applications must consult effectively with the public prior to submitting the planning application and demonstrate this to the decision takers. This is current best practice and we endorse its inclusion in the legislation.

We support the Bill's requirement for consultees on planning applications to respond within a specified timescale but stress that this should be a proper full response and not just a 'holding' response as is often the case currently. Again this requires the effective resourcing of consultees such as NIEA and Roads Service. We believe that speed of decision taking on applications which the Councils are responsible for will not be optimised unless there is a consultee resource (a dedicated member of staff) working closely with each Council or a group of councils and capable of making decisions.

We are concerned that the process of deciding what is an application to be dealt with by DoE rather than the Council is not protracted. A very short timescale should be allocated to this process with regulations governing the process published as soon as possible. We believe that there should be a non-determination period for what will be Article 25 major applications of regional significance, as at the moment there is no sanction for these types of applications taking many years to be decided on.

We are also concerned that the new councils properly balance competing material considerations in making planning decisions and that Councillors are trained effectively prior to taking on this very important decision making role. If they do not make sound planning decisions based on evidence and policy then there could be very substantial chaos (and cost to the public purse) generated as appellants take their cases to the courts as a judicial review or to the ombudsman.

With regard to the Bill's proposal for 'pre determination meetings' with the Council before the Council makes a decision on an application, the DoE should ensure that all Councils have a very strict set of rules on process and probity so that there is no bias or perception of bias in decision taking. This process could also result in litigation and cost.

Planning Appeals

We support the recommended changes to the planning appeal system such as the shorter time to make appeals post receiving the decision notice. We are content that the right to a 'hearing' on appeal and in the examination of a plan has been retained. We believe, however, that the Planning Appeals Commission should be adequately resourced to deal with its wide range of current responsibilities so that there is no need to rely on other 'independent examiners' for plan strategies. We do not agree

with the PAC's current approach of only conducting one Inquiry/Examination at a time. If the PAC cannot deal with all the requests for Examinations and Inquiries, then any appointment of an Independent Examiner and the conduct of the Inquiry/Examination should be in accordance with a strict set of rules to ensure fairness, impartiality and openness.

Performance Management

If the changes to the planning system are to succeed it is vital that the government invests in key personnel to drive it forward - planners with technical ability and with leadership skills. The implementation of the new regime will require significant changes in cultural attitude and approach if it is to be successful. Planners must develop a can-do attitude to development and be rewarded for being pro-active and imaginative, whilst also ensuring that proposed developments meet local, regional and European policy requirements. Adhering to policy and planning law, consistency in decision making and taking difficult decisions that may not always have public support will also be major challenges for the new Councils going forward.

Finally, it is important that all the follow up regulations and development orders referred to in the Bill are prepared as soon as possible to give clarity to the legislative proposals and that the Department now publishes its own Statement of Community Involvement which we believe has already been prepared in draft.

Yours sincerely

Diana Fitzsimons MA MSc FRICS MRTPI MIPI
Office Director

TURLEYASSOCIATES

Ulster Flying Club Submission to the Planning Bill

From: Terrybunce@aol.com
Sent: 14 January 2011 19:44
To: +Comm. Environment Public Email
Subject: Planning Bill

Dear Sir,

With regard to the draft Planning Bill, I would like to make the following submission on behalf of the committee of the Ulster Flying Club, managers and operators of Ards Airport.

1) The five Licensed airports in Northern Ireland, (Belfast International Airport, Belfast City Airport, City of Derry Airport, Ards Airport Newtownards, St. Angelo Airport Enniskillen) have a statutory duty to comply with elements of The Civil Aviation Act 1982, The Airports (Northern Ireland) Order 1994 and the Civil Aviation Authority, Air Navigation Order.

It is essential that a clause is inserted in the Planning Bill that will ensure relevant councils maintain a current 'Safeguarding Map' of the area surrounding airports which are licensed by the Civil Aviation Authority.

2) Councils must ensure that licensed airports, within their area, are included in the Planning Consultation Process for all proposed developments that lie within the Air Traffic Zone of the Airport. This must include scale drawings and elevations of each proposed structure.

3) Airport Air Traffic Zones should be excluded from the Simplified Planning zone provision.

Yours fathfully

TGW Bunce

Utility Regulator Submission to the Planning Bill

Mr Cathal Boylan (MLA)
Chairperson, Committee for the Environment
Room 247
Parliament Buildings
BALLYMISCAW
Stormont Estate
BESLFAST
BT4 3XX 13 January 2011

Dear Mr Boylan

RE: Committee for the Environment – Call for Evidence on the Planning Bill

Thank you for the opportunity to respond to the above consultation.

The Utility Regulator is a non-ministerial government department responsible for regulating the electricity and gas industries and water and sewerage services in Northern Ireland, to promote the short and long-term interests of consumers. We make sure that the utility industries in Northern Ireland are regulated and developed within Ministerial policy as set out in our statutory duties.

We carry out our work in line with statutory duties set out in the Energy (Northern Ireland) Order 2003 and the Water and Sewerage Services (Northern Ireland) Order 2006. The Utility Regulator has three main objectives:

- to protect the interests of electricity consumers with regard to price and quality of service, where appropriate by promoting competition in the generation and supply of electricity;
- to promote the development and maintenance of an economic and co-ordinated gas industry and to protect the interests of gas consumers with regard to price and quality of service;
- to protect the interests of water and sewerage consumers, where appropriate by promoting competition, by promoting a robust and efficient industry delivering high quality services.

We work to protect the interests of electricity, gas and water consumers in Northern Ireland by:

- issuing and maintaining licences for gas, electricity and water companies to operate in Northern Ireland;
- making sure that these companies meet relevant legislation and licence obligations;
- challenging companies to keep the prices they charge electricity, gas and water customers as low as possible;
- encouraging regulated companies to be more efficient and responsive to customers;
- working to encourage competition in the gas, electricity, water and sewerage services markets;
- setting the standards of service which regulated companies provide to customers in Northern Ireland;
- acting as an adjudicator on certain customer complaints, disputes and appeals.

The Utility Regulator supports the goals of this Bill in relation to improvements to the planning system and planning procedures:

- Supporting the future economic and social development needs of Northern Ireland and managing development in a sustainable way, particularly with regard to large, complex or strategic developments;
- Appropriate processes for regionally significant, major, local and minor planning applications;
- Streamlined processes that are effective, efficient and improve the predictability and quality of service delivery and allow full and open consultation that actively engages communities.

We have a specific interest in ensuring that Northern Ireland's utility infrastructure is developed efficiently and within a time frame which is capable of delivering Northern Ireland Government objectives. We consider that in order to deliver on Northern Ireland's target of 40% of electricity from renewable sources by 2020 there will be a need for significant electricity grid development and the north south electricity interconnector will also be essential.

We consider that electricity grid development is a "development of regional significance" as per Clause 26 of the Planning Bill. We hope that in practice the new procedures, both relating to Clause 26 and the Bill as a whole, will lead to the achievement of the overall aim of quicker, clearer and more predictable decisions.

Yours sincerely

Sarah Brady

Regulation Manager

Woodland Trust Submission to the Planning Bill

Woodland Trust response to the Planning Bill NI

The introduction of a Planning Bill to the Northern Ireland Assembly offers a landmark opportunity to enhance tree protection across the province. Northern Ireland is blessed with remarkable ancient, veteran and champion trees such as the dark hedges in County Antrim and beautiful ancient woods such as Prehen Wood in Londonderry. Any reform of the planning system must ensure that trees of special interest are afforded absolute protection from development pressures.

Summary of points

- A statutory national register of trees of special interest compiled by the DOE - ancient, veteran, champion and other heritage trees - should be created to highlight the value of the most important trees in Northern Ireland. Trees on this register should be afforded absolute protection from development.
- The Trust recognises the value of Conservation Areas as a means of protecting the built environment. The concept of Conservation Areas should be expanded so that areas rich in trees of special interest can be designated and protected on special tree interest alone.
- Exemptions for dead and diseased trees in the Tree Preservation Order (TPO) system should be removed and the dangerous category should be redrafted to ensure that all loopholes are closed. At the minute many valuable trees are lost due to ambiguity in the planning system.
- The provision for compensation should be removed from the legislation as the public purse should not bear the cost of rewarding people for simply obeying the law.
- We believe that there should be a single offence for any contravention of a TPO or Conservation Area in order to deter illegality.

A national register of trees of special interest

A national register of trees should be compiled by the DOE. Such a register would enable the Executive, district councils and other interested parties such as community groups and environmental NGOs to determine which trees in Northern Ireland are of particular wildlife, heritage, historic and landscape importance and to guarantee their absolute protection. The register should include a duty to review and report on the general state of the preservation of these trees and to advise on their continued preservation.

Conservation Areas

Conservation Areas provide an effective and uncomplicated means of affording protection to great numbers of important trees. However, Conservation Areas can only be designated with regard to special historic and architectural interest - designations cannot be agreed on the grounds of valuable trees alone. Broadening the Conservation Area designation to specifically allow areas of valuable trees to be designated and controlled in a similar manner to historic buildings would aid proactive tree protection and their management.

Exemptions

The exemptions in regard to TPOs should be amended as follows:

- Exemptions for dangerous trees should be modified for clarity.
- Exemption for dead and dying trees should be removed as this clause would have a detrimental impact on the protection of those trees that have a great biodiversity value.
- The exemption for nuisance trees should be removed as it undermines the controls on managing trees where they overhang property boundaries.

Introduce one single offence for breaching TPOs and Conservation Areas

The proposed two tier system being introduced by this legislation has proven disadvantages - it is bureaucratic to operate and the category of 'destruction' is seldom enforced - and there are no parallels to it in planning law. In our opinion there should be one single offence for breaching TPOs and Conservation Areas that would carry a hefty fine as a deterrent.

Commentary on the clauses in the Bill

Clause 103 - Conservation Areas

We welcome the inclusion of procedures whereby a district council can designate areas within its remit as Conservation Areas. Landscape features such as trees contribute significantly to the character and appearance of Conservation Areas and are rightly afforded protection.

We would, however, like to see the concept extended so that a district council can designate a Conservation Area for the quality and importance of trees alone within a specific area unrelated to buildings. This designation would be particularly valuable where there are many significant trees of special interest in an area of multiple ownership. It could apply to the following categories:

- the age, appearance and rarity of the tree;
- the historic, cultural and interest value of the tree;
- any respect in which the trees contribute towards the landscape character and appearance;
- any respect in which the trees provide habitat associated with veteran trees.

The Woodland Trust wishes to be a statutory consultee when a Conservation Area is being created due to its tree heritage.

Clause 105 - Grants in relation to conservation areas

We welcome the provision of grants or loans for the purpose of the preservation and enhancement of Conservation Areas and would like to see this provision apply to trees of special interest.

Clause 120 - Planning permission to include appropriate provision for trees

The provision in Clause 120 is welcome as it creates protection for existing trees and those that are being planted. Such a duty provides district councils with an opportunity to influence the preservation of important trees and improve or mitigate the impact of development. Development sites should actively search for opportunities to retain and plant trees in order to contribute to the Executive's aim of doubling woodland cover.

Clause 121 - Tree Preservation Orders: councils

We would like to see the specific provision for areas of trees to be protected by TPOs because such a system is valuable in situations where urgent action is needed to protect trees under immediate threat. This power would also provide an opportunity to protect the scattered, vulnerable trees within a defined boundary. A duty of this type should not be unduly onerous given modern technology such as GPS and GIS.

Clause 121, paragraph 5 - Exemptions

Certain exemptions preclude the granting of TPOs or remove controls on management of trees - these exemptions have had a significant impact on the condition and maintenance of tees of special interest. The Trust believes that certain modifications are needed to ensure the appropriate stewardship of Northern Ireland's most valuable trees.

Dangerous trees:

The legislation lists exemptions for those trees that have become dangerous. This exemption should be in line with the principles set out in the draft National Tree Safety Group guidance on the appropriate management of tree related risk. We therefore propose that the legislation be amended to include the following provision in place of the existing wording on dangerous trees:

'no such order shall apply to works that are urgently necessary, the cutting down, uprooting, topping or lopping, those parts of a tree that pose a real and present risk of serious harm.'

The word 'dangerous' is subject to a variety of interpretations and is often used to justify inappropriate tree removal. By way of comparison the phrase, 'that pose a real and present risk of serious harm', is more precisely proscribed and avoids the use of the words 'dangerous' and 'safety' which are capable of multiple interpretations.

As in Scotland we consider that the following stipulation should be added to this exemption: 'So long as notice in writing of the proposed operations is given to the appropriate authority as soon as is practicable after the operations are identified.' This is because best practice suggests that owners give at least five days notice to local councils prior to performing work on trees that are exempt from legislative requirements.

A system of notification is also necessary in relation to felling of individual trees - any area of 0.2 hectares and above will be covered by the provisions in the 2010 Forestry Act. Without

notifications the local council has no method of tracking the state and condition of protected trees and their replacements.

Dead trees

We do not believe the exemption for dead trees is appropriate as these types of tree are often the most beautiful and ecologically diverse. It is therefore disappointing that the legislation brings forward a proposed exemption for dead trees. As the Ancient Tree Hunt has demonstrated there are many valuable dead trees in Northern Ireland: thus far the project has recorded 103 dead trees that have been identified as having great significance. Moreover, three of the trees are recorded as ancient. Should this exception remain these valuable trees will remain unprotected and at risk of destruction.

Health and safety is cited as a reason for retaining the exemption and yet there is little justification to provide a specific exemption for dead trees on these grounds. As with living trees, the extent of work that might be urgently necessary to provide for safety is captured within the 'dangerous' exemption.

Dying trees:

The exemption for dying trees is open to considerable interpretation and has no doubt led to the untimely loss of many valuable trees. This category should be removed from legislation in order that Northern Ireland's most spectacular ancient and veteran trees can be protected by the designation of a TPO.

Exemption for nuisance:

At present there is an exemption for any tree management that will prevent or abate nuisance. This should be removed. As with the terms 'dying' and 'dangerous', nuisance is capable of multiple interpretations and this creates ambiguity for those affected by or administrating a TPO. Regrettably many important, historic and veteran trees are vulnerable to loss or damage due to the nuisance exemption even if they are subject to a TPO or reside within a designated Conservation Area. Removing the exemption would protect trees of special interest without compromising safety. Even with the exemption for nuisance trees removed, a landowner or their neighbour still retains the right to proceed with management work on a tree provided this was covered by the 'dangerous' exemption in Clause 121.

Clause 125 - Penalties for contravention

There are currently two categories of offence. The first offence outlined in the Bill is for any development which leads to the destruction of a tree, whilst there is a second lesser offence for any other contravention of the laws regulating a TPO or Conservation Area. These offences should be replaced with a single offence - that is triable either way - for any breach of tree preservation regulations.

In its current form a council would have to prove that a tree has been destroyed to prosecute under the offence outlined in this Bill in Clause 125 (1). Yet this is decidedly difficult as a tree can be destroyed indirectly by cutting or damaging roots or by removing so much of their branch structure that they are no longer an amenity. The complexity of the system prevents the maximum fines being levied against an offender even if there has been a clear breach of regulations. This in turn undermines the deterrence factor of the penalties. A single offence would strengthen the planning system, add clarity and act as a disincentive for those considering breaching TPOs and Conservation Areas.

Clause 182 - Compensation in respect of TPOs

We believe that the provision for compensation should be removed from the legislation. There is evidence that it undermines the TPO process. Across the UK, planning authorities often avoided placing a TPO on important trees because they are fearful that compensation may need to be paid. Instead we recommend that as with Listed Buildings (Clause 197), owners of trees of special interest protected by a TPO or in a Conservation Area should be supported by the local council in the form of advice and guidance.

Clause 196 - Historic Buildings Council (HBC)

The Historic Buildings Council is required to review and report on the general state of the preservation of listed buildings and to advise on the preservation of buildings of special architectural or historic interest. It is our view that there should be a statutory national register of trees of special interest held within DOE, but based on the HBC model. The DOE should be responsible for keeping the register, monitoring and advising on the preservation of such trees. This is especially important as tree protection is a responsibility devolved to local councils, yet there is no national organisation to ensure that Northern Ireland's tree heritage is appropriately protected.

Ancient trees which are the rarest and most valuable trees in Europe are often the least protected. A national register of trees of special interest would highlight the exceptional value of these trees and through it ensure appropriate care and protection is given to these valuable assets. Moreover, there is evidence of public enthusiasm for such a project. Across the UK, communities have engaged to identify the trees that they believe need attention. Already 80, 000 trees of special interest (ancient, veteran and notable trees) have been recorded by individuals through the Ancient Tree Hunt of which 3,231 were trees in Northern Ireland. The DOE must use this legislation as an opportunity to increase the protection of Northern Ireland's natural heritage assets such as trees.

For more information please contact:
Lee Bruce at email: leebruce@woodlandtrust.org.uk or 08452 935 551.

Appendix 4

List of Witnesses who gave Evidence to the Committee

List of witnesses who gave Evidence to the Committee

Irene Kennedy, DOE
Maggie Smyth, DOE
Angus Kerr, DOE
Catherine McKinney, DOE
Lois Jackson, DOE
Peter Mullaney, DOE
Ms Sarah Malcolmson, DOE
Mr Stephen Gallagher, DOE
Mr Brian Gorman, DOE

Suzie Cave, Assembly Research

Dr Ken Sterrett, QUB
Dr Geraint Ellis, QUB
Dr Ruth McAreavey, QUB

Councillor Jack Beattie, NILGA
Councillor Arnold Hatch, NILGA
Mr David McCammick, NILGA
Councillor John O'Kane, NILGA

Ms Catherine Blease, Northern Ireland Housing Executive
Ms Esther Christie, Northern Ireland Housing Executive

Mrs Maire Campbell, Planning Appeals Commission
Mr Trevor Rue, Planning Appeals Commission

Ms Laverne Bell, Quarry Products Association (Northern Ireland) Limited

Ms Diana Thompson, Royal Town Planning Institute
Mr David Worthington, Royal Town Planning Institute

Professor Sue Christie, Planning Task Force
Ms Claire Ferry, Planning Task Force

Mr Aodhan O'Donnell, Consumer Council

Mr Colm Bradley, Community Places
Ms Clare McGrath, Community Places

Mr Arthur Acheson, Ministerial Advisory Group

Professor Greg Lloyd

Mr John Quinn, Arc21

Mr Terry Bunce, Ards Airport

Ms Anne Doherty, Belfast City Council

Ms Joan Devlin, Belfast Healthy Cities

Ms Jonna Monaghan, Belfast Healthy Cities

Mr Lewis Porter, Craigavon Borough Council

Mr Patrick O'Neill, Development Planning Partnership

Ms Sharon O'Connor, Down District Council

Mr Roger Pollen, Federation of Small Businesses

Mr James Orr, Friends of the Earth

Mr Kevin McShane, Institution of Civil Engineers

Mr Ian Wilson, Lisburn City Council

Ms Carolyn Wilson, Mobile Operators Association

Mr David de Casseres, Northern Ireland Electricity

Ms Alison McCullagh, Omagh District Council

Ms Claire Ferry, Royal Society for the Protection of Birds

Mr Brian Sore, Royal Town Planning Institute

Mr Patrick Cregg, Woodland Trust

Mr Ben Collins, Royal Institution of Chartered Surveyors
Liam Dornan, Royal Institution of Chartered Surveyors
Ms Diana Fitzsimmons, Royal Institution of Chartered Surveyors
Mr Bill Morrison, Royal Institution of Chartered Surveyors

Appendix 5

Research Papers

13th January 2011

Prepared on behalf of Research and Library Services by

Ken Sterrett, Stephen McKay, Geraint Ellis, Ruth McAreavey

(School of Planning, Architecture and Civil Engineering, Queen's University Belfast)

Planning Reform Bill (1): Departmental Functions & Local Development Plans

This paper is the first of four papers produced in support of the
Committee stage of the Planning Bill

Research and Library Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.
We do, however, welcome written evidence that relate to our papers and these should be sent to the Research & Library Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Key Points

- The Bill sets out the function of the Department of the Environment in respect to planning as being to "formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development". This remains unchanged from previous legislation and no amendment is proposed in line with the culture of change and shift in function from land use planning to spatial planning.
- The proposed NI legislation does not include an explicit reference to the important links between the Local Development Plan and the Council's Community Plan.
- If the new legislation is the beginning of a process of introducing spatial planning into Northern Ireland, then this represents a radical change to the planning system. Does the Assembly accept the need for such radical changes?
- The legislation will require supportive policy and guidance. What is the timetable for this development and publication?
- The new legislation and overall approach to spatial planning will require substantial training for all stakeholders. What preparations are being made for this?
- The new legislation together with follow-up policy and guidance will necessitate the creation of a set of intra-government relationships that should be carefully considered. The relationship of the Local Development Plan (LDP) to the Regional Development Strategy (RDS) needs to be carefully considered.
- Area action planning has not been included in the proposed legislation, unlike the case in England. How can the legislation be employed to help facilitate the implementation of local spatial planning through regeneration?
- The Department is not bound by the recommendations of the independent examination. Does the independent examination not bring some apolitical and objective assessment of policy, procedure and content?
- The Department seeks the power to direct councils to produce joint development plans. Why does the Department need the power to direct councils to produce joint development plans? On what basis might it decide use that power?
- Implementation and delivery is at the heart of spatial planning. Does this need to be strengthened in the legislation, for example by including specific mention of the implementation of the local development proposals in the annual monitoring report?

Executive Summary

This briefing paper is the first of a set of four prepared for the Committee Stage of the Bill, providing analysis of the provisions in the Planning Bill which sets out the draft legislative framework for new and revised planning procedures in Northern Ireland. The proposals in the Bill substantively replicate the instruments contained in the Planning and Compulsory Purchase Act 2004 which applies to England and Wales and the Planning (Scotland) Act 2006. These Acts

effectively placed the new concept of ‘spatial planning’ on a statutory basis in these parts of the UK. Reform of the planning system in the Republic of Ireland is also underway, which will also place spatial planning as a core principle in its planning system.

Spatial planning moved the emphasis away from planning as simply regulatory practice narrowly focused on land use to planning as an activity that is both integrated with other local government services and is focused on delivery. In this context the development plan becomes, what the Department of Communities and Local Government’s Planning Green Paper 2001[1] described as, ‘the land-use and development delivery mechanism for the objectives and policies set out in the Community Strategy’. This has been accompanied in other parts of the UK by attempts to uplift the skills and outlook of all those involved in the planning system, in what has been called a “culture shift", represented by a move from “Development Control" to “Development Management".

