Committee for the Environment

Report on the Planning Bill (NIA 17/11-15)

Together with the Minutes of Proceedings, Minutes of Evidence and Written Submissions Relating to the Report

Ordered by the Committee for the Environment to be printed 6 June 2013
Report: NIA 119/11-15 (Committee for the Environment)

Powers and Membership

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 2011 has been as follows:

Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson[1 7]
Mr Cathal Boylan
Mr Colum Eastwood[4]
Mr Tom Elliott[2]
Mrs Dolores Kelly[3]
Mr Barry McElduff[5]
Mr Ian Milne[6]
Lord Morrow
Mr Peter Weir

1 Mr Alastair Ross replaced Mr Gregory Campbell on 20 February 2012
2 Mr Tom Elliott replaced Mr Danny Kinahan on 23 April 2012
3 Mrs Dolores Kelly replaced Mr Patsy McGlone on 23 April 2012
4 Mr Colum Eastwood replaced Mr John Dallat on 18 June 2012
5 Mr Barry McElduff replaced Mr Chris Hazzard on 10 September 2012
6 Mr Ian Milne replaced Mr Francie Molloy on 15 April 2013
7 Mr Sydney Anderson replaced Mr Alastair Ross on 7 May 2013

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Executive Summary

1. This report sets out the Committee for the Environment's consideration of the Planning Bill.

2. The Bill contains 28 clauses. Its key objective is to bring forward the implementation of a number of planning reforms contained within the Planning Act (Northern Ireland) 2011 ("the 2011 Act") before the majority of planning powers transfer to local government in 2015.

3. The Committee has considered each of the reforms contained in the 2011 Act whose implementation the Planning Bill makes provision for accelerating. The Committee is satisfied that it is right to accelerate the introduction of each of these reforms. Bringing forward these reforms not only means allowing them to become understood and established in advance of the transfer of powers but also that the benefits of them can be realised sooner.

4. In addition, the Bill makes provision for the introduction of two new reforms which were not contained within the 2011 Act. These additional provisions are intended to underpin the role of planning in promoting economic development. The first (clause 2) provides for the Department of the Environment (and the Planning Appeals Commission) when exercising particular functions to do so with a new objective of promoting economic development (alongside the objectives of furthering sustainable development and promoting or improving well-being). The second (clause 6) provides that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission

5. The Committee has given particular consideration to these two new reforms as many of those who responded to the Committee's call for evidence on the Bill were very concerned about them. They were worried that clauses 2 and 6 provided for economic considerations to be given greater weight than other considerations within planning policy and when determining individual planning applications.

6. The Committee is satisfied, having taken legal advice on the issue, that this is not the case. It is right that the planning system should promote economic development but it must do so while also promoting sustainable development and improving well-being. Creating a statutory objective of promoting economic development does not diminish the other statutory objectives which the Department has when exercising its planning functions. Equally, providing a statutory basis for economic considerations to be material considerations in no way limits the other considerations which may be material when determining planning applications.

7. The Department has informed the Committee that it is its intention to bring forward a new single Strategic Planning Policy Statement (SPPS) and to have it in place in time for the transfer of planning powers to councils. The purpose of this statement is to provide a comprehensive consolidation of planning policy.

8. The SPPS will incorporate a shorter, clearer and more focused regional planning policy; it shall incorporate a collation of policies in one document and will make regional policy more accessible and intelligible. The Department intends to consult on a draft version of the SPPS later this year, with a view to publishing it in final form in 2014.

9. It is through the single SPSS that that the Department shall address how economic considerations are to be taken into account along with the other considerations that pertain to the planning system.

10. The Committee acknowledges the concerns sincerely held by many of those who responded to its call for evidence. Although the Committee is satisfied that these concerns are

unsubstantiated it believes nonetheless that there would be value in undertaking a review of the impact of clauses 2 and 6 within three years of their provisions coming into effect.

11. These recommendations, and a number of other recommendations arising from the Committee's consideration of the Planning Bill, are set out overleaf.

Recommendations

12. In respect of clause 2 and the three objectives, the Minister should confirm to the Assembly that "promoting", "furthering", and "improving" shall each be treated as meaning the same thing. If the Minister considers that there is the potential for these different terms to be interpreted as having different meanings then he should bring forward an amendment to the Bill to provide for a consistent approach.

13. The Minister should move the following amendment to Clause 2 at the Bill's Consideration Stage:

Clause 2, Page 2, Line 5

At end insert -

'(3) The Department must, not later than 3 years after the coming into operation of section 2(1) of the Planning Act (Northern Ireland) 2013, review and publish a report on the implementation of this Article.

(4) The Department must make regulations setting out the terms of the review.".'

14. The Minister should confirm at Consideration Stage that the Department shall bring forward the draft single SPSS at the earliest opportunity.

15. The Minister should move the following amendment to Clause 6 at the Bill's Consideration Stage:

Clause 6, Page 5, Line 25

At end insert -

'(1A) in Article 25 of the 1991 Order after paragraph (3) add -

"(4) The Department must, not later than 3 years after the coming into operation of section 6(1) of the Planning Act (Northern Ireland) Act 2013, review and publish a report on the implementation of this Article.

(5) The Department must make regulations setting out the terms of the review.".'

16. The Minister should move the following amendment to Clause 27 at the Bill's Consideration Stage:

Clause 27, Page 16, Line 31

After '1' insert '2(1), 6(1),'

Committee Consideration of the Bill

17. The Planning Bill was introduced to the Assembly on 18 January 2013. It was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of its Second Stage on 22 January 2013.

18. The Minister of the Environment had made the following statement under section 9 of the Northern Ireland Act 1998:

> *'In my view the Planning Bill would be within the legislative competence of the Northern Ireland Assembly'.*

19. The policy context for the Bill is the Department's delivery of a major programme to reform the Northern Ireland planning system. This began with the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011.

20. The 2011 Act sets the legislative framework for a reformed planning system in Northern Ireland with the promise of a "speedier, simpler and more streamlined" decision-making process along with more effective enforcement controls. The reform proposes a "development management" rather than a "development control" process, introducing a shift to spatial planning which moves 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.

21. The 2011 Act also gives effect to the whole process of local government reform which includes the transfer of the majority of planning functions and decision making responsibilities to district councils, with the exception of regionally significant proposals, which will remain with the Department of the Environment. Planning applications will be dealt with by Councils and the "Planning Service" as it was known will be replaced by five "Planning Areas" designed around the proposed 11 council clusters.

22. The Department has said that the transfer of planning functions to councils is intended in 2015 in line with the Executive's commitment to reform local government. However, in the interim, the Executive has agreed to the drafting of this Bill to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act. The Department has stated that the Planning Bill will make legislative changes to improve the efficiency and effectiveness of the planning system, agreed by the previous Assembly, available to the Department in advance of the transfer of planning functions to councils. It therefore brings forward amendments to the Planning (Northern Ireland) Order 1991 which reproduce provisions in the 2011 Act.

23. The Bill also introduces additional provisions (Clauses 2 and 6) to underpin the role of planning in promoting economic development through amendments to both the Planning (Northern Ireland) Order 1991 and the 2011 Act.

24. The Department has clarified that the Bill is intended as an interim measure most of which will remain in place only until it is possible to fully commence the 2011 Act at which point it will be repealed. However, where the Bill amends the 2011 Act those provisions will apply to the planning system post transfer of planning functions to councils. In keeping with the 2011 Act, the Bill will modernise and strengthen the planning system by providing faster decisions on planning applications, enhanced community involvement, faster and fairer appeals, tougher and simpler enforcement as well as a strengthened Departmental sustainable development duty.

25. Departmental officials briefed the Committee on the Bill at its meeting on 10 January 2013, prior to its second stage reading. The officials provided members with an overview of the policies contained within the Bill before taking questions from members.

26. The main areas of discussion were good design, draft PPS 24, economic advantage and disadvantage, the duty to respond to consultation, the appeals process, diversification, the transfer of planning to local councils, repeat planning applications, pre-application community consultation, neighbourhood notification, powers of intervention, the role of building control and subordinate legislation.

27. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 26 January 2013 in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill.

28. A total of 112 organisations and individuals responded to the request for written evidence. A copy of the written submissions received by the Committee is included at Appendix 3 and additional information submitted is included at Appendix 6.

29. On 18 February 2013, the Assembly agreed to extend the Committee Stage of the Bill to 7 June 2013.

30. On 11 April 2013 a member of Assembly Research briefed the Committee on the main differences between the Planning Bill and the 2011 Act. A copy of the research paper is included at Appendix 5.

31. On 11 April 2013 the Council for Nature Conservation and the Countryside (CNCC) briefed the Committee on the Bill. The CNCC stated that it welcomed many of the clauses and the concept of bringing forward reforms from the 2011 Act so that they take effect from now rather than waiting until 2015. However, the CNCC was seriously concerned about Clauses 2 and 6 and the lack of consultation that had taken place in relation to them.

32. On 18 April 2013 the Committee held a stakeholder event on the Planning Bill. The purpose of the event was to enable the Committee to gather evidence from the public and key stakeholders on the key issues arising from the Bill. Although a wide range of issues was discussed the focus was on the statement of community involvement (Clause 1); the general functions of the Department and the Planning Appeals Commission and determination of planning applications (Clauses 2 and 6); public inquiries: major planning applications (Clause 10); fixed penalties (Clause 20); and the duty to respond to consultation (Clause 23). A transcript of the event is included at Appendix 2.

33. During its consideration of oral and written evidence from interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department and Assembly Legal Services.

34. The Committee conducted its informal clause by clause consideration of the Bill on 25 April 2013 and 2 May 2013. It followed up on issues arising from this consideration at its meetings on 16, 23 and 30 May 2013. The Committee's consideration of the Bill and the issues associated with each clause is set out on page 6.

35. The Committee undertook its formal by clause by clause consideration of the Bill on 30 May 2013.

36. The Committee agreed this report and ordered it to be printed on 6 June 2013.

Clause by clause consideration of the Bill

Clause 1: Statement of community involvement

37. Clause 1 introduces the requirement for the Department to produce a statement of its policy for involving the community in its development plan and planning control functions within one year of the clause coming into operation. In doing so it accelerates the implementation of a reform provided for by section 2 of the 2011 Act.

38. Some of those who had responded to the Committee's call for evidence were concerned about the impact that the provisions of this clause would have on local councils. At the Committee meeting on 25 April 2013 the Department confirmed that local councils will not be expected to produce Statements of Community Involvement within one year of the commencement of this clause. This clause places a requirement only on the Department. The councils will be responsible for the preparation of their own Statements of Community Involvement after the transfer of planning powers under Section 4 of the 2011 Act.

39. At its meeting on 30 May 2013 the Committee was content with clause 1 as drafted.

Clause 2: General functions of the Department and the Planning Appeals Commission

40. Clause 2 amends Article 10A of the Planning (Northern Ireland) Order 1991. A statutory duty is imposed on the Department and the Planning Appeals Commission in exercising any function under Part 2 or Part 3 to do so with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. In addition where the Department, or as the case may be the Planning Appeals Commission (PAC), exercise any function under Part 2 or Part 3 of the Planning (Northern Ireland) 1991 they must have regard to the desirability of achieving good design. Corresponding amendments are made to Section 1 and Section 5 of the Planning Act (Northern Ireland) 2011.

41. There was considerable opposition and concern to clause 2. Many of those who responded to the Committee's call for evidence, and those who took part in the Committee's stakeholder event, were concerned that clause 2 would require the Department to give greater weight to its new objective to promote economic development than its other objectives of furthering sustainable development and promoting or improving well-being.

42. There were those who pointed out that the Department's existing definition of sustainable development embraces economic, environmental and social issues and concepts. As such they believed that creating a new duty to promote economic development was unnecessary.

43. How sustainable development is defined was important to many. Some suggested that the Bill should be amended to include the widely accepted definition of sustainable development from the Brundtland Commission. It was stated by some that a full and clear definition of sustainable development may cancel out the need for a separate duty in respect of economic considerations.

44. Community Places suggested the following amendment to clause 2, which would have the effect of defining sustainable development in legislation:

> *"Where the Department or the Planning Appeals Commission exercises any function under Part 2 or this Part, the Department or, as the case may be, the Commission must exercise that function with the objective of furthering sustainable development which secures:*
>
> *i. protection and enhancement of the environment;*
>
> *ii. promotion of economic development;*
>
> *iii. promotion of social development; and*

iv. promotion or improving well-being;

and which balances current needs with those that may arise in the future."

45. The Committee agreed to ask the Department to consider this suggested amendment.

46. Some of those who responded to the Committee wanted more clarity in relation to the desirability of achieving good design, pointing out that the concept of good design is subjective. Others were uncertain of what was meant by well-being or how it could be promoted.

47. On the other hand, a number of those who responded to the Committee's call for evidence were in favour of clause 2.

48. The Department acknowledged the concerns that stakeholders had raised in relation to clause 2. However, the Department said that clause 2 and its three subsections, themes and principles should be read together as an integrated approach rather than selective with a hierarchy therein. They said that, without compromising the wider purposes and principles of the planning system, it is timely, appropriate and legally correct to affirm through the Assembly and the Planning Bill that economic considerations are material when it comes to preparing planning policy. The Department considers that this clause reflects the Programme for Government and the direction provided by the Executive with regard to the economy.

49. The Department also said that it is satisfied that the proposed provisions are in no way a direction that gives determinative weight, or for that matter more weight, to the duty to promote economic development compared to the other duties.

50. The Department went on to explain that further policy and guidance will be required to ensure a balanced, proportionate approach is followed. The Department also confirmed that it intends to consult widely on related policy within the single Strategic Planning Policy Statement (SPPS) by the end of the year. The Department does not intend this to lead to further bureaucracy or complexity, or impact on the overall character and integrity of the planning system.

51. In the Department's opinion Community Places' suggested amendment to Clause 2 puts four elements (protection and enhancement of the environment; promotion of economic development; promotion of social development; and promotion or improving well-being) under the one umbrella of furthering sustainable development. It implicitly attempts to define sustainable development which has not been defined in planning or, so far as the Department is aware, other Northern Ireland legislation.

52. The Department went on to say that sustainable development is a concept whose meaning has evolved and is likely to continue to evolve over time. The Department is of the view that whilst well intentioned, the suggested amendment may have the unintended consequence of limiting or reducing the scope of the concept it wishes to promote. The Department considers that it is more appropriate, in line with other jurisdictions, to provide a fuller explanation of what sustainable development means in the planning context through policy and guidance. This approach allows greater flexibility to respond as the concept evolves. The Department considers it is more appropriate to view sustainable development through policy (Para 11, PPS1) and intends to elaborate upon this in the proposed single SPPS.

53. In relation to the desirability of achieving good design the Department recognised how this was subjective. While it considers good design a desirable requirement in any development it recognises that it may not always be achievable. The Department's policy on good design is set out in Planning Policy Statement 1. The Department said that good design should be the aim of all those involved in the development process and will be encouraged everywhere.

54. The Department also said that its published guidance 'Building on tradition – A Sustainable Design Guide for the NI Countryside' already aims to improve the quality of design in the

countryside to help to ensure that new buildings fit into the landscape. It said that it will bring forward a new urban design manual to assist in strengthening city and town centres. The Department intends to elaborate on good design principles in the SPPS.

55. In relation to the promotion of well-being the Department said that it intends to elaborate on how the matter of "well-being" relates to the planning system in the proposed single SPPS.

56. The Committee gave careful consideration to the issues that had been raised with it on clause 2, as well as the Department's responses. The Committee also sought its own legal advice.

57. Having done so the Committee is satisfied that clause 2 does not provide for the Department or the PAC to give greater emphasis to the objective of promoting economic development compared to the objective of furthering sustainable development or their objective of promoting or improving well-being.

58. It is already the case that the Department's existing definition of sustainable development provides for it to have regard to, inter alia, promoting economic development. The effect of clause 2 will be to define the objective of promoting economic development as a separate objective to the objective to further sustainable development. Treating these objectives as separate does not have the effect of giving one greater weight over the other.

59. The Committee noted that the Department has said that the proposed SPPS and guidance will set out details on how it shall take a balanced, proportionate approach which works in the public interest in relation to planning, economic considerations and sustainable development. This policy statement and guidance shall be key documents in relation to the implementation of clause 2.

60. The Committee recommends that the Minister should confirm at Consideration Stage that the Department shall bring forward the draft single SPSS at the earliest opportunity.

61. The Committee noted that as result of clause 2 the three subsections of the stated objective of the Department (and the PAC) are expressed in different ways: "furthering" sustainable development, "promoting or improving" well-being; and "promoting economic development". The Committee sought clarification from the Department as to whether these different terms meant that there was a difference in relative emphasis or weighting.

62. The Department assured the Committee that there was not: it considers that there is no fundamental difference between these terms. It explained that these different terms were used to reflect the wording of the 2011 Act. It also pointed out that the use of different terms in the 2011 Act arose from amendments that had been initiated by the previous Committee for the Environment.

63. The Committee noted the Department's assurance but agreed nonetheless that, at Consideration Stage, the Minister should confirm to the Assembly that "promoting", "furthering", and "improving" shall each be treated as meaning the same thing. If the Minister considers that there is the potential for these different terms to be interpreted as having different meanings then he should bring forward an amendment to the Bill to provide for a consistent approach.

64. The Committee is satisfied, having given careful consideration to all the relevant facts, that the concerns expressed to it about clause 2 are unsubstantiated.

65. Nonetheless, the Committee believes that there would be value in undertaking a review of the impact of clause 2 within three years of its provisions coming into effect.

66. The Committee asked the Department to consider an amendment to provide for this. The Department responded on 29 May 2013 when it pointed out that Section 228 of the 2011 Act requires the Department to review and issue a report on the implementation of the Act within three years of the commencement of Part 3 of the Act and at least once in every 5

years after that. However, the Minister, subject to Executive agreement, is also content to support an amendment and to bring forward separate reporting on the implementation of clause 2(1) as a Departmental amendment to the Planning Bill at Consideration Stage.

67. At its meeting on 30 May 2013 the Committee was content with clause 2, subject to the following Departmental amendment being made:

Clause 2, Page 2, Line 5

At end insert -

'(3) The Department must, not later than 3 years after the coming into operation of section 2(1) of the Planning Act (Northern Ireland) 2013, review and publish a report on the implementation of this Article.

(4) The Department must make regulations setting out the terms of the review.".'

Clause 3: Meaning of development

68. Clause 3 amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land that for the purposes of the Order are not to be taken to involve development. This now includes structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.

69. Clause 3 provides for the accelerated implementation of a reform provided for by section 23 of the 2011 Act.

70. At the Committee meeting on 25 April 2013 the Department explained that this clause is intended to strengthen the Department's existing policy that the demolition of unlisted buildings within areas of townscape character requires planning permission. The effect of the clause would be that partial demolition of an unlisted building in an area of townscape or village character would also require planning permission.

71. The Committee was content with the Department's explanation.

72. At its meeting on 30 May 2013 the Committee was content with clause 3 as drafted.

Clause 4: Publicity etc. in relation to applications

73. Clause 4 substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications for planning permission. The Department must not consider an application if the publicity requirements are not satisfied.

74. Clause 4 also amends Article 25 of the Planning (Northern Ireland) Order 1991. Article 25 as amended makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination.

75. Clause 4 provides for the accelerated implementation of a reform provided for by section 41 of the 2011 Act.

76. At the meeting on 25 April 2013 the Department explained that it wished to have flexibility to change the arrangements for publicity to take account of new and changing forms of media.

77. The Committee was content that this was reasonable.

78. At its meeting on 30 May 2013 the Committee was content with clause 4 as drafted.

Clause 5: Pre-application community consultation

79. Clause 5 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation. Article 22A places an obligation on developers to consult the community in advance of submitting an application if the development falls within a class prescribed for the purposes of this Article. The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate.

80. Clause 5 also inserts Article 22B which requires the applicant to produce a report indicating what has been done to comply with the pre-application community consultation requirements. The report must be submitted with the application. The form of the pre-application consultation report may be set out in Regulations.

81. In addition Clause 5 inserts Article 25AB. If the pre-application community consultation requirements have not been complied with the Department must decline to determine the application. The Department can request additional information in order to decide whether to decline the application.

82. Clause 5 also places a requirement upon the Department to include notices of Pre-application community consultations and consultation reports in the planning register prepared in accordance with Article 124 of the Planning (Northern Ireland) Order 1991.

83. Clause 5 provides for the accelerated implementation of reforms provided for by sections 27, 28 and 50 of the 2011 Act.

84. A number of those who had written to the Committee had pointed out that clause 5 does not define the class of application to which these requirements will apply. At the meeting on 25 April 2013 the Department explained that the requirements of this clause would apply to significant developments. The Department will be able to prescribe, through subordinate legislation, classes of development application which will be subject to pre-application community consultation. The classes of development will be subject to public consultation and Assembly scrutiny. The Committee was content with this explanation.

85. There were also many respondents who said that, even with the provisions of clause 5, third party rights of appeal should still be put in place as a safeguard. However, the Department said that it is not its intention to introduce a third party right of appeal at this time and that such appeals could undermine the aim of pre-application community consultation which aims to front-load the system to encourage and facilitate greater community involvement in the planning process.

86. At its meeting on 30 May 2013 the Committee was content with clause 5 as drafted.

Clause 6: Determination of planning applications

87. Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

88. The Committee noted considerable concern and opposition to clause 6. Although these concerns were expressed in a variety of ways, most of them were based upon the following three arguments: (a) that it is inappropriate for economic considerations to be taken into account when determining planning applications; (b) that the Department is neither competent nor has the resources to assess the economic advantages and disadvantages likely to result in granting or refusing planning permission; and (c) that the effect of the

provision would be to give economic considerations greater weight than other material considerations.

89. There were also representations made by those who supported clause 6.

90. The Department again told the Committee that, without compromising the wider purposes and principles of the planning system, it is timely, appropriate and legally correct to affirm and clarify through the Planning Bill the accepted position that economic considerations are material when it comes to preparing planning policy and determining planning applications and that it is without prejudice to other relevant matters.

91. The Department also said that quick decisions balanced by a favourable planning environment are key to economic growth and new jobs. The planning system should not operate in isolation in a manner which acts as an impediment to development and economic progress.

92. The Department reminded the Committee that case law has ruled that economic considerations are already a material consideration. This reflected comments made by the Minister during the Bill's Second Stage when he spoke about how the Department has previously taken economic matters into consideration when determining planning applications. Planners are therefore already capable of assessing the economic advantages and disadvantages of planning applications. In any event guidance and training will continue to be provided to planners by the Department.

93. The Department explained that the planning system does not exist to protect the private interests of one person against the activities of another. The economic advantages and disadvantages of any particular proposal will therefore be relevant to the wider community as a whole i.e. in the public interest.

94. The Department accepted that a number of concerns had been raised and said that it was important that these are addressed through the forthcoming strategic SPSS and further guidance. However, the Department emphasised that by definition other material considerations are neither subverted, nor diminished in importance as a consequence of this provision.

