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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.

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 wants¹

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

¹ For more information visit: <http://www.communities.gov.uk/planningandbuilding/planningsystem/communityinfrastructurelevy/>

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/>;

² Current Chief Planner, England : Steve Quartermain <http://www.lgcandlgn-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)

<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.

⁴ Excerpt from PPS 12 Local Spatial Planning, pp. 17-18

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/pps12lsp.pdf>

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

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>

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

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

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 Vanguard scheme

Local authorities in England are invited to apply to become Neighbourhood Planning Vanguard. 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

⁷ From http://www.legislation.gov.uk/ukxi/2008/1572/pdfs/ukxiem_20081572_en.pdf, accessed 24.01.11)

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 Vanguard 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 Vanguard 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 Vanguard schemes 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 Vanguard 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:

⁸ <http://www.communities.gov.uk/planningandbuilding/planningsystem/neighbourhoodplanningvanguards/>

- 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.