This Bill makes the initial statutory provision for this approach to be adopted in Northern Ireland, in the context of district councils taking over some of the planning responsibilities currently handled by the DoE (NI). The basic provisions of the proposed NI legislation will, it is assumed, be supported by a new Planning Policy Statement (PPS) which would explain what local spatial planning is, and how local development plans should be prepared. Additional written guidance and support should also be forthcoming.

In order to both understand and scrutinise the legislation it is important to acknowledge the difference between two types of planning; land-use planning and spatial planning. The former characterizes the present system and practice in Northern Ireland, whereas the latter seems to be what is proposed for a future system.

The shift to a new form of planning, primarily located within reformed local government structures in Northern Ireland will present significant challenges for all stakeholders including professionals, officials and politicians. Arguably though, the benefits of these changes potentially far outweigh the costs of major changes in culture and practice.

This paper is the first of four papers produced in support of the Committee stage of the Planning Bill, which are:

- Paper 1: Departmental Functions and Local Development Plans
- Paper 2: Development Management, Planning Control and Enforcement
- Paper 3: Community Involvement
- Paper 4: Council’s Performance: Capacity, Delivery and Quality

Contents

Introduction

This briefing paper is the first of a set of four prepared for the Committee Stage of the Bill, providing analysis of the provisions in the Planning Bill which sets out the draft legislative framework for new and revised planning procedures in Northern Ireland. The proposals in the Bill substantively replicate the instruments contained in the Planning and Compulsory Purchase Act 2004 which applies to England and Wales and the Planning (Scotland) Act 2006. These Acts effectively placed the new concept of 'spatial planning' on a statutory basis in these parts of the UK. Reform of the planning system in the Republic of Ireland is also underway, which will also place spatial planning as a core principle in its planning system.

Spatial planning moved the emphasis away from planning as simply regulatory practice narrowly focused on land use to planning as an activity that is both integrated with other local government services and is focused on delivery. In this context the development plan becomes, what the Department of Communities and Local Government's Planning Green Paper 2001[2] described as, 'the land-use and development delivery mechanism for the objectives and policies set out in the Community Strategy'. This has been accompanied in other parts of the UK by attempts to uplift the skills and outlook of all those involved in the planning system, in what has been called a "culture shift", represented by a move from "Development Control" to "Development Management".

This Bill makes the initial statutory provision for this approach to be adopted in Northern Ireland, in the context of district councils taking over some of the planning responsibilities currently handled by the DoE (NI). The basic provisions of the proposed NI legislation will, it is assumed, be supported by a new Planning Policy Statement (PPS) which would explain what local spatial planning is, and how local development plans should be prepared. Additional written guidance and support should also be forthcoming.

In order to both understand and scrutinise the legislation it is important to acknowledge the difference between two types of planning; land-use planning and spatial planning. The former characterizes the present system and practice in Northern Ireland, whereas the latter seems to be what is proposed for a future system.

The shift to a new form of planning, primarily located within reformed local government structures in Northern Ireland will present significant challenges for all stakeholders including professionals, officials and politicians. Arguably though, the benefits of these changes potentially far outweigh the costs of major changes in culture and practice.

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- Paper 1: Departmental Functions and Local Development Plans
- Paper 2: Development Management
- Paper 3: Community Involvement
- Paper 4: Capacity, Delivery and Quality

In this paper:

- Section 1 provides an analysis of the key themes;
- Section 2 reviews equivalent arrangements in comparable jurisdictions; and
- Section 3 identifies contentious issues which may require further scrutiny.

In considering these papers it may be useful to refer to the following documents in conjunction with this paper:

- The full Planning Bill (2010): http://www.planningni.gov.uk/index/about/planning_bill.pdf
- Draft Explanatory and Financial Memorandum: http://www.planningni.gov.uk/index/about/planning_bill_efm_-_as_introduced.pdf
- Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf
- Final EQIA at a strategic level: http://www.planningni.gov.uk/index/about/final_eqia_at_strategic_level-2.pdf
- Independent Report from the Planning Reform Consultation Events 2009 Equality Statement: http://www.planningni.gov.uk/index/about/independent_report_from_the_plannng_reform_consultation_events_2009__f_.pdf
- England and Wales Planning and Compensations Act (2004): http://www.legislation.gov.uk/ukpga/2004/5/contents
- Republic of Ireland Planning and Development Act 2000: http://www.irishstatutebook.ie/2000/en/act/pub/0030/index.html
- Republic of Ireland Planning and Development (Amendment) Act 2010: http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/3409/b34d09d.pdf
- Planning (Scotland) Act (2006): http://www.legislation.gov.uk/asp/2006/17/contents
- England Localism and Decentralisation Bill (2010): http://services.parliament.uk/bills/2010-11/localism/documents.html

1 Overview & Analysis of the Key Themes

Functions of the Department of the Environment - Part 1 of the Planning Bill is concerned with the functions of the Department of Environment in respect to its planning powers. This remains unchanged from previous legislation, setting out its key statutory function to “formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development". Although the Department appears to be proposing the model of spatial planning as adopted in other parts of the UK, the Bill does not propose to amend the functions of the Department in line with this and they remain narrowly land use focused. Other sections in part 1 define the issues that can be taken into account when preparing plans with “social and environmental" being added to the “physical and economic" characteristics any area. Part 1 of the Bill also reaffirms the duty on the Department to prepare a statement of community involvement. These issues are further highlighted under the section on “Contentious Areas" below (see also Paper 4 forthcoming).

A New Approach to Development Planning – As noted in the introduction, the proposed new legislation will trigger a significantly new approach to development planning in Northern Ireland (NI).

Does the Assembly accept the need for such a major change to the Development Plan process, or would it prefer to make adjustments to the existing system?

The broad consensus from a review of practices elsewhere suggests that a shift to spatial planning provides a more relevant and cost effective response to changing social, economic and environmental circumstances. This is reinforced through its focus on delivery; on creating and shaping place; and on its potentially strong connection to the wider vision expressed through the community plan.

Local Development Plan & the Community Plan - The proposed NI legislation does not include an explicit reference to the very important links between the Local Development Plan (LDP) and the Council's Community Plan. In England & Wales the 2004 Act states that the local planning authority 'must have regard to ..... the community strategy prepared by the authority' [19 (2) (f)]. This explicit link is crucial if the new approach to development planning is to be effective. Indeed it can be argued that the Community Plan should provide the lead for the Local Development Plan so that the LDP becomes the spatial expression of the Community Plan. This then emphasizes the horizontal integration between functions and services and their spatial needs.

How does the Department see this relationship and what about the sequencing of the two plans?

In the Government's Response to the Consultation on Planning Reform[3] it notes that 'there will be a statutory requirement for district councils to take account of community plans in the preparation of their local development plans for their area' (para. 2.105). Arguably the lack of a statutory link weakens this key relationship.

Supportive Policy & Guidance - The proposed new legislation will be supported by new policy and guidance. This may take the form of a new Planning Policy Statement (PPS) although other supportive guidance and manuals may also be forthcoming. It is critically important that these explanatory documents are developed in parallel with the legislation.

What form will the policy and guidance take and what is the timetable for their development and publication?

For example, in England and Wales PPS 12 is entirely devoted to the new spatial planning system. It 'explains what local spatial planning is, and how it benefits communities. It also sets out what the key ingredients of local spatial plans are and the key government policies on how they should be prepared'.

The Local Development Plan & the Regional Development Strategy - The relationship of the Local Development Plan (LDP) to the Regional Development Strategy (RDS) needs to be considered. Section 8(5) of the draft legislation states that 'in preparing a plan strategy, the council must take account of the regional development strategy'. However, in Section 1(2), in relation to the general functions of the Department with respect to the development of land, it states that the Department must 'ensure that any such policy is in general conformity with the regional development strategy'.

Despite majority concerns expressed in the public consultation about the 'possible downgrading / reduction in the role of the RDS' (2.86), the Department has maintained its view that the current phrase 'in general conformity' will not be carried forward for local development plans prepared by district councils. It does not view this alteration, to the legislation, as a 'downgrade' as., the requirement that the DoE shall have regard to the RDS in exercising its functions in relation to development, will place a statutory requirement on district councils to require them to take account of the RDS in their LDP preparation.

However, in the England & Wales legislation a section is devoted to 'conformity with regional strategy'. It is important to note that there is an implied 'legal hierarchy' for plan relationships, with 'must be in conformity' as the strongest phrase.

The Local Development Plan & other Government objectives. The model of spatial planning allows for the planning system to coordinate and give spatial expression to a wide range of other government priorities. For example, in England the government has made extensive efforts to use the planning system as a major element in its climate change strategy, while in Wales efforts have been made to ensure that planning and development supports health objectives, such as reducing obesity.

Does the Department envisage the Northern Ireland planning system to function in the same way and if so, does this require any changes to legislation?

Local Development Plan - The draft legislation specifies the development plan documents as: the plan strategy and the local policies plan (LPP) [6(2)]. It is anticipated that the plan strategy will set out the strategic objectives for the plan area. Significantly too, it will require the Council to specify how these objectives will be implemented. The LPP is a follow-on, more detailed, site specific plan for the area. Spatial Planning in England and Wales takes 'a loose-leaf approach' known as the Local Development Framework (LDF). The individual development plan documents within this include the Core Strategy (Plan Strategy in NI), as well as other issue based or thematic documents. Significantly too, the LDF documents can include provision for Area Action Plans (AAPs). The latter allows councils to focus on key areas for coordinated action or change. Normally this might be a regeneration area or a town centre where land acquisition might be needed or where urban design is a key part of place making. In the context of implementing spatial plans at council level in Northern Ireland this might be an important facility, particularly since it has the potential to bring regeneration and spatial planning together to achieve coherent change.

Why has this facility not been included in the proposed legislation? How can the legislation be employed to help facilitate the implementation of local spatial planning through regeneration?

Arguably, Area Action Plans would help keep the development plans relevant as they focus on key areas of change. Moreover, this facility would provide regeneration schemes with the statutory status they often lack as well as locating schemes within the broader visionary frame of the community plan and the plan strategy.

Adopting the Local Development Plan - The proposed legislation requires councils to submit every development plan to the Department for independent examination. The plan will then be tested for its 'soundness' [10(5)(b)]. Presumably tests of soundness will be specified in follow-up policy and guidance publications. In relation to the adoption process [12], the Department has the power to direct the council to adopt the plan with or without modifications. In other words, it is not bound by the recommendations of the independent examination. There was some concern in the public consultation that this 'goes against the principle of devolved planning' (2.84).

All of this requires further explanation from the Department; does the independent examination not bring some apolitical and objective assessment of policy, procedure and content?

Joint Development Plans – Two or more councils may agree to prepare joint development plans, however, the Department also has the power to direct councils to prepare joint development plans [18]. In England and Wales such arrangements are entirely voluntary, although the Secretary of State may constitute a joint committee to be the local planning authority. This raises a number of issues.

Why does the Department need the power to direct, and indeed, on what basis might it decide to use that power? Where councils do prepare joint development plans, will they also assume a joint role as the local planning authority (i.e. for development management purposes)? Is it possible that joint Plan Strategies could be prepared that allow individual councils to develop their own Local Policy Plans?

Training & Re-skilling - Experience from elsewhere suggests that a key to the success of implementing the new legislation and the new system in all its forms is preparatory training and re-skilling for all the key players. For the professional planners, officials and politicians the turn to spatial planning represents a 'substantial shift in thinking and practice requiring what Nadin calls a process of 'learning and unlearning'. This sea change in practice will also impact on all other stakeholders and they too will require an understanding of a new language, a new system and significantly changed practices. In relation to development planning, for example, a spatial approach will require collaborative working across disciplines and across sectors. This is quite different to the technocratic and sometimes narrow approach used in land-use planning.

What preparations are being made for this? (See also Paper 4 forthcoming).

Intra-Government Relationships - The new legislation and follow-up policy create a set of government relationships that should be carefully considered. Effectively the governance of the new system will involve: the new councils; the Department of the Environment (DOE); the Department of Regional Development (DRD); and the Office of the First Minister and Deputy First Minister (OFMDFM). Arguably DRD's role in putting in place a coherent spatial strategy for the region is vital to ensure that local development plans knit together for wider regional benefit.

Implementation – A key to the success of a new spatial planning system will be its ability to oversee, direct and often lead the implementation process. Indeed, to some extent this is acknowledged in 8(2)(b):- 'a plan strategy must set out … its strategic policies for the implementation of (its) objectives. However, a spatial planning approach, in contrast to a land-use planning approach, is tasked with the challenge of integrating and coordinating the spatial investments of other public services. Consequently, this needs strong legislative support.

How can the legislation be strengthened in this regard? For example, should there be specific mention of the implementation of the local development proposals in the annual monitoring report?

2 Equivalent arrangements in comparable jurisdictions

As noted earlier, the part of the legislation that deals with local development plans largely replicates the 2004 Planning and Compulsory Purchase Act for England and Wales and the Planning (Scotland) 2006. The shift to spatial planning in these jurisdictions has its origins in the model of planning expressed in the European Spatial Development Perspective (1999, ESDP) as

well as being influenced by practices in other English speaking countries (Morphet, J.) (See also Paper 4 forthcoming). In Scotland spatial planning has been embraced at National and City Regional level, but as Morphet notes it would 'be difficult to argue that there is currently a local system of spatial planning in operation'

The basis of the planning system in the Republic of Ireland is the Planning and Development Act (2000), which has undergone a number of minor amendments in the intervening years, such as new procedures for strategic infrastructure (2006). The Irish Parliament has also passed the Planning and Development (Amendment) Act 2010 that introduces reforms to bring the planning system in line with European legislation and new provision for development plans, to ensure that they are regularly monitored and reviewed and that they take account of a wider set of issues, including housing strategies, population and greenhouse gas emissions.

Within the context of the UK and Ireland, spatial planning has been most developed in England given that it has been in operation there for six years. The teething problems, particularly relating to the major change in 'culture and practice' are being addressed in a number of ways that warrant further consideration.

Prof. Morphet (University College London) has undertaken significant research on all of this and the Committee may see value in asking her for further advice. Prof. Morphet was formerly an advisor to the Department of Environment NI.

3 Contentious Areas

- Under Part 1 (s1) the functions of the Department of the Environment are defined as being to: "formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development". This remains unaltered from previous legislation and underlines the key role of the planning system to regulate land use. This does not encompass the broader function of co-ordination implied by the shift to spatial planning, which may involve not just coordination of the development of land but also the spatial expression of other areas of policy. This issue also applies to Part 1 (section 1, part 4). Here the Bill sets out the issues that the Department may take into account when preparing plans and while it provides an expanded list of issues from previous legislation, it remains primarily focused on land use matters and does not provide for the broader integrative functions implied by the shift to spatial planning.
- Furthermore, the function of the Department as specified in the Bill implies that the objective of the planning system is to deliver "orderly and consistent development", rather than using the powers over regulating development to secure longer term or more strategic goals, such as sustainable development or the well-being of the Northern Ireland population. In Part 2 (s5) the Bill establishes a duty for development plans "to contribute to the achievement of sustainable development" and this could be incorporated into the functions of the Department to ensure this applies to all planning duties under the Bill.
- A key reason for the development of spatial planning elsewhere is its focus on delivery. In the context of Northern Ireland this will require significant changes, not only for planning practice, where the tradition has been about simply regulating development, but also for other stakeholders who will need to 'buy into' and work with the new model. The concept of 'creating place' which underpins spatial planning requires other sectors such as health, education and housing to submit to a community plan and development plan process that takes a more holistic and integrated view of how people live their lives. The public sector tradition in Northern Ireland, particularly over the last 30-40 years, has

been about individual departments and agencies operating within their own discrete areas. A more integrated approach, however, would see spatial planning as the key vehicle for giving expression to communities' spatial objectives for health, education and so on.

[1] Department of Communities and Local Government, (2001) Planning: Delivering a Fundamental Change.

[2] Department of Communities and Local Government, (2001) Planning: Delivering a Fundamental Change.

[3] Planning Service (NI), (2010) Reform of the Planning System in Northern Ireland: Your chance to influence change: Government Response to Public Consultation July – October 2009

13th January 2011

Prepared on behalf of Research and Library Services by

Stephen McKay, Geraint Ellis, Ruth McAreavey, Ken Sterrett

(School of Planning, Architecture and Civil Engineering, Queen's University Belfast)

Planning Bill (2): Development Management, Planning Control and Enforcement

This paper is the second of four papers produced in support of the
Committee stage of the Planning Reform Bill

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We do, however, welcome written evidence that relate to our papers and these should be sent to the Research & Library Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Key Points

- Many of the provisions contained in the Bill consolidate those in existing legislation but have been re-crafted to facilitate the role of district councils.

- While the Bill reaffirms that the functions related to development plans should contribute to the achievement of sustainable development the development management functions are not covered by such a duty.
- The Department or district council must have regard to the local development plan and any other material considerations in determining planning applications through the development management process.
- New classifications for development have been established – major and local. The former will be dealt with by the Department and the latter, normally, by the council.
- On major applications there is a responsibility for developers to consult with the community in advance of lodging an application and prepare a report which must be submitted with the application.
- There is no provision for performance agreements between the Department and the applicant.
- Powers will be delegated to individual planning officers to make decisions on specific types of application, though district councils have powers to make such decisions where considered appropriate.
- The time limitation for appeal to the Planning Appeals Commission (PAC) has been reduced from 6 months to 4 months.
- The PAC will not be able to select the appeal type to be used in any given case.
- There is no provision for third party appeals.
- There is no provision for the PAC to award costs for vexatious planning refusals.
- It will be an offence to carry out unauthorised partial demolition of non-listed buildings in conservation areas.
- The Department has decided not to introduce criminalisation for breaches of planning control but, in this context, a number of other areas of investigation may be worthy of scrutiny.
- The Department will not proceed with notification of initiation of development and completion of development certificates.
- The Department has provided legislation for Fixed Penalty Notices which might encourage offenders to comply with regulations, avoid the necessity of a court appearance and save on cost to the public purse.
- Multiple planning application fees can be charged for development begun before the application was made.

Contents

1.0 Introduction

This briefing paper is the second of a set of four prepared for the Committee Stage providing analysis of the provisions in the Planning Bill which sets out the draft legislative framework for new and revised planning procedures in Northern Ireland. The proposals in the Bill substantively replicate the instruments contained in the Planning and Compulsory Purchase Act 2004 which applies to England and Wales and the Planning (Scotland) Act 2006. These Acts effectively placed the new concept of 'spatial planning' on a statutory basis in these parts of the UK. Reform of the planning system in the Republic of Ireland is also underway, which will also place spatial planning as a core principle in its planning system.

Spatial planning moved the emphasis away from planning as simply regulatory practice narrowly focused on land use to planning as an activity that is both integrated with other local government services and is focused on delivery. In this context the development plan becomes, what the Department of Communities and Local Government's Planning Green Paper 2001[1] described as, 'the land-use and development delivery mechanism for the objectives and policies set out in the Community Strategy'. This has been accompanied in other parts of the UK by reforming the way in which communities can engage with the planning system.

This Bill makes the initial statutory provision for spatial planning to be adopted in Northern Ireland, in the context of district councils taking over some of the planning responsibilities currently handled by the DoE (NI). The basic provisions of the proposed NI legislation will, it is assumed, be supported by a new Planning Policy Statement (PPS) which would explain the broad

arrangements for spatial planning, including how local communities can become involved. Additional written guidance and support should also be forthcoming.

The shift to a new form of planning, primarily located within reformed local government structures in Northern Ireland will present significant challenges for all stakeholders including professionals, officials, politicians and communities. Arguably though, the benefits of these changes potentially far outweigh the costs of major changes in culture and practice.

This paper is the second of four papers produced in support of the Committee stage of the Planning Bill, which are:

- Paper 1: Departmental Functions and Local Development Plans
- Paper 2: Development Management
- Paper 3: Community Involvement
- Paper 4: Capacity, Delivery and Quality

In this paper:

- Section1: identifies the key issues arising from the Bill in respect to community engagement;
- Section 2: provides an analysis of the key themes;
- Section 3: reviews equivalent arrangements in comparable jurisdictions; and,
- Section 4: identifies contentious issues which may require further scrutiny.

Members of the Assembly may find it useful to refer to the following documents in conjunction with this paper:

- The full Planning Bill (2010): http://www.planningni.gov.uk/index/about/planning_bill.pdf
- Draft Explanatory and Financial Memorandum: http://www.planningni.gov.uk/index/about/planning_bill_efm_-_as_introduced.pdf
- Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf
- Final EQIA at a strategic level: http://www.planningni.gov.uk/index/about/final_eqia_at_strategic_level-2.pdf
- Independent Report from the Planning Reform Consultation Events 2009 Equality Statement: http://www.planningni.gov.uk/index/about/independent_report_from_the_plannng_reform_consultation_events_2009__f_.pdf
- England and Wales Planning and Compensations Act (2004): http://www.legislation.gov.uk/ukpga/2004/5/contents
- Republic of Ireland Planning and Development Act 2000: http://www.irishstatutebook.ie/2000/en/act/pub/0030/index.html
- Republic of Ireland Planning and Development (Amendment) Act 2010: http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/3409/b34d09d.pdf
- Planning (Scotland) Act (2006): http://www.legislation.gov.uk/asp/2006/17/contents

- England Localism and Decentralisation Bill (2010): http://services.parliament.uk/bills/2010-11/localism/documents.html

2.0 Overview of themes

The reform of the planning system in Northern Ireland has seen a shift from development control, which focused upon merely controlling undesirable forms of development, to development management, which is more about facilitating appropriate development in ways that are proportionate to the significance of each application. The overall aim is to improve the quality of built environment, increasing the efficiency of the planning process and provide greater certainty about timescales, particularly for the applicant and third parties, in the context of achieving the Programme for Government Public Service Agreement targets. Development management can only operate successfully if the Department/district councils:

- responds positively to requests for pre application advice;
- ensures that all stages of the development management process are completed within stated timescales;
- promotes meaningful public consultation and takes account of representations received;
- actively manages consultations regarding the need to consult and the assessment of responses;
- requests amendments/additional information as early as possible to avoid unnecessary delay;
- provides an initial planning view as early as possible in the application process particularly when a proposal is considered to be fundamentally unacceptable;
- assesses applications to form corporate opinion for consultation with district council at the earliest possible opportunity; and,
- issues decisions promptly following completion of council consultation.

The development management process will take place within a plan-led system. This means that the Department or district council must determine planning applications in accordance with the statutory development plan, unless material considerations indicate otherwise. If the development plan contains material policies or proposals and there are no other material considerations, the application should be determined in accordance with the development plan (s.6 (4)). Where there are other material considerations, the development plan should be the starting point, and other material considerations should be taken into account in reaching a decision.