95. The Committee gave careful considerations to the issues that had been raised with it on clause 6, as well as the Department's responses. The Committee also sought its own legal advice.

96. The Committee concluded that it is appropriate that considerations relating to any economic advantages or disadvantages are included in the material considerations that the Department (and councils) must have regard to when determining a development application.

97. In fact this provision will simply provide a statutory basis for something that already happens in practice. And it is right that this takes place and continues to take place.

98. Priority number 1 in the Executive's Programme for Government is growing a sustainable economy and investing in the future. It would be wrong if the planning system was to impede this objective by dismissing economic considerations when determining planning applications. That does not mean, however, that economic considerations are the only considerations that need to be taken in account when applications are determined.

99. If it was the case that clause 6 provided for economic considerations to outweigh other material considerations then the Committee would not be content. But clause 6 does not do this. Providing a statutory basis for economic considerations to be material considerations in no way limits the other considerations which may be material. Nor does it mean that economic considerations will be given greater weight than other material considerations.

100. Clause 6 is clear that the inclusion of economic considerations within material considerations is without prejudice to the generality of the requirement of the Department (or councils) to

have regard to the local development plan, so far as material to the application, and to any other material considerations.

101. The Committee again noted that the Department will consult on and publish further policy and guidance which will set out details on economic considerations and how the Department will take a balanced, proportionate approach which works in the public interest. The Committee looks forward to the publication of the draft SPSS at the earliest opportunity.

102. The Committee is satisfied, having given careful consideration to all the relevant facts, that the concerns expressed to it about clause 6 are unsubstantiated.

103. Nonetheless, the Committee believes that there would be value in undertaking a review of the impact of clause 6 within three years of its provisions coming into effect.

104. The Committee asked the Department to consider an amendment to provide for this. The Department responded on 29 May when it pointed out that Section 228 of the 2011 Act requires the Department to review and issue a report on the implementation of the Act within three years of the commencement of Part 3 of the Act and at least once in every 5 years after that. However, the Minister, subject to Executive agreement, is also content to support an amendment and to bring forward separate reporting on the implementation of clause 6(1) as a Departmental amendment to the Planning Bill at Consideration Stage.

105. At its meeting on 30 May 2013 the Committee was content with clause 6, subject to the following Departmental amendment being made:

Clause 6, Page 5, Line 25

At end insert -

'(1A) in Article 25 of the 1991 Order after paragraph (3) add -

"(4) The Department must, not later than 3 years after the coming into operation of section 6(1) of the Planning Act (Northern Ireland) Act 2013, review and publish a report on the implementation of this Article.

(5) The Department must make regulations setting out the terms of the review."'

Clause 7: Power to decline to determine subsequent application

106. Clause 7 extends the Department's power to decline subsequent applications for planning permission or listed building consent under Article 25A and paragraph 4A of Schedule 1 of the Planning (Northern Ireland) Order 1991. This now includes the power to decline applications where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.

107. Clause 7 provides for the accelerated implementation of reforms provided for by sections 46 and 92 of the 2011 Act.

108. At the meeting on 2 May 2013 the Committee noted that there was broad support for this clause. The Committee also noted that a similar application was one where the Department thinks that the development and the land to which the application relates are the same or substantially the same. Clearly distinguishable proposals are unlikely to be considered the same or substantially the same. This clarification is also relevant in relation to clause 8.

109. At its meeting on 30 May 2013 the Committee was content with clause 7 as drafted.

Clause 8: Power to decline to determine overlapping applications

110. Clause 8 extends the Department's power to decline to determine overlapping applications for planning permission or listed building consent under Article 25AA and paragraph 4B of Schedule 1 of the Planning (Northern Ireland) Order 1991 to include the power to decline to determine similar applications made on the same day. It also includes the power to decline a planning application where the same development is subject to a "deemed application" determination by the Planning Appeals Commission arising from an appeal against an Enforcement Notice and the Commission has not issued its decision.

111. Clause 8 provides for implementation of reforms provided for by sections 48 and 93 of the 2011 Act.

112. As is the case with clause 7, clause 8 states that the Department "may" decline to determine an application. Some of those who responded to the Committee's call for evidence said that "may" could be strengthened to "shall". The Department told the Committee that the use of "may" allows for flexibility and discretion in exceptional cases. The Committee was content that this was appropriate.

113. At its meeting on 30 May 2013 the Committee was content with clause 8 as drafted.

Clause 9: Aftercare conditions for ecological purposes on grant of mineral planning permission

114. Clause 9 amends Article 27A of the Planning (Northern Ireland) Order 1991 by extending the list of land uses to be considered when the land is being restored to a required standard to include "use for ecological purposes". In doing so it provides for the accelerated implementation of a reform provided for by section 53 of the 2011 Act.

115. At its meeting on 2 May 2013 the Committee noted that clause 9 was widely welcomed. The Committee also noted that the RSPB had recommended the inclusion of "nature conservation" as a use for closed mineral works. The Department explained that section 53 of the 2011 Act had been amended at its Further Consideration Stage to extend the list of uses to be considered when the land is being restored to a required standard to include "use for ecological purposes". The intention of this amendment had been to extend the list of uses for a wide range of purposes, including what might broadly be defined as nature conservation. The Department was therefore of the opinion that clause 9 (and section 53 of the 2011 Act) adequately incorporates nature conservation. The Committee was content with this explanation.

116. At its meeting on 30 May 2013 the Committee was content with clause 9 as drafted.

Clause 10: Public inquiries: major planning applications

117. Clause 10 amends Article 31 of the Planning (Northern Ireland) Order 1991 to allow the Department to appoint a person other than the Planning Appeals Commission (PAC) to hold a public local inquiry (or hearing) to consider representations made in respect of any application to which Article 31 has been applied.

118. Clause 10 provides for the accelerated implementation of a reform provided for by section 26 of the 2011 Act.

119. There was significant concern raised about clause 10, both in written submissions to the Committee and at the stakeholder event on 25 April 2013. The opposition was not so much concerned with the accelerated introduction of the provision but the policy underlying it.

120. There were concerns that a person appointed by the Department may not be independent (or at least may not be seen to be independent). There were also concerns that there may be inconsistency between the approach taken by a person appointed by the Department and the approach taken by the PAC. Some suggested that if there was concern about PAC's

ability to deal with an increased workload then the answer was to increase PAC's resources and capacity rather than have the Department appoint a person to hold an inquiry. Notably, PAC itself opposed clause 10 as it too had concerns about public confidence about the independence of a person appointed by the Department and the potential for there to be different procedural approaches. It also pointed out that the cost of appointing a person would fall to the Department (unlike the PAC's own cost).

121. The Committee gave careful consideration to these concerns at its meeting on 2 May 2013. It noted the Department's statement that the power to appoint persons other than the PAC to carry out public inquiries would be used only in very rare circumstances and that the PAC will always be the Department's first port of call for inquiries or hearings on article 31 applications. The Department explained that the power provided for by clause 10 (and section 26) reflects a power that other departments have. The Department would exercise this power in the same way as other departments have done: with due regard to the application of proper process and rigorous standards in order not to compromise principles of transparency and independence. In doing so the Department would ensure that any person appointed would be independent and impartial. The Department envisaged that, for consistency, the approach to be adopted for inquiries by independent examiners will follow that by the PAC.

122. The Department informed the Committee that the PAC already has the power to appoint persons to assist it in the performance of its functions but that when there were significant delays a number of years ago there was no move to bring in additional resources. The Department wants to have a power that would allow it to intervene to prevent such delays in the future.

123. On the issue of cost, the Department acknowledged that it would have to fund the appointment of a person but pointed out that there are also costs when PAC holds inquiries and hearings.

124. The Committee asked the Department to provide it with further detail about how this power would be used and asked whether provision could be made for a person or body other than the Department to have this power.

125. The Committee was provided with a response by Departmental officials which was considered at the meeting on 16 May 2013. The Department stated that in the event of it deciding that a public inquiry should be held, it will first approach the PAC to ask it to conduct the inquiry. If, and only if, the PAC is not in the position to conduct the inquiry within a reasonable timeframe will the Department consider appointing a person other than the PAC to conduct the inquiry.

126. The Department also stated that in the event that the PAC experiences an increase in its casework OFMdFM could appoint additional commissioners or persons, thereby addressing any resource implications that might arise and, as a consequence, curtail any need for independent examiners to be appointed by the Department. The Department emphasised that the provision is not in any way intended to bypass the PAC, or to permit the Department to arbitrarily appoint independent examiners without first consulting the PAC.

127. Following consideration of the Department's explanation the Committee indicated that it was broadly content. The Committee understands the concerns that have been raised but believes that these have been addressed in the assurances provided by the Department. Ultimately, in order to ensure that avoidable delays do not occur, it is important that that the Department has this power. Without this power it is possible to envisage a scenario where the PAC was not going to undertake an inquiry within a reasonable timeframe and the Department would be unable to intervene. However, the Committee fully expects, based on the assurances that it has received, that the Department would only ever have to exercise this power in exceptional circumstances, if at all.

128. At its meeting on 30 May 2013 the Committee was content with clause 10 as drafted.

Clause 11: Appeals: time limits

129. Clause 11 reduces the appeal periods for making an appeal to the Planning Appeals Commission under Articles 32 (planning decisions), 57 (hazardous substances consent) and 83E (certificates of lawful use or development) of the Planning (Northern Ireland) Order 1991 from six to four months or such other period as may be specified by development order.

130. Clause 11 provides for the accelerated implementation of reforms provided for by sections 58, 96, 115 and 173 of the 2011 Act. The Committee noted that most of the stakeholders who had addressed this clause in their written responses had welcomed the reduction in the appeals period.

131. At its meeting on 30 May 2013 the Committee was content with clause 11 as drafted.

Clause 12: Matters which may be raised in an appeal

132. Clause 12 inserts "Article 32A" in the Planning (Northern Ireland) Order 1991 so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that its not being raised was due to exceptional circumstances.

133. Clause 12 provides for the accelerated implementation of a reform provided for by section 59 of the 2011 Act.

134. The Committee considered clause 12 at the meeting on 2 May 2013 when it noted that section 59 of the 2011 Act had been included at the request of the previous Environment Committee. The Committee also noted that clause 12 was welcomed by most of the stakeholders who had addressed this clause in their written responses to the call for evidence.

135. Nonetheless, the Committee pointed out to the Department that the PAC had said that the clause is contradictory because, on the one hand, it seeks to restrict the matters that may be raised at an appeal, and, on the other, it maintains the requirement to have regard to material considerations. Officials responded by saying that the Department would have to produce guidance on how this provision would work and what matters may or may not be raised.

136. The Committee also noted how the Department had responded to queries raised by a Member at the Bill's Second Stage about the human rights implications of clause 12. The Department had confirmed that it had made an assessment of whether the entire Bill (not just clause 12) was compatible with the European Convention on Human Rights and considered that it was not incompatible in that regard. The Committee also noted the Department's subsequent reference to a similar provision that has been in place for a number of years in Scotland without legal challenge.

137. At its meeting on 30 May 2013 the Committee was content with the clause 12 as drafted.

Clause 13: Power to make non-material changes to planning permission

138. Clause 13 inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to make a change to a planning permission already granted 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. Consultation and publicity arrangements may be set out in Regulations.

139. Clause 13 provides for the accelerated implementation of a reform provided for by section 67 of the 2011 Act.

140. The Committee considered clause 13 at the meeting on 2 May 2013. The Department had confirmed that it will produce guidance on the various aspects of the non-material change

provisions to supplement the primary and subordinate legislation and to give advice to all users of the new process. The Committee was content with this approach.

141. At its meeting on 30 May 2013 the Committee was content with clause 13 as drafted.

Clause 14: Aftercare conditions imposed on revocation or modification of mineral planning permission

142. Clause 14 inserts a provision at Article 38A of the Planning (Northern Ireland) Order 1991 which permits the Department to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under Article 38, provided a restoration condition is included or in place on the land. In doing so it provides for the accelerated implementation of a reform provided for by section 69 of the 2011 Act.

143. There were no objections to clause 14.

144. At its meeting on 30 May 2013 the Committee was content with clause 14 as drafted.

Clause 15: Planning agreements: payments to departments

145. Clause 15 amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland department and not solely the Department of the Environment. In doing so it provides for the accelerated implementation of a reform provided for by section 76 of the 2011 Act.

146. It was suggested to the Committee by some that the English model of the Community Infrastructure Levy should be considered. However, the Department said that it did not intend at this time to introduce a similar levy.

147. At its meeting on 30 May 2013 the Committee was content with clause 15 as drafted.

Clause 16: Increase in Certain Penalties

148. Clause 16 increases penalties in relation to 7 articles in the Planning (Northern Ireland) Order 1991. For offences under Article 49 (acts causing or likely to result in damage to listed buildings) the maximum level of fine, on summary conviction, has been raised to the statutory maximum. Also the fine payable on summary conviction when a person fails to prevent damage or further damage resulting from the offence is raised from one tenth of a level 3 fine to one tenth of a level 5 fine on the standard scale for each day on which the failure continues. Offences may also be convicted on indictment.

149. This clause also increases the maximum level of fine, on summary conviction, for a range of offences relating to breaches of planning control or consents from £30,000 to £100,000. This applies to offences under Articles 61 (hazardous substances); 67G (temporary stop notices); 72 (enforcement notices) and 73 (stop notices) of the Planning (Northern Ireland) Order 1991 Order. The fine on summary conviction for an offence under Article 67 D (non-compliance with planning contravention notice) is raised from level 3 to level 5 on the standard scale while the fine for an offence on summary conviction under Article 76 (enforcement notice to have effect against subsequent development) increases from level 5 on the standard scale to £7500. The increased fines do not apply to any offence committed before this clause comes into operation.

150. Clause 16 provides for the accelerated implementation of reforms provided for by sections 103, 117, 134, 137, 147, 149 and 150 of the 2011 Act.

151. At its meeting on 2 May 2013 the Committee considered clause 16. It noted that the 2011 Act had been amended to take account of the previous Committee's view that the level of fines relating to a range of planning offences should be significantly increased. That Committee had been concerned that previous fines had not reflected the potential financial gain which could be achieved through intentional breaches of planning control. Subsequently,

the 2011 Act increased the level of maximum fine available on summary conviction from £30,000 to £100,000 for a range of offences.

152. When the current Committee discussed clause 16 it noted that there was no level of minimum fine. It asked the Department to consider whether provision could be made to ensure that any fine was proportionate to the value of the development.

153. The Committee considered the Department's response at the meeting on 16 May 2013. The Department stated that the level of fine to be imposed in particular cases is a matter for the courts but that the increase in the maximum levels of fines to be made available under the proposed changes provides additional latitude for the courts to exercise their discretion in sentencing.

154. The Department also stated that the introduction of a set minimum level of fine, aside from those established by the standard scale, would limit the discretion of the courts in determining the level of fine to be imposed after considering the individual circumstances of a case. The Department said that compulsory minimum sentences make no allowance for the possibility, which always exists, of an exceptional case, so they can lead to unintended and unwelcome consequences.

155. The Department told the Committee that it believed it would be prudent to assess the impact of the proposed increases in maximum fines, coupled with the new sentencing guidelines on planning offences, before considering the need for further strengthening of the law in this case. Such proposals would require detailed discussions with the Department of Justice and the judiciary. The Committee was content with this approach

156. At its meeting on 30 May 2013 the Committee was content with clause 16 as drafted.

Clause 17: Conservation areas

157. Clause 17 amends Article 50 of the Planning (Northern Ireland) Order 1991 to include provision that the Department must pay special attention to (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise. In doing so it provides for the accelerated implementation of a reform provided for by section 104 of the 2011 Act.

158. Clause 17 was welcomed by many of those who responded to the Committee's call for evidence.

159. The Committee considered clause 17 at the meeting on 2 May 2013 when the Department stated that this clause reinforces the existing policy in response to a recent legal ruling. The provision provides for enhancement to take place and, if this is not possible, then the area should be conserved.

160. The Committee sought clarification of what was meant by "enhancing", having noted that the Royal Town Planning Institute had raised some concerns about this test as opposed to the "no harm" test. The Department told the Committee that the proposed amendments in clause 17 are not bringing forward any new policy. They do, however, reflect the Department's established long standing policy on development in conservation areas as set out in PPS 6 "Planning, Archaeology and the Built Heritage" and in particular policies BH12 and BH14.

161. The Department told the Committee that its presumption that development should preserve or enhance a conservation area was affected by the outcome of the High Court case of South Lakeland District Council v Secretary of State for the Environment and Carlisle Diocesan Parsonages Board [1992] 2 WLR 204, which held that local planning authorities could not insist that developments are beneficial to conservation areas, merely that they do not harm them.

162. The Department said that it does not wish to stifle development in conservation areas. The emphasis will be on the careful control and positive management of change, to enable the area to remain alive and prosperous, but at the same time to ensure that any new development accords with the area's special architectural or historic interest, and where the opportunity arises to seek to enhance its character / appearance.

163. At its meeting on 30 May 2013 the Committee was content with clause 17 as drafted.

Clause 18: Control of demolition in conservation areas

164. Clause 18 amends Article 51 of the Planning (Northern Ireland) Order 1991 by adding additional provision that any structural alteration to a building in a conservation area, where the alteration consists of demolishing part of the building, shall be taken to be demolition for the purposes of Article 51. In doing so it provides for the accelerated implementation of a reform provided for by section 105 of the 2011 Act.

165. Clause 18 was welcomed by many of those who responded to the Committee's call for evidence.

166. Some respondents felt that where demolition is approved in conservation areas the timescale for the rebuilding should be included to ensure the preservation of the overall amenity of the area, and that this timescale should be rigorously enforced. The Department informed the Committee that where demolition is approved in a conservation area, under BH14 of PPS6 "Planning, Archaeology and the Built Heritage" it will normally be conditional to prior agreement for the redevelopment of the site. Where consent is granted for the demolition of a building, conditions will normally be imposed prohibiting the demolition of the building until planning permission for redevelopment has been granted and contracts have been signed for the approved redevelopment of the site. All approvals granted are given a time period to commence development. The Committee noted this response at the meeting on 2 May 2013 and was content.

167. At its meeting on 30 May 2013 the Committee was content with clause 18 as drafted.

Clause 19: Tree preservation orders: dying trees

168. Clause 19 amends Articles 65 and 65B of the Planning (Northern Ireland) Order 1991 and Section 125 of the Planning Act (Northern Ireland) 2011 by removing the reference to dying trees. Dying trees are no longer exempt from the provisions of a tree preservation order.

169. Clause 19, which provides for the accelerated implementation of reforms provided for by sections 122 and 125 of the 2011 Act, was welcomed by many of those who responded to the Committee's call for evidence.

170. At the meeting on 2 May 2013 the Committee was content with this provision but emphasised the need for the Department to respond speedily to applications for the Department's consent to fell dying trees.

171. At its meeting on 30 May 2013 the Committee was content with clause 19 as drafted.

Clause 20: Fixed Penalties

172. Clause 20 inserts 2 articles into the Planning (Northern Ireland) Order 1991. Articles 76C and 76D enable an authorised officer to issue a fixed penalty notice for the offences of failing 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 level of fixed penalty will be prescribed by Regulations and is reduced by 25% if paid within 14 days.

173. Clause 20 provides for the accelerated implementation of reforms provided for by sections 153 and 154 of the 2011 Act.

174. The Committee noted that a number of respondents believed that once an offender had paid a fixed penalty there would be no further enforcement action against that person even though a breach of the condition notice might continue. A fear expressed was that a developer would build in the cost of a fixed penalty for breach of a planning condition to the overall development costs and that, once the fixed penalty had been paid, no further action would be taken.

175. At the meeting on 2 May 2013 the Department confirmed that this would not be the case. The Department had explained that the use of fixed penalty notices will be discretionary and will follow an assessment of the merits and circumstances of individual cases. Fixed penalty notices will provide planning staff with an additional enforcement tool where a person has failed to comply with an enforcement notice or a breach of condition notice. A fixed penalty notice is a notice offering a person the opportunity of discharging any liability for prosecution in respect of a breach of an enforcement notice or breach of condition notice, by paying the Department a penalty of an amount specified in the notice within 28 days. It does not remove the requirement to remedy the breach of planning control. Should that breach continue the Department will be able to take further action.

176. The Committee was content with this explanation.

177. At its meeting on 30 May 2013 the Committee was content with clause 20 as drafted.

Clause 21: Power of planning appeals commission to award costs

178. Clause 21 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event that agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court. Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.

179. Clause 21 provides for the accelerated implementation of reforms provided for by sections 205 and 206 of the 2011 Act.

180. The Committee noted that a number of respondents welcomed this clause as they believed it should help reduce the likelihood of vexatious or frivolous delaying tactics at appeal. However, there were also those who objected as they believed that it would create further obstacles for small voluntary groups to raise objections to major projects by large developers.

181. At the meeting on 2 May 2013 the Department clarified that this clause allows the PAC to award costs for the unreasonable behaviour of one party which have left another party out of pocket financially. The Department was clear that the clause does not put obstacles in the way of objectors participating in an appeal. It is intended to ensure that all parties involved in an appeal act reasonably. The Committee was satisfied with this explanation.

182. At its meeting on 30 May 2013 the Committee was content with clause 21 as drafted.

Clause 22: Grants

183. Clause 22 amends Article 120 of the Planning (Northern Ireland) Order 1991 to extend the Department's power to grant aid non profit organisations whose objectives include furthering an understanding of planning policy. The Department of Finance and Personnel's approval for such grants is no longer required.

184. Clause 22 provides for the accelerated implementation of a reform provided for by section 225 of the 2011 Act.

185. At the meeting on 2 May 2013 the Department stated that this clause was only applicable to the Department and would not apply to councils when planning powers are transferred.

Grants would usually be for one year and the levels of funding would be dependent on the number of applications the Department received.

186. The Committee was content with this clarification.

187. At its meeting on 30 May 2013 the Committee was content with clause 22 as drafted.

Clause 23: Duty to respond to consultation

188. Clause 23 inserts Article 126A into the Planning (Northern Ireland) Order 1991. It requires those persons or bodies which the Department is required to consult (before determining certain applications for planning permission or consent) to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and the Department. The section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

189. Clause 23 provides for the accelerated implementation of a reform provided for by section 229 of the 2011 Act.

190. Although clause 23 was widely welcomed many stakeholders had questions about what the prescribed periods would be (with a number suggesting that the time period should be no more than either 21 or 28 days). There were other queries about the procedure that would be followed for the purposes of the requirement to consult. Some felt that there needs to be recognition of the size, complexity and volume of detailed impact assessments that accompany many larger planning applications.

191. The Department told the Committee that details of the process that statutory consultees will follow will be prescribed in subordinate legislation. The subordinate legislation will prescribe a time period within which consultees should respond. However, it will also allow for a time period to be agreed between the Department and consultees where they are dealing with applications that are more complex and require more information and a longer response time. The subordinate legislation will be subject to public consultation and Assembly scrutiny.