As the Department provided for a plan-led system in the Planning Reform (Northern Ireland) Order 2006 (4(1)) but did not commence the legislation it is critical to establish a view on when this is likely to occur.

The following section considers the key issues contained in the Bill and where appropriate draws attention to significant changes to the existing system. In the first instance attention turns to development management and subsequently listed buildings, conservation areas, and enforcement.

2.1 Development management

The Bill reaffirms that it must be an objective of those exercising functions in relations to local development plans to contribute to the achievement of sustainable development (s.5) but does

not make the same provision in the context of planning control. While this has proved to be a useful objective for development plans, there is a case for this to be an objective of the entire planning system (as is the case in England, Wales, Scotland and the Republic of Ireland) and therefore there is a case that this should apply to the functions under other parts of the Bill, particularly development management.

Under the new legislation development will be identified as major or local (s.25) and regulations will be made to identify which class each type of scheme will fall into. The Department can, however, require a specific application which would normally be a local development to be dealt with as if it is a major development. Regulations will be made to differentiate between major and local classifications and provision has been made so that developers must approach the Department if proposed development falls above prescribed thresholds. The Department will also decide if an application is regionally significant or involves a substantial departure from the development plan, and is to be dealt with by it instead of the district council (s.26). An exception is made for urgent development by the Crown where an application can be made directly to the Department. Applications under this clause provide the option for a public inquiry to be held by the PAC or a person appointed by the Department. If an application raises national security or security of premises issues, a public local inquiry route must be followed. Provision has been made so that developers who propose to apply for permission for major development must consult with the Department if a proposed development is of regional significance. The Department will make regulations prescribing the procedure to be followed in relation to this consultation process, though it is not apparent if this is to include regulations regarding the achievement of performance targets agreed between the Department and the applicant, an issue raised in the Consultation Paper (see section 5.1 below). On receipt of the inquiry report the Department must take into account the findings of the PAC or appointee but the report is not binding.

Does this require further exploration and can the process be truly independent if this is the case? Furthermore, if there is an option to hold a public local inquiry what criteria will be used to determine whether or not an inquiry should be held? If there are no such criteria should guidance be provided?

There have been changes to the existing procedure regarding community consultation with a requirement placed on developers to consult the community in advance of submitting an application if the proposal falls within the major development category (s.27). This consultation period should not last for less than 12 weeks and a report of the findings must be produced and submitted with the planning application. Regulations have to be produced regarding provision of notice, identifying consultees and the process to be followed. In this context lessons might be learnt by examining similar procedures recently implemented for the major infrastructure planning process in England. Whilst the process is embryonic preliminary investigations conducted by Queen's University have indicated that potentially there are major benefits for all stakeholders. In particular the initial evidence suggests that applicants develop a much more penetrative understanding of key issues at an early stage in the process which, in turn, assists in crafting remedies.

There is provision for call in by the Department whereby it can direct that applications be referred to it instead of being dealt with by the district council (s.29). In such cases a public local inquiry may be held, though an inquiry route must be followed on called in applications relating to national security.

Is there a need to ask for clarity on what circumstances a public local inquiry may be held? Is there a need to produce guidance on this matter?

Prior to issuing a determination on a planning application there is provision whereby the Department can require the district council to provide the opportunity for the applicant to have a hearing before the district council (s.30). The procedures for hearings and who can be heard are left to the discretion of the district councils.

Does it need to be explored how consistency across the jurisdiction can be assured? How will hearings be conducted when applications cut across more than one district council area? Perhaps there is scope to develop a framework which provides guidance and fosters a rigorous and coherent approach?

There will be a responsibility for each district council to prepare a scheme of officer delegation, stating the application types where they will allow the decision to be taken by one planning officer rather than the council (s.31). In any specific case, however, the district council will be able to decide that an application which would normally fall within this scheme should be determined by the council.

In pursuit of consistency, again, is there a need to provide guidance for councils on when this should occur?

Provision has been made for creating and modifying simplified planning zones which are designed to facilitate economic development by granting permission for specified types of development (s.33-38). There is, perhaps, a necessity to take on board further advice from nature conservation experts as some designations seem to be omitted from protection, for example, Special Protection Areas, Special Areas of Conservation and Ramsar Sites do not always fall within the areas protected by the regions identified in the Bill.

The legislation regarding the submission of planning applications, particularly in relation to form and content remains substantively unchanged though powers to specify publicity requirements will be provided (mirroring the G.B situation) (s.41). This is an area which might benefit from research based upon experiences in other jurisdictions, for example, in the Republic of Ireland prior to the submission of an application, the onus is upon the applicant to publish a public notice of proposals before making an application. This must be done by placing a notice in a locally circulating newspaper and putting up a site notice that can be clearly read. The application must be received by the local authority within 2 weeks of the notice appearing in the local newspaper and the erection of the site notice and the site notice must remain in place for at least 5 weeks from the date of receipt of the planning application.

The Department or district council must have regard to the local development plan and any other material considerations in the process of determining planning applications, though the authorities can refuse to determine applications in specified circumstances (s.46-50). Grounds for refusing to determine applications are similar to the existing position, for example, a similar application has been refused on the same site less than two years previously or where a similar application is currently being determined on the same site (twin tracking). Is there a need to ask whether two years is long enough or could this perhaps be a discretionary process where the decision to refuse to determine is based upon the fact that there have been no significant changes in planning circumstances since the previous application?

Provision to appeal to the PAC remains, though the time limitation period has been reduced to 4 months from 6 (s.58). Significantly, despite support in the consultation process, there is no provision for third party appeals though it was stated in the consultation response that this is to be subject to further scrutiny (Paper 3 will provide further analysis of this issue).

Time limitations on the duration of planning permissions remain unchanged and completion notice (s.63) legislation has been consolidated. A completion notice requires a development

which has a time bound planning permission, and which has been begun, to be completed. Effectively, development which has technically commenced does not remain lawful once the notice comes into effect. The district council must give at least one year for the completion and these must be confirmed by the Department before they take effect. The person on whom it is served can request a hearing before the PAC, as can the district council.

Is there a danger that this could lead to injustice if the recipient of a notice cannot reasonably complete a development –which might be the case, particularly in a time of economic uncertainty?

The district council can issue an order requiring a particular land use to stop or require buildings to be removed or altered (s.72). The NIHE has a duty to house anyone whose place of residence is displaced if there is no reasonable alternative.

Finally, under development management, new powers are to be introduced setting out the procedure for dealing with district councils' own applications for planning permission (s.78). The powers ensure district councils do not face a conflict of interest in dealing with their own proposals for development. The principle remains that district councils will have to make planning applications in the same way as other applicants for planning permission. Provisions are introduced for district councils to grant planning permission for their own development or for development carried out jointly with another person and for development to be carried out on land owned by district councils. The Department will make regulations which will deal with governance arrangements and ensure that conflicts of interest are avoided.

The Bill deals with the prescribed requirement of an authority to consult with persons or authorities which exercises functions for the purposes of any statutory provision and there will be time limitations for responses. There is also authority for the Department to request reports on consultee compliance with specified response time periods (s.224).

Should there not be consideration for the assessment of the Department's performance in the Bill?

2.2 Conservation

Turning to conservation, the legislation remains largely unchanged though it remedies the problems which emerged as a result of the landmark Shimizu ruling in the courts, which meant that partial demolition of non-listed buildings in conservation areas did not require consent. It will in future be an offence to carry out unauthorised partial demolition of non-listed buildings in conservation areas, thereby lending greater support to built heritage protection (s.104).

2.3 Enforcement

Under the new enforcement provisions the Department has provided legislation for Fixed Penalty Notices (s.152-154) which aim to encourage offenders to comply with regulations, avoid the necessity of a court appearance and save on cost to the public purse. These have been introduced into Scotland but it is premature to assess effectiveness.

2.4 Financial provisions

Finally, multiple planning application fees may be charged for development begun before the application was made (s.219). The relevant amount will be determined at a later stage and will be included in subordinate legislation. This will be a deterrent to those who flagrantly flout

regulations and advice but there is a risk that unwitting offenders could be unreasonably penalised.

3.0 Consultation responses

3.1 Award of costs

The consultation paper explained that, in GB, parties who appeal proceedings can apply for costs to be awarded against another party in the appeal, if they believe that they have been left out of pocket by that other party's unreasonable behaviour. This could result in a hearing being adjourned, unnecessarily prolonged, or cancelled, wasting resources and causing unnecessary expense to the aggrieved party. The consultation proposed introducing a power that would allow the PAC to award costs where a party has been put to unnecessary expense and where the PAC has established that the other party has acted unreasonably. There was overwhelming support of 90 per cent (out of 142 who responded) for this proposal. Some of the concerns expressed can be addressed by taking a closer look at the costs system as currently operated in GB. The systems in England and Scotland are accompanied by extensive separate guidance which provide examples of unreasonable behaviour which can extend to the planning authority as well as to appellants (see under Section 4 for further explanation). In its report on the consultation, the Department stated that it intended to introduce the award of costs into Northern Ireland and to issue guidance to accompany the commencement of the provisions but this has not been put forward in the Bill.

Perhaps the Department could explain why this has not been brought forward in the Bill and how it intends to proceed?

3.2 Third party appeals

Though this will be considered in detail in Paper 3, on a point of information, the Department stated that it did not intend to bring this forward in the Bill. Given, however, that the majority of respondents supported introduction, the Department has considered 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. In its consultation response it stated that this approach would ensure that third party appeals would not present an opportunity to hinder the recovery and delivery of a productive and growing economy in Northern Ireland. It was indicated that third party rights at this stage could well be a competitive economic disadvantage to Northern Ireland, given that they have not been introduced in England, Scotland or Wales and there is a suggested significant risk of potential adverse impact upon investment in the Northern Ireland economy if they were to be introduced.

3.3 Notification of initiation of development and completion of development

The consultation paper explained that provisions were introduced into Scottish legislation requiring developers to submit a start notice to the planning authority notifying it of their intention to commence development and that they have met any pre-conditions. The developer is further required to notify the planning authority when certain agreed stages of the development are completed, and again when the entire development is complete. Though 69% were in support the Department declined to bring this forward in the Bill. The Department stated that it considered that the practicalities and outcomes of the Scottish experience would need to be examined carefully before reaching conclusions as to the appropriateness of similar provisions for Northern Ireland. In particular, the Department stated that it wished to consider the resource implications and to explore the potential for closer links with the building control notification

system, and any benefits that might come from this, particularly as both functions (not just building) will be the responsibility of district councils, following the transfer of planning functions. While there is some doubt over the usefulness and effectiveness of stage inspections there is evidence to suggest that notices of initiation provide security for land owners who could be assured that they have commenced development prior to expiration of their permission. There is evidence that this remains an area of confusion and concern. Such notices would alleviate uncertainty and ensure consistent agreement on the definition of commencement. Furthermore, notices of completion would ensure that development is completed in accordance with the permission granted thereby reducing levels of non-compliance and the need for enforcement action.

4.0 Comparisons and lessons from elsewhere

Other comparable jurisdictions that share the features of the Northern Ireland Planning System (i.e. England, Wales, Scotland and the Republic of Ireland) have all been active in reforming their planning systems during the last seven years. Many of these reforms have featured initiatives related to planning control. Some of these are noted below:

4.1 Decision making

There is a higher degree of autonomy in decision making for local government in the planning systems of GB. Specifically, the powers of the Department are more intrusive in Northern Ireland as it will deal with all applications classified as major.

Is this likely to change? Are any provisions in place to move towards a reduced role for the Department? If so what are these? If not, should a strategy be put in place to facilitate progress towards a more devolved system?

4.2 Enforcement

In the Republic of Ireland the enforcement system has legislated for criminalization and there is no evidence of emerging problems as a result of this strategy. Importantly, the Department has decided to retain an enforcement system based upon discretionary principles and a test of evidence based upon the balance of probability. This means that the decision by the planning authority to take enforcement action is discretionary and not mandatory, only occurring where it has been decided that it is expedient to do so. In effect, there is discretion for the planning authority to take action or let matters rest as they are. The effect of the test imposed by the balance of probability means that the recipient of the enforcement notice does not have to prove innocence beyond all reasonable doubt (as per criminal law), but obtain, as far as possible, best evidence to demonstrate that it is not unreasonable to assume that there has been no breach of regulations. Even if objective evidence cannot be provided self-serving evidence cannot just be rejected because it is uncorroborated or unchallenged – if it is to be set aside, there must be good and sufficient reasons for rejecting it. Thus the test of evidence is much lower than in criminal law. In this context, the Irish strategy does not seem to have been explored by the Department in its scrutiny of the issue during the consultation process (see below under 5.4).

4.3 Planning appeals

An applicant currently has six months in which to appeal to the PAC if an application is refused. In Scotland, the appeal period has been reduced to three months since 2008. It was also reduced to three months in England in 2003 but was returned to six months in 2004 following an increase in appeal numbers. England has since reduced the appeal period for householder appeals to 12 weeks from April 2009. Of the 160 respondents who commented on this issue, 65

per cent supported a reduction in the time limit, including the Northern Ireland Human Rights Commission. Majority support came from most of the respondent groupings, with only the business and development group and the agents / architects / professional and legal bodies group expressing opposition. Many of those opposed (including the PAC) quoted the experience in England where it was returned to six months.

4.4 Third party appeals

Third party appeals are operating in the Republic of Ireland but not in the planning jurisdictions of Great Britain (see Paper 3).

4.5 Cost awards

Costs guidance in GB considers awards against planning authorities for the unreasonable refusal of planning permission. In any appeal proceedings the planning authority is expected to produce evidence to substantiate each reason for refusal by reference to the development plan and all other material considerations costs may be awarded against them. Similarly, while authorities are not bound to adopt, or include as part of their case, the advice given by their own officers they are expected to show that they had reasonable grounds for talking a decision contrary to such advice. If they fail to do so costs may be awarded against the authority. This makes provision for the same matters as raised in the consultation process.

How does the Department intend to progress this?

5.0 Contentious areas

The following section of the paper will highlight some of the areas that raised most interest in terms of responses from the consultation, and will consider the areas that are likely to raise further questions

5.1 Performance agreements and assessment of the Department

The Department indicated in the consultation process that it would bring forward performance agreements (PAs) and that these should be made available to developers proposing regionally significant development. It was suggested that PAs would be a voluntary agreement between the developer and the Department which would provide a project management framework for processing applications by identifying what should be done, when and by whom, to reduce problems and speed up the handling of these large and complex applications. Although there is provision in PART 10 of the Bill for assessment of the council's performance, there is no mention of the PA. Furthermore, there is no legislative provision for the assessment of the Department's performance.

Is there a need to include provision for both PAs and the Department?

5.2 Appointment of independent examiners

In the consultation process there was a mixed response when respondents were asked if they agreed with the proposal giving the Department the option to appoint independent examiners (27% for and 25% against). Those respondents who were not in favour of the proposal held the view that the PAC plays an important role in ensuring consistency in planning decision-making. A key view expressed in common by these respondents was that, as the final decision on a

regionally significant application is taken by the Department, an independent examiner appointed by the Department would not be considered truly independent.

Is this an issue which needs to be unpacked in greater detail – the Department's response is likely to be that if anyone is unhappy they can challenge the process via judicial review (an unreasonable expectation due to the excessive cost, except for the wealthy and those entitled to legal aid).

5.3 Appeal type selection process

The Department does not intend to proceed with legislation to allow the PAC to determine the most appropriate appeal method. There are currently four types of process, written representation, attended site visit, informal hearing and formal hearing. In the Republic of Ireland the overwhelming majority of appeals are dealt with via written representation. There are issues on both sides here. In the case of minor forms of development, where matters are straight forward, all evidence should be in the mandatory statement provided by the appellant to the PAC. New issues can only be introduced in extenuating circumstances, hence in such cases there is no need for a more time consuming form of determination. If these were used more frequently it would speed up the process significantly for all appeals, yet in extenuating circumstances additional information could still be submitted. Where complex matters need to be scrutinised the PAC would be able to assess from the case notes provided to it by the planning authority at the outset whether a more inquisitorial process could be applied. On the other hand appellants would not be entitled to an oral hearing if this was their preferred option.

5.4 Criminalisation

This is an issue which does not seem to have been thoroughly examined in the consultation process. While the matter was considered and 180 respondents commented on the issue, 52% indicated that the Department should not give further consideration to making it an immediate criminal offence to commence any development without planning permission. Some of those opposed commented that this would be an unwarranted draconian step and there were comments that some breaches of planning control are a result of an innocent error. The prosecution of unwitting offenders is, however, an unlikely scenario as non-compliance can frequently be remedied quickly through dialogue and prosecution normally only takes place when an offender has refused to comply. The arguments against criminalisation relate mainly to the onus of proof and the test of evidence, whereby the responsibility is on the prosecution to prove an offence beyond all reasonable doubt. This would undoubtedly put pressure on the Department's resources as the requirement to meet such a test is high. This problem might, however, be easily remedied by mirroring practice in the Republic of Ireland and introducing reverse onus (section 156 (6)) of the Planning and Development Act 2000), whereby the recipient of the enforcement notice, not the planning authority, must prove beyond all reasonable doubt that an offence has not occurred.

This rationale which does not appear to have been explored to date, might, therefore, be worthy of further scrutiny.

[1] Department of Communities and Local Government, (2001) Planning: Delivering a Fundamental Change.

Northern Ireland Assembly

Research and Library Service
Bill Paper

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Prepared on behalf of Research and Library Services by

Geraint Ellis, Ruth McAreavey, Stephen McKay, Ken Sterrett

(School of Planning, Architecture and Civil Engineering, Queen's University Belfast)

Planning Bill (3): Community Involvement

This paper looks at the Community Involvement provisions set out in the Planning Bill. It is one of four papers prepared for the Bill, which follow a common format that highlights: the key issues arising in the Bill; summarises the findings of the public consultation and the Government's response; reviews comparable arrangements in comparable jurisdictions and highlights potential contentious issues that arise.

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Key Points

- The Planning Bill makes provision for planning responsibilities to be handled by local authorities, which will increase opportunities for the public to deal directly with elected representatives with decision-making responsibilities.
- It reaffirms the duty to prepare a Statement of Community Involvement (SCI) (s.4) and extends this to district councils. It does not make a provision for monitoring or reviewing these statements.
- The Bill provides for pre-application consultation (s.27) by applicants for major developments, although this does not specify requirements as much as is proposed in other jurisdictions.
- The Bill provides for a district council to hold a pre-determination hearing (s.30) where the views of the applicant and others can be heard.
- The Bill introduces a duty to respond to consultation (s.224) on any body undertaking consultations under the legislation.

- The Bill does not establish a statutory link between local development plans and Community Strategies, as has been the case where similar approaches to planning have been adopted in other parts of the UK.
- The Department's response to the consultation made a number of commitments that do not appear in the Bill, for example a proposal to only allow representations to development plans that are related to testing the soundness or sustainability of the plan, rather than being "objection-based".
- The Department have decided not to proceed with the introduction of some form of third party right of appeal, despite being a prominent issue during the consultation phase.
- The Bill does not take into account a number of other community involvement initiatives taken forward in other parts of the UK including:
- Neighbourhood Development Orders;
- Good Neighbour Agreements;
- Specified minimum requirements for pre-application consultation by applicants;
- Availability of information on how planning applications have been dealt with.
- Securing local benefits from development through planning obligations or a Community Infrastructure Levy.
- Many of the details of the new provisions are to be provided in supplementary guidance or legislation.
- The EQIA for planning reform make a number of commitments that are not reflected in the Planning Bill.

Contents

5.9 Equality provisions

1 Introduction

This briefing paper is the third of a set of four prepared for the Committee providing analysis of the provisions in the Planning Bill which sets out the draft legislative framework for new and revised planning procedures in Northern Ireland. The proposals in the Bill substantively replicate the instruments contained in the Planning and Compulsory Purchase Act 2004 which applies to England and Wales and the Planning (Scotland) Act 2006. These Acts effectively placed the new concept of 'spatial planning' on a statutory basis in these parts of the UK. Reform of the planning system in the Republic of Ireland is also underway, which will also place spatial planning as a core principle in its planning system.

Spatial planning moved the emphasis away from planning as simply regulatory practice narrowly focused on land use to planning as an activity that is both integrated with other local government services and is focused on delivery. In this context the development plan becomes, what the Department of Communities and Local Government's Planning Green Paper 2001[1] described as, 'the land-use and development delivery mechanism for the objectives and policies set out in the Community Strategy'. This has been accompanied in other parts of the UK by reforming the way in which communities can engage with the planning system.

This Bill makes the initial statutory provision for spatial planning to be adopted in Northern Ireland, in the context of district councils taking over some of the planning responsibilities currently handled by the DoE (NI). The basic provisions of the proposed NI legislation will, it is assumed, be supported by a new Planning Policy Statement (PPS) which would explain the broad arrangements for spatial planning, including how local communities can become involved. Additional written guidance and support should also be forthcoming.

The shift to a new form of planning, primarily located within reformed local government structures in Northern Ireland will present significant challenges for all stakeholders including professionals, officials, politicians and communities. Arguably though, the benefits of these changes potentially far outweigh the costs of major changes in culture and practice.

This paper is the third of four papers produced in support of the Committee stage of the Planning Bill, which are:

- Paper 1: Departmental Functions and Local Development Plans
- Paper 2: Development Management
- Paper 3: Community Involvement
- Paper 4: Capacity, Delivery and Quality

In this paper:

Section 1: identifies the key issues arising from the Bill in respect to community engagement;

Section 2: provides an analysis of the key themes;

Section 3: reviews equivalent arrangements in comparable jurisdictions; and

Section 4: identifies contentious issues which may require further scrutiny.

Members of the Assembly may find it useful to refer to the following documents in conjunction with this paper:

- The full Planning Bill (2010): http://www.planningni.gov.uk/index/about/planning_bill.pdf
- Draft Explanatory and Financial Memorandum: http://www.planningni.gov.uk/index/about/planning_bill_efm_-_as_introduced.pdf
- Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf
- Final EQIA at a strategic level: http://www.planningni.gov.uk/index/about/final_eqia_at_strategic_level-2.pdf
- Independent Report from the Planning Reform Consultation Events 2009 Equality Statement: http://www.planningni.gov.uk/index/about/independent_report_from_the_plannng_reform_consultation_events_2009__f_.pdf
- England and Wales Planning and Compensations Act (2004): http://www.legislation.gov.uk/ukpga/2004/5/contents
- Republic of Ireland Planning and Development Act 2000: http://www.irishstatutebook.ie/2000/en/act/pub/0030/index.html
- Republic of Ireland Planning and Development (Amendment) Act 2010: http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/3409/b34d09d.pdf
- Planning (Scotland) Act (2006): http://www.legislation.gov.uk/asp/2006/17/contents
- England Localism and Decentralisation Bill (2010): http://services.parliament.uk/bills/2010-11/localism/documents.html

2 Overview of themes

Community involvement can be defined as being the processes through which planning provides “opportunities for people, irrespective of age, sex, ability, ethnicity or background, business, the voluntary sector and others to make their views known and have their say in how their community is planned and developed. Community involvement in planning should not be a reactive, tick-box, process. It should enable the local community to say what sort of place they want to live in at a stage when this can make a difference"[2]

In the consultation documents for planning reform, the Department noted that one of its objectives was to create a planning system that “allows for full and open consultation and actively engages communities". Indeed, effective community involvement is a critical element in any planning system and over the past decades there have been major attempts to improve this aspect of the planning system, with statutory defined opportunities for a whole range of stakeholders to make representations on development plans and planning applications. Effective involvement results in outcomes that better reflect the aspirations of the wider community, improves the quality and efficiency of decisions, promotes social cohesion, raises awareness of all involved about the needs of communities and the business sector, and it is also critical in raising the public’s confidence in the planning system. There are a number of key barriers to community involvement that include the costs of participation for both stakeholders and the planning authority, the complexity of some issues, the technical language of planning and problems of identifying and reaching all the relevant groups in society. Over recent years there has also been increasing concern over delays caused by the planning system, which can sometimes be accentuated as a result of participatory procedures.

The draft Planning Bill reaffirms many of the previous opportunities for community involvement, such as the need for planning authorities to produce a Statement of Community Involvement. Most notably, it provides for the transfer of many planning powers to district councils, where locally elected politicians who understand the concerns of local communities will be making the majority of planning decisions and shaping the planning policy for their council areas.

The Bill also introduces a number of new provisions for public consultation, including:

- extending the duty to produce Statements of Community Involvement to district councils (s.4).
- introducing the requirement for pre-application consultation (s.27) by applicants for major developments. Any prospective applicant must provide 12 weeks notice to a district council that such an application is to be made, must specify who the applicant intends to consult with and the nature of that consultation. A report of the pre-application consultation should be submitted before the application is made.
- Providing for pre-determination hearings (s.30) where the “applicant and any person so prescribed" can appear and be heard by a committee for the council. The arrangements for this and any rights of attendance will be determined “as the council considers appropriate". The type of development to which this will apply will be subject to specification in regulation or a development order.
- The introduction of a duty to respond to consultation (s.224) on any person or body which exercises functions under the planning legislation. This specifies that “a substantive response to any consultation" should be given. The Department may specify the procedure to be followed under this section.

As noted in section 3 below, the Bill does not appear to provide for all the issues related to community involvement that the Department committed to in its response to consultation on planning reform and the details of many of the new provisions will be provided in future clarification and guidance. These issues and others prompted by what is included or omitted from the Bill are discussed in more detail under section 5, Contentious Issues.

It should also be noted that most of the issues raised in the EQIA undertaken for the planning reform process relate to community involvement and a number of issues are discussed in section 5.9 below.

3 Consultation responses

The arrangements over community involvement were the most common and strongest voiced issues raised during the public consultation on planning reform. The Department has issued a detailed response[3], in some cases amending its previous position in the light of the observations made. There was a mixed response to many of the issues raised during the consultation and as a consequence these highlight issues that may require more detailed scrutiny during the legislative process. A detailed report of the consultation is available[4], and for the purpose of this paper, the key issues relating to community involvement that the Committee may wish to consider are:

- The Department noted that it intended to make a statutory link between community plans and local development plans. This is not included in the Bill.
- The Department noted that it intended to change the first stage of a development plans, from an “issues paper" to a “preferred options" paper. This is not included in the Bill.

- The Department noted that it intended to change the basis of examining development plans from an objection based one to one which tests the soundness and sustainability of the plans and that only those representations that contribute to this test will be heard. This is not included in the Bill.
- The Department noted that it intended to specify that “any consultation engages as much of the affected community as possible". This has not been substantially detailed compared to the Localism Bill recently introduced in England.
- The Department noted that it intended to introduce a power that would allow the PAC to award costs where a party has been put to unnecessary expense and where the PAC has established that a party has acted unreasonably. This is not included in the Bill (Paper 2 deals with this in more detail).
- The issue of third party planning appeals was commonly raised during the consultation with a majority of respondents supporting their introduction. The Department has noted that it does not wish to proceed with this at this time.

Do each of these commitments mentioned above require legislative provision? If so, why are these not included in the Planning Bill?

4 Comparisons and lessons from elsewhere

Other comparable jurisdictions that broadly share the features of the Northern Ireland Planning System (i.e. England, Wales, Scotland and the Republic of Ireland) have all been active in reforming their planning systems during the last seven years. Many of these reforms have featured initiatives related to community involvement. Some of these are noted below:

England and Wales:

The Planning and Compulsory Purchase Act (2004) introduced the spatial planning approach to England and Wales, including major revisions to the development plan system. This was accompanied by a renewed emphasis on delivery of planning outcomes and on community engagement. This included the publication of specific guidance (Community Involvement in Planning: The Government’s Objectives) which explained how planning related to other forms of governance, set out operational principles, specified requirements for Statements of Community Involvement and provided details of service delivery, including a planning delivery grant, support for Planning Aid and the Planning Advisory Service.

The current Coalition government is in the process of reviewing the previous planning legislation and policy. It published its Decentralisation and Localism Bill in December 2010 which covered a number of areas of policy that may affect how the public engages with local authorities and government, such as provision for local referendum and new powers of competency for local authorities, but also included specific reforms relating to community involvement with the planning system. This includes:

- Provision for neighbourhood development plans and order.
- Increased requirements for pre-application consultation.

Scotland:

Planning etc.(Scotland) Act 2006 made a range of amendments to the main 1997 legislation and in respect to community engagement introduces the following provisions:

- A duty on a planning authority to make public information as to how planning applications have been dealt with, including any documents taken into account, the material considerations upon which the decision was based and any pre-application consultation report.
- Provision of Good Neighbour Agreements between developers/landowners and community organisations to regulate activities on a site.

The Republic of Ireland:

The planning system of the Republic of Ireland is broadly similar to that of Northern Ireland, with key differences being that local authority planners have a greater range of executive powers and that third parties have a right to initiate planning appeals in addition to applicants. Third party appeals act as a way in which individuals and communities engage with planning decisions and as a consequence, other opportunities for participation are not as extensive as currently available in Northern Ireland. The main planning law is the Planning and Development Act 2000, which has been subject to a number of amendments, most recently through the Planning and Development (Amendment) Act 2010. This did not introduce any major provisions related to community consultation, although it does make minor changes to the way revisions to development plans are advertised, including specifically inviting observations related to the interests of children.

5 Contentious Areas

The following section of the paper will highlight some of the areas that raised most interest in terms of responses from the consultation, and will consider the areas that are likely to raise further questions

5.1 Opportunities for securing further community involvement

The consultation document for planning reform noted that one of the objectives was to create a planning system that “allows full and open consultation and actively engages communities". However the Bill provides for only relatively minor improvements in consultation from the previous system and largely remains a reactive rather than proactive system, relying on stakeholders and members of the public to respond to initiatives of the Department and district council. There is now widespread experience of innovative practices in community involvement and members may wish to review to what extent these have been taken into account and what other opportunities there may be for securing this stated aim of planning reform.

What provisions in the Bill specifically facilitate the “active engagement" of local communities? What research of good practice was undertaken in drafting the Bill and what other initiatives did the Department consider in addressing this aim of planning reform?

5.2 Statutory requirements for Statements of Community Involvement.

Statements of Community Involvement (SCI) were introduced as a duty on the Department in the Planning Reform (NI) Order 2006. The Planning Bill extends this to district councils. Other jurisdictions have set out detailed guidance on what these statements should include, yet this is currently undefined in the case of Northern Ireland. Furthermore, the Planning Bill does not make any requirements on the Department or district councils to monitor or review SCIs.

Should the requirement to prepare a SCI be accompanied by a duty to monitor and review its effectiveness?

The Bill also provides for SCIs to be prepared in relation to development plans and development management (Parts 2 and 3), but not other provisions in the Bill, including conservation, tress etc. There may be a case for establishing SCIs for all provisions under the Bill.

Is there a case that SCIs should relate to all planning functions and thus cover all parts of Bill?

The section 5.9 below notes that SCIs could also be better aligned with the equality duties of the Department and the district councils.

Should SCIs highlight the requirement to engage with the groups specified under s754 of the Northern Ireland Act 1998?

5.3 Strengthened pre-application consultation procedure.

As in section 2 above, the Planning Bill (s.27) makes provision to require applicants for major developments to undertake pre-application consultation. This does not detail the requirements on applicants on the form of the consultation nor the response they should take subsequent to the consultation. The recently published Localism Bill responds to the English experience of pre-consultation procedures and proposes higher demands for pre-applications consultation. This includes:

- Provision for this to be applied to any development, not just those considered “major";
- Requires that the proposed application should be publicized “in such a manner as the person reasonably considers it likely to bring the proposed application to the attention of a majority of persons who live at, or otherwise occupy premises in the vicinity of the land";
- Defines what the publicity should cover (e.g. timetable for consultation and how to make representations);
- Proposes a duty to take account of the responses to consultation.

How effective have pre-application procedures been in other jurisdictions where they have already been introduced? Are there any reasons why the Bill should not reflect the more detailed specification for why these are proposed in the English Localism Bill?

5.4 Pre-determination Hearings

As noted above, the Planning Bill provides for councils to hold pre-determination hearings on major developments. The Bill allows discretion on behalf of the council to determine who should be permitted to address the hearing and who can be in attendance.

In the interests of openness and transparency, is it appropriate to allow district councils to exclude the public or other interests from attending or addressing pre-determination hearings?

5.5 Third party appeals

Third party appeals were a common issue raised during the consultation for planning reform. The Department has noted that “there does not appear to be any immediate compelling reason

to proceed in the public interest towards making provision for third party appeals in the current round of planning reform proposals".

Third party rights of appeal allow other parties other than the applicant to initiate an appeal on a planning decision. This has been a long standing feature of the planning system in the Irish Republic, where anyone who has made an observation on the original planning application can initiate an appeal on the outcome of a planning application, including those awarded permission.

There a number of models of third party appeals, from those of a relatively unrestricted nature, such as those available in the Republic of Ireland to more limited rights of appeal, where it may be restricted to particular cases (such as where a decision departs form a development plan or those dealing with planning permission for district councils themselves) or extend the right only to particular parties (such as statutory agencies or advocacy organisations such as community groups or environmental NGOs).

What are the variations of third party appeals considered by the Department and what are the potential impacts on each of these on public confidence, community involvement, quality of decisions and delay?

5.6 Securing broader community benefits from development

The Bill reaffirms existing powers of the Department to enter into planning agreements, which can be used to facilitate development through the developer payments, improvements to infrastructure etc. This provision is rarely used in Northern Ireland compared to other jurisdictions. The consultation on planning reform did raise the possibility of introducing a new system of developer contributions and this attracted wide qualified support. In its response to the consultation, the Department has noted that this issue is not intrinsic to planning reform and that it is an issue to be dealt with by the Executive, where a coordinated response can be provided.

This is in contrast to the situation in England and Wales, where planning legislation has been used to introduce a Community Infrastructure Levy[5] (CIL). This will allow local planning authorities to gather a contribution for local infrastructure (such as water supply, transport, schools, health centres, flood defences, open spaces etc) according to the size of new development being undertaken. In the Republic of Ireland developers of major housing schemes have been obliged to provide a proportion of affordable housing.

What assessment has been undertaken on the impact of the Community Infrastructure Levy in Northern Ireland?

5.7 Learning from other jurisdictions

While Planning Reform has a goal of securing a planning system that actively engages communities, the Department has decided not to include some interesting initiatives related to communities introduced in other comparable jurisdictions. A number of these have been mentioned above (such as third party appeals and pre-application consultation), but this section further highlights a number of other provisions that may want to be considered by the Assembly, such as:

5.7.1 Neighbourhood Development Plans and Neighbourhood Development Orders

The Decentralism and Localism Bill (England) published in December 2010 aimed to decentralise government functions to local communities and citizens and includes a number of provisions related to planning. This includes the introduction of Neighbourhood Development Plans, which local planning authorities will be obliged to produce if more than 50% of residents vote for one in a local referendum. The Bill also makes provision for Neighbourhood Development Orders, based on the Neighbourhood Development Plan that will allow communities to agree a schedule of development for which planning permission will not be required. The Bill also allows for resources to be made available to support neighbourhood planning.

Would similar provisions in the Planning Bill help the Department achieve “active engagement" of communities?

5.7.2 Good Neighbour Agreements

The Planning (Scotland) Act 2006 (s.24) provides for community organisations to “enter into an obligation governing operations or activities relating to the development or use of land". These function in much the same way as the planning agreements provided under the Planning Bill (s75), but provides for such agreements to be made directly between local communities and developers and not just developers and the planning authority.

Would a provision for Good Neighbour Agreements improve the local acceptability of some developments?

5.7.3 Public availability of information as to how planning applications have been dealt with

The Planning (Scotland) Act 2006 (s.12) provides a duty to make publicly available the information on how a particular application has been dealt with. This was aimed to increase the transparency of decision making and lists information such as the list of documents considered, the material considerations taken into account and any pre-application consultation report.

Is there any reason why the public should not be provided with the information as specified in the Scottish Planning Act?

5.8 The need for further guidance or subordinate legislation

The Government’s response to consultation noted that further clarification, legislation or guidance was needed in at least the following areas related to community involvement:

- Resources, time needed and size of Statements of Community Involvement;
- Submission of representations and counter-representations on a development plan;
- The tests of soundness and sustainability of development plans;
- Requirements of representations on developments in line with tests of soundness and sustainability of development plans;
- Common guidance on procedural rules for conducting hearings and inquires for regionally significant applications;
- Best practice advice to indicate when it might be appropriate to hold pre-determination hearings when not a mandatory requirement;
- When it will be appropriate to award costs in planning appeals when one party are seen to be acting unreasonably;

It is likely that many other areas relating to new provisions introduced in this legislation will also need further clarification prior to commencement. Other papers produced on the Planning Bill have also highlighted the need for further guidance and clarification. These note the importance of establishing such guidance in parallel with the legislation and this similarly applies to providing details on how the community can be fully involved in the planning system. It should be noted, for example, that at the time of the major planning reform in England and Wales the office of the Deputy Prime Minister issued Guidance (Community Involvement in Planning: The Government's Objectives)[6] on how it aims to involve the public in planning.

5.9 Equality provisions

Almost all the issues raised in the Equality Impact Statement for this Bill relate to the way in which different groups engage with the planning system and should therefore be considered under the provisions for community involvement. A number of issues may be highlighted here:

- The EQIA notes that there is a poor evidence base for evaluating the equality impacts of the planning system and commits the Department to developing a Monitoring strategy to rectify this. There is a case that this should be put on a statutory basis, extended to district councils and included in the Bill, for example under the requirements of the Statement of Community Involvement.
- The EQIA notes that in fulfilling its equality duties, the Department works closely with organisations such as Community Places and Disability Action. During times of reductions in public sector spending financial support for organisations such as these is likely to come under pressure, which in turn may lead to compromises in the fulfilment of equality duties.

There may be a case for considering the extent to which the equality duties rely on such external organisations and if so, should such links be recognised in the legislation?

- The EQIA notes that in relation to Development Management that "The proposals will also encourage increased community engagement at an earlier stage in the process and, as such, facilitate the inclusion and consideration of the views of communities with the greatest social need who might otherwise be excluded."

Although the Bill makes provision for pre-application consultation, it does not appear to specify how this is related to those with greatest social need.

How can the Planning Bill further provide for integrating equality provisions into the functions of the Department and district councils?

[1] Department of Communities and Local Government, (2001) Planning: Delivering a Fundamental Change.

[2] Taken from Department of Communities and Local Government, (2004) Community Involvement in Planning: the Government's Objectives".

[3] As noted in The Planning Service (2010) Reform of the Planning System in Northern Ireland: Your chance to influence change; Government Response to Public Consultation July – October 2009, March 2010

[4] Independent Report from the Planning Reform Consultation Events 2009 Equality Statement:http://www.planningni.gov.uk/index/about/independent_report_from_the_plannng_reform_consultation_events_2009__f_.pdf

[5] This was introduced in the 2008 Planning Act, for details see The Community Infrastructure Levy, http://www.communities.gov.uk/documents/planningandbuilding/pdf/communityinfrastructurelevy.pdf

[6] See http://www.communities.gov.uk/documents/planningandbuilding/pdf/147588.pdf

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Prepared on behalf of Research and Library Services by

Ruth McAreavey, Stephen McKay, Ken Sterrett, Geraint Ellis

(School of Planning, Architecture and Civil Engineering, Queen's University Belfast)

Planning Bill (4):
Implementation, Performance and Decision making: Issues of Capacity, Delivery and Quality

This paper examines issues of capacity, delivery and quality in relation to the Planning Bill. It is one of four papers and follows a common format highlighting the key issues arising in the Bill; summarising the findings of the public consultation and the Government's response; reviewing comparable arrangements in comparable jurisdictions and highlighting potential contentious issues.

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Key Points

- Planning within this Bill is not just about land use, but it transcends issues of housing and development to encompass broader social well-being. How does the Department propose to disseminate sea change/paradigm shift that will be required among the key stakeholders?
- The integration of all components of planning will be central to the Bill's success and this relies on the institutional infrastructure or the governance arrangements. What is the vision for an effective and successful planning system?

- Buy-in from, and participation of key stakeholders is crucial to the legislation. What arrangements are in place to ensure sufficient and equal involvement of different interest groups?
- Developing a new strategic vision requires leadership and cultural change. How will the new planning system create space for leadership and nurture cultural transformation?
- Currently, development planning in Northern Ireland is very land use based, overly technocratic, functional, legalistic and market-driven. A new form of planning would attempt to define the existing and potential distinctive quality of 'place'. How will the quality of the built environment become an integral feature of the new planning system?
- Creating the new structures simply provides circumstances to encourage a new approach. Transformation of the planning system in Northern Ireland will be reliant on consistent and coherent interpretation of this primary legislation and the timing and form of any subordinate legislation and supplementary guidance that will follow (see also Paper 1). How does the Department propose to promote the need for greater transparency and information on this matter?
- Many of the issues surrounding effective implementation and delivery are amorphous, have the potential to be overly complex and risk confusion. What steps are being taken to guarantee clarity and transparency in emerging relations between departments, agencies and other interest groups?
- The Department will have powers to assume a central position in the delivery and evaluation of planning. How will it be scrutinised and specifically, what are the limits on its power to exercise its function?
- Local government reform is under consultation. Opportunities to make statutory connections in relation to issues such as Community Planning or powers of well-being appear to have been missed. What will be done to ensure a coherent approach and one that avoids duplication of functions?
- The new legislation will rely on capacity building across a diversity of stakeholders – professional/non-professional planners, community organisations and specific interest groups, etc. What additional resources will be available to support necessary development of skills and expertise?

Contents

Introduction

This briefing paper is the final of four prepared for the Committee providing analysis of the provisions in the Planning Bill which sets out the draft legislative framework for new and revised planning procedures in Northern Ireland. The proposals in the Bill substantively replicate the instruments contained in the Planning and Compulsory Purchase Act 2004 which applies to England and Wales and the Planning (Scotland) Act 2006. These Acts effectively placed the new concept of 'spatial planning' on a statutory basis in these parts of the UK. Moreover, reform of the planning system in the Republic of Ireland is underway and it will also place spatial planning as a core principle in its planning system.

Spatial planning moved the emphasis away from planning as simply regulatory practice narrowly focused on land use to planning as an activity that is both integrated with other local government services and is focused on delivery. In this context the development plan becomes, what the Department of Communities and Local Government's Planning Green Paper 2001[1] described as, 'the land-use and development delivery mechanism for the objectives and policies set out in the Community Strategy'. This has been accompanied in other parts of the UK by reforming the way in which communities can engage with the planning system.

This Bill makes the initial statutory provision for spatial planning to be adopted in Northern Ireland, in the context of district councils taking over some of the planning responsibilities currently handled by the DoE (NI). The basic provisions of the proposed NI legislation will, it is assumed, be supported by a new Planning Policy Statement (PPS) which would explain the broad arrangements for spatial planning, including how local communities can become involved. Additional written guidance and support should also be forthcoming.

The shift to a new form of planning, primarily located within reformed local government structures in Northern Ireland will present significant challenges for all stakeholders including professionals, officials, politicians and communities. Undoubtedly the benefits of these reforms potentially far outweigh the costs of major changes in culture and practice.

This paper is the third of four papers produced in support of the Committee stage of the Planning Bill, which are:

- Paper 1: Departmental Functions and Local Development Plans
- Paper 2: Development Management
- Paper 3: Community Involvement
- Paper 4: Implementation, Performance and Decision making: Issues of Capacity, Delivery and Quality

In this paper, Section 1 identifies the key issues arising from the Bill in respect to Capacity, Delivery and Quality; Section 2 provides an analysis of the key themes; Section 3 reviews equivalent arrangements in comparable jurisdictions; and, Section 4 identifies contentious issues which may require further scrutiny.

Members of the Assembly may find it useful to refer to the following documents in conjunction with this paper:

- The full Planning Bill (2010): http://www.planningni.gov.uk/index/about/planning_bill.pdf
- Draft Explanatory and Financial Memorandum: http://www.planningni.gov.uk/index/about/planning_bill_efm_-_as_introduced.pdf
- Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf
- Final EQIA at a strategic level: http://www.planningni.gov.uk/index/about/final_eqia_at_strategic_level-2.pdf
- Independent Report from the Planning Reform Consultation Events 2009 Equality Statement: http://www.planningni.gov.uk/index/about/independent_report_from_the_plannng_reform_consultation_events_2009__f_.pdf
- England and Wales Planning and Compensations Act (2004): http://www.legislation.gov.uk/ukpga/2004/5/contents

- Republic of Ireland Planning and Development Act 2000: http://www.irishstatutebook.ie/2000/en/act/pub/0030/index.html
- Republic of Ireland Planning and Development (Amendment) Act 2010: http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/3409/b34d09d.pdf
- Planning (Scotland) Act (2006): http://www.legislation.gov.uk/asp/2006/17/contents
- England Localism and Decentralisation Bill (2010): http://services.parliament.uk/bills/2010-11/localism/documents.html

1 Overview of themes

A successful Bill will aspire to achieve impartiality along with appropriate standards of consistency, transparency and quality. However, the legitimacy of the Bill will rely on an understanding of the expanded meaning of planning that is evident within the new legislation as contrasting to land use planning (see papers 1 and 2). But of equal importance within this emerging policy landscape will be the associated delivery mechanisms, including institutional apparatus, skills of all stakeholders and suitable processes of performance monitoring and review.