192. The Committee was content with this response.

193. At its meeting on 30 May 2013 the Committee was content with clause 23 as drafted.

Clause 24: Fees and Charges

194. Clause 24 amends Article 127 of the 1991 Order to enable the Department to charge multiple fees for retrospective planning applications. In doing so it provides for the accelerated implementation of a reform provided for by section 223 of the 2011 Act.

195. At the meeting on 2 May 2013 the Department stated that this clause was a deterrent for submitting retrospective applications and that the level of the multiple fees would be set out in subordinate legislation.

196. The Committee noted that there was broad support for this provision.

197. At its meeting on 30 May 2013 the Committee was content with clause 24 as drafted.

Clause 25: Duration

198. Clause 25 allows the Department to make subordinate legislation to repeal provisions in the Bill and to include 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.

199. The Committee had no issues with this clause.

200. At its meeting on 30 May 2013 the Committee was content with clause 25 as drafted.

Clause 26: Interpretation

201. Clause 26 contains interpretation provisions and defines a number of terms used throughout the Bill.

202. The Committee had no issues with this clause.

203. At its meeting on 30 May 2013 the Committee was content with clause 26 as drafted.

Clause 27: Commencement

204. Clause 27 concerns the commencement of the Bill and enables the Department to make commencement orders. Clause 27 provides for clauses 1, 15, 16, 22, 26, 27 and 28 to come into operation on Royal Assent.

205. The Committee considered clause 27 at its meetings on 2, 23 and 30 May 2013. The Committee noted that the Department had signalled its intention to elaborate on key issues (including economic considerations) through a single strategic planning policy statement. The Department also said it was its intention to consult widely on the related policy and guidance in the single planning policy statement before clauses 2 and 6 were commenced.

206. The Committee was concerned about the potential for a delay to the commencement of clauses 2 and 6. Despite the Department's stated intentions, it could not guarantee that the consultation on the single strategic planning policy statement would occur by a specific date. Consequently, it could not guarantee that the commencement of clauses 2 and 6 would occur by a specific date.

207. The Committee asked the Department to consider making an amendment to provide for clauses 2 and 6 to be commenced on Royal Assent. The Department responded by explaining that such an amendment would mean that from the date of the Bill's Royal Assent, policy making by the Department under Part 2 or Part 3 of the Planning (Northern Ireland) Order 1991 would have to be carried out with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. In doing so, particular attention would have to be paid to the desirability of achieving good design. In clause 6 affirmation that the reference to material considerations in the determination of planning applications includes a reference to any economic advantages or disadvantages likely to result from the grant or refusal of planning permission would also apply from the date of Royal Assent.

208. The Department went on to confirm that, subject to Executive Committee agreement, the Minister would support this amendment and would take it forward as a Departmental amendment to the Planning Bill at Consideration Stage. The Department assured the Committee that it would work expeditiously to bring forward the associated policy and guidance. The Department then suggested that Clause 27 (1) is amended to include reference to section 2(1) and 6(1).

209. At its meeting on 30 May 2013 the Committee was content with clause 27, subject to the following Departmental amendment being made:

Clause 27, Page 16, Line 31

After '1' insert '2(1), 6(1),'

Clause 28: Short title

210. Clause 28 provides a short title for the Bill.

211. The Committee had no issues with this clause.

212. At its meeting on 30 May 2013 the Committee was content with the clause 28 as drafted.

Long Title

213. At its meeting on 30 May 2013 the Committee was content with the Bill's long title.

OTHER ISSUES

Delegated Powers

214. The Examiner of Statutory Rules advised the Committee that the Bill contains several powers to make subordinate legislation. The Committee was content with the proposed level of scrutiny for these powers.

Consultation

215. Many of those who responded to the Committee's call for evidence felt that there was a lack of proper consultation on the Bill, particularly in relation to clauses 2 and 6. Some suggested that it was inappropriate for the Bill to proceed without full consultation being undertaken by the Department.

216. The Department explained how the policy underpinning the vast majority of the provisions of the Bill (i.e. all but clauses 2 and 6) is essentially the same as that underlying the 2011 Act. This policy was subject to equality, regulatory and human rights impact assessment and extensive public consultation. However, the Department went on to say that the provisions in relation to clauses 2 and 6 (which were not in the 2011 Act) were only recently identified as being desirable and have not been consulted upon. The Department pointed out that these provisions will be subject to consultation and scrutiny during the Assembly process.

217. The Committee sought its own legal advice in relation to the degree of consultation that had been undertaken in relation to Clauses 2 and 6. Having done so, the Committee was content that there was no legal reason to prevent the Bill passing through the Assembly's legislative process.

218. The Committee supports and encourages Departmental consultation on key policy issues. Effective consultation is an important feature of our democratic process and can identify valuable information which helps inform decision making and the design of effective solutions.

219. In the case of this Bill, the Committee accepts that there had been extensive consultation on the reforms that were contained in the 2011 Act. In the Committee's view had there been further consultation in relation to clauses 2 and 6 this would have created the potential to the delay the entire Bill to such an extent as to undermine its effectiveness.

220. The Committee noted that the Department had said that although it had not consulted on clauses 2 and 6 these provisions will be subject to consultation and scrutiny during the Assembly process. The Committee did call for evidence on the Bill and received 112 submissions. The Committee also held a stakeholder event on the Bill that was open to the public to attend. The evidence that Committee received was instrumental in assisting it in the consideration of the Bill. However, a Committee's scrutiny of a Bill should not be considered as an alternative to departmental consultation.

Appendix 1

Minutes of Proceedings

Thursday 10 January 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mrs Dolores Kelly
Mr Francie Molloy
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Barry McElduff

10:03am The meeting began in public session.

1. Apologies

Apologies are listed above.

10. Departmental Pre-Legislative Briefing on the Planning Bill

The Chairperson informed members that they had been provided with the Draft Bill and a synopsis of reforms in the Bill.

Departmental Officials briefed the Committee and answered members' questions on the Planning Bill.

The main areas of discussion were the new clauses, a timeframe for the introduction of the Bill and the subordinate legislation that will follow.

[EXTRACT]

Thursday 28 February 2013, Key Largo Room, Everglades Hotel, Derry/Londonderry

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Francie Molloy
Lord Morrow
Mr Alastair Ross

10:02am The meeting began in public session.

1. Apologies

Apologies are listed above.

6. Planning Bill

The Chairperson informed members that they had been provided with a Departmental reply to Committee queries raised during the Second Stage debate.

Agreed: That a letter is sent to the Department asking for a reply to the query raised by Jim Allister MLA on the human rights implications for introducing a restriction that only new information could be presented at appeals.

[EXTRACT]

Thursday 14 March 2013, Room 30, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Francie Molloy
Mr Barry McElduff

10:11am The meeting began in public session.

1. Apologies

Apologies are listed above.

9. Planning Bill

Members noted a Departmental reply to Committee queries on new material at appeals.

[EXTRACT]

Thursday 21 March 2013, Room 30, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

10:01am The meeting began in public session.

1. Apologies

There were no apologies.

7. Planning Bill

The Chairperson informed members that they had been provided with a paper from the Examiner of Statutory Rules on the delegated powers of the Planning Bill.

Agreed: That the paper from the Examiner of Statutory Rules is included in the final Committee report.

The Chairperson informed members that they had been provided with submissions to the Committee's call for evidence. The submissions include an anonymous contribution and a late submission from the Northern Ireland Retail Consortium.

Agreed: That a letter is sent to the anonymous contributor explaining that the Committee will not accept an anonymous submission and giving this contributor the opportunity to resubmit their submission.

Agreed: That the rest of the submissions, including the late submission, are included in the final Committee report.

Agreed: That the invitations to the Stakeholder event on 18 April 2013 are issued and that the event focuses on the 6 clauses/key issues discussed.

[EXTRACT]

Thursday 11 April 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Barry McElduff

10:13am The meeting began in public session.

1. Apologies

Apologies are listed above.

11. Assembly Research Briefing on the Planning Bill

An Assembly Research official briefed the Committee and answered members' questions in relation to the Planning Bill.

12. CNCC Briefing on the Planning Bill

Representatives of CNCC briefed the Committee and answered members' questions in relation to the Planning Bill.

The main areas of discussion were the group's concerns regarding Clauses 2,6 & 10 of the Bill as currently drafted.

11:59am Mr Ross left the meeting.

12:06pm Mrs Kelly left the meeting.

12:24pm Mr Elliot left the meeting.

12:28pm Lord Morrow left the meeting.

Anna Lo, MLA
Chairperson, Committee for the Environment
25 April 2013

[EXTRACT]

Thursday 18 April 2013, Long Gallery, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mr Ian Milne
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mrs Dolores Kelly

10:10am The meeting began in public session.

1. Apologies

Apologies are listed above.

2. Planning Bill Stakeholder Event

The Chairperson welcomed attending stakeholders and Departmental officials and explained the format of the event.

There followed a discussion on clauses 1,2,6,10,20 & 23 of the Planning Bill.

Stakeholders and members were invited to give their views on these clauses and Departmental officials responded to questions and issues raised.

Stakeholders were invited to give their views on other clauses relevant to the Bill and Departmental officials responded to the questions and issues raised.

The event was recorded by Hansard.

[EXTRACT]

Thursday 25 April 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Jonathan Watson (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

10:10am The meeting began in public session.

1. Apologies

There were no apologies.

10. Initial clause by clause consideration of the Planning Bill

10.54am The meeting went into closed session. to allow the Committee to receive advice from the Bill Office.

11.02am The meeting resumed in open session.

The Committee Chairperson informed members that they had been provided additional written evidence from the Northern Ireland Biodiversity Group and the Ulster Architectural Heritage Society.

Agreed: Members agreed that they were content to accept the additional papers and include them in the final Committee report.

The Committee commenced the initial clause by clause consideration of the Planning Bill with discussion on issues raised by stakeholders in relation to Clauses 1 – 6.

11:55am Mr McElduff left the meeting.

12:24pm Mr McElduff re-joined the meeting.

12:30pm Mr Elliott left the meeting.

12:32pm Mr Weir left the meeting.

Agreed: That a letter is sent to the Department asking that they respond to any additional issues raised at the Stakeholder Event on the 18th April which were not yet addressed in the Department's written response to the clause by clause summary of responses table.

Agreed: That the Department provides a rationale for the inclusion of the objective of promoting economic development (in Clause 2) and the inclusion of Clause 6.

[EXTRACT]

Thursday 2 May 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Ian Milne
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Barry McElduff

10:11am The meeting began in public session.

1. Apologies

Apologies were noted as above.

4. Initial clause by clause consideration of the Planning Bill

The Committee continued its initial clause by clause consideration of the Planning Bill with discussion on issues raised by stakeholders in relation to Clauses 7 – 28, general comments relating to the Bill and further issues relating to Clauses 2 and 6.

10:14am Mr Weir joined the meeting.

10:16am Mr Elliott joined the meeting.

10:16am Mr Milne joined the meeting.

Agreed: That, in relation to clause 10, the Committee seeks a written response from the Department on whether provision could be made for a person or body other that DOE (e.g. OFMdFM) to have the power to appoint a person other than the Planning Appeals Commission (PAC) to hold a public inquiry.

The Committee also requested a response to queries on when and how the power to appoint a person would be exercised.

10:35am Mr Weir left the meeting.

10:39am Mr Boylan left the meeting.

10:41am Mr Boylan re-joined the meeting.

10:44am Mr Weir re-joined the meeting.

10:53am Mr Hamilton left the meeting.

11:00am Mr Elliot left the meeting.

Agreed: That, in relation to Clause 16, the Committee seeks a written response from the Departmental on whether there could be a minimum fine, and whether provision could be made to ensure that any fine was proportionate to the value of the development.

11:11am Mr Elliott re-joined the meeting.

11:27am Mrs Kelly left the meeting.

11:35am Mr Hamilton left the meeting.

11:36am Mr Weir left the meeting.

11:40am Mr Weir re-joined the meeting.

11:41am Mrs Kelly re-joined the meeting.

11:41am Mr Hamilton re-joined the meeting.

The Committee also discussed some further issues in relation to Clause 2 of the Bill in particular a suggested amendment provided by Community Places.

Agreed: Departmental officials agreed to consider and provide a response to the Committee in relation the suggested amendment.

Agreed: That the summary tables containing the Department's responses to the clauses are published on the Assembly website and are also included in the final Committee report.

[EXTRACT]

Thursday 9 May 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Interests declared: Mr Sydney Anderson, member of Craigavon Borough Council.
Lord Morrow, member of Dungannon and South Tyrone Borough Council.
Mr Peter Weir, member of North Down Borough Council.

10:15am The meeting began in public session.

The Chairperson welcomed Mr Anderson as a new member to Committee and thanked Mr Alastair Ross for his contribution on leaving the Committee.

1. Apologies

None

11. Planning Bill: Consideration of the Need for Legal Advice

The Committee discussed the need for legal advice on some aspects of the Bill.

12:15pm Mr McElduff left the meeting.

12:13pm Mr Hamilton joined the meeting

Agreed: Members agreed to request legal advice on the level of Departmental consultation on the Planning Bill.

[EXTRACT]

Thursday 16 May 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mrs Dolores Kelly
Mr Barry McElduff
Lord Morrow
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Tom Elliott
Mr Ian Milne

10:09am The meeting began in public session.

1. Apologies

Apologies were indicated as above.

10:34am The meeting moved into closed session.

8. Planning Bill

Assembly Legal services provided the Committee with legal advice in relation to the Planning Bill.

11:14am Mr Hamilton left the meeting.

11:17am The meeting continued in public session.

Mr Brian Gorman (Planning Service) and Ms Irene Kennedy (Planning Service) briefed the Committee on issues previously raised by members in relation to the Planning Bill.

Agreed: Members agreed that at further stages of the Bill the Chairperson should confirm with the Minister that the 3 terms used at Clause 2, 'furthering, promoting and advancing', may be considered as interchangeable.

[EXTRACT]

Thursday 23 May 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: None

Interests declared: Mr Sydney Anderson, member of Craigavon Borough Council
Lord Morrow, member of Dungannon & South Tyrone Borough Council
Mr Peter Weir member of North Down Borough Council

10:10am The meeting began in public session.

1. Apologies

Apologies were indicated as above.

7. Planning Bill – formal clause by clause consideration

11:30am Mr Boylan rejoined the meeting.

12.03pm Mr McElduff rejoined the meeting.

Agreed: The Committee agreed to defer its formal clause by clause consideration of the Planning Bill in order to consider possible amendments to clauses 2,6 & 27.

The Chairperson indicated that at Consideration Stage she intended to bring forward an amendment to clause 2 as a private member.

13. Date, time and place of next meeting

10:00am The next meeting will be held on Thursday 30 May 2013 in the Senate Chamber, Parliament Buildings.

12.19pm The Committee moved into closed session to discuss the wording of possible amendments to the Planning Bill.

12:32pm The Chairperson adjourned the meeting.

[EXTRACT]

Thursday 30 May 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: None

10:09am The meeting began in public session.

1. Apologies

Apologies were indicated as above.

11:02am Lord Morrow joined the meeting.

8. Planning Bill – formal clause by clause consideration

Ian Maye (Deputy Secretary), Brian Gorman (Planning Service), Irene Kennedy (Planning Service) and Simon Kirk (Strategic Planning) responded to the Committee's suggestions for amendments to clauses 2, 6 &27. The Committee was content with the proposals.

The Committee noted a draft indicative timetable for the Planning Bill to come into operation.

11:08am Mr Elliot joined the meeting.

11:09am Mr McElduff left the meeting.

Clause 1 – Statement of community involvement

Question put and agreed:

"That the Committee is content with Clause 1 as drafted"

Clause 2 – General functions of the Department and the Planning Appeals Commission

The Chairperson put the following question:

"That the Committee is content with Clause 2 subject to the amendment as proposed by the Department"

The Committee divided:

AYES	NOES
Mr Boylan	Ms Lo
Mr Elliott	
Mr Hamilton	
Mrs Kelly	
Mr Milne	
Lord Morrow	
Mr Weir	

The motion was therefore carried.

Clause 3 – Meaning of development

Question put and agreed:

"That the Committee is content with clause 3 as drafted"

Clause 4 – Publicity etc. in relation to applications

Question put and agreed:

"That the Committee is content with clause 4 as drafted"

Clause 5 – Pre-application community consultation

Question put and agreed:

"That the Committee is content with clause 5 as drafted"

11:18am Mr Anderson rejoined the meeting.

Clause 6 – Determination of planning applications

The Chairperson put the following question:

"That the Committee is content with Clause 6 subject to the amendment as proposed by the Department"

The Committee divided:

AYES	NOES
Mr Anderson	Ms Lo
Mr Boylan	
Mr Elliott	
Mr Hamilton	
Mrs Kelly	
Mr Milne	
Lord Morrow	
Mr Weir	

The motion was therefore carried.

Clause 7 – Power to decline to determine subsequent application

Question put and agreed:

"That the Committee is content with clause 7 as drafted"

Clause 8 – Power to decline to determine overlapping applications

Question put and agreed:

"That the Committee is content with clause 8 as drafted"

Clause 9 – Aftercare conditions for ecological purposes on grant of mineral planning permission

Question put and agreed:

"That the Committee is content with clause 9 as drafted"

Clause 10 – Public inquiries: major planning applications

Question put and agreed:

"That the Committee is content with clause 10 as drafted"

Clause 11 – Appeals: time limits

Question put and agreed:

"That the Committee is content with clause 11 as drafted"

Clause 12 – Matters which may be raised in an appeal

Question put and agreed:

"That the Committee is content with clause 12 as drafted"

Clause 13 – Power to make non-material changes to planning permission

Question put and agreed:

"That the Committee is content with clause 13 as drafted"

Clause 14 – Aftercare conditions imposed on revocation or modification of mineral planning permission

Question put and agreed:

"That the Committee is content with clause 14 as drafted"

Clause 15 – Planning agreements: payments to departments

Question put and agreed:

"That the Committee is content with clause 15 as drafted"

Clause 16 – Increase in Certain Penalties

Question put and agreed:

"That the Committee is content with clause 16 as drafted"

Clause 17 – Conservation areas

Question put and agreed:

"That the Committee is content with clause 17 as drafted"

Clause 18 – Control of demolition in conservation areas

Question put and agreed:

"That the Committee is content with clause 18 as drafted"

Clause 19 – Tree preservation orders: dying trees

Question put and agreed:

"That the Committee is content with clause 19 as drafted"

Clause 20 – Fixed penalties

Question put and agreed:

"That the Committee is content with clause 20 as drafted"

Clause 21 – Power of planning appeals commission to award costs

Question put and agreed:

"That the Committee is content with clause 21 as drafted"

Clause 22 - Grants

Question put and agreed:

"That the Committee is content with clause 22 as drafted"

Clause 23 – Duty to respond to consultation

Question put and agreed:

"That the Committee is content with clause 23 as drafted"

Clause 24 – Fees and Charges

Question put and agreed:

"That the Committee is content with clause 24 as drafted"

Clause 25 – Duration

Question put and agreed:

"That the Committee is content with clause 25 as drafted"

Clause 26 – Interpretation

Question put and agreed:

"That the Committee is content with clause 26 as drafted"

Clause 27 – Commencement

The Chairperson put the following question:

"That the Committee is content with Clause 27 subject to the amendment as proposed by the Department"

The Committee divided:

AYES	**NOES**
Mr Anderson	Ms Lo
Mr Boylan	
Mr Elliott	
Mr Hamilton	
Mrs Kelly	
Mr Milne	
Lord Morrow	
Mr Weir	

The motion was therefore carried.

Clause 28 – Short title

Question put and agreed:

"That the Committee is content with clause 28 as drafted"

Long title

Question put and agreed:

"That the Committee is content with the long title"

11:29am Mr Hamilton left the meeting.

[EXTRACT]

Tuesday 4 June 2013
Room 29, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Sydney Anderson
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Mr Peter Weir

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Lord Morrow

12:56pm The meeting began in public session.

1. Apologies

Apologies were indicated as above.

2. Minutes

The minutes from the meeting on 30th May 2013 were agreed.

3. Consideration of the draft Committee report on the Planning Bill

The Committee gave consideration to the draft report on the Planning Bill.

The Committee considered the Executive Summary section of the report.

Agreed: The Committee was content with the Executive Summary section of the report subject to minor amendments.

13:04pm Mr Weir joined the meeting.

The Committee considered the Recommendation section of the report.

Agreed: The Committee was content with the Recommendations section of the report as drafted.

The Committee considered the Consideration of the Bill section of the report.

Agreed: The Committee was content with the Consideration of the Bill section of the report subject to minor amendments.

13:06pm Mr Milne joined the meeting.

The Committee considered the Clause by clause consideration section of the report.

Agreed: The Committee was content with the Clause by clause consideration section of the report subject to minor amendments.

The Committee considered Appendix 1 – Minutes of Proceedings.

Agreed: The Committee was content with the Appendix as drafted

The Committee considered Appendix 2 – Minutes of Evidence.

Agreed: The Committee was content with the Appendix as drafted

The Committee considered Appendix 3 – Written Submissions.

Agreed: The Committee was content with the Appendix as drafted

The Committee considered Appendix 4 – List of Witnesses.

Agreed: The Committee was content with the Appendix as drafted

The Committee considered Appendix 5 – Assembly Research Papers.

Agreed: The Committee was content with the Appendix as drafted

The Committee considered Appendix 6 – Other papers submitted to the Committee.

Agreed: The Committee was content with the Appendix as drafted

4. Date, time and place of next meeting

The next meeting will be held on Thursday 6 June 2013 at 10:00am in the Senate Chamber, Parliament Buildings.

13:07pm The Chairperson adjourned the meeting.

Anna Lo, MLA

Chairperson, Committee for the Environment
23 May 2013

Thursday 6 June 2013, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Ian Milne
Lord Morrow
Mr Peter Weir

In Attendance: Mrs Sheila Mawhinney (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Sydney Anderson
Mr Barry McElduff

10:06am The meeting began in public session.

1. Apologies

Apologies were indicated as above.

6. Planning Bill – consideration of final report

The Committee agreed to move to agenda item 7.

The Committee considered the final draft of the report on the Planning Bill.

Agreed: The Committee was content with the amendments made to the report following its last meeting (4th June) and agreed that the report should be ordered to print.

Agreed: The Committee agreed that it was content for an extract from the minutes of this meeting to be included in its Report unapproved.

Agreed: The Committee agreed the wording of a Press Release to be issued on the publication of its Report.

[EXTRACT]

Appendix 2

Minutes of Evidence

10 January 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mrs Dolores Kelly
Mr Francie Molloy
Lord Maurice Morrow of Clogher Valley
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Ms Irene Kennedy	*Department of the Environment*
Mr Angus Kerr	
Mr Kevin McKeever	

1. **The Chairperson**: I welcome Angus Kerr, director of planning policy division; Irene Kennedy from planning; and Kevin McKeever. Thank you very much for coming. Happy new year to you all. Will you give us a presentation of five or 10 minutes? Afterwards, we will ask questions. Thank you.