Locally, the Planning Bill is set in the context of an ongoing Review of Public Administration. It provides for the transfer of many planning powers and functions to district councils, where locally elected politicians will assume a key function in the spatial planning process. Charged with development control functions and with the design of local plans, the role of local government is critical in the process. Through enhanced decision making processes and more extensive consultation obligations, the Bill intends to address a democratic deficit while improving the quality and legitimacy of public decision making. Specifically planning will become more locally accountable as elected representatives influence activities within their locality. This new framework of governance ought to create conditions that nurture experimentation and embrace diversity. However, implementing the institutional apparatus is no guarantee of success as innovation and change do not necessarily follow from administrative reform.

There are a number of potential barriers to effective delivery including the establishment of new organisational structures, relationships and collaborations; the adoption of the new functions and powers; expertise, personnel and technical aspects of planning. Finally pressure on the public purse, as evidenced through recent budget cuts, is likely to continue and will also have considerable influence as councils balance potential tensions such as the need for consultation while being expedient or achieving transparency as well as best value.

1. Integration - The integration of all components of planning will be central to the Bill's success and this relies on the institutional infrastructure or the governance arrangements and buy-in from key stakeholders. Morphet et al[2]. (2007) note that following reform in England, the role of planning has not been widely understood among those working in the system and consequently that system has not transformed to reflect a more integrated approach.

a. Governance: an evolving system of governance with the creation of new relationships internally and externally to local government and engagement with a breadth of stakeholders. A network or lattice of relationships among the relevant agencies and organizations will avoid a disjointed or 'silo' approach to planning matters. Significant opportunities appear to have been lost through a failure to make connections to emerging functions and activities within councils that are accompanying proposed local government reform in Northern Ireland. For instance the intended 'Partnership Panel' would have an advisory role to formalise relations between central and local government and to provide strategic direction. Meanwhile the planned 'power of well-

being' would allow councils to take action to promote or improve the well-being of their district. It is not clear how such instruments will impact on the Bill.

Why have explicit links not been made to the emerging functions that are following from reorganisation of the public sector and associated reform of local government? How will the Department ensure that an overly complex process is avoided and that an integrated approach is achieved?

b. Leadership: in other areas e.g. England and Scotland, a Chief Planning Officer provides a professional leadership role to complement administrative leadership provided through elected representatives and their departments. Indeed, it should be noted that the Bill provides for planning functions to lie with the Department and this will focus the leadership and accountability of this arrangement. From a legislative perspective, the Chief Medical Officer in NI could provide a precedent for replication within planning.

Who has the power to provide leadership through a strategic and integrated approach? Who will lead this process - why has a Chief Planning Officer function not been created?

c. Stakeholder involvement: Many different stakeholders will have a legitimate interest in planning in NI. More than simply local authority planning staff, elected representatives, landowners and developers, this relates to a broad church of interested parties including local communities, businesses, interest groups and 'non-planning' departments within local authorities, to name but a few. Building the capacity and competency of these different actors to effectively engage with the planning process, while also achieving their compliance, will be a necessary activity. Cultural transformation is unlikely to occur in the absence of education and radical attempts to enlighten legitimate interest groups planning more integrated systems of working.

What arrangements and resources are in place to ensure the advocacy, competency and capacity of local communities, vulnerable groups and other stakeholders so that they are able to fully participate in the planning process?

2. Capacity and transparency - The Department retains key functions and will lead the process of performance, management and audit. The power of the Department to intervene across many of the delegated functions and to oversee a monitoring and performance management role has been written into the legislation. While the Department has always intervened in the planning process, institutional reform will result in new operating arrangements.

a. Departmental intervention and direction: the Department can direct the SCI (Statements of Community Involvement) if no agreement can be reached with the DC (District Council), indeed timetables for Statements of Community Involvement are to be agreed between councils and the Department. The Department has powers of intervention in development planning process – this may relate to preparation, withdrawal, adoption and approval of local development plans (including joint plans) and their independent examination. It can also direct local councils to work together for the preparation of local plans. In England and Wales Joint Planning Committees are recognised as statutory planning authorities.

Under what circumstances and in what conditions will the Department direct councils to work together? What powers do the Department have to insist upon such coalition? Why have formal arrangements not been provided for within the Bill? How does this affect accountability and responsibility for plans?

b. Performance management has relevance within the Department and at local government level. Planning Service was established as an Executive Agency in 1996 with the aim of

improving its management, efficiency and financial performance. The Department recently announced the “deagentisation" of the Planning Service as part of the transition to the newly reformed planning system. A change to this will provide both opportunities and potential drawbacks. The new structure will include the transference of core planning functions (i.e. development plan and management; and strategic operations) to the Department by April 2011. Meanwhile existing Divisional Planning Offices will be reduced to five, mirroring new local government structures. They will continue to provide a service to the local councils as the planning authority of that area. No longer operating as an Executive Agency, the Divisional Offices will have a separate legal entity to the Department. As an independent entity it will not be subject to the same governance arrangements, thus raising questions of accountability, transparency and delivery.

The Department will carry out a statutory audit function on council performance and decision making regarding general and particular functions under the Bill (Section 10, para. 203).

This raises issues of expertise, capacity and breadth of performance management. Section 10 provides ample detail on matters of council performance and decision making in relation to development control. However, it does give equal clarity or direction to other issues that relate to spatial planning, a process underpinning the Bill. For instance sustainable development (para. 5) receives passing attention and is dealt with in a way that suggests a one-off activity (for instance para. 9(7) requires councils to prepare a sustainability appraisal and report on this to the Department). But as Morphet[3] (2011) points out, even though a Sustainability Audit is required by EU Directive, it is not a one off process, but should operate in parallel with the local plan. Similarly the way in which community is defined and involved remains unclear in the legislation.

How can an assessment be made that the local planning process is ‘fit for purpose’ and is ‘deliverable’, and who makes the assessment? What measures will be used to monitor and evaluate the statements of community involvement and of sustainability? How will the “deagentisation" of the Planning Service effect the management and performance of the Department’s planning functions? Who monitors and evaluates the performance and decision-making of the Department? How will Divisional Planning Offices be evaluated?

c. Subordinate legislation: Many of the details of new provisions are to be provided in supplementary and subordinate guidance or legislation.

What is the intended implementation schedule, i.e. timing, form and content of supporting legislation and guidance?

d. Expertise and technical changes will impact on the capacity of planning agents to deliver. This has a bearing on planning departments and planning professionals, but crucially, it also relates to the wider planning bailiwick. During the reform of the planning system in England and Wales it was recognised that there was a significant differential in the performance of local planning authorities. To overcome this, it introduced a Planning Delivery grant to incentivise performance and support capacity where needed. Focused on delivery and outcomes and among the measures funded were bursary and mentoring schemes. Another aspect of the reform in England and Wales are the powers to award grants to organisations such as Planning Aid that provide assistance and advice on all aspects of planning (2004 sect 115, para 304A). Meanwhile the Bill takes a very limited approach. It provides for research and education grants, along with grants for planning activities related to specific proposals for land use.

Does the Department intend to introduce an incentive scheme or capacity building for district councils planning functions? Are there plans to implement a training and development programme to engender the shift in mindset that is necessary for a new understanding of

planning? Especially in the light of budgetary cuts, what financial resources exist that will ensure sufficient technical knowledge and adequate capacity is developed among different planning agents – planning and non-planning professional; and community representatives? What expertise is available to evaluate planning (from individual officers through to council and departmental levels) as an all-encompassing process whereby places are created?

e. Probity: There is enhanced responsibility for local councils and individual officers across the implementation of the Bill. Individual officers will have a role in reviewing proposals under the scheme of delegation (para. 31) and scrutiny will occur through the governance arrangements that are currently under consultation under Reform of Local Government. Guidance will be provided from the Departments of Environment and of Regional Development as well as OFMDFM. However, the planning process has the potential to be a critical element in the viability of a commercial property scheme and in other jurisdictions it has been vulnerable to some acts of corruption. More than many others areas of public policy, it is necessary to ensure all decisions are made in a transparent way that upholds the most stringent standards of probity. For these reasons this transcends issues of scrutiny that are part of good governance within local councils as currently under consultation.

Are any specific arrangements being made to uphold the probity of the planning system in the transfer to district councils?

3. Quality of the built environment: while issues relating to efficiency and effectiveness are central considerations in the overall planning reform process, it must also be remembered that the public increasingly judge planning outcomes in terms of the quality of the environment they have to live and work in. A more qualitative approach to planning needs to permeate all aspects of the system, including: the different stages of development planning; master-planning; area-action planning; planning policy and, of course, development management. This is absolutely essential if we want to create a structure and system that delivers higher quality, workable environments that communities are proud to live and work in.

This might be captured in follow-on policy/guidance and through creating multidisciplinary teams within the councils. However, it is important to have legislative endorsement for such an approach. Very significantly, in this regard, 'Sustainable development' has now been redefined in English Planning law to include 'good design'. S.39 of the Planning and Compulsory Purchase Act 2004 was amended so that, in contributing to the achievement of sustainable development, the planning body 'must (in particular) have regard to the desirability of achieving good design.'

Why has this important reference to 'good design' not been included in the current Bill? Can we be reassured that the design of the built environment will become an important feature in the new spatial planning system?

3 Consultation responses

There was a mixed response to many of the issues raised during the consultation and a detailed report of the consultation is available[4]. Many of these issues are to be accommodated in subsidiary legislation and supplementary guidance. This highlights the fact that the Bill is part of a more comprehensive programme of reform and underlines the import of subsequent policies and documentation that are both timely and sufficiently detailed. Specifically the consultation responses that have not fully been dealt with by the Bill that the Committee may wish to consider in relation to capacity, performance and quality include:

- The timing and practicality of the transition from the old to new system and of the ongoing implementation of the RPA and more specifically of the subsequent reform of local government.

- Challenges of governance and the creation of power imbalances and undue control from the department as the centralised planning department.
- Accountability, scrutiny and probity of local councils and their officers; many of the issues of quality standards remain ill-defined.
- Achieving a balance between locally-led plans and strategic frameworks, while also ensuring a consistent and quality approach.
- Adequacy of resources and expertise to implement the Bill.

4 Comparisons and lessons from elsewhere

Other jurisdictions have embraced the spatial planning concept, indeed harmonisation of regulation as part of the European project has been evident following the Single European Act (1987). Local government reform across the globe has meant that top-down agenda setting and decision-making processes have been replaced by a range of different partnerships involving government and interest groups including local communities. Aiming to achieve greater efficiency and accountability, these reforms also intend to ensure citizen involvement at the local level. The availability and quality of information flowing between government and citizens should therefore become more useful and meaningful.

England and Wales:

Spatial planning emerged in England in the early 2000s (Planning and Compulsory Purchase Act 2004) and many of the lessons and experiences have particular resonance for this Bill. At the same time as planning legislation placed a statutory obligation on local government in England to prepare community strategies, reform of local government was also occurring. The publication of specific guidance (Participation and policy integration in spatial planning 2008) supports the general reform of local planning and more particularly the implementation of local development frameworks. It thus provides direction on issues of governance and good practice by focusing on policy integration, local government collaboration and wider stakeholder engagement. By focusing on matters of delivery, integration and performance management, reform in England and Wales has both encouraged and guaranteed transformation of the system. For instance legislating for the creation of Joint Planning Committees (PCPA 2004 para 29) created a sound framework of governance so that through joint working, local authorities are constituted as the statutory planning authority for a particular area. That legislation makes explicit links to the Local Government Act (1972).

As a result of these overarching transformations, cultural change within the planning profession has been necessary to ensure that planning is a proactive and integrated process, rather than a regulatory tool. One of the single greatest challenges that arose as a result of this was that planners in England and Wales failed to appreciate the sea change necessary for reform. Attention was paid to planning practice, expertise and performance which, although crucial elements of the reform process, do not complete the requirements of change. This narrow focus failed to acknowledge the importance of culture, values and knowledge. Thus challenges arose in different areas including achieving meaningful stakeholder involvement; ensuring flexibility and expediency; and avoiding complexity and bureaucracy. Subsequent subordinate legislation and performance management have helped define the approaches underpinning this paradigm shift. For example the test of ‘deliverability’ (under PPS 12 in England) requires LDFs to be supported by evidence of need.

Associated schemes such as the Pathfinder Initiative (http://www.sqw.co.uk/nme/about.htm) as implemented by the former Neighbourhood Renewal Unit in the Office of the Deputy Prime Minister show how integration with other departments and functions can influence spatial

planning. By demonstrating leadership and allowing freedoms and flexibilities on the part of local authorities, the scheme sought to allow local communities to be more responsive to specific economic, social and environmental issues that they were facing. Inevitably these activities affect planning. Such schemes emphasise the need for innovative approaches and a movement from tried and tested approaches to ensure that planning is appropriate to local conditions.

Continuing emphasis on flexibility and innovation; along with promoting locally based approaches and solutions to community planning is evident through council powers of well-being and also within emerging policy and rhetoric of the current UK Coalition government. Advancing its concept of the Big Society and shift from Big Government is the Decentralisation and Localism Bill published its in December 2010. It seeks to empower local people and provides greater autonomy and responsibilities to local councils. Not only are Community Infrastructure Levies being used to ensure spending at a local level, but pioneering place-based or community budgets are being tested across 16 areas with a view to full implementation by 2013. By incentivising local communities with control over local budgets, community planning becomes a meaningful and attractive prospect. Meanwhile Community Right to Challenge provides local communities with the ability to scrutinise the performance of local councils ensuring transparency and efficacy in public service delivery.

The Republic of Ireland:

The planning system of the Republic of Ireland is broadly similar to that of Northern Ireland, with a key difference being the right for third parties to initiate a planning appeal as well as applicants. This acts as a key way in which individuals and communities engage with planning decisions and as a consequence, other opportunities for participation are not as extensive as currently available in Northern Ireland. The main planning law is the Planning and Development Act 2000, which has been subject to a number of amendments, most recently through the Planning and Development (Amendment) Act 2010.

General lessons

Creating a forum for debate and dialogue outside of the planning process and beyond government is often an effective way to achieve change. The National Planning Forum represents a cross-sectoral voice on planning issues in England and is involved in a range of activities including networking, promotion of good practice and influencing policymaking. Here we see membership drawn from local government, government agencies, but also from a range of non-governmental organisations. No such body exists within Northern Ireland, but this would provide an opportunity to embed planning as a process that is about more than land use.

The role of professional organisations such as the Royal Town Planning Institute or the Royal Institute of Chartered Surveyors, or of non-governmental organisations should not be overlooked as planning reform is implemented. Their function in supporting the profession specifically in technical and professional areas or in the promotion and exchange of good practice has been important in the past. Their utility has been demonstrated recently within the ongoing reform programme in England and Wales.

5 Contentious Areas

While many of the issues associated with implementation, performance and decision making are dealt with through development planning and management process (see papers 1-3); there are a number of additional areas that are likely to raise further questions:

1. Collaboration and policy integration: Creating place is not just about land use, concern with space involves wider issues of well-being, such as health, education and wider social care. Pivotal to this will be the establishment of effective working relations with different interest groups to deliver locally based solutions.

How will these connections be defined, nurtured and maintained to avoid defensive reactions and strategies from individual councils? Is there a link between potential alliances and the new RPA boundaries? How will cross sectoral collaboration be guaranteed? Furthermore, many councils already collaborate under other policies, such as the NI Rural Development Programme. How will lessons already learned from collaborative activity be used? How will duplication of function be avoided? How will pre-existing relationships be protected?

2. Budgets and resources: this has relevance across the implementation of the Bill. A reduction in public expenditure has created a relatively austere financial environment that is likely to impact on the capacity of local government to deliver.

How will these cuts influence the implementation of the Bill? Other resource related contention may arise from the expanded expertise necessary within councils. Taking account of the expanded role of local government and associated pressures to perform while remaining attentive to quality standards, what resources will be available to ensure a smooth transition to the new system? Will sufficient resources and time be allocated for future consultations on subsidiary legislation and supplementary guidance? Finally, while the spirit of the Bill is about the transfer of powers, the reality remains that local areas are fairly limited in terms of directly influencing budgets. To what extent can processes of local development be implemented in the absence of locally held community funding?

3. Delivery and equality: This Bill has ambitious aspirations of inclusion and participation. However, given the history of community relations in Northern Ireland and of increased ethnic diversity and incidences of conflict associated with these relatively new and emerging communities, community relations is likely to remain a challenging and contested area. Although legislation such as Section 75 of the NI Act (1998) or the Race Relations (NI) Order (1997) provide the framework for equality of opportunity and positive community relations, widespread participation and engagement does not necessarily follow.

To what extent can an assessment be made that appropriate and effective community engagement has been achieved by local councils? How will the Department ensure that expectations are fulfilled?

[1] Department of Communities and Local Government, (2001) Planning: Delivering a Fundamental Change.

[2] Morphet, J., Gallent, N., Tewdwr-Jones, M., Hall, B., Spry, M. and Howard, R. (2007) Shaping and delivering tomorrow's places: Effective practice in spatial planning (EPiSP), London: RTPI, CLG, GLA and JRF.

[3] Morphet, J. (2011) Effective practice in spatial planning. Oxford: Routledge

[4] Independent Report from the Planning Reform Consultation Events 2009 Equality Statement:http://www.planningni.gov.uk/index/about/independent_report_from_the_plannng_reform_consultation_events_2009__f_.pdf

Northern Ireland Assembly

Research and Library Service
Briefing Paper

2 February 2011

Suzie Cave

Zoning for Social Housing

The following paper looks at the zoning of land for social housing in other jurisdictions, such as the Republic of Ireland, England and Scotland

Paper 000/00 NIAR 000-00

Republic of Ireland

Over the past decade, there has been legislative emphasis on increasing the supply of social housing. According to a 2004 report by the National Economic Social Council (NESC) the reduction in social housing provision in the 1980s and the sale of public land banks greatly reduced the role of the local authorities in the overall land and housing system. Increasing pressure of access and affordability prompted a revival of social housing provision in the 1990s. But that increase in supply was constrained by the high price of land. In that context, the adoption of Part V of the Planning and Development Act 2000 can be seen as an attempt to achieve a stronger supply of social and affordable housing.[1]

In the Planning and Development Act, 2000:

- Each planning authority is required to make a development plan every six years. A development plan is to 'set out an overall strategy for the proper planning and sustainable development of the area' and to include provisions for zoning, provision of infrastructure, conservation and protection of the environment and the integration of the planning and sustainable development of the area.
- A planning authority must ensure that 'sufficient and suitable land is zoned for residential use..to meet the requirements of the housing strategy and to ensure a scarcity of such land does not occur at any time during the period of the development plan'(s95 (1) (a))

- Strategic Development Zones (SDZs) are to facilitate more efficient and integrated planning of large-scale housing developments. These zones can be designated by the Government on foot of a Ministerial Order, where it is deemed to be of importance to the economic and social development of the state, and following relevant consultation with the relevant development agency or planning authority. (s167 (1))

The NESC argued that the core social housing stock had fallen to a level that was too low in comparison to the composition of the housing needs of the population[2]. The Council's overall view at the time was that the need for social housing was unlikely to diminish, given likely economic and social developments. One of the main concerns with the NESC was the scale of increase in the overall stock of social housing necessary to provide an adequate supply.[3] In fact the NESC suggested that increasing the social housing stock to 200,000 by the end of 2012 (an increase of 9000 units per year) would be an appropriate response to the demand.[4] The increase in the zoning of land was also highlighted in suggested policy approaches by the NESC, in order to remove its scarcity[5]

The current situation

The encouragement over the last decade on the zoning of land to increase the supply of social housing has clearly had an impact. According to an article by the Irish Independent, local authorities in the ROI rezoned enough land during the property boom, to build more than a million homes that were not needed. Councils rezoned more than 44,000 hectares of land for housing over the past ten years, an excess of 31,633 hectares.[6]

This is enough land to build almost 1.5 million houses and apartments[7], and based on information from the Department of the Environment, the Irish Independent has highlighted that only 400,000 units are actually needed up to 2016.

Questions have been raised over the complete lack of regulation that enabled councillors to deem vast tracts of land suitable for housing. An Bord Pleanala chairman John O'Connor criticised the extent of the rezoning, saying that excessive and unsustainable zoning of land had been a contributor to the property bubble and its aftermath.

According to NISRA, in their 2010 report 'A Haunted Landscape: Housing and Ghost Estates in Post -Celtic Tiger Ireland'[8]:

- Planning did not act as the counter-balance to the excesses of the building frenzy, zoning too much land and giving out too many planning permissions. The result was oversupply of houses across the whole country, with some counties particularly badly hit.
- Permissions and zoning have been facilitated by the abandonment of basic planning principles by elected representatives on the local and national stage and driven by the demands of local people, developers and speculators, and ambitious, localised growth plans framed within a zero-sum game of potentially being left behind with respect to development.
- Central Government not only failed to adequately oversee, regulate and direct local planning, but actively encouraged its excesses through tax incentive schemes. In fact the Report recommends that future tax incentive schemes should be evidence-informed, fully debated and have set targets.
- The process of land zoning should be evidence-based and zonings time delimited. Housing and patterns of development should be based on local need, not greed, and guided by the National Spatial Strategy and not localism and zero-sum comparisons.

In response to the crisis, in December 2010 the Environment Minister John Gormley enacted the Planning and Development (Amendment) Act 2010 which:

- Provides a stronger statutory link between Regional Planning Guidelines (RPGs) and the National Spatial Strategy (NSS), these must have regard to population targets which are to be updated by the Minister.
- Introduces the inclusion of an evidence-based “Core Strategy". These must take account of any policy in relation to national and regional population targets- RPGs are a key enabler for the preparation of Core Strategies because they translate overall national and regional population targets and estimates of future housing requirements into city and county council figures.
- The Core Strategy must also provide the policy framework for local area plans (LAPs) in relation to zoning at LAP level.
- The Core Strategy of local authority development plans must also outline the location, quantum, and phasing of future development, the detail of transport plans, retail development and policies for development in rural areas. This is to secure a strategic and phased approach to zoning.[9]

England

Housing Planning Policy Statement (PPS3) doesn’t specifically mention zoning as such but does outline the process by which suitable land sites for housing should be identified. It suggests that at the local level, Local Development Documents should set out a strategy for the planned location of new housing which contributes to the achievement of sustainable development. Local Planning Authorities should, working with stakeholders, set out the criteria to be used for identifying broad locations and specific sites taking into account[10]:

- The spatial vision for the local area (having regard to relevant documents such as the Sustainable Community Strategy) and objectives set out in the relevant Regional Spatial Strategy.
- Evidence of current and future levels of need and demand for housing as well as the availability of suitable, viable sites for housing development.
- The contribution to be made to cutting carbon emissions from focusing new development in locations with good public transport accessibility and/or by means other than the private car and where it can readily and viably draw its energy supply from decentralised energy supply systems based on renewable and low-carbon forms of energy supply, or where there is clear potential for this to be realised.
- Any physical, environmental, land ownership, land-use, investment constraints or risks associated with broad locations or specific sites, such as physical access restrictions, contamination, stability, flood risk, the need to protect natural resources e.g. water and biodiversity and complex land ownership issues.
- Options for accommodating new housing growth to include, for example, re-use of vacant and derelict sites or industrial and commercial sites for providing housing as part of mixed-use town centre development, additional housing in established residential areas, large scale redevelopment and re-design of existing areas, expansion of existing settlements through urban extensions and creation of new freestanding settlements.
- Accessibility of proposed development to existing local community facilities, infrastructure and services, including public transport. The location of housing should facilitate the creation of communities of sufficient size and mix to justify the development of, and sustain, community facilities, infrastructure and services.

- The need to provide housing in rural areas, not only in market towns and local service centres but also in villages in order to enhance or maintain their sustainability. This should include, particularly in small rural settlements, considering the relationship between settlements so as to ensure that growth is distributed in a way that supports informal social support networks, assists people to live near their work and benefit from key services, minimise environmental impact and, where possible, encourage environmental benefits.
- The need to develop mixed, sustainable communities across the wider local authority area as well as at neighbourhood level.

A key objective is that Local Planning Authorities should continue to make effective use of land by re-using land that has been previously developed:

- The national annual target is that at least 60 per cent of new housing should be provided on previously developed land. This includes land and buildings that are vacant or derelict as well as land that is currently in use but which has potential for re-development.
- When identifying previously-developed land for housing development, Local Planning Authorities and Regional Planning Bodies will, in particular, need to consider sustainability issues as some sites will not necessarily be suitable for housing. There is no presumption that land that is previously-developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed.
- At the regional level, Regional Spatial Strategies should set a target for the proportion of housing development that will be on previously-developed land over the plan period.
- At the local level, Local Development Documents should include a local previously-developed land target and trajectory (having regard to the national and regional previously-developed land target in the Regional Spatial Strategy) and strategies for bringing previously-developed land into housing use.[11]

Scotland- Planning for affordable local housing

Zoning more land

According to the Committee for Rural Affairs and Environment councils in Scotland have some limited powers to plan specifically for affordable local housing. The Committee wished to ascertain how these powers were being applied and whether giving councils any extra powers could add to their effectiveness.[12]

A developer giving evidence to the Committee observed that one way to make housing cheaper would be to zone more land for it.[13] The Chief Planner indicated that the evidence for it was not entirely clear-cut[14] and that land designated for housing will not always end up being used for this purpose. In addition, as witnesses from the social rented sector pointed out, social landlords are generally at a disadvantage against commercial developers in any situation where land is sold in a free market. This would presumably hold true even where land prices fell because of an increased supply. Zoning more land for housing is therefore not a panacea and is not without potential disadvantages (land being a finite resource).

In response to this the Committee stated that they “would encourage councils to zone more land for housing, if councils consider that they can do so without detriment to other important land-use priorities. It is unclear whether zoning more land would, in itself, make any more than a marginal difference to house prices, but it should be seen as a necessary first step in the change in planning culture that the Committee considers is needed. Councils should continue to be

mindful, however, that their main priority in drawing up local plans should be to ensure that the most appropriate land is zoned for housing in the first place."

Zoning the right land

According to the Committee there appears to be no shortage of space in much of rural Scotland and yet there is a widespread perception that land for housing is hard to come by. The Committee has sought to examine this and is of the opinion that the solution is not simply to zone more land for housing, as there appear to be obstacles that prevent rural land that has been zoned for housing, actually being released for that use. For example:

There is evidence of land zoned for housing over decades in successive local plans remaining undeveloped, in some cases because the land was never apparently suitable or economically viable for housing in the first place.

Homes for Scotland, the representative body for the building industry told the Committee that there had been instances of councils designating land for housing, without first checking with utility providers whether the necessary infrastructure could be realistically provided there. It was only much further down the line, when developers were seeking to get projects to work, that such problems would become apparent.[15]

According to the Committee's Report 2009, the Highland Housing Alliance cited a report which stated that around "30 per cent of land zoned in local plans was unable to be developed, because either there were access and legal problems or the landowner simply did not want the land to be developed. The land might have been included in the plan without properly consulting the landowner to ask whether they were serious about moving it into development."

In fact the Committee suggested that it would be good practice for councils to carry out regular audits of land zoned for housing to ascertain whether it continues to be appropriately designated (or was inappropriately designated in the first place), and, if not, to re-designate it. This should be done independently of, and (the Committee would suggest) more frequently than, the process of revising local plans.

Zoned land and private landowners

There is no legal obligation on landowners to make land zoned for housing available for development. In practice, the attitude of local landowners towards development can have a huge effect on the availability of affordable housing. According to the Committee this is particularly the case where much of the land surrounding a community is concentrated in the hands of only a few people, or belongs to just one estate, as is often the case in rural Scotland.

The Committee has made clear that there is a mixed situation in Scotland, where some landowners form effective partnerships with other local housing stakeholders, working together to help secure affordable accommodation in areas of high need. Others, however, do not, to the extent even of allowing existing properties to lie empty and fall into disrepair rather than lease or sell them to local residents.[16]

As a general conclusion, however, the Committee has found that the lack of zoned land being made available for affordable development is one of the biggest difficulties facing the rural housing market.

[1] NESC, Housing in Ireland: Performance and Policy (2004) http://www.nesc.ie/dynamic/docs/NESCHousingReport.pdf (Pg 191)

[2] Ibid (Ch 3)

[3] Ibid (Ch 4)

[4] Ibid (Pg 152)

[5] Ibid (Pg 191)

[6] Irish Independent, 'Councils Zoned Land for Million Surplus Homes' www.independent.ie/national-news/councils-zoned-land-for-million-surplus-homes-2373654.html

[7] Far more than the suggested development in 2004 by the NESC of 200,000 by 2012.

[8] NISRA (2010) A Haunted Landscape: Housing and Ghost Estates in Post-Celtic Tiger Ireland http://www.nuim.ie/nirsa/research/documents/WP59-A-Haunted-Landscape.pdf

[9] For more information see DEHLG, Implementation of the Regional Planning Guidelines Best Practice Guidance (2010) (p.9) http://www.environ.ie/en/Publications/DevelopmentandHousing/Planning/FileDownLoad,1605,en.pdf

[10] PPS3:Housing http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement3.pdf (pg 14-16)

[11] For more information see PPS3:Housing http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement3.pdf

[12]See the Committee Report 2009 http://www.scottish.parliament.uk/s3/committees/rae/reports-09/rur09-05.htm#14

[13] Andy Pearson, Tweed Homes. (Scottish Parliament Rural Affairs and Environment Committee, Official Report, 25 June 2008, Col 888.) The witnesses from Homes for Scotland, the umbrella body for developers argued that if there was to be any chance of the Government meeting its ambitious medium-term target of 35000 new houses per year, much more land needs to be zoned in local plans. (Scottish Parliament Rural Affairs and Environment Committee, Official Report, 28 May 2008, Col 776. For more information see: http://www.scottish.parliament.uk/s3/committees/rae/reports-09/rur09-05.htm#_ftn51

[14] Scottish Parliament Rural Affairs and Environment Committee, Official Report, 25 June 2008, Col 857

[15]See the Committee Report 2009 http://www.scottish.parliament.uk/s3/committees/rae/reports-09/rur09-05.htm#14

[16] For more information on obstacles to releasing zoned land for development, and for possible incentives to release private land see the Committee Report (2009) (para 111 to 141). http://www.scottish.parliament.uk/s3/committees/rae/reports-09/rur09-05.htm#14

Northern Ireland Assembly

Research and Library Service
Briefing Paper

27 January 2011

Dr Ruth McAreavey (School of Planning, Architecture and Built Environment, QUB) and Suzie Cave (Research and Library)

Planning Reform Bill: Follow-up work from Research Briefing Sessions

The following paper gives further information requested during the briefings by Dr Ken Sterrett, Dr Geraint Ellis, and Dr Ruth McAreavey from the School of planning, Architecture and Civil Engineering at Queens University Belfast. This is in relation to the four research papers produced on behalf of Research and Library Services, on the draft Planning Reform Bill.

Paper 000/00 NIAR 000-00

Research and Library Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.
We do, however, welcome written evidence that relate to our papers and these should be sent to the Research & Library Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Many of these issues are about good practice and implementation on the ground. The following provides an overview of the legislation and suggests some additional websites that provide excellent resources and a range of guidance material.

1 The Community Infrastructure Levy

The Community Infrastructure Levy is a new levy that local authorities in England and Wales can choose to charge on new developments in their area. The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods want - for example new or safer road schemes, park improvements or a new health centre. The system is very simple. It applies to most new buildings and charges are based on the size and type of the new development.

If such a levy was considered it could:

- deliver additional funding for them to carry out a wide range of infrastructure projects that support growth and benefit the local community;

- give local authorities the flexibility and freedom to set their own priorities for what the money should be spent on - as well as a predictable funding stream that allows them to plan ahead more effectively;
- provide developers with much more certainty ‘up front’ about how much money they will be expected to contribute, which in turn encourages greater confidence and higher levels of inward investment;
- ensure greater transparency for local people, because they will be able to understand how new development is contributing to their community; and
- enable local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure the neighbourhood wants[1]

2 Leadership- The introduction of a Chief Planning Officer, as is the case in England + Scotland

The functions of the Chief Planner include helping local councils deliver their local plans for better housing and sustainable communities; ensuring the development of the skills and capacity of planning professionals and of planning careers more generally. One of the main functions arising from the role is the provision of non-statutory guidance and advice on issues that are enshrined in the legislation. These ‘planning circulars’ are used to explain policy and regulation more fully. Many are quasi-legislative and include a direction or requirement to take specific action. Letters are used to provide key communication between central and local government. Many circulars and letters include guidance on implementation of aspects of planning policy.[2]

For more information visit:
http://www.communities.gov.uk/planningandbuilding/planningsystem/circulars/

3 Performance management

The UK Localism Bill gives the community the right to challenge councils – leaves them open and directly accountable. This is about shifting power from central to local government and then outwards to civil society. Essentially if a group, organisation, partnership, etc. believe that local government are not delivering particular services or fulfilling key functions, then they can challenge the council. As part of the challenge they must demonstrate how they plan to deliver the services differently and more effectively. Clearly this raises questions of capacity in terms of the types of groups that would be positioned to challenge local government.

4 Localism Bill ‘community right to challenge’ - legal briefing

The Localism Bill, whose second reading in the House of Commons is scheduled for Monday 17 January 2011, includes a proposed right for civil society organisations to challenge the provision of services by local authorities.

The definition of ‘civil society organisations’, and the decision to exclude particular services from the right to challenge, would lie with the Secretary of State for Communities and Local Government. It is important to note that a successful challenge would not give the challenger the right to deliver those services.[3]

There is more discussion on right to challenge at these sites:
http://www.civilsociety.co.uk/finance/news/content/8071/localism_bill_right_to_challenge_applies_to_causal_communities_too ;

http://www.thirdsector.co.uk/news/Article/1041079/Right-challenge-voluntary-sector-says-Greg-Clark/;

http://www.ncvo-vol.org.uk/networking-discussions/discussions/bigger-picture/localism

The Localism Bill introduces a number of other measures that may be of interest to the NI Environment Committee, for instance requiring publication of senior officer salaries and of the provision of more detailed budgetary information.

'Tests of deliverability' and 'evidence of need'[4]

(This also touches on issues of implementation).

Effectiveness

Core strategies must be effective: this means they must be:

- deliverable;
- flexible; and
- able to be monitored.

Deliverability

Core Strategies should show how the vision, objectives and strategy for the area will be delivered and by whom, and when. This includes making it clear how infrastructure which is needed to support the strategy will be provided and ensuring that what is in the plan is consistent with other relevant plans and strategies relating to adjoining areas. This evidence must be strong enough to stand up to independent scrutiny.

Therefore it should:

- be based on sound infrastructure delivery planning (see para 4.8 above);
- include ensuring that there are not regulatory or national policy barriers to the delivery of the strategy, such as threats to protected wildlife sites and landscapes or sites of historic or cultural importance;
- include ensuring that partners who are essential to the delivery of the plan such as landowners and developers are signed up to it. LPAs should be able to state clearly who is intended to implement different elements of the strategy and when this will happen; (These issues are handled through early involvement of key stakeholders in the preparation of options for the plan.) and
- be coherent with the core strategies prepared by neighbouring authorities, where cross boundary issues are relevant.

Flexibility

A strategy is unlikely to be effective if it cannot deal with changing circumstances.

Core strategies should look over a long time frame – 15 years usually but more if necessary. In the arena of the built and natural environment many issues may change over this time. Plans should be able to show how they will handle contingencies: it may not always be possible to have maximum certainty about the deliverability of the strategy. In these cases the core strategy should show what alternative strategies have been prepared to handle this uncertainty and what

would trigger their use. Authorities should not necessarily rely on a review of the plan as a means of handling uncertainty.

Monitoring

A core strategy must have clear arrangements for monitoring and reporting results to the public and civic leaders. Without these it would be possible for the strategy to start to fail but the authority and indeed the public would be none the wiser. Monitoring is essential for an effective strategy and will provide the basis on which the contingency plans within the strategy would be triggered. The delivery strategy should contain clear targets or measurable outcomes to assist this process.

Annual Monitoring Report (AMR) content

An AMR should:

- Report progress on the timetable and milestones for the preparation of documents set out in the local development scheme including reasons where they are not being met.
- Report progress on the policies and related targets in local development documents. This should also include progress against any relevant national and regional targets and highlight any unintended significant effects of the implementation of the policies on social, environmental and economic objectives. Where policies and targets are not being met or on track or are having unintended effects reasons should be provided along with any appropriate actions to redress the matter. Policies may also need to change to reflect changes in national or regional policy.
- Include progress against the core output indicators including information on net additional dwellings (required under Regulation 48(7)7) and an update of the housing trajectory to demonstrate how policies will deliver housing provision in their area.
- Indicate how infrastructure providers have performed against the programmes for infrastructure set out in support of the core strategy.

AMRs should be used to reprioritise any previous assumptions made regarding infrastructure delivery. Guidance on the approach to developing monitoring frameworks and producing annual monitoring reports is set out in the Local Development Plan[5]

Tests of soundness

The new spatial planning system requires the Development Plan Document (DPD) to demonstrate that its core strategy is sound. The nine tests of soundness are grouped under the headings of ‘procedural’, ‘conformity’ and ‘coherence, consistency and effectiveness’ as set out in PPS12 (ODPM, 2004: para. 4.24). Box 2.2 provides a summary of these ‘tests.’

Box 2.2: The Nine Tests of Soundness:

Procedural tests

(1) The Development Plan Document (DPD) has been prepared in accordance with the Local Development Scheme (LDS);

(2) The DPD has been prepared in compliance with the Statement of Community Involvement (SCI), or with the minimum requirements set out in the regulations where no SCI exists;

(3) The plan and its policies have been subjected to Sustainability Appraisal.

Conformity tests

(4) It is a spatial plan which is consistent with national planning policy and in general conformity with the Regional Spatial Strategy (RSS) for the region or the Spatial Development Strategy (SDS) if in London, and it has properly had regard to any other relevant plans, policies and strategies relating to the area or to adjoining areas;

(5) It has had regard to the authority's Community Strategy.

Coherence, consistency and effectiveness tests

(6) The strategies/policies/allocations in the plan are coherent and consistent within and between DPDs prepared by the authority and by neighbouring authorities, where cross boundary issues are relevant;

(7) The strategies/policies/allocations represent the most appropriate in all the circumstances, having considered the relevant alternatives, and they are founded on a robust and credible evidence base;

(8) There are clear mechanisms for implementation and monitoring;

(9) It is reasonably flexible to enable it to deal with changing circumstances.[6]

5 Joint community work – Localism Bill

Joint working also arises from additions to Planning and Compulsory Purchase Act 2004 through Joint Committees who become the statutory planning authority for that area.

Legislative Background

Part 2 of the 2004 Act provides for local development plans in England. Under the system, local planning authorities are required to prepare a local development scheme which is in effect a project plan" for the preparation of local development documents. The scheme identifies which local development documents will be produced, in what order and when. Local development documents consist of development plan documents and supplementary plan documents. Development plan documents, taken as a whole, together with the relevant regional spatial strategy (RSS) under Part 1 of the Act constitute the development plan for the area. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

Section 29 of the 2004 Act makes provision for one or more local planning authorities to agree with one or more county councils to establish a joint committee. The Secretary of State may by order constitute a joint committee to be the local planning authority for the purposes of Part 2 of the 2004 Act for such areas and in relation to such matters as the constituent authorities agree.

The joint committee established by this Order will exercise the functions of a local planning authority under Part 2 of the 2004 Act in relation to the preparation, submission and revision of certain local development documents specified in the local development scheme submitted to the Secretary of State on 16 March 2007, a joint local development scheme and local development documents specified in the joint local development scheme.[7]

Legislation can be viewed at
http://www.statutelaw.gov.uk/content.aspx?LegType=All&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&PageNumber=0&NavFrom=0&parentActiveTextDocId=973677&ActiveTextDocId=973678&filesize=6224

Also of possible interest to the Environment Committee:

Neighbourhood Planning Vanguards scheme

Local authorities in England are invited to apply to become Neighbourhood Planning Vanguards. They will be pioneers for this process and help push the boundaries of what it can achieve. We are looking for around a dozen places - a range of rural and urban, prosperous and in need of regeneration - which will give us the greatest insight into how neighbourhood planning will work in practice.

The Neighbourhood Planning Vanguards scheme has been instigated by the Department for Communities and Local Government in advance of the new statutory provisions for neighbourhood planning being introduced through the Localism Bill. The Bill is expected to receive Royal Assent in late 2011. A key requirement of the Neighbourhood Planning Vanguards scheme is that the development of proposals involves a community group or a parish council. All local planning authorities in England are invited to apply.

The proposals developed through the Neighbourhood Planning Vanguard scheme may vary in their scope and complexity, or in the size of the area covered. The proposals should involve one or more of the following and relate to part of a local planning authority's area:

- a draft development plan document
- a draft local development order under section 61A of the Town and Country Planning Act 1990.

All Neighbourhood Planning Vanguards will be asked to liaise closely with the Department's staff throughout the preparation of any plan or order.

The requirements of the scheme:

The Neighbourhood Planning Vanguards scheme aims to follow, as closely as possible, the procedures for neighbourhood planning being established through the Localism Bill. It therefore expects the local planning authorities participating in this scheme to, as far as practicable:

- work closely with a parish council or community group so as to enable that group or council to prepare a draft plan or order;
- provide the parish council/community group with reasonable guidance and technical assistance to facilitate their preparation of a plan or order; and
- appoint a suitably qualified professional to undertake an independent examination of any proposed order (as they would need to in the case of a development plan document which they believe should proceed to independent examination).

In addition, though not a requirement of funding, it has suggested that local planning authorities should undertake a referendum on the proposed neighbourhood plan or order.

Given that the relevant provisions in the Localism Bill are not yet in force, local planning authorities will need to operate within the restraints of the current system for producing development plan documents and local development orders.

Under this scheme, a grant of up to £20,000 will be made available towards the cost of the plan and orders within each neighbourhood.[8]

6 Implementation (examples elsewhere and also strategic partnerships in other jurisdictions).

(a) Community planning: the following pilot project that is being led by the NI Rural Development Council may be of particular interest to the Committee.

The Rural Development Council (RDC), in association with DCP Strategic Communication, development planning partnerships and Streets-UK, developed a proposal to implement a community planning pilot project in the Fermanagh and Omagh District Council areas.

The pilot aims to:

- Build community and voluntary sector capacity through training and other programme elements to allow these sectors to engage fully in the community planning process
- Bring the community and voluntary sectors around the table with the statutory and private sectors to decide how and where resources should be allocated
- Create a draft community plan

The initial proposal was to pilot a community planning process and develop a draft Community Plan in the Fermanagh / Omagh proposed new council cluster area over an 18-month period. Given the current status with RPA it now looks unlikely that the two Councils will be clustered therefore the consortium is consulting and working with both Councils to find the most beneficial way to collaborate and implement the pilot.

Features of the Pilot:

- Awareness Raising
- Inclusiveness
- Consultation & Engagement across all sectors – community / voluntary, public, private
- Training & Capacity Building
- Communications – inform, educate, call to action – range of tools
- Sharing best practice & learning

The programme aims to promote a cross-disciplinary model using best practice in community development, community relations, communications and formal planning processes, by encouraging the following:

- Establishment of a representative Community Planning Forum - CPF (forerunner to a Community Planning Partnership) involving the public, private and VCS (voluntary and community sector)
- The development of a draft community plan

- Building capacity within the VCS to engage in the community planning process pre and post RPA
- Establishing best practice and learning from within and for the VCS and other sectors on community planning

(b) PPS 12

Engagement with Delivery Stakeholders

Local authorities should undertake timely, effective and conclusive discussion with key stakeholders on what option(s) for a core strategy are deliverable.

Key stakeholders should engage in timely and effective discussions with local planning authorities on the deliverability of options for core strategies.

It is essential that stakeholders key to the plan's delivery are engaged early in the production of the core strategy. Early engagement with stakeholders may enable potential impediments to the plan to be identified and overcome. There is no point in proceeding with options for the core strategy which cannot be delivered as a result of failure to obtain the agreement of key delivery agencies. Stakeholders also need to be engaged earlier to avoid late and unexpected representations emerging at the end of the process which might render the plan unsound and lead to lengthy delays in the delivery of a robust planning framework for the area. Local authorities are strongly encouraged to seek out major landowners and developers and engage them fully in the generation and consideration of options. This should help ensure that the core strategy is deliverable.

The relevant delivery agencies include:

- Regulatory agencies: The Environment Agency, English Heritage, Natural England.
- Physical infrastructure delivery agencies: highways authority, Highways Agency, utilities companies, Network Rail, public transport providers, airport operators.
- Social infrastructure delivery agencies: local authority education dept, social services.
- Primary care trust, acute hospital trusts, strategic health authority, the Police, charities/NGOs.
- Major landowners – including the local authority itself and government departments and agencies.
- House builders, the New Homes Agency and other developers.
- Minerals and waste management industries.