2. **Mr Angus Kerr (Department of the Environment)**: Thank you very much, Chair. First, I want to apologise because I have just recovered from a rather nasty bout of flu. You can probably hear it in my voice. I will be croaking a little too much today. Apologies for that. It probably sounds worse to me than it does to you.

3. Thank you very much for inviting us back to the Committee. You will remember that on 21 June 2012, we gave you a short briefing on the Bill. As the Bill is moving forward again, it is probably helpful for us to update you. The latest position is that the Minister intends to introduce the Bill to the Assembly on Monday 14 January 2013. You will recall that the main purpose of the Bill is, essentially, to accelerate the introduction of a number of the much-needed reforms to the planning system that are already in the Planning Act (Northern Ireland) 2011, which went through the previous Assembly, ahead of the transfer of planning powers to councils. So the bulk of the reforms are not new. As many members will recall, the policy has already been established and was previously subject to Committee and Assembly scrutiny. As you know, the 2011 Act modernised the planning system in order to transfer powers. The Act reflects the two-tier planning system to be run by the Department and local councils. The time frame for the transfer of those powers is 2015.

4. The Bill will reproduce provisions in the 2011 Act and bring them forward as amendments to the Planning (Northern Ireland) Order 1991. So that will work as an interim measure that will allow the reforms to be implemented sooner and in advance of the transfer of planning powers. Therefore, it provides an opportunity to transfer a system that councils, planners, developers and, of course, the public will already be using and have had a chance to test, see how it works and get a better and fuller understanding of it rather than introducing all the changes at the same time as we introduce the transfer of the function.

5. In addition, the Bill contains a couple of newer elements that were not part of the 2011 Act. One of these, which we highlighted to the Committee in June, relates to promoting good design. The other additional fundamental issue is that the Minister has decided to introduce proposals that aim to underpin the role of planning in promoting economic development. I am here today with Irene Kennedy and Kevin McKeever. Irene will quickly go through the main elements of the Bill and also talk in a little more detail about those new bits.

6. **Ms Irene Kennedy (Department of the Environment)**: Good morning, Chair and members. The Bill has 28 clauses

and no schedules. Twenty-four of the clauses make amendments to the 1991 order. They correspond with provisions reforming planning law in the 2011 Act but have not yet been brought into operation. Clause 25 makes provision for the Department to make an order repealing those clauses when the relevant sections of the 2011 Act come into operation and provisions of the 1991 order, which are amended by this Bill, are repealed. That is the mechanism.

7. Three clauses make amendments to the 2011 Act. There are no changes to the development plan system in the Bill. It is the Department's view that councils are best placed to deliver the new generation of development plans. It is, therefore, appropriate that the comprehensive reforms of the development plan system that were discussed in the lead-up to the 2011 Act take effect when the transfer of planning powers makes its way to councils.

8. I have outlined the main established reforms that we carried forward from the 2011 Act through amendments to the 1991 order. Those are listed in the synopsis that we provided to the Committee. First, the proposed provisions will bring about faster processing of planning applications through a number of reforms, such as the option to appoint persons other than the Planning Appeals Commission to conduct inquiries and hearings into major planning applications.

9. To speed up decision-making, a duty will be placed on statutory consultees to provide substantive response consultations on applications within a prescribed time frame. The Bill contains enabling powers to allow publicity arrangements for planning and listed building applications to be set out in subordinate as opposed to primary legislation. That will provide flexibility to choose from a range of communication methods to provide information to the public. In addition, the Bill contains provision to allow the Department to approve non-material changes to an existing planning permission without the applicant having to take the time or go to the expense of submitting a further application.

10. The proposed provisions provide simpler and tougher enforcement by introducing fixed penalty notices for failure to comply with an enforcement notice or breach of condition notice; clarification on the requirement for consent or planning permission to partially demolish any part of an unlisted building; and increased penalties for a range of planning offences. Penalties for failure to comply with an enforcement notice or stop notice, for example, will be raised from £30,000 to £100,000 on summary conviction. The increased fines were sought by the previous Committee during consideration of the 2011 Bill. They were subsequently tabled and discussed during that Bill's formal Consideration Stage. The Bill also provides for multiple fees to be charged for retrospective planning applications.

11. A number of measures are carried forward to strengthen environmental aspects of planning. Those include amending the Department of the Environment's (DOE) sustainable development duty to require the Department to carry out its policy and plan-making functions with the objective of furthering sustainable development and promoting or improving well-being. It requires that, where possible, proposed development in a conservation area should enhance the character and appearance of that area. The Department's consent will also be required for the felling of, or works to, trees covered by a tree preservation order that are dying because dying trees are no longer exempt.

12. Faster and fairer appeals are proposed through reducing the period during which an applicant can submit an appeal against a planning decision from six months to four months. The Bill introduces a period for a certificate of lawful use or development appeals and powers to restrict the introduction of new material at appeals. It also allows the Planning Appeals Commission to award costs in planning appeals in

which the unreasonable behaviour of one party has left another out of pocket. The proposals will enhance community involvement through the introduction of the requirement for developers to carry out statutory pre-application community consultation for major applications. The Bill also requires the Department to prepare and publish, within one year, a statement of community involvement for its functions.

13. I turn now to the new reforms that the Department proposes to make to both the 1991 order and the 2011 Act. In June, we advised the Committee that the Bill would contain a minor amendment requiring particular attention to be given to the desirability of achieving good design in delivering policy and plan-making functions. To support that, the Department also intends to consult, in coming months, on an urban stewardship and design guide and on subordinate legislation to require certain planning applications and listed building consent applications to be accompanied by design and access statements.

14. Since we briefed the Committee in June and following discussions at the Executive, the Minister has decided to bring forward additional proposals to underpin the role of planning in promoting economic development. Those proposals are included as amendments to both the 1991 order and the 2011 Planning Act. They will continue to apply once the transfer of planning powers to councils has taken place. The new proposals will require the Department to formulate and co-ordinate planning policy with the additional objective of promoting economic development. A similar requirement will be placed on the Department, the council, the Planning Appeals Commission or the independent examiner in carrying out any development plan functions. The Department and councils, in determining any application for planning permission, will be required to have regard to considerations relating to the economic advantages or disadvantages likely to result from granting or refusing planning permission.

15. The Committee and the Executive recognise that the planning system has a key role to play in supporting economic recovery. The Executive's Programme for Government and the economic strategy both recognise the importance of planning in rebuilding and rebalancing the economy. In the current economic climate, it is important that the planning system adapts flexibly and quickly to the many challenges facing the economy. Proposals that may bring investment should be processed as quickly as possible. The planning system should be more efficient, give greater certainty to developers and process applications faster. This approach acknowledges the role that planning has to play in delivering sustainable development and growing the economy. Good planning and quick decisions are key to economic growth and new jobs.

16. Further elaboration will be set out in the Department's forthcoming single planning policy statement. It will deal with the core principles underlying the reformed planning system and address how economic considerations are to be taken into account along with social and environmental considerations. It will assert the purpose and role of planning, including in a sustainable development context.

17. So, Chair, that is what is included in the Bill, what we discussed in June and what the new additions are.

18. **The Chairperson**: Thank you very much. I very much support the addition on good design. Some architects in Northern Ireland will tell you that some of our buildings are not good enough, shall I say. PPS 25, which was drafted by the Department, was specifically about economic development, so why are we adding this now? This is similar to PPS 25.

19. **Mr Kerr**: It was PPS 24, which is the one that was withdrawn. There is a difference. PPS 24 dealt with the amount of weight that should be given to economic considerations in

planning decisions. This aspect of the change to the legislation is only establishing economic development as a statutory material consideration in the determination of planning applications. It is not saying that it should be given greater weight and could be the determining weight, and so forth, in making planning decisions, as PPS 24 did. The proposed amendment simply states that economic development is a material planning consideration in the determination of planning applications. There is a subtle difference, but it is a different type of measure. One is a legislative measure, and the other is a policy measure. As Irene mentioned, when we come to develop this through the single planning policy statement, we may want to get into questions of how much weight various considerations should be given in different circumstances. How do we differentiate between environmental and economic considerations, and so on? That is more of a policy issue than a statutory requirement or an identification of what the considerations are. That is what this is doing in the legislation.

20. **The Chairperson**: There is a reference to whether refusal would have an economic disadvantage. Any potential disadvantage to economic development would have to be considered. Does that put a lot of pressure on the planners simply to say yes to all developments?

21. **Mr Kerr**: I see this as clarifying for planners that economic advantages and disadvantages are a material consideration to be taken into account when approving or refusing a planning application.

22. **The Chairperson**: How material is that? That is not about massing, sites or traffic congestion.

23. **Mr Kerr**: In the philosophical debates about this all the way along, it was said that economic considerations have always been a material consideration in dealing with planning applications. Therefore, there was a debate about whether this was necessary. That is a separate issue, but we now have it in front of us, and it clarifies something that most of us around this table knew: economic considerations are and will continue to be material in deciding planning applications. You only have to look at the recent decisions that people will be aware of, such as Runkerry, Athletic Stores and major retail applications. If you read all of the material associated with those, you will see that they deal with the weight given to economic considerations in coming to whatever decision was made on those planning applications. So that is how it has been in making planning decisions for many years.

24. **The Chairperson**: Why do you have to add a clause with a particular emphasis on economic development?

25. **Mr Kerr**: It clarifies the position and gives economic development the statutory weight of a material planning consideration, and there can be no doubt about that. So it gives economic development a status. I suppose that, ultimately, legislation gives it the highest status in policy. If this goes forward, it absolutely guarantees the establishment in Northern Ireland of economic development as a material consideration in planning decisions.

26. **Mr Boylan**: Thank you very much for your presentation, and happy new year to you. We have finally got round to the Planning Bill. I will pick up on the point about the weight being given to economic development. It is about time that this was clarified because, otherwise, you cannot shout about growing the economy and everything else. This is all about appropriate and proper development. In the absence of area plans, some of which are on hold and some of which are in draft form, I think that we need something. Is this coming through as part of the Bill, or is it coming through separately?

27. **Ms I Kennedy**: It is part of the Bill.

28. **Mr Boylan**: I add my support to that. We need clarification on what should and should not be allowed in terms of economic weight.

29. I have some particular points to raise, starting with the duty to respond. Many planning applications have been held up by certain bodies. How do you propose to go about tackling that? Obviously, you will set out a time frame. If those bodies were not to respond to that, would they be subject to a penalty of any description?

30. **Mr Kerr**: Subordinate legislation will be needed to explain who the statutory consultees are, what the precise timescales are and to deal with the issue of the penalty, which still needs to be decided. There are options for a light-touch approach or more stringent action against statutory consultees whose responses are late. The performance of those who are not statutory consultees now but who will be the statutory consultees of the future has been improving quite substantially, which gives us cause for encouragement when it comes to Roads Service, the NIEA, and so on. They have been responding in good time and have, more or less, been meeting their targets. A lot of recent work has been starting to focus on the quality and type of responses that we get back, whether they are helpful and whether they are the right type of response so that we can get the best planning decision.

31. **Mr Boylan**: Councils need to have confidence that this will take place. I will not mention any consultees, but I know from experience how long it can take for a response to come in. I agree that we need to look at penalties. Delay not only holds up the whole system but can impact on local authorities. If we are to be strong in introducing penalties, let us make sure that they will work.

32. My other query is to do with additional material being provided. I cannot see where that is in the Bill just now. Should we not be looking at creating a situation whereby when someone is making an application, the material that they are supposed to produce is clearly identified? That would mean that we would not be waiting for extra material or other information. That clearly holds up the process. Do we propose to deal with that in subordinate legislation as well?

33. **Mr Kerr**: Is that in relation to the appeal process?

34. **Mr Boylan**: Yes.

35. **Ms I Kennedy**: There is a provision that deals with appeals and materials. It will mean that the ability to introduce new material is prevented. There is a restriction on that. The decision made at an appeal should be made on the basis of the information provided when the decision on the application was made. That is to prevent —

36. **Mr Boylan**: So that gap is now closed? That has been an issue.

37. **Ms I Kennedy**: Yes.

38. **Mr Boylan**: I just could not think where it was in the Bill. I remember that coming up in the debate. Clearly, that is an issue that we need to look at.

39. **Ms I Kennedy**: That is carried forward from the 2011 Act. Bear with me, and I will tell you where the clause is.

40. **Mr Boylan**: I could not see it. I just wanted clarification because, even yet, additional material is being provided. We need to look at that at the start of the process.

41. **Ms I Kennedy**: It is clause 12.

42. **Mr Boylan**: I want to ask about diversification. I have seen a lot of applications, and we are not clear on what we will allow under diversification. What innovations, for example, will be allowed? I am talking in general about what is happening in rural areas. I would like to see what we will introduce or what is in the Bill to direct that. I know that a lot of light engineering business applications have come through from people who have moved away from agricultural practices. That is the way forward, so I would like to know what is in the Bill or how we should look at that.

43. **Mr Kerr**: That issue will probably be dealt with most effectively on the policy side, particularly when we bring

the single policy statement to the Committee. The Minister has looked at that area and considered it as part of his ongoing review of PPS 21. A number of people have raised that as a problem or an issue. There have been discussions about that and some training for staff on a more flexible approach to what can constitute diversification, along with some other aspects of PPS 21.

44. **Mr Boylan**: I have one final point, Chair. There was a particular complaint about alterations and the fact that people have not complied with the plans that they submitted, especially in and around Belfast. Has a role for building control officers been considered?

45. **Mr Kerr**: That is a key area, particularly for 2015 and beyond following the transfer of planning powers to councils. I see that as one of the many benefits of transferring planning to councils because it brings it right in with some of the other existing council functions, such as building control. There is an attempt to liaise as closely as possible with Building Control now, but the transfer of planning powers to councils offers a really good opportunity in the future to make it much more systematic in councils, which will be responsible for planning decisions. Currently, there is no systematic way in which officers go back out and check those planning decisions, whereas, if a council has responsibility for building control, part of its business is to go out two or three times and look at the particular proposals. That is where those elements are tied together to make that very important link.

46. **The Chairperson**: Really, we are just progressing part of the 2011 Act. Then, by 2015, the rest will be enforced.

47. **Mr Kerr**: That is right.

48. **The Chairperson**: Will it automatically go through the Assembly again?

49. **Mr Kerr**: Someone can keep me right here. These changes will be repealed because they will become irrelevant after the transfer. The Planning Act, which, as you know, is already through, will come into effect in 2015, and there will be a raft of subordinate legislation, which we will talk to you about in the coming months and years.

50. **The Chairperson**: For this to be beneficial, the timing is important. If we drag this on, it will not be enforced long before the power is handed over to councils.

51. **Mr Kerr**: Absolutely. I am glad that you raised that because we want to emphasis to the Committee that the faster that we introduce this, the more benefit there will be from what everyone can learn from it.

52. **The Chairperson**: Do we have a timetable for Second Stage?

53. **The Committee Clerk**: It is 22 January.

54. **Mr Boylan**: The reason why I asked some of my questions is that the information needs to get down to councils now. Councils need to find out fairly quickly what is coming down the tracks. I know that we plan on putting this on the agenda for next week, but how soon can councils be briefed on it?

55. **Mr Kerr**: We already work closely with councils as part of the project to transfer planning. It is part of the work of my division in DOE. There is a 15- or 16-strand project, which we are working through a number of committees, and so on, with local government. One of those strands is legislative, so we have already been talking to them about this, and we will continue to talk to them. Councils are quite supportive of this approach because it gives them an opportunity to test and trial some of the changes before everything is thrust upon them in 2015, although they recognise the challenges, as do we. It is a big task. It is a huge change management programme in a short period.

56. **Mrs D Kelly**: I welcome many of the planning reforms, but I would like clarification on some of your introductory remarks. You may be aware of a case in the Craigavon area that has been to the High Court. It relates to building in a green belt area, and enforcement costs

have been applied. As I understand it, further applications have been lodged for the same site, so those are vexatious planning applications. Will the Bill deal with that type of action?

57. **Mr Kerr**: The Bill contains measures on repeat applications. Do you want to handle that one, Irene?

58. **Ms I Kennedy**: Yes. There is a provision in the Bill, but provision is already in place for the Department to decline to determine an application if it is for a similar development on the same site. We have expanded on that to deal with cases in which an enforcement action is under way. Sometimes, a site or development may change, but if the application is for the same development on the same site and is made within two years of the last decision, it should be open to the local planning office to decline to determine it.

59. **Mrs D Kelly**: I will have to check that out.

60. I have one other point. The explanatory memorandum refers to:

"multiple fees for retrospective planning applications."

61. What does that mean?

62. **Ms I Kennedy**: If a retrospective application came in, we would, through subordinate legislation, apply a higher, premium fee. The level would have to be determined through legislation, but it could be two or three times the amount the applicant would have paid had the application been submitted in a timely manner.

63. **Mrs D Kelly**: OK. Thank you.

64. **Lord Morrow**: Clause 5 deals with pre-application community consultation. The proposed legislation states:

"A period of at least 12 weeks must elapse between giving the notice and submitting any such application."

65. Waiting for 12 weeks before submitting the application does not sound like an efficient system. What priority or attention will preliminary applications be given? In my area, if someone submitted an application that was deemed to be preliminary, I do not think that the planners would give it priority. I am not criticising them for that, because they should give priority to the actual application. However, clause 5 states that, in fact, a pre-application must be submitted before the formal application, but that cannot be submitted until at least 12 weeks have elapsed since the pre-application. Is that efficiency at its best?

66. **Mr Kerr**: The purpose of that is to ensure that there is pre-application community consultation. In other words, there must be consultation with the community on the proposal before it becomes a formal application. It is to make sure that developers undertake proper consultation for at least a period of 12 weeks. The clock should not have started for the formal application at that stage; the clock should start when that application is received. It should then be dealt with, we would argue, more quickly, because it has gone through a sensible and rigorous local community consultation. So instead of the local community being hit with an application out of nowhere and then objecting to it and becoming very annoyed and worked up, they will know all about a developer's application. The community will already have had discussions with the developer, and the developer will, we hope, have amended the application to try to reflect the local community's views and wishes.

67. **Lord Morrow**: Thank you for that reply.

68. Will this Bill also ensure that we do not have bad planning? For instance, I am aware of some housing developments with no public services, and yet people are living in houses there. Will the new Planning Bill ensure that we do not have a repeat of that sort of activity?

69. **Mr Kerr**: That does not sound like something that we should have now or after the Bill.

70. **Lord Morrow**: The point is that we do.

71. **Mr Kerr**: Certainly, those sorts of issues should be dealt with through

any application that comes through these proposals. We hope that the pre-application community consultation will afford an opportunity to identify such issues right at the start, or very early on, because statutory consultees should be involved in that process.

72. **Lord Morrow**: Will there be a continuation of neighbourhood notification? I know that it is not compulsory, but I think that it is still a useful aspect of planning.

73. **Mr Kerr**: Yes. We are looking at that area to determine whether it is the best way of carrying out the advertisement arrangements associated with planning applications or whether other options could come forward through subordinate legislation.

74. **Lord Morrow**: Are there any proposals to extend the length of time from the granting of planning approval to being required to commence work? Will people have to go back for renewal if the scheme does not start within a period of three, or maybe it is five, years? In the present economic climate, it is, perhaps, not practical for that to happen. Does the new Bill make any provision for that without requiring a complete resubmission, going through the whole process again and incurring a further very costly fee?

75. **Mr Kerr**: Nothing in the Bill, as currently drafted, deals with that.

76. **Lord Morrow**: Would there be any merit in looking at that?

77. **Mr Kerr**: Yes, an ongoing fees and funding review is trying to look at some of those issues. It relates more to a reduction in fee for a situation in which people submit a new application. We hope to introduce a consultation on that very soon.

78. **Lord Morrow**: I suspect that, in many cases, banks are pushing applicants who have got planning approval because they have not commenced work. However, they must keep the planning approval alive. They cannot afford to lose planning on the site, and they can barely afford to renew it, so they are caught in a catch-22 situation. I think that the new Bill should look at such scenarios. Perhaps an extension of the planning approval time should be considered. I know that it cannot run on ad infinitum, and I do not advocate that it should. However, that aspect of planning must be re-examined.

79. **The Chairperson**: Given the economic climate, I agree. Cathal, do you want to jump in?

80. **Mr Boylan**: Previously, outline planning permission could be renewed. It might be appropriate to look at something like that.

81. **The Chairperson**: I understand that community involvement is required for major development only. It is not for your next-door neighbour's extension.

82. **Mr Kerr**: That is correct.

83. **The Chairperson**: What would you identify as major development requiring community consultation?

84. **Mr Kerr**: That is a good question. We need to establish that, and it will be established through subordinate legislation. It applies to development. A balance must be struck between the risk of slowing down the planning system by applying something such as this to more minor development, for which we get a lot of applications, and applying it to development that can maximise the benefit that a particular approach gives to the community. So it looks at proposals of a reasonably significant size. I suppose, in housing, we are talking about 50 houses, or possibly more. None of this is settled yet, but it is not meant to focus on smaller applications. It is for those that will make a difference to the community and in which the community will be very interested.

85. **Mr Molloy**: Thank you for your presentation. At present, the Minister can intervene and take planning applications out of the line. Will that power remain with the Minister when planning is devolved to local councils?

86. **Mr Kerr**: Once planning is devolved to local councils, the Minister will have powers of intervention across the whole piece. He will have power to intervene in planning decisions and call-in powers for applications and development plans. That is the same as the situation in the other two-tier jurisdictions in these islands. They all have those powers. They are not used very often in the other jurisdictions, but the powers are there.

87. **Mr Molloy**: The Minister here seems to use them selectively. Instead of encouraging economic development, he sometimes discourages it. Is there a means of dealing with that situation to give clients an opportunity to appeal to move a situation forward?

88. **Mr Kerr**: At present, there is no obvious need for call-in or intervention powers for the Minister, because the Minister is responsible for all of the decisions. Essentially, he gets involved in all planning application decisions.

89. **Mr Molloy**: Yes, but he takes some applications out of the line and allows the planners to deal with others. I am talking about that type of situation.

90. **Mr Kerr**: In the future?

91. **Mr Molloy**: Yes.

92. **Mr Kerr**: The facility for that to carry on in future will be there. There will be a legislative facility for that to take place. There would need to be reasons for it.

93. **Mr Molloy**: We are talking about consultees having to respond within a certain time. There is also the need for the Minister, in that type of situation, to have to release within a certain timescale because, at the present time, it is an open door; he can hold them on the desk for as long as he likes. The developer, in that situation, needs the opportunity to be able to push for a decision.

94. **Mr Kerr**: Developers have the opportunity of a non-determination appeal if they so wish. That would be a facility that they could use — [Inaudible due to mobile phone interference.]

95. **Mrs D Kelly**: Somebody's phone is going.

96. **Mr Molloy**: Beam me up.

97. You said that building control will have more say under the new legislation. A benefit of that is the co-operation between building control and planning. I know of some instances, such as those that Lord Morrow talked about, where building control has inspected the foundations and that type of thing before planning permission was given for the housing. It seems to be a roundabout sort of way of doing things. In the future, with local government, will you see a better tie-in between building control and planning in that situation?

98. **Mr Kerr**: Absolutely. As I said earlier, that is one of the great benefits of transferring planning to local government. That is the way in which it operates in the other jurisdictions. It is more difficult for us, as a Department, to be co-ordinated with councils, whereas, if a particular local council is responsible for planning and building control, it stands to reason that even that very structural change will lead to a better joined-up approach between the two.

99. **Mr Molloy**: The five-year renewal was very useful. Lord Rooker wiped that out. He introduced some bad legislation, so maybe it is time to be reminded of some of the bits that are left over. The idea of being able to renew it alleviates the problem that we have at the present time of a lot of foundations having been dug out, sub-floors in places and eyesores all over the place, whereas a developer, whether it be for one house or more, can renew that and have a five-year thing. There may have to be some timescale on it of two or more renewals. It needs some sort of legislation to make sure that it is right.

100. **The Chairperson**: The Department carried out a really extensive consultation for the 2011 Act. Now you are putting in two new bits. The promotion of economic development and good design are new for the Bill. You said in your explanatory notes that

it will be subject to consultation and scrutiny during the Assembly process. What consultation are you doing? Are you doing any public consultation? You do not have time.

101. **Mr Kerr**: No. We do not have time. Changes to do with economic considerations emerged through the Executive process of the Bill going through the Assembly. We see the scrutiny process by the Assembly and the consultation that you will be doing as an opportunity for public consultation and scrutiny, particularly of those aspects of the Bill.

102. **The Chairperson**: So, you expect the Committee to call for evidence as a sort of consultation?

103. **Mr Kerr**: We assume that the Committee will call for evidence. We welcome that as some consultation that can take place, particularly on the newer issues that have come through.

104. **Lord Morrow**: This sounds like a trivial point, but the Bill states that it will come into operation on a day or days that the Department may, by order, appoint. Could we wait for six to 12 months after the Bill goes through the Assembly before the Department makes its decision, or is there a time by which it must move on it?

105. **Ms I Kennedy**: That is quite a standard clause in most Bills, because there may be other pieces of work that we need to line up in terms of, say, subordinate legislation to make the policy work. You commence the provision when you have the subordinate legislation or, perhaps, guidance ready, but it is very much that the Department needs to set out a programme of when it is going to commence the various elements.

106. **Lord Morrow**: Yes, so it could be a long time. Well, maybe not, but it could be an indefinite period after that before the Department makes the order.

107. **Ms I Kennedy**: It could be, but we are keen to get these reforms in place so that they do make a difference and are available before the transfer. Some sections listed in clause 27 will come in when the Bill receives Royal Assent.

108. **Lord Morrow**: I think that we had this with the parts on ground rent when, in fact, the Bill was some time passed before it was ordered by the Department to commence. We just hope that there would not be a long, long delay after the Assembly does its bit, but thank you for your reply.

109. **Mr Boylan**: Surely we have an idea of what subordinate legislation we need to bring forward. We need to learn from some of the past Bills, when it took a serious period of time, so that we have an indication of what is coming. I would like to see it move forward fairly quickly.

110. **Mr Kerr**: So would we. We would need to move it forward quickly in order to achieve what we want to achieve from the Bill.

111. **Mr Molloy**: Under clause 22 in relation to grants, the Department has the power to grant aid to non-profit-making organisations. I assume that is like support organisations for planning for third parties. Surely there has to be some means of verifying whether there are valid objections or just objectors. Objectors can object continuously, and if you have the Department funding a non-profit organisation to carry on those objectors, the objectors can keep going, whereas the developer, individual or economic development project has not got the money to continue. Is there some means of vetting that to make sure that those objectors have a valid objection in the first place, before funding is given to them?

112. **Mr Kerr**: In a sense, there is already the facility for us to grant aid and the organisation that we do that with, and have done for many years, is Community Places, which used to be Community Technical Aid. The idea is that it assists local communities and local people who would not have the expertise to participate properly in the planning system to be able to do that. If, as a result of that or as a result of funding some other body to do that sort of work,

there were objections coming forward that were vexatious or irrelevant and so forth, that would have to be dealt with through the course of that application and those objections would not be given weight if they were of that nature. However, it would be very unlikely for that situation to arise. Certainly, that has not been our experience of operating with organisations such as Community Places.

113. **The Chairperson**: Community Places would be objecting on behalf of a group of residents rather than an individual. It would never side with an individual.

114. **Mr Molloy**: Chair, I would have to cite one particular case where one family with support in the community was supported by a body and the planners over-ruled and even cautioned the people that the objections were not only not valid but treacherous. Yet the Department continued to fund the support organisation for that. There is a danger that objectors can be serial objectors and be continually funded. That is at no cost to them, so it is very easy to continue to object in that situation. As with legal aid, we need some sort of a qualification in the new legislation.

115. **Mr Weir**: It is right that there can be that level of support for people at times. However, care needs to be taken to differentiate between genuine community concerns over things and where it is the serial objector. We have all seen such situations. In north Down, our controversies, more often than not, are where there are a large number of objections. However, sometimes what appears on paper does not necessarily match reality. You sometimes see or hear of a number of objections, but when you boil it down, you find that it may well represent four times the number of households that are actually objecting. On some occasions, every member of the household writes in, and sometimes you find that someone has written in half a dozen times and it counts as an individual objection each time. I have also seen situations where there should be something reasonably valid. One person in the street gets a real bee in their bonnet and, because of the way they present the thing, effectively co-opt, for want of a better word, a lot of people who live locally to sign petitions or whatever. Those people may not necessarily be given the full facts. There will be that side to it. That is just a comment.

116. On Lord Morrow's point about the commencement side of it and to reinforce as regards the timescale, people may be concerned at times and there may be very valid reasons for needing particular bits of subordinate legislation and regulation. From the point of view of handling that when putting it through and also from the PR point of view, at times, people have an expectation. When they see something passing through the Assembly, they expect it to become law immediately. For instance, one of the things that a number of us got — understandably, given its nature, there had to be subordinate legislation — was when the Department produced the high-hedges legislation. You had, effectively, the guts of a year before that came into effect. A number of people who saw it pass through the Assembly asked why that was and why they could not make a complaint under the new law immediately. There were good reasons why that was the case.

117. Let me just clarify a point about the commencement provisions of this. Obviously, there are clauses that will come into effect on Royal Assent. For the remainder, is it the intention for commencement orders to be staggered? Of the remaining 20 or so clauses, do you intend for them all to come into effect at one particular point in the future, or is it a question of having, say, four or five of them coming into effect with one set of regulations and others later? What do you see as the way forward for those regulations?

118. **Ms I Kennedy**: I think that some of them will naturally group together, and we would try to do those at the same time. Ultimately, the overall aim is to get these

in place as soon as we can, so that we can make a difference before 2015.

119. **Mr Weir**: I understand. What you are saying is that commencement is likely to be staggered in two or three or in three or four chunks, rather than being a single thing. Thank you.

120. **Ms I Kennedy**: Yes.

121. **The Chairperson**: OK. There are no more questions. Thank you very much for coming and thank you for your presentation. I am sure that we will see you regularly about the Bill.

11 April 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Mr Peter Archdale	*Council for Nature Conservation and the Countryside*
Mr Patrick Casement	

122. **The Chairperson**: Patrick and Peter, you are both very welcome. Members have received a copy of your submission. Would you like to give us a brief presentation?

123. **Mr Patrick Casement (Council for Nature Conservation and the Countryside)**: It will be very brief, Chairman. Thank you very much indeed for inviting us today. We are very pleased to be here again.

124. As a preamble, I would like to say that we welcome many of the clauses. We welcome the concept of bringing forward the reforms so that they take effect from now rather than waiting until 2015. The primary issues that we have with the Bill are, as you just mentioned, the changes introduced in clauses 2 and 6, in particular, but we have a couple of further concerns as well.

125. Our primary concerns focus on three main points. First, we are concerned about the consultation. We do not feel that the method of consultation was appropriate for this sort of change to legislation. Consultation should have been undertaken at a departmental level and not left to the Environment Committee. Apart from anything else, I think that it is a huge burden to place upon the Committee, and it is not the normal way in which democratic business is done in this country. We are concerned about that. Secondly, we feel that these clauses are effectively redundant because the economic factors are already enshrined in the concept of sustainable development. We are also very concerned because they introduce a series of ambiguities, contradictions and difficulties that will, we believe, lead to increased legal challenges to planning decisions and serious delays, and they will undermine the main purpose of this Bill. They will also mean developers and government incurring significant costs. We are seriously concerned about those three primary problems.

126. Below that, we have two or three other points that I would like to make. One is about how one looks at the sort of data presented with planning applications. Already, we see a significant difference in the way in which economic, environmental and social data are analysed and assessed. We feel that the extent of that difference will increase with this Bill. If one aspect is given a further importance, there will be a problem in how one evaluates the data. We need to find a better way of evaluating environmental and social data, and a much better way of evaluating economic data. In the past few years, a series of decisions has been taken where the economic data was very scanty, but planning applications were granted on economic grounds that were, we felt, very shaky, especially with the changes to the economy since 2008.

127. We are very concerned that such changes were not considered for a strategic environmental assessment, which would, we feel, have been the appropriate way to go forward. The changes represent a major shift in the way that planning will be looked at, but a strategic environmental assessment

was not even considered. No scoping exercise is being carried out even to assess whether it should have been.

128. We feel that there is a missed opportunity. There is a need for a much wider land-use strategy for Northern Ireland, which would make all of these planning decisions very much more straightforward and be a much more appropriate way of dealing with the problems in planning and in our economy.

129. We also have concerns about clause 10 and the appointment of examiners, as you mentioned. We feel that it is not necessary. We have a perfectly good Planning Appeals Commission (PAC), which, we feel, should be allowed to fulfil its function.

130. Finally, we feel that the timescales for consultation in clause 23 should differ and be set according to the various sorts of development. We have personal experience of looking at some of the incredibly detailed environmental impact assessments for major developments, which take days and days to digest and understand, let alone respond to. That applies even to some not very big developments: there can be several thousand pages of submission even for a wind farm development. Development proposals are coming in at a terrific rate, and to try to deal with those effectively and properly places serious strains on the statutory consultees. We think that there needs to be some sort of appropriate scale of timescales relative to the development.

131. I hope that our submission was relatively straightforward and understandable and that you have had a chance to have a look at it. We welcome any questions that you have for us.

132. **The Chairperson**: As I said, I read through much of the submission last week, when I was at home. On Tuesday, I also met a resident group in south Belfast, at its invitation. Many people seemed to be really concerned about the economic development addition. A lot of the submissions said that adding the promotion of economic development is not understanding the concept of sustainable development, which is that there needs to be a balance of socio-economic and environmental aspects. Therefore, adding that extra duty gives much extra weight to the promotion of economic development. As you say, planners are not economists. Not many will have an understanding of the economy or job creation. Also, it is difficult to ascertain from applications whether they will result in economic gain. How do you monitor that after approving a planning application?

133. **Mr Peter Archdale (Council for Nature Conservation and the Countryside)**: Chair, I will introduce two examples. First, the Special EU Programmes Body (SEUPB) looks in great detail at the economic case for grant applications, and it takes two consultants about six months to do that. If I may draw a parallel, the level of detail required in the specialism is considerable. Secondly, I draw to your attention to what happened in England with the marine conservation zones. I know that this concerns marine planning, but the relevance is that those zones were supposed to mean a sustainable use of the seas. Again, England found that the height of the barrier, if you like, and the level of assessment on the scientific criteria were completely different from those on the economic criteria. So it was acceptable for fishermen to say, "I have always fished here, without providing any supporting economic data, and my business depends on this." The scientists then had to say, "We have surveyed there", or, even worse, "We have not surveyed there, and we do not know what is there." Therefore, there was no counter-evidence. So it is excruciatingly difficult to get a common level for all three legs. On the economic side, at least there will probably be a business plan behind the developer or individual who makes the application. However, we do not have the social baseline data that is necessary in a lot of these cases. Coming back to the central point, we think it an unnecessary

and redundant aspect of the Bill that should not be there.

134. **The Chairperson**: Many have said that having to get economic assessments could be counterproductive and greatly add to the burden of developers and businessmen who want to make applications. It would also delay approvals and applications.

135. **Mr Casement**: If it has any parallel with the environmental impact assessment type of approach, it will put a huge burden on developers, for major developments anyway. With environmental impact assessments, developers have to do significant research and pay specialist consultants to provide them with evidence. All too often, they do not provide the necessary evidence and are asked to provide more. As a result, the process is delayed. I can see the same thing happening if this is brought in. It would be a parallel process with the economic side because the data provided would be deemed inadequate if it were assessed effectively and properly.

136. **The Chairperson**: Clause 6 will be so difficult —

137. **Mr Casement**: That will be the one where things will fall down.

138. **The Chairperson**: It deals with things that are advantageous and disadvantageous, and there are always two sides to a coin. There will be the potential for objections to every application and an opportunity to argue about what is advantageous and disadvantageous.

139. **Mr Casement**: We made the point — I stress it again — about the differing timescales involved. One has to be very cautious. Although there may be a very short-term economic gain, it may peter out within a matter of two or three years, whereas, if one damages the environment, it will probably be damaged for very much longer.

140. I would like to put in a word for what the environment contributes to our economy. That is often not fully recognised or understood. We are not very good at valuing what our environment does for us, whether by storing carbon, filtering our water or simply attracting tourists to come and look at our wonderful landscapes. We need to find a better way of providing some sort of monetary value of our environment and measuring its intangible benefits.

141. **The Chairperson**: We need a longer-term view of our environment rather than short-term economic gains.

142. **Mr Casement**: That is our view.

143. **Mr Elliott**: Gentlemen, thank you very much for your presentation. Will you explain the remit of your organisation in relation to the Department?

144. **Mr Casement**: We provide advice to and scrutiny of the Department of the Environment (DOE) with regard to nature and landscape conservation. We were set up in 1989 after nature and countryside conservation bodies in the other three countries of the United Kingdom had been turned into non-departmental public bodies, such as the Countryside Council for Wales and Scottish Natural Heritage. In Northern Ireland, it was decided to retain those functions within government. As what one might call a sop to those who suggested that it should be an independent agency, it was decided to set up an independent advisory group to scrutinise decisions, particularly on designation and wider issues to do with nature conservation.

145. **Mr Elliott**: Thanks for that, Patrick. That is useful. Were you asked for any advice by the Department before the Bill was published? I would have thought that, as an advisory body to the Department, it would have sought advice from you before its publication.

146. **Mr Archdale**: I will offer a comment on that rather than anything else. We have learned that you can offer advice, but it is not always received. Indeed, the Department knew what our advice would be because our position on this was set out very clearly in response to draft PPS 24. No, the Department did not

come to us, which begs the question of why it was put forward in the first place, whether the Department had a role in putting it forward or whether it has come from a completely different angle because, as has been made clear, this is draft PPS 24, and the response to that was very clear.

147. **Mr Elliott**: I would like there to be absolute clarity: did the Department not seek any advice from you before the publication of the Bill?

148. **Mr Casement**: No, we were part of the consultation process on the planning reform that led to the 2011 Planning Act. We were asked to respond to the public consultation on draft PPS 24 but not specifically to the consultation on the 2013 Planning Bill.

149. **Mr Elliott**: Peter, you said that you wondered whether the Bill came from the Department or from some other source. Will you elaborate on that?

150. **Mr Archdale**: Only what I said. I am not privy to the political or departmental background to this, but my observation was that I do not understand why, having been turned down in the guise of PPS 24, it has come forward again. I have no evidence on whether it was motivated politically or departmentally, but, as far as I am aware, there is no target in the Planning Service or DOE to promote this. It certainly does not appear in the Programme for Government, other than as a general economic development aspect. That is as much as I can give you on that.

151. **Mr Casement**: It is perhaps revealing that it was not included in the equality impact assessment that accompanies the Bill. We found that a bit odd, to be honest, and the fact that it appeared to be an afterthought sowed the seed of our doubt.

152. **Mr Elliott**: As an advisory body to the Department, you were, essentially, ignored?

153. **Mr Casement**: We were not consulted. We are not much involved in the making of policy. We have suggested that it might be more helpful if we were included at earlier stages of the development of some policies that the Department produces, but we find that we are used more widely with regard to decisions that have already been taken. We are consulted at a later stage than we would prefer to be as an advisory body.

154. **Mr Archdale**: On the other hand, there have been occasions when we stimulated the Department to look at a policy that we thought was dated or in need of rewriting, so it is not quite black and white.

155. **Mr Elliott**: Your scrutiny role appears to be at a higher level than your advisory role.

156. **Mr Casement**: That is probably a very good way of putting it.

157. **Mr Archdale**: The Department is required by the legislation to say when it is declaring a designated site, having consulted with the Council for Nature and Conservation of the Countryside.

158. **Mr Elliott**: Do you believe that there is a conflict between sustainable development and economic development in the Bill?

159. **Mr Casement**: There is a potential conflict, but there is not necessarily a conflict. The risk of conflict is considerable. Sustainable development encompasses a lot more than just economic development and is based on the concept that we will not damage the prospects of future generations by what we do today. Economic development, I am afraid, does not have any of those considerations. It is simply about what suits somebody at a particular moment.

160. **Mr Archdale**: Economic development is selling the golden eggs for a while and then deciding that you want to kill the goose as well. At least it can be; it is not always

161. **Mr Casement**: There is always that danger. It does not take that into consideration.

162. **Mr Elliott**: From what you say, may I take it that CNCC would be opposed to economic development?

163. **Mr Casement**: No. I do not think that we could possibly say that. We want economic development to be sustainable development. I have to say that —

164. **Mr Elliott**: You say that there is potential conflict. There is potential conflict between any type of development and sustainable development. But we have to get to a point — sorry for labouring this, Patrick — where economic development is sustainable development. So explain that concept to me.

165. **Mr Casement**: It is simply development that will not harm the prospects of future generations. We have to be sure that we leave the environment and our world in no worse a condition than they were in when we inherited them. Unfortunately, we are not very successful at doing that. It is a difficult thing to do, but that is the principle or the —

166. **Mr Archdale**: Aspiration.

167. **Mr Casement**: — aspiration. Unless one has that aspiration, we can see only a decline in the condition of the world. I think that one has to —

168. **Mr Elliott**: But accepting that — sorry — there is always, but always, going to be a potential conflict between economic development and sustainable development in every circumstance.

169. **Mr Casement**: Yes, but one can take steps to mitigate or avoid that conflict.

170. **Mr Elliott**: Yes.

171. **Mr Casement**: That is the point. If one has a planning policy that is predicated on sustainable development, one will do everything one can to mitigate. If it is purely on economic development, there will be no onus or requirement to actually do that —

172. **Mr Elliott**: Sorry; maybe I am doing your job for you, although I should not be. I am trying to understand. Are you saying that you have no difficulty with the economic development aspect of the Bill provided that there is a protection in it that such economic development should be sustainable?

173. **Mr Casement**: That is correct.

174. **Mr Elliott**: But that is not there; is that what you are saying?

175. **Mr Casement**: In effect, that is what I am saying. I am saying that the Bill already states that the planning system will take account of and be guided by the principles of sustainable development. To put in a clause, then, that suggests that you give some sort of weight to economic development seems redundant. I do not see why that should be done or what the point is, without subverting the idea of sustainable development.

176. I am a little uncomfortable about having to argue the case for sustainable development, because this is not our primary role at all. Nevertheless, we have increasingly, over the past four or five years, been forced into the role, with one or two others, of being the champions, if you like, for sustainable development. That has happened since the demise of the Sustainable Development Commission and since we lost our Sustainable Development Commissioner for Northern Ireland. It is a role that we are not entirely happy with, because it is a bit beyond our real expertise. We are here primarily to talk about the natural environment, and looking after that is a cornerstone of sustainable development but only one aspect of it. So, I am a little uncomfortable about that, and I think that I ought to make that point because there is no longer an official champion for sustainable development in Northern Ireland.

177. **Mr Elliott**: Well, I am sorry, Patrick, but, when you come here and put a paper to us that effectively deals with sustainable development issues, which this does —

178. **Mr Casement**: Yes.

179. **Mr Elliott**: — I do not see why you should be uncomfortable about having a discussion around it, and —

180. **Mr Casement**: No, I am not uncomfortable about it. I am perfectly comfortable about it. I am sorry; I am saying that we are perhaps not the best people to talk about it. It is part of our remit, but it is not the driving force behind our remit. OK? That is all I am saying. I am quite happy to present it, but we are not experts in all of the aspects of sustainable development.

181. **The Chairperson**: But sustainable development really tries to strike a balance between the many aspects — economic, environmental and others. So, economic development is already included in sustainable development.

182. **Mr Archdale**: Yes, and that is the point that we very much wish to make.

183. **Mr Elliott**: Chair, I have a number of other issues to raise, but I will ask about just one if that is OK. In your paper, you indicate that you do not know why that economic part of it should be in the Bill, because it is already in other aspects of planning. If it is in other aspects of planning, what is the difficulty of it being in the Bill?

184. **Mr Casement**: We are concerned about it being singled out for special mention. It implies — it certainly gives us the impression — that it is going to be the overriding factor among the three aspects of sustainable development. We think that the principle of sustainable development is that all three should be given equal consideration. Therefore, to single it out and mention it suggests very strongly to us, and probably to most of the other respondents to the Bill, that it is being given special consideration above the other two and is, therefore, not true to the principle of sustainable development.

185. **The Chairperson**: The duty of planning is about land use and land development. It is not about promotion of economic development. If you ask planners to think beyond their role, that is going to be a difficulty, in my mind.

186. **Mr Casement**: I agree with that. We have not stressed that in our submission. That is looking at it from a planning point of view rather than an environmental point of view, if you like, but we share that concern that it is beyond the skills and remit of our planning system to do that. That is what an economic Department should be doing.

187. **Mr Boylan**: I am sorry that I missed the start of the presentation. You are very welcome, and, to be fair, I know that you have made a lot of good contributions to the Committee on different policies. However, I am on the other side of this argument, because I am not convinced, to be honest with you. The Chair has just made a statement about planning and economic development. We could say that it is not the duty of planning to look after the environment either; it is about land use. Either way, there is an economic aspect of it, whether you like it or not, and there is an economic aspect of sustainability and creating jobs.

188. I have been dealing with planning for many years at council level and now. You get the impression that people who argue the case on economic grounds think that everything will be built on an economic argument. That is not the case. I do not think there is a burden on developers, because you bring your business plan to the table. It is you bringing it, especially in the private development sector, and if it works, it works. I am not hearing enough at the moment to convince me. If you remove the issue from the draft PPS 24, which was a determining factor in relation to the economics, it is slightly different. I will use this example: if a company comes in — Tesco, or whatever it is — it has to prove both the advantages and the disadvantages in terms of displacement of jobs or anything else. I think that is up to those people; they are the developers, and it is up to them to prove the case. That needs to be stated exactly in the application process. That is how I look at the whole process. That is my view on it.