[1] For more information visit: http://www.communities.gov.uk/planningandbuilding/planningsystem/communityinfrastructurelevy/

[2] Current Chief Planner, England : Steve Quartermain http://www.lgcandnlgn-planning.com/programme/main-conference/putting-the-new-planning-policy-in-a-local-context-what-do-changes-to-the-system-mean-on-the-ground/steve-quartermain

[3] See also separate pdf for legal briefing published by Hempsons law firm, who specialise in matters relating to the voluntary and community sector.From

http://www.navca.org.uk/localvs/infobank/ilpunews/communityrighttochallenge.htm , accessed 24.01.11)

[4] Excerpt from PPS 12 Local Spatial Planning, pp. 17-18 http://www.communities.gov.uk/documents/planningandbuilding/pdf/pps12lsp.pdf

[5]See Framework Monitoring: A Good Practice Guide (ODPM 2005), Also for more information see PPS 12 Local Spatial Planning, pp. 17-18 available at http://www.communities.gov.uk/documents/planningandbuilding/pdf/pps12lsp.pdf

[6] Taken from Measuring the Outcomes of Spatial Planning in England RTPI& DCLG 2008, available at www.rtpi.org.uk/download/4357/Measuring-Outcome-Main-P4.pdf)

[7] From http://www.legislation.gov.uk/uksi/2008/1572/pdfs/uksiem_20081572_en.pdf, accessed 24.01.11)

[8] http://www.communities.gov.uk/planningandbuilding/planningsystem/neighbourhoodplanningvanguards/

7 January 2011

Suzie Cave

‘Climate Change’ within planning legislation

The following paper looks at the inclusion of climate change in planning legislation in other jurisdictions such as England, Scotland and the Republic of Ireland.

There does not appear to be any provisions covering climate change in planning legislation in Scotland i.e. the Planning etc. (Scotland) Act 2006, and in the ROI i.e. the Planning and Development Act 2000. However, in England, climate change is mentioned in the following legislation in relation to planning:

to the Research & Library Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

England: Planning Act 2008

This is an Act to establish the Infrastructure Planning Commission and make provision about its functions; to make provision about the authorisation of projects for the development of nationally significant infrastructure; to make provision about town and country planning; and to make provision about the imposition of a Community Infrastructure Levy.[1]

Aspect of Act	Clauses
National policy statements (Part 2)	5 (7) A national policy statement must give reasons for the policy set out in the statement (8) The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change
National policy statements (Part 2)	10 Sustainable development (1) This section applies to the Secretary of State's functions under sections 5 and 6. (2) The Secretary of State must, in exercising those functions, do so with the objective of contributing to the achievement of sustainable development. (3) For the purposes of subsection (2) the Secretary of State must (in particular) have regard to the desirability of— (a) mitigating, and adapting to, climate change; (b) achieving good design.
Changes to existing planning regimes (Part 9 ch2)	Climate change 181 Regional spatial strategies: climate change policies (1) Section 1 of PCPA 2004 (regional functions: regional spatial strategies) is amended as follows. (2) After subsection (2) insert— "(2A) The RSS must include policies designed to secure that the development and use of land in the region contribute to the mitigation of, and adaptation to, climate change." (3) In subsection (3) for "subsection (2)" substitute "subsections (2) and (2A)". 182 Development plan documents: climate change policies In section 19 of PCPA 2004 (preparation of local development documents) after subsection (1) insert— "(1A) Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change."

The climate Change Act and PPS1

The Climate Change Act prompted a look to the planning system to deliver a large effort to meet the emission targets. As a result, the government published a supplement to PPS1 'Planning Policy Statement: Planning and Climate Change, Supplement to Planning Policy Statement 1' (2007)' dealing with this.[2]

PPS1 sets out the overarching planning policies on the delivery of sustainable development through the planning system. The PPS on climate change supplements PPS1 by setting out how planning should contribute to reducing emissions and stabilising climate change and take into account the unavoidable consequences.

The policies in this PPS should therefore be fully reflected by regional planning bodies in the preparation of Regional Spatial Strategies (p.12 of supplement paper), the Spatial Development Strategy (p.10), and by planning authorities in the preparation of Local Development Documents (p.14). Similarly, applicants for planning permission should consider how well their proposals for development contribute to the Government's ambition of a low-carbon economy and how well

adapted they are for the expected effects of climate change. The policies in this PPS are capable of being material to decisions on planning applications.

[1]Planning Act 2008 http://infrastructure.independent.gov.uk/wp-content/uploads/2009/08/ukpga_20080029_en.pdf

[2] DCLG,(2007) Planning Policy Statement: Planning and Climate Change, Supplement to Planning Policy Statement 1 http://www.communities.gov.uk/documents/planningandbuilding/pdf/ppsclimatechange.pdf

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Suzie Cave

Simplified Planning Zones

Introduction

Simplified planning zones (SPZs) are simply a form of deregulation which achieve their effect by granting planning permission for specified types of development. Conforming schemes can go ahead without a separate planning application being made, thus providing speed and certainty for all parties. The following paper will look at how simplified planning zones operate in other jurisdictions.

England

The legal basis for the creation of Simplified Planning Zones is to be found in Sections 82 to 87 and Schedule 7 of the Town and Country Planning Act 1990, as amended by Schedule 5 to the Planning and Compensation Act 1991.

Subordinate legislation and guidance on SPZs is also found in the Town and Country Planning (Simplified Planning Zones) (Excluded Development) Order 1987 as amended by SI 1996 No. 396, the Town and Country Planning (Simplified Planning Zones) Regulations 1992, and PPG5: Simplified Planning Zones issued by the Government in November 1992. In addition, the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 contain provisions relating to Simplified Planning Zones.

PPG5 'Simplified Planning Zones' (1992) has since been replaced, under the Planning and Compulsory Purchases Act (2004) s45, by the new PPS4[1]. PPS4 sets out the Government's comprehensive policy framework for planning for sustainable economic development in urban

and rural areas, which includes the use of simplified planning zones[2]. PPG5 has been reissued as practice guidance alongside PPS4.[3]

Procedure for SPZ schemes

According to PPG5:[4]

- Local planning authorities have a statutory duty to keep under review the parts of their area where a SPZ scheme is desirable.
- According to the Secretaries of State, authorities should review regularly the scope for SPZ schemes in their areas.
- Anyone can ask a local planning authority to make (or alter) schemes. If the authority refuses, or fails to make a decision within three months, the applicant can require the request to be referred to the Secretary of State, who may direct the authority to make (or alter) the scheme.
- Should an authority not feel able to grant permission to a request for a SPZ scheme, it should provide the applicant with a full statement of reasons.
- SPZs will normally be most appropriate in older urban areas where there is a particular need to promote regeneration and to encourage economic activity. Old industrial sites and sites in single ownership may be particularly suitable for SPZ treatment.
- They may be useful in areas where design flexibility is to be encouraged, such as an extensive tourist operation where frequent investment in new attractions is needed.
- Where sites suitable for SPZ treatment straddle local planning authority boundaries, it is open to the authorities concerned to prepare a scheme jointly.

Format of SPZ schemes

- A SPZ scheme consists of a map and a written statement, and such diagrams, illustrations and descriptive matter as the local planning authority think appropriate.
- A SPZ scheme written statement must specify:

a) the development or classes of development permitted by the scheme;

b) the land in relation to which permission is granted; and

c) any conditions, limitations or exceptions subject to which it is granted.

Duration

A scheme lasts for a total of 10 years. However, any conforming development started within 10 years of making the scheme does not require a separate planning application. There is nothing to prevent local planning authorities from designating a new SPZ covering the same area of land at that stage.

Relationship with Development Plans

- The authority should indicate in the SPZ written statement the relationship of their SPZ proposals to those of the development plan for the area.

- If it is intended that planning permission for a particular development will be granted by making a SPZ scheme ,it should be indicated in the plan's reasoned justification.
- Whilst there are separate procedures for preparation of development plans and SPZs, it may help to process, in the initial stages, an SPZ scheme simultaneously with a development plan, where the latter is making new provision for development (e.g. a new industrial park).
- SPZs should, in any event, be closely related to plan policies and proposals and thereby reflect the social, economic and environmental considerations to which development plans must have regard. Where, exceptionally, proposals depart from the plan in such a way as significantly to prejudice its implementation, a local inquiry will be appropriate (see Annex B, paragraph 3.18).

Compliance with other legislative controls

It should be noted that an SPZ grants only permission, and that all other legislative controls must be complied with, these include the following:

- Environmental health legislation and other environmental protection legislation such as that directly dealing with noise and pollution control;
- Consent to display advertisements;
- Consent for the stopping or diversion of a highway or footpath;
- Approval under the Building Regulations; and
- Authority for any highway works which are to be carried out within the boundaries of the public highway.

Should it be the case that, at the date of adoption, there are no listed buildings, ancient monuments, conservation areas or tree preservation orders located within the area of the SPZ, and designations are subsequently made within the lifetime of the SPZ, development involving any of these would not fall within the SPZ permission, and planning and other associated consents would be required in the normal way.

In respect of environmental assessment, SPZs do not require environmental assessment (EA) under the Environmental Assessment Regulations 1999. A SPZ cannot include development which would require an EA; such types fall under Schedule 1 of the 1999 Regulations. Development of a type listed under Schedule 2 will require EA only if the particular project is likely to have significant effects on the environment due to its nature, size or location. In these cases separate planning applications accompanied by an environmental statement would need to be submitted to the local authority.

Selection of Areas

- There are no restrictions on the size of SPZs.
- SPZs can grant permission for a wide range of major developments or for just one predominant use. Or they might permit a wide range of minor developments including changes of use, extensions and infill development.
- SPZs may include land in local authority or Crown ownership. The arrangements for development by local authorities, or development on their land (described in DOE Circular 19/92 (WO39/92)) do not apply to SPZs. In the case of Crown land, the Crown - like the owners of other land in the area of proposed scheme - must be consulted.

- Areas to be excluded: National Parks, the area of the Broads Authority, Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest, approved green belts, conservation areas, or any other area excluded by an order made by the Secretary of State. Other land of significant conservation, landscape, recreational and agricultural value should be avoided.
- SPZ can be classed as either: specific–gives permission which specifically itemises the types of development permitted and the limit imposed, or general - gives a general or wide permission covering almost all types of development but listing the exceptions.

Possible Uses

- Large old industrial areas or estates;
- New employment areas;
- New residential areas;
- Large single ownership sites;
- Redevelopment sites such as large vacant or underused sites; and
- Land requiring provision of service, such as land in association with roads and services e.g. water supply and sewerage facilities.

For more information see PPG5 'Simplified Planning Zones which outlines the general nature and role of SPZs. Detailed guidance on the 'Use, Content and Effect of SPZs' is given in Annex A, while 'Guidance on SPZ Procedures' is given in Annex B.[5]

Scotland

Section 21A of the Town and Country Planning (Scotland) Act 1972 obliges planning authorities to consider the making of simplified planning schemes. Section 21 A to 21 E, and Schedule 6A of the 1972 Act made provision with regard to these schemes and the SPZ (Scotland) Regulations 1987 established the more detailed procedural requirements. Section 59 and Schedule 11 of the Planning and Compensation Act 1991 (the 1991 Act) made provision for streamlining the procedures under the 1987 Regulations. The relevant provisions are now being implemented, through the Simplified Planning Zone (Scotland) Regulations 1995, which replace the 1987 Regulations.

The guidelines for SPZs appear in Circular 18/1995 'Simplified Planning Zones under the Planning and Compensation Act 1991. These guidelines under Circular 18 are directly similar to the guidelines under PPG5 in England.[6]

Modifications made in 1995

The new procedures introduced in the guidelines in 1995 (Circular 18/1995) continue to provide for consultation on a proposed scheme, notification, consideration of objections, modification of proposals, and for the involvement of the Secretary of State. The main change in the procedure comes in the consideration of objections; there will no longer be a statutory requirement to have a public local inquiry to consider objections. A planning authority will be able to consider any objections themselves, or appoint a person to consider the objections for them, should they consider a full public local inquiry would not be appropriate.

In streamlining the adoption procedures, the Secretary of State has removed the obstacle which has been cited as the main disincentive for the use of SPZs. In line with Section 21 A of the 1972

Act, planning authorities should now consider whether SPZ schemes can be used to deregulate the planning system within their area and keep this matter under review.

Annex 1 of the Circular offers detailed guidance on the possible uses and advantages of SPZ Schemes; and Annex II outlines the detailed procedures required for adopting or altering such SPZ Schemes.

Environmental Assessment

Similar to the conditions in England, SPZ schemes themselves do not require environmental assessment (EA) under the Environmental Assessment (Scotland) Regulations 1998. Consequently, the SPZ Regulations 1995 prescribe that a SPZ cannot include development which would require an EA. Additionally, the Town and Country Planning (Simplified Planning Zones) (Scotland) Order 1995 provides that no SPZ scheme shall have effect to grant planning permission for development requiring EA. Development which fails within any of the descriptions included in Schedule 1 to the 1998 Regulations will always require EA; and, therefore, such projects must be excluded from SPZ schemes. Development of a type listed in Schedule 2 to the 1998 Regulations will require EA only if the particular project is likely to have significant effects on the environment due to such factors as its nature, size or location. Planning authorities should ensure that such developments are also excluded from any SPZ scheme.

Republic of Ireland

Simplified planning zones are known in the RoI as strategic development zones'. A 'strategic development zone' is defined as a site or sites for which a planning scheme has been made and is in force. SDZs are dealt with under Part IX of the Planning and Development Act 2000[7], which states the following:

Designation and Acquisition of sites

The Government, on foot of a proposal by the Minister for the Environment and Local Government, may designate a particular site or sites for the establishment of a SDZ. The types of development for which a zone may be established include industrial, residential or commercial development which is of importance in a national context.

The Minister, in advance of putting a proposal to the Government to designate a site, must consult with any relevant development agency or local authority.

The order must specify-

- The particular development agency or agencies which will be responsible for the preparation of the draft planning scheme.
- The type or types of development which are to be facilitated by the establishment of the SDZ. Under subsection (5), development which is ancillary to or necessary for the specified types of development is deemed to be included in the order, even if it is not expressly stated to be included by the Government. This includes, for example, necessary infrastructural works to permit the development to proceed.
- The reasons why the type or types of development have been specified and the site or sites have been designated by the Government.

A draft planning scheme must be prepared for the designated site or sites within 2 years of the order being made, therefore an order has an effective life of 2 years. The Government may amend or revoke an order designating a site for the establishment of a SDZ.

Provision enables for land to be acquired (including compulsory acquisition) by the planning authority, or agreements to be made by a development agency to facilitate the establishment of a SDZ.

The planning scheme for SDZs

The draft planning scheme consists of:

- A written statement and a plan indicating how the site is to be developed.
- The types of development to be permitted on the site and their extent and give proposals in relation to design, minimisation of adverse effects on the environment and ancillary infrastructural, community and other development.
- Information on the likely significant environmental impacts of implementing the scheme. This must refer to the environmental impact statement under section 177, insofar as that is relevant to the detail of the scheme.
- Where the draft planning scheme relates to residential development, it must be consistent with the housing strategy prepared by the planning authority in accordance with Part V of the Act. If land within a SDZ is to be used for residential development, a specific objective reserving land for the provision of social and affordable housing must be included in the draft scheme.
- In the event that a designated site, or sites, are situated in two or more planning authorities' areas, the functions stated under Part IX, including the approval of the making of the planning scheme, may be performed jointly by the authorities, or performed by one, having obtained the consent of the other authority or authorities in advance of making a scheme.

Submission of the draft planning scheme

A planning authority is to follow the following procedures when a draft planning scheme is submitted:

- All draft planning schemes must be sent to –
- the regional authority within whose region the site or sites to which the draft planning scheme applies is or are situated;
- any local authority whose area is within or contiguous to the site or sites to which the draft planning scheme applies; and
- any planning authority whose area is contiguous to the site or sites to which the draft planning scheme applies.
- The planning authority must also place a notice of the preparation of the draft planning scheme in one or more newspapers circulating in its area. The notice must state that a copy of the draft planning scheme is available for inspection at a particular location or particular locations at particular times. The scheme must be available for inspection for a minimum of 6 weeks.
- Not more than 12 weeks after the giving of notice of the preparation of a draft planning scheme, the manager of the planning authority must prepare a report for submission to

the members of the authority on any submissions or observations received. Members of the planning authority must consider both the draft planning scheme and the report of the manager.

- The scheme must be made 6 weeks from the date of submission of the scheme and the manager's report to the members of the planning authority – any requests for variation must be resolved within the 6 weeks.
- The scheme will come into force after a further 4 weeks. However, if an appeal against the decision of the planning authority is made to An Bord Pleanála (the Board), it will not come into force until the appeal is determined.
- Notification must be made within 6 working days of the decision of the planning authority on the scheme, to the Minister, the Board, the authorities (listed in the section above) and any person who made a submission or observation. A notice must also be published in local newspapers.
- The development agency involved in the preparation of the draft planning scheme, or any person who made submissions or observations in respect of the draft planning scheme, may appeal the decision of the planning authority on the scheme to the Board.
- The Board must consider the appeal and make a decision within 18 weeks. If a scheme is approved, notice of the approval must be published in local newspapers.
- When considering the draft planning scheme, the planning authority or the Board must consider the proper planning and sustainable development of the area, and also -
- the provisions of the development plan;
- the provisions of the housing strategy (see also section 168(4));
- the provisions of any special amenity area order or the conservation or protection of any European site;
- if appropriate, the effect on any neighbouring land to the land to which the scheme relates;
- if appropriate, the effect the scheme would have on any place outside the area of the planning authority; and
- if appropriate, any other consideration relating to development outside the area of the planning authority, including any area outside the State.
- A planning scheme is deemed to be part of the development plan for the area, until revoked. Any provision of the development plan which is contrary to the terms of the planning scheme is superseded to the extent necessary to fulfil the terms of the scheme. (sub-section 9)

Revocation of planning scheme

- The planning authority, having received consent from the development agency concerned, may amend or revoke a planning scheme.
- Should a planning authority decide to amend a scheme, the planning authority should treat it as a draft amendment and carry out the procedures as stated in section 169 (see above section 'Submission of the draft planning scheme').
- The Planning authority must publish the revocation in local newspapers.
- Permissions granted in SDZs can be limited or extended, using the same powers for all permissions, under section 40 and 42 respectively.

[1] PPS4 replaces Planning Policy Guidance 4: Industrial, Commercial Development and Small Firms (PPG4) and Planning Policy Guidance 5: Simplified Planning Zones (PPG5) both published on 10 November 1992; Planning Policy Statement 6: Planning for Town Centres (PPS6) published on 21 March 2005; and the economic development sections of Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) published on 3 August 2004.

[2]
PPS4 http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement4.pdf

[3] Ibid p. 24

[4] See
PPG5 http://www.leics.gov.uk/index/environment/planning/community_services_planning/planning_general/links.htm

[5] PPG5 Simplified Planning Zones
(1992) http://www.leics.gov.uk/ppg05_simplified_planning_zones_1992.pdf

[6] Circular 18/1995 'Simplified Planning Zones'
(Scotland) http://www.scotland.gov.uk/Publications/1995/08/circular-18-1995#a1

[7] Planning and Development Act
2000 http://www.irishstatutebook.ie/2000/en/act/pub/0030/index.html

16 February 2011

Suzie Cave

Planning Systems and Vulnerable Group Engagement

Research and Library Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.
We do, however, welcome written evidence that relate to our papers and these should be sent to the Research & Library Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Introduction

This papers looks at the how vulnerable groups are represented in the planning systems of other jurisdictions i.e. England, Scotland, Wales and Republic of Ireland. Local authorities in all four jurisdictions have developed a range of processes and structures to enable community engagement. In most cases these are supported and facilitated by community planning support or networking organisations in the community and voluntary sectors, and this paper will also look at some examples of this.

Scotland

The 1994 Local Government Act introduced a Statutory right of consultation for Community Councils. According to information supplied by Community Places[1], there are 1200 Community Councils across Scotland. Each receives a weekly list of planning applications and the Planning Authority must consult with them. There is an agreed procedure in place in each case.

The Community Councils receive professional planning advice and support from Planning Aid Scotland (PAS) which also provides free advice to disadvantaged people. It employs 11 staff and is funded by the Scottish Executive's Planning Division.

PAS offers:

Advice

By providing a free, impartial advice service to people to aid understanding and assist engagement with the planning system. The service is provided by volunteers, who are all fully qualified and experienced planners based throughout Scotland.

Advice is given on any planning issue, from home extensions, wind farms, schools, public spaces, new shopping centres and roads, how to support or object to planning applications, how to get planning permission and how to get involved with Development Plans. It also deals with questions about planning appeals, enforcement etc.

Training

PAS offers a range of training programmes for a range of people from those with no experience in planning to those who are experts in the field (communities, developers and professionals). Training is delivered by professional planners, communications specialists, legal experts, community artists and others, on weekdays and Saturdays.

Training and advice service leaflets have been circulated all over Scotland to planning offices, libraries, community venues, Citizens Advice Bureaux, community groups, MSP constituency offices etc.

Education

PAS offers education programmes for young people aged 8-25 years. These projects are specially designed for all young people, from primary school age through to young adults. For more information visit http://www.planningaidscotland.org.uk/page/122/Education.htm

Mentoring

The Planning Mentoring Scheme is a new programme, funded by the Big Lottery Fund[2] and Supporting Voluntary Action (SVA)[3], linking Planning Aid for Scotland (PAS) with Community and Voluntary Service (CVS)[4] organisations and third sector “Interfaces". This provides planning advice and guidance to community led development projects across rural Scotland.

Key to the Planning Mentoring Scheme is the PAS role in helping empower people in an independent and impartial way. The scheme has been designed to guide and provide technical expertise to community led projects across rural Scotland at different stages of their development. The PAS network of volunteers provides guidance and advice, demonstrating how communities can shape their own neighbourhoods.

The programme provides for sustained collaborative working by all stakeholders to facilitate active engagement by CVSs in the planning system. It assists in developing projects that are put forward by community groups and CVSs, and owned by them, to enhance their asset base and leave transferable skills in communities.

The scheme demonstrates how the Interface organisations and others can use their creativity and ideas to create sustainable and lasting legacies in their communities.

The Planning Mentoring Scheme has four key aims:

1. Demonstrate how community groups and CVSs can participate in shaping their environment and achieve positive outcomes by working closely with PAS over a longer period of time.