189. **Mr Archdale**: Can I come back with a recent judicial ruling on a wind farm? I am not going to go into all the detail, but, in essence, the judge overturned the commissioner's decision on the basis that the commissioner had not given correct consideration to the economic aspects. In the ruling itself, the way in which the information is presented makes it very clear that the timescale over which the economic case is being considered is completely different to the timescale and impact of any environmental issues. The judgement itself was around economic aspects and whether the commissioner had been correct in the way in which she looked at it. The particular point that is very clear in the judgement is that there was not a common baseline for the timescales over which the economic considerations were judged — ie the life of the wind farm. That is one of the fundamental problems when you start saying, "Of course there is going to be a business case", because it does not look at the same timescales as the environmental case in a lot of issues.

190. The social aspect is difficult, and I am not suggesting for a second that we know where we are going to be, as a society, in 25 years' time. That is an issue that we just have to put there and say, "That is really difficult". The tendency with the economic argument is to look at the very short term or much shorter term than you do with the environmental one. I am bringing that back to the point that we still feel that the economic argument puts undue weight on one of the legs of the three-legged stool.

191. **Mr Casement**: I go back to the point that the Chairman made about clause 6. Clause 2 is redundant, because economic development is considered as part of sustainable development. That is fine. Clause 6 goes much further, in that the economic advantages or disadvantages likely to result from the granting or refusal of planning permission have to be considered. That effectively raises the provision to the same level as PPS 24. That is where I have a particular problem, because, although that has been rejected already, here it is reappearing.

192. **Mr Boylan**: I respect that, Patrick. There are other policies that control wind farms and everything else. If it is the case that we need to look at policies, that is a different matter. There are other factors involved in the process for a planning application.

193. From the papers that I have read, there seems to be a presumption that everything that is applied for will be granted permission. You are talking about sustainability and the protection of the countryside, but I am not getting the examples to show whether the policies that are there will not protect it. Do you understand? To be honest, I have not been convinced by the argument. We are going to have other presentations.

194. **Mr Casement**: I could probably wheel out quite a few arguments —

195. **Mr Boylan**: I respect that 100%. I am just not convinced, to be honest with you. I have seen applications turned down, regardless of their economic value. I do not want a building in every field. The community plan idea in area plans in the future will protect a lot of that.

196. **Mr Casement**: I share your optimism.

197. **Mr Boylan**: The sooner we get to a process where communities are more involved, especially when it comes to neighbour notification and all of those things that I am trying to get in the Planning Bill, the better. We will listen to more economic arguments, but the examples and the belief are not out there. People may come to this Committee, take their caps off and say that they believe that every application will be given permission due to its economic weight, but that is not the case. There is enough policy. That is my opinion.

198. **Mr Casement**: I can see that we are not going to change your mind.

199. **Mr Boylan**: Not at this moment in time.

200. **The Chairperson**: It is going to give extra weight to the PAC as well as to planners. Then, the decision will be subject to challenge if an application is turned down and will go to the PAC, which will delay the process.

201. **Mr Boylan**: That is the sad factor: we are sitting here talking about economic growth, jobs, promotion and everything else, yet behind all of it is the threat of judicial reviews and everything else. That is the wrong way to go about things. If we are serious about things, that is a bigger argument.

202. **Mr Casement**: My fear is that this will lead to that sort of hold-up and delay and legal challenge. That is why I am worried.

203. **Mr Archdale**: To take your point and turn it right around, although we are not sustainability experts, I do not think that there is a single person on CNCC who believes that the current economic model, as being peddled by politicians in Europe, not just here, is sustainable. You cannot have exponential growth, or even continual growth. Anyone who believes that you can is completely deluded.

204. **Mr Boylan**: That is why it is great to have the presentation, and that is why the argument is here. All I am saying, as a representative of a big rural area, is that I see young people leaving every single day to go to America and to Australia for work, and there is nothing. Do you understand me? We want a proper policy. I am on the environmental side because I want protection of the countryside and everything else, but I am not getting the argument that is coming forward. No disrespect to what the Chair said about planning policy, but you have to give some economic thought to it. There is no doubt about that.

205. **Mr Casement**: It is already written into the planning system. PPS 4 sets that out absolutely clearly.

206. **Mr Boylan**: There is a bit of difference between the words "sustainability" and "economics". I could make this argument all day. I see young children in here, and we want to make sure that —

207. **Mr Weir**: We do not want to be making any comments that might be past the watershed.

208. **Mr Boylan**: It is their future as well, and we are trying to protect the countryside. That is my only concern in relation to what you are saying. Urban settings and settlements have their own area plans and everything else within that. The open countryside —

209. **Mr Casement**: To be honest, we would feel a lot happier about this if we had area plans, but, unfortunately, we do not. We have chaos.

210. **Mr Archdale**: I live in Omagh. Our area plan was written in 1985.

211. **Mr Casement**: I fall within the northern area plan, and it is still in draft form and is about to expire next year, before it has even been adopted. What sort of planning system is that?

212. **Mr Archdale**: The plan-led system? Oh, yes.

213. **The Chairperson**: We need overall strategic planning development so that the planners can follow through. Cathal, economic development is not just about planning. Planning is part of it. Economic development encompasses so many issues, such as better education and qualifications for young people.

214. **Mr Boylan**: There are loads of policies there, Chair. There are loads of factors as well as economics.

215. **The Chairperson**: It is not just down to planners to sign off, saying yes to every single development.

216. **Mr Weir**: To be fair, that is taking the argument to an absurd level. Economic development can be about all of those things, but, at the end of the day, if there is not physically somewhere and, indeed, a job for someone to work in because there is not that level of economic development, all of the training in the world will not make a button of difference.

217. **The Chairperson**: Planning applications are not always about economic development.

218. **Mr Weir**: With respect —

219. **The Chairperson**: Every developer can say that building a block of flats on a site would benefit the economy.

220. **Mr Weir**: Far be it from me to defend the Minister, who can defend himself, but, if the proposal were that economic development would be the sole factor and would exclude everything else, you would have an argument. To be fair, I appreciate that we will be coming back to this, and there is not much point in thrashing it to death. It is simply about saying that economic development should be a factor in making decisions.

221. **Mr Boylan**: In the presentation, the issue of the aftermath or end of life was mentioned. It is an interesting debate and one that we need to have. Say that there was a development and, in two years time, some people move out, which we have seen. Conditions should be put on that, and we need to look at that now in planning. We are looking now at some of the sites, such as for mineral extraction and how we recover them. On a new development, there needs to be an end factor. That needs to be put on the table as well. That is quite reasonable.

222. **Mr Archdale**: It is extremely difficult. If a developer goes bust, there may be nobody you can get hold of to ask whether the development could go ahead. If you say that there should be a bond, developers may think, "Oh, I cannot afford to have it if I have got to have £100,000 or £10 million sitting in the bank or whatever."

223. **I wanted to come back to one point that we touched on**: we have hooked a lot of the points in our submission into various planning policy statements. Although that is not in this Bill proposal, I will take the opportunity to raise the grave concerns we have that, first, PPS 2 has languished now for two years, I think — bloody nearly two years, anyway — without being issued, and what is there at the moment is seriously out of date, but, more worryingly —

224. **The Chairperson**: What is PPS 2?

225. **Mr Archdale**: PPS 2 is on wildlife and natural heritage. What worried me was listening to Angus Kerr telling you that they intend to review all the planning policy statements and that there will be a single PPS for the new planning system. Now, the points about how much weight to give and the counterarguments that we have made depend on those planning policy statements. We have serious concerns about a very streamlined set of planning policy statements that frankly will not give the protection and the guidance that has already been established if those are swept away or amended.

226. **Mr Casement**: We have a system that has evolved to deal with changes in our society and our environment, and to sweep them away for a single, very simplified system causes us grave concern.

227. **The Chairperson**: One single statement will not be able to —

228. **Mr Casement**: There will have to be a very large number of supplementary statements, and we do not quite understand what the difference is between having specific planning policy statements and having a series of supplementary ones. It seems to me that it is just making a lot of work for a lot of people within the planning system or for a very few people —

229. **Mr Archdale**: Or maybe making lots of work for lawyers, to take your judicial review point and turn it around.

230. **Mr Casement**: Yes, ultimately for lawyers.

231. **The Chairperson**: What is your recommendation for the Planning Bill?

232. **Mr Casement**: We would like to see clauses 2 and 6 dropped. We also wish to see an amendment to clause 23 about the timescales for responses, and we would prefer to see clause 10, which is about the appointment of an external commissioners, dropped as well.

233. **The Chairperson**: There have been a lot of responses on that.

234. **Mr Casement**: Those are the key points that we would like to see emerge from this Committee consideration of this Bill. I should say consultation, because I expect it is a real problem for you, but this is not something that you are seeking —

235. **The Chairperson**: Do you have a structure of regular meetings with DOE?

236. **Mr Casement**: Yes, we have regular meetings of our own that are attended by senior officials from DOE. We also meet regularly with the Northern Ireland Environment Agency (NIEA) board, and we have other meetings scheduled with other parts of DOE. We regularly meet Angus Kerr from planning policy, and we meet with the environmental policy people on a very regular basis; they often attend our meetings as well.

237. **Mr Archdale**: It is very much an open door; we do not have to go and hammer on their doors. Most of those examples were on the NIEA side; the same applies on the marine side.

238. **Mr Casement**: Yes, we have a very good relationship with the new marine division as well. We met several of their people just earlier this week.

239. **The Chairperson**: Have you met the new NIEA person?

240. **Mr Archdale**: Yes. He is coming to our meeting in May as well.

241. **Mr Casement**: Yes.

242. **The Chairperson**: Very good. There are no other questions. Thank you very much indeed.

243. **Mr Casement**: Thank you for the opportunity, we appreciate it very much.

244. **The Chairperson**: We will hear from other people next week at our stakeholder event. Thank you.

11 April 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Ms Suzie Cave *Research and Information Service*

245. **The Chairperson**: I welcome Suzie Cave, who will give a briefing on the Planning Bill.

246. **Ms Suzie Cave (Research and Information Service)**: Thank you very much, Chair. The purpose of the paper is to give an overview of the proposals under the Planning Bill 2012. The aim of the Planning Bill is to accelerate the introduction of a number of reforms to the planning system contained in the 2011 Act. It is intended as an interim measure until the 2011 Act is fully commenced in 2015 in line with the transfer of planning functions to the councils, at which point the 2012 Bill will be repealed. However, the new additions to the Bill will apply only post-transfer and, as a consequence, will come into action only after 2015.

247. As many of the provisions are similar to those in the 2011 Act, this briefing will look at those that show difference, in particular the new additions not included in the 2011 Act.

248. The first table in the paper illustrates the corresponding clauses brought forward from the 2011 Act. The section following that gives detail on the clauses and, where appropriate, raises the issues discussed around the 2011 Act that may still apply. I will just give a quick overview of those: they include enhanced community involvement through the production of a statement of community involvement within one year of commencement of the clause; faster processing of planning applications by streamlining processes to speed up the decision-making, such as the requirement in clause 22 for statutory consultees to respond to the consultation within the time frame agreed by the Department — however, it has been suggested that response times should reflect the scale of the proposed development to allow for adequate consideration; a faster and fairer appeals system, which includes a reduction in the time limit from six to four months for submitting appeals to the Planning Appeals Commission (PAC); a restriction on the introduction of new material at appeal stage; and the awarding of costs by the PAC where the unreasonable behaviour of one party has meant that an agreement has not been met and left the other party out of pocket.

249. There is also the idea of simpler and tougher enforcement under clauses 15, 19 and 23, with an increase in the maximum level of fines; the use of fixed penalty notices; the power to charge multiple fees for development that commenced before the planning application was made; and the enhancement of the environment by amending the Department's sustainable development duty to include promoting well-being, achieving good design, ensuring the enhancement of the character of an area and an extension to the aftercare conditions in relation to mineral planning permission under clauses 8 and 13.

250. A few provisions have been modified slightly since the 2011 Act. They include the production of a statement of community involvement within one year of commencement of the clause. In the 2011 Act, under section 4, the timescale had not been stated.

251. Clause 5 reiterates the provision under section 27 of the 2011 Act on pre-application community consultation, the difference being that the 2012 Bill confers the duties on the Department rather than the councils, as was the case under the 2011 Act.

252. Under measures to enhance the environment, clause 18 amends section 125 of the 2011 Act, making dying trees no longer exempt from a tree preservation order.

253. Clauses 8 and 13 extend the aftercare conditions that apply to mineral planning permission. Clause 13 extends provisions in section 53 of the 2011 Act, allowing the Department to impose aftercare conditions where mineral planning permission has been revoked or altered.

254. The paper also looks at other areas that may be of interest for further consideration. On the independent examiners for major planning applications, clause 10 brings forward a provision on the appointment of persons other than the PAC to conduct inquiries and hearings into major planning applications only. The Department will be responsible for the appointment of examiners, and its response to the consultation stated that they would come from the Planning Inspectorate for England and Wales or the Scottish Reporters Office. However, an issue raised during the consultation may still apply, namely that respondents may question whether an independent examiner appointed by the Department would be considered truly independent, given that the final decision on regionally significant planning applications is taken by the Department.

255. The Department stated that it does not intend to bring forward any provisions for third-party appeals and indicated that they could be a competitive economic disadvantage to Northern Ireland, given that they have not been introduced in England, Scotland or Wales. However, given the great support for the introduction of those proposals during the consultation, the Department said that further consideration of third-party appeals should be deferred until the extensive changes to the planning system under planning reform and the implementation of the review of public administration (RPA) have settled down and are working effectively.

256. Another area that may be of interest is the use of fixed-penalty notices, in clause 20, as an alternative to costly and lengthy prosecutions through the courts. The level of fixed penalty will be prescribed in subsequent regulations, the details of which have yet to be disclosed. However, the Bill offers a 25% reduction in the amount of the fixed penalty if it is paid within 14 days. During consultation on the 2011 Act, respondents wanted a mechanism that would stop continued breach. It was felt that payment of a one-off fine may not be enough to stop continued breaches of planning and that it should be made clear that a fixed penalty is a first step in enforcement, as offenders are subject to further prosecution if the breach is not remedied.

257. The final section of the paper looks at the new additions to the Bill. According to the Department, the policy underpinning the 2012 Bill is the same as the 2011 Act, which has already been subject to an equality impact assessment, public consultation in 2009 and Assembly scrutiny in 2010-11, suggesting, therefore, that there is no need for further consultation. However, additions to the Bill that were not contained in the 2011 Act have not undergone the same level of scrutiny: the promotion of good design and economic development in clause 2; and an amendment to section 45 of the 2011 Act in clause 6, stating that when determining planning applications, consideration should include any economic advantages or disadvantages likely to result from the decision.

258. Although the Department considers these to be welcome additions to the Bill, concern was expressed in the past about similar issues. Previous Environment Ministers Mr Sammy Wilson and Mr Edwin Poots attempted

to underpin the role of planning and promoting economic development, particularly through the introduction of PPS 24, which is detailed in the paper. However, their efforts were not met with support from stakeholders, who felt that it prioritised economic development over the other elements of sustainable development that should all equally underpin planning decisions. Hence, in 2011, Minister Attwood announced that he would not take PPS 24 forward. With similar wording being presented this time round, those concerns could be raised again. Any opposition similar to that voiced in the past has the potential to delay the passing of the Bill through the Assembly, especially if it is considered the main mechanism for stakeholders to express their views on the new additions.

259. One of the main purposes of the 2012 Bill is to bring forward elements of the 2011 Act and have them in operation before 2015. However, should there be any delay, it will give the Department less time to put those into operation in sufficient time before 2015. Thank you for listening. Do you have any questions?

260. **The Chairperson**: Thank you very much, Suzie. That was a very comprehensive paper, and I liked the way in which you set out the tables so clearly.

261. I remain very concerned about the new clauses. I spent last week reading submissions from individuals and organisations, and there are certainly many objections to them. Members, you will receive the synopsis of responses. A huge number of objections have been raised to clauses 2, 6 and 10, mostly to clause 6. As a Committee, we need to look into this seriously.

262. Members have no questions, so thank you, Suzie.

18 April 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mr Ian Milne
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

Stakeholders:

Mr John Anderson Mr Paul Thompson	
Ms Lynn Scott	*ASDA*
Ms Liz Fawcett Mr Herbie McCracken	*Belfast City Airport Watch*
Mr Ciaran Quigley	*Belfast City Council*
Ms Laura McDonald Ms Jonna Monaghan	*Belfast Healthy Cities*
Mr Tony McGuinness	*Belfast Holyland Regeneration Association*
Mr Peter Carr	*Belfast Metropolitan Residents' Group*
Ms Elaine Devlin	*Community Places*
Ms Gemma Attwood	*Community Relations Council*
Mr Nigel Lucas	*Construction Employers Federation*
Mr Angus Kerr	*Department of the Environment*
Ms Christine Cosgrove	Dundonald Green Belt Association
Ms Tanya Jones	*Fermanagh Fracking Awareness Network*
Mr James Orr	*Friends of the Earth*
Mr John Moore	*Holywood Conservation Group*
Mr Richard Buchanan	*Institute of Directors*
Mr Gerard Daye	*Mount Eagles Drive Action Group*
Mr James McCabe	*Mount Eagles Ratepayers' Association*
Ms Diane Ruddock	*National Trust*
Ms Judith Annett	*Northern Ireland Biodiversity Group*
Ms Sue Christie	*Northern Ireland Environment Link*
Ms Catherine Blease	*Northern Ireland Housing Executive*
Alderman Jim Dillon	*Northern Ireland Local Government Association*
Ms Karen Smyth	*Northern Ireland Local Government Association*
Ms Elaine Kinghan	*Planning Appeals Commission*
Mr Gordon Best	*Quarry Products Association*
Professor Geraint Ellis Mr Gary Jebb	*Queen's University Belfast*
Mr David Mounstephen	*Royal Town Planning Institute Northern Ireland*
Ms Michelle Hill	*RSPB*
Ms Anne Casement	*Ulster Architectural Heritage Society*
Ms Victoria Magreehan	*Ulster Wildlife Trust*
Professor Greg Lloyd	*University of Ulster*

263. **The Chairperson**: Good morning everyone and thank you very much for coming to Parliament Buildings to participate in this stakeholder event on the Planning Bill. I can see Tom coming. The Planning Bill was introduced in the Assembly on 14 January 2013, and it passed Second Stage on 22 January. Committee Stage began on 23 January and will conclude on 7 June, when the Committee will report to the Assembly. It is expected that the remaining plenary stages of the legislative process will take place in the autumn.

264. Today, we are focusing on five key areas of the Bill that have been raised

consistently by you in your submissions. As you are aware, we are trying to condense as much evidence as we can into the time available — and I should not be vain; I need my glasses. Forgive me for a minute.

265. We have received over 100 written submissions from a range of individuals and organisations keen to make us aware of their thoughts on the Bill. I would like to take this opportunity to thank you for your written submissions and for your attendance today.

266. Before I outline the format for the evidence session, I would like to outline some housekeeping arrangements quickly. The toilets on this floor are outside any of the doors. Turn left along the corridor, and they are on the right hand side. If the fire alarm rings, which is unlikely, leave the Building immediately. Do not use the lifts. Follow instructions from the doorkeepers and Committee staff. If anyone feels unwell or needs assistance, please let a member of the Committee staff know immediately.

267. I will now outline the format for the evidence session. I understand that a paper setting out the order in which evidence will be taken has been provided. I trust that you all have a copy. There are five areas for discussion, and I will be strict in keeping you within the confines of the discussion area. Frustrating as it may be, we simply do not have time to go through every single aspect of the Bill. I hope that there will be some time at the end to address particular significant outstanding points that have not been addressed during our discussions.

268. For each area of discussion, I will begin by inviting comments from two preselected organisations. After that, I will open up the meeting for comments from the Floor. I ask you to be as brief as possible. We will stop you after three minutes, if necessary, in order to let as many people as possible have a chance to present their views. If you wish to speak, please signal to me or to the Committee staff. Members of staff have roving microphones, which must be used by those in the Public Gallery when speaking, so that we can hear you. You should also ensure that you state your name and organisation for the record because, as I have said, we are recording the session for the purposes of a Hansard report.

269. There will also be an opportunity for Committee members to ask questions of participants or seek clarification. Members can signal to Committee staff if they want to make comments or put questions to a participant or officials. Once an area has been dealt with, departmental officials will respond to the issues raised and answer any questions or points of clarification that Committee members may have. We will then move on to the next issue.

270. We will now start the discussions. Forgive me, I have a bit of a sore throat this morning and I hope that I can last through the whole session. I will do my best.

271. Clause 1 relates to the statement of community involvement (SCI). It introduces the requirement for the Department to produce a statement of its policy for involving the community in its development plan and planning control functions within one year of the clause coming into operation.

272. **Ms Elaine Devlin (Community Places)**: We support the current reform of the planning system and welcome many of the proposals, particularly those that aim to improve community involvement. In particular, we welcome the requirement set out in the Bill for the Department of the Environment (DOE) to prepare and publish its statement of community involvement within one year of the Bill receiving Royal Assent.

273. The statement of community involvement will set out how local people and communities will be involved in planning decisions that affect them, including the production of development plans, decisions on planning applications and planning appeals.

274. We see the statement as a document that will set out clear principles, commitments and standards for involving local people and organisations in decisions that affect them. To enable people to get involved, groups, communities and individuals need to have the opportunity to learn about the relevant processes and develop skills and knowledge to influence decisions, and the statement of community involvement should recognise that. It should also indicate appropriate engagement methods to be used and should set out monitoring arrangements to ensure that it is making a difference. It should help to ensure that involvement is effective and influential; people are linked to the decisions that are being made; decisions better relate to community aspirations and needs; and that there is trust and confidence in the engagement process.

275. By clearly setting out how engagement will be front-loaded into the planning system, the statement of community involvement will contribute to the aims of planning reform by speeding up the planning process, ensuring that issues are dealt with at an appropriate stage in it and ensuring greater clarity for local people, communities and other stakeholders about the standard of engagement that will be expected in planning processes. The DOE statement of community involvement, which it has to produce within a year, will be a benchmark that will be used and looked to by local councils when it becomes their turn to produce their own statement of community involvement. Therefore, it is important that the statement is properly resourced, and it is important to get it right to ensure that consistent standards of engagement and involvement are applied across the region.

276. There are already lots of examples of good practice from England and Scotland, where local councils already produce statements of community involvement. However, it is essential that local people and communities are involved in the production of the statement of community involvement here so that local expertise can be drawn on and so that it can be tailored to meet local needs. It will also be important to involve the 11 council clusters in this process of developing the statements of community involvement.

277. Once a draft statement has been produced, it is important that sufficient time and resources are given to allow proactive consultation to take place with local communities and the public. Therefore, we recommend that work is begun as soon as possible on the statement of community involvement to allow appropriate time for a development consultation and to allow it to become operational and to be tested in a working environment before the handover of powers in 2015.

278. Another related provision in the Bill is the requirement for a pre-application consultation. Subordinate legislation setting out the standards for this is still to follow, so, obviously, this will be linked to the statement of community involvement and what is in there. Likewise, we would like to see those further regulations coming forward as soon as possible to allow proper time for development of these, consultation on these regulations and for them to be tested in a working environment before 2015. Although it is not included in the Bill, community groups often say to us that third-party appeals would also help to strengthen confidence of local people in the planning system and test whether engagement is really working.

279. **The Chairperson**: Thank you, Elaine. The next speaker is Ciaran Quigley. Ciaran, can you speak close to the microphone? It is quite a big room.

280. **Mr Ciaran Quigley (Belfast City Council)**: I am the town solicitor with Belfast City Council, and, on behalf of the council, I thank the Chair and the Committee for the opportunity to contribute to today's proceedings on the Planning Bill.

281. The council welcomes the introduction of the Planning Bill in the run-up to 2015, when RPA will kick in. Hopefully, this will enable the Department to test some of the planning elements in the run-up to the relevant date in 2015 when the new arrangements will come into place. We commend that, in introducing the reforms set out in the Bill, all efforts are made to strengthen the relationship between the Department and the council, and we are working together on that. This is a real opportunity to further the effectiveness and resilience of the planning system in Northern Ireland.

282. We have a short comment on the statement of community involvement. It is a short clause, but it is an important provision. It ties in with what Belfast City Council holds most important in relation to communities and neighbourhoods. It is a central tenet of our corporate planning process, and we want to see how it will work out in practice. We want to work with the Department, and we welcome the opportunity to do so. At this stage, there is not much more that I can say, Chair. Thank you.

283. **The Chairperson**: Thank you, Ciaran. We have a bit of interference. I remind people to switch off their mobile phones. We now open the meeting to comments from the Floor. Anyone who wishes to speak should raise their hand and wait for the microphone.

284. **Ms Lynn Scott (ASDA)**: I am head of town planning at Asda. My only comment on the proposed community consultation regulations is that we think that the 12-week prescribed period could be reduced to eight weeks. We are working in the Scottish system and are aware that the 12-week period is quite long. Most developers are geared up in advance of the submission of the proposal of application notice to go forward with the public consultation, and an eight-week period would be more reflective to ensure that there is not excessive delay upfront prior to the submission of the application notice.

285. My only other comment is that the regulations that come forward about what should be undertaken for the public consultation have to be very prescriptive. I find that the Scottish system works well. The requirements of a public consultation, a press notice and consultation with the local groups work well. However, the current English system is too ambiguous and can be open to interpretation. Due to possible concerns about judicial review, etc, I think that it should be prescriptive to the exact requirements of what the applicant will have to do.

286. **Professor Greg Lloyd (University of Ulster)**: I want to make a point about a statement of community involvement. I think that we are in danger of missing a trick, because this is about engagement rather than simple involvement. Mention was made of Scotland. The evidence from Scotland shows that we need to encourage a wider democratisation of understanding about planning and to engineer, in some way, a culture change whereby we do not simply engage or become involved with planning when it affects us. We should, in fact, contribute to an ongoing conversation about the well-being of our land and environment.

287. **Mr David Mounstephen (Royal Town Planning Institute Northern Ireland)**: We have over 560 members in Northern Ireland who work in the public, private, voluntary and education sectors, and we are the leading professional body for spatial planners. We welcome the opportunity to contribute to the debate. The Royal Town Planning Institute (RTPI) welcomes, in principle, the fact that the Department is to produce a statement relating to community involvement. Obviously, the detail of that statement is critical, and, at this stage, that is unknown. It has the potential to have very significant impacts on planning processes. Any statement must be truly useful to communities, the Department and to all those who engage with the planning system. It must not result in unnecessary delay or burdens on those people. The institute is very keen to be involved in the preparation of the statement and would welcome an early opportunity to provide input to it.

288. **The Chairperson**: We want to hear your concerns and comments, but we would also like to hear any recommendations to amend the clauses, if you think that that is necessary. Let us know in what way an amendment could address your concerns. We want to hear comments about changes and about how you want changes to be made.

289. **Ms Liz Fawcett (Belfast City Airport Watch)**: I represent an umbrella residents' group. I want to seek some clarity. We have a comment about clauses 4 and 5. It is relevant to community consultation, which is not on your agenda as being discussed separately. Would you like to hear our comments now?

290. **The Chairperson**: Yes.

291. **Ms Fawcett**: We support the general thrust of clauses 4 and 5, which, as we understand it, give DOE the ability to widen the scope of notification of consultation requirements. However, we believe that it is vital that the legislation is more prescriptive where proposed development will clearly affect a wide area. We believe that it should be mandatory in such cases for the Department to notify everyone in that area. We have had an example of where publicity was not effective in a major development. That occurred last May, when the Department of the Environment was consulting on an application by George Best Belfast City Airport to vary the terms of its planning agreement. The figures submitted in the airport's application showed that up to 26,000 people would be affected by that. Our concern was that many of those people were completely unaware that the application was there. We can compare that with an example of good practice in a similar situation in Newham Council in England, when London City Airport submitted an application to vary its planning agreement. Newham Council sent out more than 10,000 letters to local residents to notify and consult with them. In addition, it displayed 200 site notices and advertised in local newspapers. We would like to see the legislation tightened up in that regard so that the Department is obliged to ensure that people on the ground know about it. In the application by Belfast City Airport, 21 schools were listed by the airport as being affected. Our understanding — and the Committee is very welcome to check this — is that none of those schools was notified by the Department of the fact that they had been named in that application.

292. We see this as an opportunity. We hope that the Committee will seek to tighten this up.

293. **The Chairperson**: OK. Thank you, Liz.

294. **Mr John Moore (Holywood Conservation Group)**: Different groups in a community may have different views on a proposal, but there should be some definite way of ensuring that all aspects and all views on a new proposal are included in the statement of community involvement.

295. **The Chairperson**: Thank you, John.

296. **Mr Elliott**: I have a query. The proposed legislation indicates that each council will be responsible for its own statement of community involvement. How do people feel about that? Should there be one overarching statement of community involvement? I know that the Bill says that the Department will provide guidelines, but should there be at least some areas that it can work within, or will it leave it totally open to each council? I accept that what might be useful for Belfast may not be useful for Fermanagh or Tyrone, but I think there should be some overarching guidelines. How do members feel about that?

297. **The Chairperson**: I think that the officials may answer that later.

298. **Mr Elliott**: I was just wondering what the public feel about that.

299. **The Chairperson**: Representatives from the Northern Ireland Local Government Association (NILGA) are here. Derek is here. Would you like him to answer that?

300. **Ms Karen Smyth (Northern Ireland Local Government Association)**: We welcome the Bill, and we know that a great deal of importance has been

attached to piloting things such as the statement of community involvement. However, the time frame involved, when we are also coming up to local government reform, will be quite difficult for us. We look forward to seeing what the Department is going to produce and would be keen to use that as a potential model for councils to take their own statements of community involvement further. There is a regional approach at a departmental level. Once the councils take over planning, it is desirable to boil it down and take a more local approach to statements of community involvement. We want to see a consistent approach to formulating those.

301. **The Chairperson**: Perhaps officials could respond to that later. A number of people have expressed concerns about the tight timescale of one year before planning powers pass to councils and about how much involvement councils may have in the production of the statements. We look forward to hearing from Angus or Irene on that.

302. **Mr Boylan**: I would like to welcome everybody. I want to pick up on two points. The first is on engagement. Professor Lloyd is right about that: it has to be meaningful. I hoped that the session today would bring out ideas from you. We need to bring people together to make a meaningful contribution in the community, yet we have not heard anything about that. People have commented on the statement of community involvement, but no ideas have come back about who they think should be in place. Are we going to say that is going to be Tom, Dick and Harry? Who is it? Where do we start the process? Who is involved in it is one element; the other element is the decision-making process. What tools are we going to give to people to make that decision? Who will make the final decision? How will that stand up? As we bring out all the clauses today — and there are a lot more contentious clauses than this one — I want to hear more contributions. At the end of the day, this is going to be about the decision-makers, and they need to have the tools.

303. My other point is on the neighbourhood notification. We have said that we would like that to be in statute as part of the Planning Bill. Perhaps the departmental officials can address that. Neighbourhood notification is vital to this process, whether urban or rural. At present, that is not in statute. Chair, will the Department respond clause by clause or respond at the end?

304. **The Chairperson**: I will ask the departmental official to give his view on that.

305. **Mr Angus Kerr (Department of the Environment)**: I thank the stakeholders for their positive comments about the statement of community involvement, which the Department views as important. Work will commence shortly on that. We will not wait until the Bill comes into effect before we bring that work forward.

306. Even though it applies to the full functions of the work of the Department in planning, we will not extend it to looking at development plans because the Department is not bringing forward any development plans before the transfer of functions. That is an area on which we would happily engage with people, particularly given that we view that work as being important as a test bed and a pilot for the work that will come from councils.

307. Engagement and involvement are the watchwords. It is our intention to engage with the community and key stakeholders as much as we possibly can in the preparation of the statement. As I said, we will commence that work very shortly. The sooner we get that done and the statement into place, the longer it will have to take effect.

308. A number of points were raised, focusing on publicity issues. Mr Boylan and others mentioned notification. We will take that work forward through subordinate legislation, so it will be fully consulted on. There are opportunities in that to look at how the Department

currently undertakes its publicity around planning applications and planning functions to try, for example, to look at statutory requirements for neighbour notification. Other options include site notices and other forms of engagement and publicity that may be important. That work will flow from the Bill, be ongoing and be consulted on.

309. Comments were made on the provisions in pre-application community consultations. Those issues can be dealt with through the statement of community involvement and what our approach to that will be. With regard to the 12-week period, that is a period for which we have to be given notice, but it could be that the community consultation takes place in a much shorter time. We have to know 12 weeks before the application comes in, but it may come in in a shorter time, provided it meets the requirements of the associated engagement process.

310. Tom Elliott raised a point about the council approach after the Bill when the Planning Act is being implemented. When councils come forward, they will have the statement of community involvement that we will have prepared through the Bill for the Department. They will also have guidance on how we think the approach could work, which will be based on testing our statement of community involvement. However, the Act and probably the subordinate legislation that will flow from it on SCIs are likely to give councils the flexibility to do their own thing in statements of community involvement because part of it is to try to engender some innovative thinking in how to engage with the public and communities on planning. Certainly, looking at SCIs from other jurisdictions, I think that there are some novel and good ideas coming through from certain authorities on how they engage with the public in different ways. So, it is hoped that we will set a standard for consistency, which is important, and allow councils the flexibility to bring forward their own approach. Have I covered all the issues?

311. **The Chairperson**: Yes. So, there will be one statement of community involvement from the Department. Flowing from that, will each council need to produce something similar?

312. **Mr Kerr**: There is a requirement on us, while we are the planning authority, to prepare a statement of community involvement. That will take us up to 2015. There will be a similar requirement on councils post-2015 to produce a statement of community involvement on how they will involve the public in the way in which they want to conduct planning. There are basic statutory requirements that the Department and the councils need to comply with, but we want to allow councils the flexibility to take novel and different approaches in how they engage. There are all sorts of methods of engagement, as you are familiar with, ranging from the more standard traditional ways, such as public meetings, and so on, through to other methods that councils in other jurisdictions have moved into, such as social media. So, it is to allow councils to look at that and indicate what way they might like to move forward with some of those issues.

313. **The Chairperson**: Similarly, they have to produce that within one year of the functions being transferred.

314. **Mr Kerr**: No; that is a requirement on the Department. The councils will need to prepare a statement of community involvement before they get to a certain stage in their development plan process. It will be worded so that they have do it before they "consult" around their plan because it is important that they set out how they do that before they get to that stage in the plan.

315. **The Chairperson**: Does anyone want to ask Angus further questions? He is the policy director of the DOE.

316. **Lord Morrow**: Will we end up with 11 different plans?

317. **Mr Kerr**: Yes, there will be 11 different development plans. The facility is in the legislation for any of the 11 councils to

come together and prepare a joint plan. I suppose it is similar to the current position in which, theoretically, you could end up with 26 separate development plans. As you know, the Department has tried to pull plans together: sometimes they come forward as one district, but often they are joint, such as the northern area plan.

318. **Mr Boylan**: I thank Angus for his responses. My only concern is that whatever the Department brings out, it has to be right. There have to be flexibilities, but that is down to interpretation, and you are allowing some flexibility for different council areas to deal with that. The stakeholders here should be involved in and aware of all that. The key element is what comes from the Department, allowing balance and flexibility to have all those issues tied in. People need to consider that and think about the contributions that will be made in that process.

319. **Mr Kerr**: I absolutely agree with that.

320. **Mr Tony McGuinness (Belfast Holyland Regeneration Association)**: I am concerned about the use of the words "engagement", "notification" and "consultation". Is it the case that we will still be regarded as third parties under the new legislation rather than as neighbours, the community or people affected?

321. **Mr Kerr**: I am not sure that I follow the question completely, but the whole ethos around planning reform, the original Planning Act and the Bill is to increase meaningful community engagement and involvement in our overall planning processes. It is to try to make that stronger, more meaningful, to front-load it and have it as early as possible, through the plans that the councils will be preparing and the process of dealing with planning applications. That is why we have pre-application community consultation to allow communities to engage meaningfully even before the planning application is submitted.

322. **Mr T McGuinness**: Hopefully, this question is more precise: do we have a say in the decision-making? Do our public representatives — councillors — have a say in the decision-making? The planners are making decisions that affect communities. In fact, such decisions have almost totally destroyed our community. We do not have a say. They talk about overall public interest, but they do not know what that is. They do not know about sustainable communities. They do not know about health and education, public order or any of that. With our planning applications and appeals, we had the backing of the council, the police and many other agents, but that was simply disregarded because we were third parties.

323. **Mr Kerr**: The current and future system takes the views of objectors in planning matters very seriously. They are material to any planning decision. Councils are statutory consultees within the process. Of course, post-2015, local councils will make those decisions.

324. **The Chairperson**: We have to move on. We are running out of time already.

325. We will now discuss clause 2, the general functions of the Department and the Planning Appeals Commission (PAC), and clause 6, the determination of planning applications. Clause 2 amends article 10A of the Planning (Northern Ireland) Order 1991. A statutory duty is imposed on the Department and the PAC in exercising any function under Part II or Part III to do so with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. Clause 6 amends article 25 of the Planning (Northern Ireland) Order 1991 and section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications include a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission. The majority of stakeholder commentary was on those two clauses.

326. I will first ask Nigel Lucas from the Construction Employers Federation (CEF) to speak.

327. **Mr Nigel Lucas (Construction Employers Federation)**: Good morning, and thank you very much.

328. The Construction Employers Federation welcomes the opportunity to participate in this stakeholder event. We represent around 1,200 individual construction firms in Northern Ireland, large and small. The construction industry makes a substantial contribution to the local economy and supports many thousands of jobs, directly and indirectly, as construction activity also creates demand for goods and services in many other sectors.

329. Clause 2 introduces an amendment whereby the Department will have a statutory duty, among other things, to take into consideration the furthering of sustainable development, promoting or improving well-being and promoting economic development. From the business community's viewpoint, it is vital that Northern Ireland has a planning system that is fit for purpose. That not only will allow indigenous businesses to grow but will send a clear message to overseas investors that Northern Ireland is open for business. That will attract new businesses here and help to create new jobs in the local economy. The provision in clause 2 to take into account the promotion of economic development is wholly consistent with the commitment by the Northern Ireland Executive in the Programme for Government to ensure that 90% of large-scale investment planning decisions are made within six months and that applications with job creation potential are given additional weight.

330. As the measures relating to the promotion of good design and economic development were not consulted on with the stakeholders when the Planning Bill was at consultation stage, it is essential that they are robust and given full consideration in the context of the planning reform agenda. The CEF strongly believes that when an economic case for development is unequivocal, and as long as the planning application is consistent with existing planning policy and sustainable development principles, the planning application should be approved and any such proposed development should take place. That is not to say that rapacious entrepreneurs should be given the green light to cut down trees and tear up green fields in the name of economic progress. The CEF is the champion of best practice, which includes environmental protection and sustainable development. Any such planning application that has the potential to have a significant impact on economic development should be carefully monitored in co-operation with the various agencies to mitigate any threat of environmental damage so that the local economy can benefit from such an investment. That is particularly important in the current economic climate, where environmental protection should not be sacrificed for economic expediency. That said, the CEF and the wider business community strongly believe that clause 2 should have the full support of the Environment Committee and, indeed, the entire Assembly to facilitate inward investment, promote economic prosperity and help to rebalance the local economy.

331. **Mr James Orr (Friends of the Earth)**: Thank you and good morning.

332. We have no problems with the aims of the Planning Bill to speed up planning applications, strengthen the economy and offer better environmental protection and community involvement. Friends of the Earth totally believes in that. The problem is that those aims will not be achieved if clauses 2 and 6 go through. The clauses will change the planning system for ever, and they will change it for the worse. They are simply repugnant and probably unlawful. They are repugnant to the stated aims of the legislation. These are the most far-reaching clauses, which I think have been slipped in through the back door; there has been no regulatory impact assessment, no equality impact

assessment, no public consultation, no independent professional planning input and no comparative assessment with other jurisdictions or planning authorities. On that basis, this is the fourth attempt to introduce an economic supremacy concept. Therefore, I thank the Environment Committee for allowing us to give expression to these views.

333. The legal and independent professional planning opinion that we have received suggests that clause 2 will be interpreted as giving supreme weight on all applications, policies and development plans not even to the economy but — this is an important point — to narrow economic sectoral interests. The clause means that economic considerations will be the first among equals; in legal terms, primus inter pares. It will end up outweighing every other consideration. In simple terms, that is because sustainable development is already infused with the concept of economic interests. To add in this extra economic duty will, in practice, override all other considerations. This changes 50 years of planning law and practice. Planning goes with the land; it does not go with the applicant. Planning will no longer be in the public interest, which includes the wider needs of the economy, but will simply go with the narrow economic claims of a particular developer. I think that we need to separate those two points: the interests of the economy and the interests of the claims of a particular developer.

334. We honestly do not know what the problem is that these clauses are trying to solve. Northern Ireland already has one of the most permissive planning regimes in western Europe. Of all commercial applications, 96% are currently approved; 47,000 homes have been built in open countryside in the past 10 years in Northern Ireland; according to freedom of information requests, half of all quarry applications do not even bother applying for planning permission and instead are retrospective. You can even build a holiday resort in the setting of our only world heritage site. We simply do not know what the problem is that these clauses are purporting to try to solve. There are many planning problems: lack of consistency; lack of certainty; no up-to-date plans; environmental damage; and town centre decay. Those are real, valid planning problems. Developers, employers and architects do not tell me that the problem is that economic considerations are not given enough weight. So my recommendation to you is to delete the new economic duty and simply define sustainable development in an intelligent way that balances economic, social and environmental considerations.

335. I will be very quick on clause 6. We think that this clause is a gift to lawyers. As we all know, our planning system is already highly legalised and defined by endless battles in the courts. That is a sure sign of poor governance, poor policy and poor legislation. The clause is another example of very bad law and will be a source of endless litigation. Developers and others will seek to challenge, while the planning system has weighted economic advantage — and to whom?

336. Let us take a supermarket development. Asda will say that it will create 120 jobs; Tesco will say that it will create 140; and Sainsbury's will come in with 200. Locals will point to the economic disadvantage, saying that the price of their houses has been depressed because they overlook a car park rather than a green field. Others will say that house prices have increased. This will end up in very clumsy, unworkable and litigious bad practice, and we will be a laughing stock across the world. It is aggressive and unworkable, and it should not have reached this stage.

337. By supporting the supremacy premise in clause 2 and the chaos of clause 6, you will effectively be saying that all other planning considerations do not matter and that issues of landscape protection, protecting our cultural heritage, creating socially balanced communities, respecting nature, promoting the rights of individuals and helping a participative democracy do not matter.

338. Take, for example, the republican plot in Milltown cemetery, a children's play area, Navan Fort or Carson's statue in front of Parliament Buildings, none of which has any definable and tangible economic weight. These clauses could allow those places to be sacrificed for a car park, a bingo hall or an abattoir. I am not saying that that will happen, but you will allow it to happen if these clauses go through.

339. I am sure that some of you are thinking that it is all about the economy these days, so just let it run. That argument, no matter how seductive, is counterproductive for three reasons. First, it ignores the fact that the environment is the source of all our wealth, particularly in a country —

340. **The Chairperson**: Will you be quick?

341. **Mr Orr**: — OK — where tourism and agriculture are so important. Secondly, we currently measure the economy in GDP. Car crashes, terrorist attacks, deforestation and pollution all add to GDP. Is that the basis on which we want to measure good planning? Most importantly, finally, there is no evidence that planning is a brake on economic development. If there is, please show me peer-reviewed evidence from any other country that says that a good, healthy planning system is a brake on economic development. I can point to lots of healthy economies that have a good, robust planning system as a prerequisite.

342. Whatever you think about these clauses, I urge you to think that this is not about the economy or about planning. Please do not try to solve the problems of the planning system or the economy by dismantling the planning system. Try to solve the problems of the planning system by dealing with the problems of the planning system. *[Applause.]*

343. **The Chairperson**: Thank you, James. I know that I have given James a bit more time. We have allowed a lot more time for this discussion because it concerns two of the most controversial clauses. I believe that Nigel wants to say a little bit more.

344. **Mr Lucas**: Thank you, Madam Chair. I want to make a brief statement about clause 6, if I may.

345. Clause 6 introduces a new provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission. The CEF fully supports this provision, as it is wholly consistent with clause 2 on economic considerations. The construction industry can deliver key economic benefits to the local economy. The multiplier effect of the construction industry into the local economy has been well documented. Every £1 invested in construction generates £2·84 into the wider local economy.

346. Inward investment by new businesses will provide long-term economic benefits to Northern Ireland as a whole. New jobs mean prosperity and more money circulating in the local economy with an increase in demand for goods and services in other sectors that will also benefit.

347. Previous attempts to underpin the role of planning in promoting economic development have been unsuccessful. However, given the likelihood that the economic downturn will be with us for several years before any significant recovery is seen, we cannot let this opportunity be lost. That is not to say that developers should not have regard to good design, sustainable development and environmental impacts, but, on balance, the outcome must be in favour of economic considerations.

348. The Minister of the Environment succinctly summed up the situation in the debate on the Bill's Second Stage on 22 January 2013:

"There is a presumption of development in law. Some people do not like that, but there is a presumption of development in law. The purpose of the planning system is, working from that principle, to then mould planning policy and decisions that take into account all the other factors that properly and reasonably

should be taken into account." — [Official Report, Vol 81, No 2, p70, col 1].

349. That sentiment is strongly supported by the CEF. We commend clause 6, and we ask the Environment Committee and the Assembly to embrace this golden opportunity to stimulate economic growth by supporting the inclusion of clause 6 unamended.