2. Provide an opportunity for planning professionals to increase awareness and understanding of how to best engage with CVSs.

3. Help community groups and CVSs to enhance and deepen their understanding of how to work positively with the planning system and deliver their objectives.

4. Link planning mentors with community groups and CVSs to build capacities and share knowledge across Scotland.[5]

PAS reaches out to most excluded in Scotland

On the 4th November 2010 PAS, with the support of the Scottish Traveller Education Programme, facilitated a seminar which aimed to bring together planning professionals and organisations who work with Gypsy/Travellers or Gypsy/Traveller issues in Scotland. The aim was to share experience and good practice, and to discuss key learning points for taking forward in their work, along with encouraging participants to work together more effectively and to understand where to access relevant advice and information. The objectives of the seminar were to enable:

- A better working relationship between Gypsy/Traveller support organisations and planning professionals.
- A greater understanding of the needs of Gypsy/Travellers among planning professionals and how best to engage with Gypsy/Travellers on planning issues.
- A greater understanding of planning and the opportunities to engage with the planning system among Gypsy/Travellers and the organisations which seek to support them.[6]

Wales

According to Community Places, in Wales there are 735 community and town councils which are normally consulted on planning issues. Planning Aid Wales is funded by the Welsh Government to provide advice and support to disadvantaged communities and individuals and to support their involvement in planning processes.

England

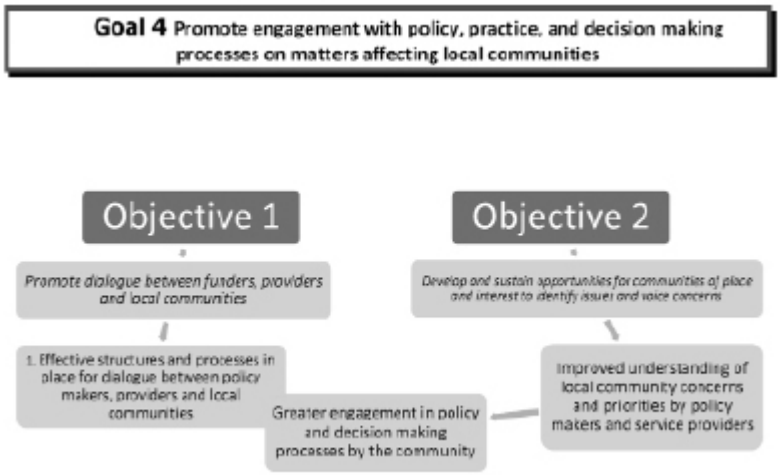
Parish Councils have a statutory right to be consulted on planning applications. Under the Localism Bill the coalition Government is proposing that neighbourhood forums and parish councils be empowered to put forward projects for Neighbourhood Development Orders. The Planning Authority will be required to approve these projects where 50% of local people support them. The coalition Government has established a new Communities and Neighbourhoods in Planning Fund to provide support for communities' engagement in planning.

Republic of Ireland

Community places informed that in 2006 the Government established a Taskforce on Active Citizenship. Its 2007 report found that barriers to inclusion and involvement included an absence of meaningful opportunities for participation. Its recommendations included capacity building for local and excluded communities, and lifelong learning programmes.

Local and Community Development Programme

The House of Oireachtas highlighted the use of the Local and Community Development Programme (LCDP) in Ireland, which is a programme initiated at State level but carried out by Local Development Companies at community level. The programme is targeted at: the unemployed, low income families, people with disabilities, disadvantaged young people, older people, early school leavers, and homeless people among others. The programme has a set of 4 aims, of which goal 4 and its objectives is of particular interest:



The programme identified the types of actions that would be necessary to achieve Goal 4:

- In house surveys and the compilation of data in relation to the needs and situation of particular target groups, these to include gender disaggregated data where appropriate;
- Actions focused on the mentoring processes of community development and enhancing community leadership;

- Training in management and organisational skills, including management training for community ownership of buildings and other assets;
- Training in negotiation, conflict resolution, representational and lobbying skills;
- Education/ Information on policy and decision-making structures;
- Provision of accessible information covering a range of development issues (see also goal one);
- Actions designed to promote equality and to combat discrimination, including positive action initiatives, health promotion initiatives, anti-racism actions etc;
- Actions to support volunteering; and
- Actions to support networks, and collaborations to support the achievement of strategic objective. Figure 10 shows how these actions can be applied[7]

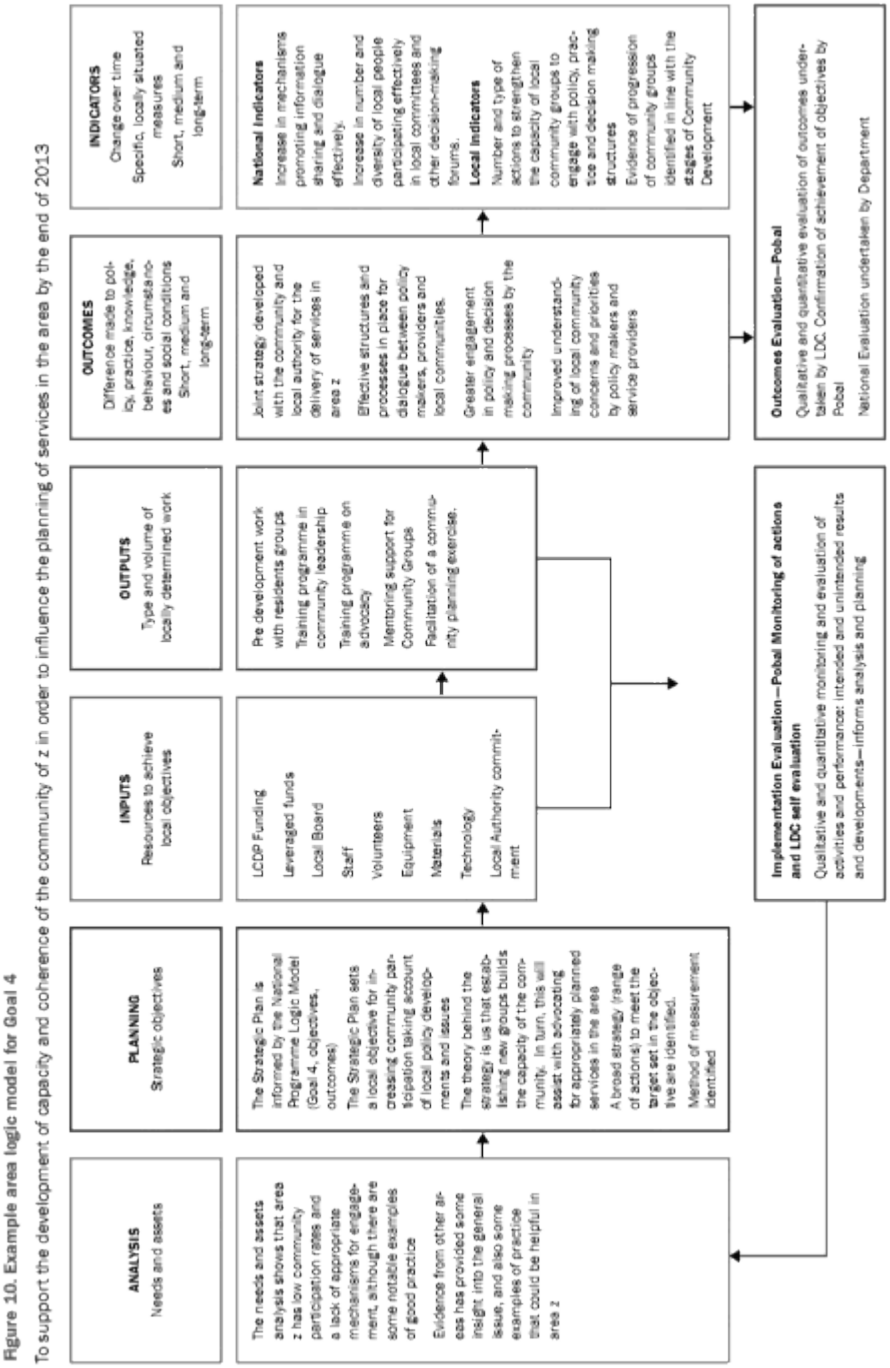


Figure 10. Example area logic model for Goal 4
To support the development of capacity and coherence of the community of z in order to influence the planning of services in the area by the end of 2013

Engagement in Community Planning

The Rural Community Network in Northern Ireland has studied the concept of community planning throughout the UK and Republic of Ireland. According to their report ‘A tale of two villages: Considerations for rurally sensitive community planning’ in some parts of the world community planning is seen as a description for community involvement in physical and land use planning. In the UK and Republic of Ireland it is accepted as being loosely based around the concept that local people should be actively involved in planning the provision and delivery of public services that are tailored to meet the specific needs of their community.[8] Community planning can therefore be considered as an effective system to ensure complete community

engagement that reaches out to all vulnerable, disadvantaged and socially excluded groups. The following section looks at examples of community planning from other jurisdictions.

Scotland

Community planning was one of three core elements within the Local Government in Scotland Act and as such became a statutory duty for local government.

Under the Local Government Act, statutory guidance on' Community Planning' was produced[9]. According to the guidance, under section 15 of the Act, equalities objectives[10] must be mainstreamed by local authorities and bodies into their involvement with community planning.

The guidance makes reference to a document prepared by the Scottish Equalities Co-ordinating Group detailing how to mainstream equalities. The guidance suggests the following action points:[11]

- Know the composition of the community the council serves. Are some groups over or under-using particular services?
- Review existing methods of consultation, particularly in regard to whether equalities groups are under-represented and take action to redress any imbalance.
- Find more innovative ways to consult those individuals and groups who do not respond to the more traditional consultative mechanisms which take account of their needs and interests. For example, the use of new technology in reaching housebound and other severely disabled people.
- Consider setting up specific forums for equalities groups.
- Work with existing community consultative bodies and advocates to strengthen their representativeness and their capacity to work in partnership with the council.
- Ensure all leaflets and publicity material is written in plain English, supported by graphics and available in ethnic minority languages, British Sign Language, Braille, large print, tape etc.
- Provide interpretation facilities and communications support services (eg sign language, interpreters and lip speakers) where needed.
- Organise consultation meetings at times and places which help those with caring responsibilities and/or provide crèche facilities, are accessible to disabled people etc.

Advice notes

Under the Scottish Executive's more detailed 'Community Planning advice note'[12] (to be read in conjunction with the statutory guidance), one of the principals for effective community engagement is 'Reaching Out'.

This involves reaching out to socially excluded communities and groups, such as people with disabilities, ethnic minorities and young people. In line with this, the Scottish Executive has produced a consultation toolkit to encourage and facilitate participation of young people in the decision making process. (For more information see the advice notes p.62 -65 http://www.scotland.gov.uk/Resource/Doc/47237/0028842.pdf)

Another key step[13] suggested is the identification of key barriers to engaging with communities and working out how these should be addressed, for example, through training and

development work among staff or support for community groups or representatives. See, for example, Supporting Community Representatives: a discussion paper, Community Planning Task Force, 2001. (http://www.communityplanning.org.uk/documents/cptfwg3-community-reps.pdf)

The advice note continues to suggest that community planning at the local level, linked to the Council-wide Community Plan, will play a particularly important role in helping to close the opportunity gap that exists between disadvantaged and better off communities. See Scottish Executive (2002) “Better Communities in Scotland: Closing the Gap"[14], and Scottish Executive 2003, “Community Regeneration Statement: implementation of Action Plan".[15]

According to RCN, one of the effects of the commitment to community planning through the Local Government in Scotland Act has been the creation of Community Planning Partnerships within all of Scotland’s 32 local authority areas. RCN draws attention to a review of Community Planning carried out in 2006 by Audit Scotland. Audit Scotland was of the opinion that “community planning can add value to existing joint working by providing a local strategic framework and building a culture of co-operation and trust". However, the report also highlighted that there were ongoing difficulties with community planning in relation to differing geographic boundaries; the lack of clarity on community planning priorities; and ongoing challenges around ensuring that community engagement is sustained and systematic.

Single Outcome Agreements

As a further tier to the community planning structures within Scotland has been the creation of Single Outcome Agreements (SOAs) in 2007 due to the establishment of a concordant between the Scottish Executive and Local Government. These are the mechanisms that enable the 32 Community Planning Partnerships to set and agree the strategic priorities for their local area. The SOA also details the responsibilities of individual community planning partners in making the SOA outcomes a reality and sets out how the local priorities contribute to the national outcomes of the Scottish Government. [16]

England and Wales

Within England and Wales, progress on community planning has had a similar focus to Scotland in that the emphasis is on public bodies identifying the needs of the communities they operate in and then looking to respond to these needs in an effective way. The promotion of wellbeing has been central to the moves around community planning within England and Wales and these powers were enshrined within the Local Government Act 2000. The Act has seen a requirement being placed on county and county borough councils to prepare ‘community strategies’ for promoting or improving the economic, social and environmental wellbeing of their areas and contributing to the achievement of sustainable development in the UK.’[17]

Sustainable Communities Strategy

The need for widespread community consultation and engagement is central to how sustainable community strategies are to be developed. In effect, the sustainable community strategy is a ten to fifteen year plan which sets out ‘…the overarching long term strategy for the local authority area and all its population based on a thorough analysis of needs and priorities, and opportunities for addressing them’.[18]

Local Area Agreements

More so within England than Wales, there is also an additional mechanism employed known as the Local Area Agreement (LAA), which is effectively a means to define, implement and monitor the partnership working required to fulfil the aims of the sustainable community strategy.[19]

In its People, Plans and Partnerships - A National Evaluation of Community Strategies in Wales (2006) report, the Welsh Assembly, for example, recognised that 'Engaging with people and communities requires a plurality of methodologies appropriate to involve people in different roles; techniques need to be more creative and innovative particularly in the context of those sections of the community who are disengaged with formal political processes; there needs to be a better understanding of the tensions between representative and participatory democracy, a more seamless, continuous, co-ordinated and transparent approach to public involvement; and lastly a commitment to funding the process.'

According to RCN, with the publication of the 'Communities in Control –Real People, Real Power' White Paper in July 2008, England and Wales have displayed a commitment to community planning as a means of improving local services and as a mechanism for building community capacity and engagement.

Republic of Ireland

Within the Republic of Ireland, the community planning function currently falls under the remit of the County or City Development Boards. In June 1998, the Irish Government established an Interdepartmental Task Force on the Integration of Local Government and Local Development Systems, chaired by the Minister for the Environment and Local Government. The Report of the Task Force on the Integration of Local Government and Local Development Systems (August 1998) was subsequently approved by Government. One of the key recommendations emerging from the report was the creation of the County Development Boards (CDBs) which were established in each county and city in Ireland in early 2000.

There are currently 34 CDBs (29 county councils and in each of the five major cities) led by local government and they are representative of local development bodies together with the State agencies and social partners operating locally. For the first time, CDBs brought together the key players at a local level to engage in a process of long-term planning for each county or city.[20]

Each CDB:

- Is required to prepare and oversee the implementation of a ten year county/city Strategy for Economic, Social and Cultural Development. This plan provides the template guiding all public services and local development activities locally.
- Is made up of representatives from the four key sectors of local government, local development, the social partners (business and trade unions) and state agencies. Immediately prior to the creation of the CBDs, Community Forums were also created in each of the County/City areas to identify potential community representatives for the CBDs.

Further Examples

The following information was supplied by Community Places, detailing examples of Local authorities that have developed a range of processes and structures to enable community engagement. In most cases these are supported and facilitated by community planning support or networking organisations in the community and voluntary sectors.

Fife uses the following processes:

- Community Councils- These are made up of people who live in local areas. If a community council were set up in every area of Fife, there would be 104 councils. The council must consult with other community councils on planning applications. They are set up under a scheme called the scheme for the establishment of community councils in Fife which shows:
- the area each community council covers
- how the community councils should operate and
- how community councillors should be elected[21]
- People's Panel- This is a group of people that will be used by members of the Fife Partnership to consult with on a variety of public issues. Consists of around 3000 members who will reflect the Fife Adult (over 16) Population in terms of age, gender, working status and geographical location.[22]
- Young People's Panel
- Various events for engagement
- Local Community Plans[23]
- Fife Council for Voluntary Services is the support organisation for engagement[24]

Dumfries and Galloway has:

- Community Councils (100)
- 'Xchange Network' for public involvement -
- brings together members of the public in Dumfries and Galloway who are interested in taking part in or commenting on local services;
- provides people with the opportunity to be trained in public involvement skills and to take part in changing and developing services; and
- is supported by the Council and the NHS.[25]
- Local Community Plans (4)
- Local Rural Partnerships –
- 4 Local Rural Partnerships (LRPs) were established in Dumfries and Galloway, as a means of providing effective links between Strategic Policy developments and planning and grass roots voluntary and community organisations involved in service delivery. The Scottish Executive and Dumfries and Galloway Community Planning partners jointly fund the four LRPs. Each of them has representation from the public, private, voluntary and community sectors. Each LRP has their own individual work plan which varies according to local circumstances and need. Included in each work plan is a programme of capacity building which is tailored to meet local need. The LRPs are now actively involved in addressing cross cutting issues such as social inclusion, health improvement and economic regeneration. This should ensure a Community Planning approach is in place to deliver creative solutions at a local level.[26]

Sunderland

Citizens' Panel -

Community Spirit is Sunderland's citizens' panel, a group of over 2000 residents from all parts of Sunderland. It gives residents a chance to say what they think about important issues (such as crime and clean streets) and ask for action and feedback from the people responsible.

The panel was established in April 2002 when 20,000 Sunderland residents were randomly selected to become members. More residents were invited to join in June 2004, September 2005 and September 2006. The membership period lasts for 3 years.

Panel members are invited to complete up to 3 planned questionnaires per year. They may also be invited to attend consultation meetings and other activities. Participation is entirely optional.

Significant efforts have been made to remove barriers and assist panel members to take part. Members were asked to indicate which, if any special arrangements would help them to participate and how they would like to take part. In particular, the following arrangements are being provided:

- provision of information in large print, audio tape and other languages
- completion of questionnaires by post, telephone and the Internet
- assistance with travel arrangements[27]

Cardiff

Ask Cardiff Consultation & Engagement Framework -

On 1 October Cardiff Council's Executive formally approved the adoption of the new Ask Cardiff Consultation and Engagement Framework. This has introduced a new Consultation and Engagement Strategy for the Council and set out a number of supporting mechanisms that will need to be put in place to support these new approaches. These include:

- The new Ask Cardiff website;
- An Annual Citizen Engagement Programme;
- Enhanced support for the Council's Citizens' Panel;
- Online e-learning resources;
- The Consultation Excellence Scheme;
- A Local Consultation Management Board;
- Shared Public Sector Consultation Resources; and
- Interdepartmental and multi-agency data analysis.[28]

[1] Community Places advises community groups and individuals on planning issues; supports Community Planning; facilitates community consultation and research; and advises community building projects. http://www.communityplaces.info/

[2] http://www.biglotteryfund.org.uk/

[3] http://www.scvo.org.uk/SVA/Home/Home.aspx

[4] http://www.scvo.org.uk/cvsnetwork/Home/Home.aspx

[5] For more information visit
http://www.planningaidscotland.org.uk/page/117/Mentoring.htm

[6] For more information visit
http://www.planningaidscotland.org.uk/news_more.asp?news_id=29&current_id=1

[7] Local and Community Development Programme Guidelines p.33)

[8] RCN (2010), A tale of two villages: Considerations for rurally sensitive community planning. For more information see
http://www.ruralcommunitynetwork.org/publications/publicationlist.aspx?pub=R

[9] The Local Government in Scotland Act 2003 Community Planning: Statutory Guidance
http://www.scotland.gov.uk/Resource/Doc/47237/0028845.pdf

[10] In the guidance the term 'equalities' is used in its widest sense and would encompass not only gender, race, disability and sexual orientation but also individuals and groups facing discrimination on the grounds of age, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions [from definition of equal opportunities provided in Scotland Act 1998].

[11] Guidance on Equalities, Best Value, Community Planning and the Power to Advance Well-Being www.cosla.gov.uk/attachments/publications/bvequalitiesguidance.pdf (p.15/16)

[12] Local Government in Scotland Act 2003 Community Planning: advice notes
http://www.scotland.gov.uk/Resource/Doc/47237/0028842.pdf

[13] For further information on key steps for councils and their community planning partners see p.66 of the advice note.
(http://www.scotland.gov.uk/Resource/Doc/47237/0028842.pdf)

[14] http://www.scotland.gov.uk/library5/social/bcis-00.asp

[15] http://www.scotland.gov.uk/library5/social/crsi-00.asp

[16] Scottish Government, Single Outcome Agreements
http://www.scotland.gov.uk/Topics/Government/local-government/SOA

[17] RCN, 'A tale of two villages etc

[18] Local Vision. Statutory Guidance from the Welsh Assembly Government on developing and delivering community strategies, 2008.
http://wales.gov.uk/publications/accessinfo/drnewhomepage/governmentdrs/Governmentdrs2008/localvisionstatguidancemar08/?lang=en

[19] RCN, 'A tale of two villages etc'

[20] RCN 'A tale of two villages etc'

[21] For more information visit
http://www.fifedirect.org.uk/topics/index.cfm?fuseaction=subject.display&subjectid=C5FE66E7-C9E1-11D5-909E0008C7844101

[22] For more information visit http://www.fifedirect.org.uk/topics/index.cfm?fuseaction=faq.display&subjectid=A91694C8-4BE0-425E-92E1767D59C85550&faqid=D205135C-E7FE-C7EA-0CFA8803FB7B9945

[23] For information on the Fife Community Plan see http://www.fifedirect.org.uk/topics/index.cfm?fuseaction=subject.display&subjectid=A91694C8-4BE0-425E-92E1767D59C85550

[24]CVS Fife is the Council for Voluntary Service Fife which promotes local community and voluntary action. We provide voluntary, community, social enterprise and charitable organisations with advice, information and one-to-one support. We also help the Voluntary or Third Sector to network, and to take part in Community Planning processes. We can provide access to training and a range of information resources. For more information visit http://www.cvsfife.org/

[25] Dumfries and Galloway Community website http://www.dgcommunity.net/DGCommunity/MiniWeb.aspx?id=72&menuid=8288&openid=8287

[26] For more information visit http://www.dgcommunity.net/dgcommunity/miniweb.aspx?id=149

[27] http://www.sunderland.gov.uk/index.aspx?articleid=2789

[28] http://www.cardiff.gov.uk/content.asp?nav=2872,3257,5423&parent_directory_id=2865&id=8609&Language=