350. **The Chairperson**: May I ask a question, Nigel? It may be a follow-up from James's comment. How will we reconcile situations in which a developer wants to build, but a business says that doing so would cause it economic disadvantage, or a house owner saying that building a factory beside their house would bring its price down? Will we be pitching people against people or developers against developers? How can we manage that, Nigel?

351. **Mr Lucas**: I do not think that it is a case of competing with one another like that. What we are saying is that economic advantage and economic considerations should not overwhelm other considerations or be given principal weight. They should be among the equal determining factors, whereas, previously, they have not been. I will go back to the example: if you have a large-scale overseas investor looking to bring many thousands of jobs into Northern Ireland, surely that has to be taken into account when considering such valuable investment; at the same time, the application for such a proposal must meet and be consistent with planning policies and sustainable development.

352. **The Chairperson**: The problem is that a developer or business may say that they will create 600 jobs, but how can that be monitored after planning permission has been granted? There is no mechanism to determine whether, two years down the line, they have fulfilled their promise of creating 600 jobs. I am just highlighting the difficulties associated with weighing up the advantages and disadvantages. I will let other members come in.

353. **Mr Weir**: For anybody involved in planning applications at present, there is always some weighting of competing interests. When someone wants to build, there is often local opposition. So some of this will involve trying to weigh the advantage to the applicant against any disadvantage of potential loss of amenity or other losses. Sometimes, everyone is in favour of or against an application, but, generally speaking, any form of planning involves judging competing claims and interests. Therefore, although economic considerations may be in a different sphere, the Bill does not completely differ from what is there at present.

354. **The Chairperson**: At present, the considerations are things such as loss of light.

355. **Mr Weir**: A whole range of things is relevant to planning considerations. Quite often, an applicant's advantage, whether the application is of a retail or domestic nature, competes with disadvantage to others. You mentioned economic advantage or disadvantage, which is often involved with planning. Potentially, this will cut both ways, which we need to take into consideration. I am sure that many of us are often faced with constituents who say that the impact of such and such being built will economically disadvantage them because it will lower their house price. Until now, we have had to say that that is not a relevant consideration because, strictly speaking, it falls outside planning. Clause 6, however, cuts both ways and applies both to those who favour particular developments and those hostile to them. In every case, someone will have to make a value judgement, as happens at present.

356. **The Chairperson**: Will it create a greater potential for more litigation, legal challenges and arguments?

357. **Mr Weir**: With respect, if there is a conflict about how any planning decision is interpreted, there is nothing to stop anybody indicating that their views were not taken into consideration, and that applies to a range of things. I am sure that there are a lot of developments about which people said that the impact

on them was not taken into account — I have seen many such developments. So this would not necessarily lead to any litigation additional to that which exists at present.

358. **Mr Elliott**: I listened to Nigel saying that he does not want outstanding weight placed on the economic aspects; rather, he wants them to be given equal weight and equal consideration. That makes me wonder whether the rest of the audience has a similar view. Are people saying that the economy should be given equal weight and equal priority in the legislation, or are they saying that the economy should be given a lesser weight?

359. **The Chairperson**: No, they are saying that it should be given equal weight, but they argue —

360. **Mr Elliott**: That is what Nigel from the CEF said, but I wonder what other people think. Are they saying that it should be given lesser weight?

361. **Mr Boylan**: Chair, I hoped that you would seek more comments from the floor before we responded. I want to hear people making proper arguments and giving examples of how they think that this will impact. I listened to James, and I know that he is passionate about particular issues. James, you need to demonstrate your case to the Committee. We will debate the issues and introduce a Planning Bill that will be handed over to the decision-makers.

362. I know that someone from the Bill Office is here. I want to find out about the legal stance of this clause because I do not want to agree a Bill that will not give people the right tools to make decisions. The next couple of years will be a transitional period in which the legislation will bed in, and I do not want to be hearing about legal challenges here, there and everywhere.

363. I know that this is not a debating forum, but I want to tease out the argument. We talk about community involvement and getting people together to make plans for growing their own communities and economies. We now say that there is an economic argument. You cannot separate planning and economics regardless of what you are doing. If you are building a house in the countryside or a factory in an urban setting, you cannot separate planning and economics. The issue is whether people believe that economic considerations should be given a determinate weight or full weight. That is why I want to hear people's arguments, and, to be honest, I am not. This is about economic consideration being one of the criteria involved in the planning process; it should not be about weight. If people have other ideas, I would like to hear them express them to the Committee. I do not agree that this clause is like planning policy statement 24 (PPS 24).

364. **The Chairperson**: I will open the floor to the stakeholders now.

365. **Ms Judith Annett (Northern Ireland Biodiversity Group)**: I chair this group, which is a non-departmental public body of the Department of the Environment. We submitted a response to the Planning Bill, and I hope that the Committee will read the entire response because I do not want to read it out now.

366. The debate should hinge on what we mean by sustainable development. I thought that we all had, since 1992, a very clear view of what was meant by sustainable development. It is a form of development that meets the needs of the present but does not prejudice the ability of people in the future to meet their needs. I also heard that from the CEF. Much of what the CEF said is absolutely correct. We need circumstances in which developers can come forward with good projects and have reasonable expectations that those will be treated fairly.

367. We decided what sustainable development was in 1992, and we worked that right through until everything for which we use European funding must be sustainable. To my knowledge, everything promoted by the Tourist Board, the Department of Enterprise, Trade and Investment (DETI) and all Departments has to fit into that category

and definition so that we are not taking away the capacity of future generations to be able to live; nor are we taking away the capacity of this generation to have clean water and clean air, safe food, an absence of flooding and an absence of major climatic events that we cannot deal with and control.

368. Sustainable development also requires us to look at externality. So, if a major economic development site is allowed on a floodplain, and a major flood occurs 10 years later, the cost is borne by the businesses involved. However, the public purse is also hit because it pays for the emergency responses, and so on. We have to look at every development and ask what effects it will have. I think that, in the Bill, "economic" means financial, and definitions are part of the problem that prompted so many people to write in about these two clauses. "Financial" rather than "economic" considerations must have been part of the thinking behind saying, "economic advantages or disadvantages" because economic effects are, for example, considerations that relate to any public or private economic effects likely to result. Those are on a very broad front of cultural, financial, danger, safety, clean air, health, etc. So, in the way that the clause is drafted, I think that economic effects differ from economic disadvantages

369. I find it difficult to make an intelligent response because there are no definitions. However, in summary, I think that we have been quite sophisticated over the past 20 years in putting forward the phrase "sustainable development". Even if the Northern Ireland Tourist Board does not say, "This is our sustainable tourism strategy" and DETI does not say, "This is our sustainable economic development", that is what they should mean. "Sustainable" should always be a word hidden in brackets. That is why the likes of the Quarry Products Association (QPA) and the Construction Employers Federation are making major efforts to reduce their impacts and to use smart technology so that they can continue to live in a society that wants us to be as wealthy in all those areas in 10 years' time as we are now. Therefore, I do not really see this as being an either/or; it is not pro-development or pro-conservation. I really do not like that kind of adversarial view of the Bill. We all agreed on the term "sustainable development", which everybody has been working on for 20 years. It feels as though putting in two separate things called "economic development" and "sustainable development", without giving us the benefit of their definitions, is a step backwards

370. If you define "sustainable development", you encompass everything that the CEF, the Quarry Products Association and I are talking about. My worry is that when you define "economic development" as something separate from that, you get a definition that, inevitably, is not as good as that of sustainable development. That, by implication, has an impact on the capacity of future generations to live as wealthily as we do now. There is a lot more in our submission, and I recommend that you read it, but that is the critical point. In many ways, a lot of us are talking about the same thing. Somebody has introduced the words "economic development", which seem to mean something different from "sustainable development". However, I do not think that, in reality, they do, which begs the question: do you really need to have the phrase "economic development" in the Bill because that is already included in "sustainable development"?

371. **The Chairperson**: Thank you, Judith. You say that sustainable development also includes economic development. Are you saying that sustainable development includes both socio-economic and environmental aspects?

372. **Ms Annett**: It does. It means that it has been taken into account. So, for example, Tesco comes forward with a really good project, which would create a lot of jobs and be welcomed by local people. If, however, the project has externalities — unintended economic, social or cultural effects — that cost other people money, comfort, health,

wealth, recreational amenities or whatever, it must be looked at very strongly. Clause 6 states:

"considerations relating to any economic advantages and disadvantages likely to result"

373. That is part of what a good planner does, and I do not think that we will try to write into the Bill everything that a good planner does. If you are minded to keep clause 6, and I hope that you are not, the phrase:

"considerations relating to any public or private economic effects likely to result"

374. using the proper definition of the word "economic" would be better. It is about recognising that economic development projects — unless sustainable, which means that they have been thought through at the design phase — have externalities that may come back on the public purse or have some other effect on people, meaning that they may end up costing more than the current benefit. That is what planners do, which is a very big and very difficult job, but I do not think that we can include everything that planners need to do. The phrase "sustainable development" has been very well defined over the past 20 years. As part of the UK, we are subject to a lot of agreements on taking forward only sustainable development. To me, that seems perfectly adequate.

375. **Professor Lloyd**: Sorry to butt in again, Chair. Frankly, I think that we are on very thin ice. This debate is not about the planning system; it is, in fact, about land. We are doing exactly what the Planning Bill is trying to avoid: we are polarising the arguments, either in favour of economic development or environmental protection. Everything that I have heard here goes back to that polarity. It is adversarial in different ways. The language may be soft, but the positions are extremely far apart. I would argue that we need to know exactly what we are working with: what is the land economy, the land resource, of Northern Ireland? The last time I looked, we were not making land any more but losing it. Land is eroding and being contaminated, polluted and flooded. We must nurture this very fine and finite resource. The planning system is there to ensure the use and development of that resource in the interests of Northern Ireland. We have then to ask whether we understand the true value of that land economy.

376. I commend you to read the foresight study undertaken in England, which looked at the holistic value of land. Sadly, the foresight report has not taken a grip as it should have done, and one of the reasons for that is that we are in a long depression. There is reference in all places to growth, and growth at any cost conjures up frightened responses. We have to be very careful about that. The foresight study showed that it is possible to identify and bring together a balanced set of views, but then define appropriate administrative arrangements. If the foresight report is not enough, I commend you to look at the Scottish Government's land use strategy, which is taking very brave decisions in saying, "This is the value of land in Scotland. This is the land that can be used for certain purposes, and this is the land that is of better value to Scotland if kept in its natural state."

377. **Mr Gordon Best (Quarry Products Association)**: I commend the Committee on organising the event today. Thank you very much for the invitation. I want to start by making a point about James Orr's earlier comments on the quarry industry. His figures were very misleading and historical. When we sat down with the DOE and the Planning Service to improve the standards in the industry, quite a lot of retrospective applications came in. Many related to minor issues, such as going slightly outside a boundary or having a weighbridge that needed planning permission. Today, I stand here very proudly as the representative of a quarry industry that is probably one of the most environmentally responsible on these islands, if not in Europe.

378. I agree with Judith that there has to be a balance. I will take off my industry representative hat and stand here as the father of a 14-year-old, a 12-year-old

and a 10-year-old, who, God willing, will leave university with a qualification in 10 years' time. I hope and pray that all our children and grandchildren will be able to find jobs, build a home and live with their families here in Northern Ireland. Unfortunately, as Nigel highlighted, there have been delays in the construction of many very important infrastructure projects in the past number of years. Young students, architects, designers and engineers coming out of university have only one option: to jump on a plane to Canada, Australia or New Zealand. I want a planning system that is fit for purpose. Our future prosperity and quality of life depend on how we grow our exports, attract inward investment and attract tourists from all over the world to our beautiful country. We in the QPA recognise that. We do not want economic development at any cost, just for the expediency of creating jobs. As I said, there has to be a balance. I appeal to us all to agree that the balance between environment and economy is in the true spirit of sustainability, as Judith highlighted, so that all our children and grandchildren do not have to do what many, unfortunately, are having to do now and go to other parts of the world to seek work, leaving their parents and family.

379. **Mr John Anderson**: I am a member of a number of organisations, but I am speaking as a heretic today.

380. We are missing the point, which is this: what happens with the legislation in the real world when an application comes before a council planning committee? I had a conversation with a councillor a number of months ago. I will not embarrass him by mentioning his name or party. He told me that he was very keen on the environment and that he was a fisherman. However, he said that, in his borough, if an application comes in that will affect an area of prime landscape and a river but has significant economic advantage, his core vote would not allow him to vote against it, no matter what he thinks. The point is that we are front-loading legislation. The checks and balances are lagging behind. They will trail in, possibly well after a significant bad precedent has been set. There is a warning here, and excuse me for putting it in these terms: if the ghost of Charlie Haughey is not to take over our planning system, we need to be very careful about the legislation.

381. **Ms Diane Ruddock (National Trust)**: I would like to pick up on some of the comments and questions that Committee members raised. Tom challenged us on whether we agree with the comment by Mr Lucas about simply giving the economy equal determining weight. The answer lies in what our colleague from the Northern Ireland Biodiversity Group said: it is there in sustainable development. I point members to the fact that PPS 1 includes a good definition of what sustainable development is. It states:

"Sustainable development seeks to deliver the objective of achieving, now and in the future, economic development to secure higher living standards while protecting and enhancing the environment."

382. That covers the economic, social and environmental aspects of sustainable development. That is already there in the planning system and the Planning Bill. The risk is that if you add in an additional clause to give further weight to economic considerations, you put that out of balance again. You invite and almost force decision-makers into a system of having to give the economy supremacy in places where that is not appropriate.

383. I also want to pick up on Cathal Boylan's very fair point, which is that the responsibility goes to the decision-makers, who, in a couple of years' time, will be councillors. They will be put in an exceptionally difficult position. He made the point that the decision-makers need the right tools. Those tools are really good development plans, the mechanisms to provide them and then a plan-led system in which the community is involved, and everybody understands how the system works. The plan for the area, agreed in advance, is your key decision-making tool. You then need

really good statements of policy, whether that is our current planning policy or whether we look forward to the single planning policy statement (SPPS) coming later in the year. Those are the tools that the decision-maker needs. If you add the economic clause to the legislation and ask decision-makers to weigh economic advantage and disadvantage, which are ill-defined terms and do not actually even necessarily refer to a sound economic business case, you are not giving them tools but putting barriers, challenges, frustrations, delays and difficulties in their way.

384. My final point is in response to your question, Chairman. How are we going to do this? Are we going to pitch member of the public against member of the public, private developer against private developer? This is really about putting a benefit into planning legislation for private interest rather than the broader public interest, which is what the planning system should be all about. If these clauses go through, the stark answer to your question is yes: we are going to pitch members of the public against one another and developer against developer. That is not going to be a good outcome for the planning system.

385. Everybody is in agreement that we need a really good planning system to take advantage of all the good things that Northern Ireland has to offer. I genuinely believe that the expertise, passion and commitment in this room could work together very effectively to design that planning system and get the kind of balance that the system really needs.

386. **The Chairperson**: Thank you, Diane.

387. **Mr Richard Buchanan (Institute of Directors)**: By way of background, the Institute of Directors (IOD) has consistently welcomed the Executive's commitment in the Programme for Government to growing a sustainable economy and investing in the future. We note that, in the PFG, the planning reform programme is identified as one of the building blocks in pursuing that objective.

388. For some years, the IOD has argued in favour of economic considerations being included in the menu of factors that planners must take account of when reaching planning decisions. In taking that stance, we have never insisted that economic considerations should eclipse all others when a final decision is taken. Far from it. We recognise, for example, that protecting the environment and promoting sustainability are also important components of growing the economy. However, we do not believe that they are mutually exclusive. We have sought a level playing field — a situation where economic considerations are among the other salient issues of which account must be taken when decisions are made. In that regard, we have taken comfort from the Minister of the Environment's statement to the Assembly on 22 January:

"I want to make it very clear that, whatever else the Bill proposes, it does not state, as PPS 24 suggested, that economic considerations should be given determinative weight." — [Official Report, Vol 81, No 2, p45, col 1].

389. We take the Minister at his word on that.

390. In some of the submissions made to the Committee on this consultation, it has been suggested that Northern Ireland is unique in attempting to introduce this factor in planning legislation. That is not the case. The importance of the planning system in relation to the economy has also been recognised in Scottish planning policy, which sets out the Government's key principles and expectations for development management. The first of those is that it should support the central purpose of increasing sustainable economic growth. In Wales, the Environment Minister, when speaking about a consultation on planning reform, said:

"As part of our ongoing review of the planning system I am keen to support the recovery of our economy by removing unnecessary bureaucracy and providing clarity for users."

391. So, there is general recognition of the importance of the planning system in building the economy. However, in

conveying the intention to introduce economic matters as a mandatory consideration, the Bill is devoid of detail as to how that will be put into effect.

392. The IOD supports these clauses in the Bill because they establish the principle of taking economic matters into account. However, there is a caveat to that support. We want to see clear proposals from the Department on how that would work in practice, and we want a commitment from the Department that it will consult widely on those proposals before this clause comes into effect in law. We would be very happy to engage constructively with others in this room and the Department in putting good practice guidelines into place.

393. Our position on the proposal to support good design is similar. Who could argue against this as a genuine, logical proposal? However, what constitutes good design? What is good to some can be ugly and offensive to others. Who will decide what constitutes good design? How will they decide it? Again, although the IOD supports the principle, we want to see more detail from the Department on how that will be applied in practice.

394. In conclusion, we understand the fears expressed by many that these clauses will allow developers to ride roughshod over environmental issues in making planning decisions. There is no reason why that should be the case. What we want is a fair balance to be struck between the economic and other considerations. We believe that the Bill, at long last, offers that prospect.

395. **The Chairperson**: Thank you, Richard. I ask for comments to be brief, please. We have a large number of people who want to speak, and I want to give everyone a chance to have their say.

396. **Mr Peter Carr (Belfast Metropolitan Residents' Group)**: Thank you for the opportunity to speak, Chairperson. I would like to take up Cathal Boylan's point about what the economic impact of these clauses might be. The way I would like to do that is to ask you to look at the world around you. The combination of an out-of-control banking sector — weakly regulated — and an out-of-control construction sector — weakly regulated — has destroyed three European economies in the Republic of Ireland, Portugal and Spain. These clauses will change the balance of power in our system. They will make it more like those systems that have conspicuously failed. I suggest that, had the clauses been in place 10 years ago, our economy would not just be in difficulty, it would be flat on its back. We would have had an excessive boom and an excessive crash comparable to that experienced in the South. I suggest to the Committee that these clauses are bad clauses. The economic prosperity of our society and of the construction sector lie in strong regulation. I ask you to reject the clauses.

397. **The Chairperson**: Thank you, Peter.

398. **Professor Geraint Ellis (Queen's University Belfast)**: I am a professor in the school of planning at Queen's. I and six other colleagues, who are all experts in planning with over 180 years' experience of researching and working in planning and with three professors among us, have considered the Bill in some detail. We came to the conclusion that it is very difficult to stress the fundamentally negative impact of what is being proposed here. We have set out a proposal in a letter that details some of the potential negative legal and practical consequences of the Bill. We can discuss some of those in detail if you want.

399. To focus your minds on this, I think that we need to focus on three key characteristics of what is being proposed in these clauses: it is mad, it is bad and it is dangerous.

400. I suggest that it is mad because it is irrational. There is no need for what is being proposed, it does not address any actual problem and there is no proof that the economy is being held back by planning. We have heard from representatives of the development industry and the Institute of Directors that all they want is for the economy

to be put on an equal footing. Well, it is already. Therefore, by their own admittance, there is no need for what is being proposed. They have said it themselves. They do not want any beneficial emphasis on the economy, and at the moment there is none; it is equally balanced. So, in a sense, it is irrational because there is no need for it.

401. It is bad legislation because the way that it is worded absolutely leaks ambiguity. As far as we know, it has not been subject to any proper appraisal and there is no research on the impact of what will happen, negative and positive. There has been no regulatory impact assessment or equality impact assessment, and we are just rushing into this, hoping that it will have the consequences we want. In our submission, we also highlighted some very fundamental legal issues. Unlike in Scotland and Wales, which have been mentioned, this Bill tinkers with some of the fundamental legal concepts of the planning system. It could all be undone as a consequence.

402. And it is dangerous. I do not know whether people fully understand what we are dealing with here. We have rested on 40 or 60 years of case law that has defined what is and is not a planning matter. What we propose to do here is to throw all that away and remake that case law. So actually, while we all want the economy to succeed, what we are going to do for the next five years, maybe, is to go to the courts to redefine what these clauses actually mean. I think that we will end up regretting this, for the economy and everything else.

403. **The Chairperson**: Thank you, Geraint.

404. **Ms Michelle Hill (RSPB)**: I am a senior conservation officer with the RSPB. I just want to pick up on a couple of points that other folk have mentioned with regard to having a robust definition of "sustainable development" in clause 2. That would negate the need for the additional economic subclause. We should look to our friends across the water in Scotland, and to some of the Scottish policy, where there is a balancing of the economic, social and environmental gains. Scots seek them jointly through the planning system. They also relate to the five guiding principles of sustainable development that are set out in the UK's shared framework for sustainable development. Bear with me; I just want to read out those five guiding principles. They are: living within environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly. I have not heard anything today from anyone that would contradict any of those guiding principles. If we had a definition of "sustainable development" in clause 2, that would negate the need for that subclause, and it would balance the three elements — the social, the economic and the environmental. That would allow us to achieve the right development in the right place. I just want to finish on this: the planning system should promote development that supports the move towards a more economically, socially and environmentally sustainable society.

405. **Mr Gerard Daye (Mount Eagles Drive Action Group)**: I will be very brief. It is a mistake to keep environmental development separate. It is our view that it should be subsumed within sustainable development. The definition should be that given in PPS 1. There are good sustainable development definitions there. It should be holistic and include social, economic and environmental aspects.

406. From our local perspective, if the economic consideration became material, it would mean that our local glen, which we have campaigned to protect and which the Department, through the consultation process in the Belfast metropolitan area plan (BMAP), has conceded should be an urban landscape wedge — and we are hopeful that the Minister, through BMAP, will designate it — will be lost. We would see a lot of our natural assets destroyed. We strongly recommend that the sustainable development model is

the one used and that the other one be struck.

407. **Mr Gary Jebb (Queen's University Belfast)**: We very much welcome the opportunity to contribute to the debate. Thank you for the opportunity to consult on the Bill. However, amendments to clauses 6 and 17 introduce a level of additional requirement, paperwork and, perhaps, ambiguity that has the potential to cause further delays in the statutory planning process. Rather than improve its efficiency and effectiveness, it may make it a more sluggish process.

408. Obviously, clause 6, as we have been discussing, makes the assessment of economic advantages or disadvantages explicit. Although, in itself, that is probably not unreasonable, it is not clear why it is necessary. The principle of sustainable development is already at the heart of the planning process, and that includes consideration of social, economic, environmental and physical aspects. We believe that that balance is appropriate and relevant. We give some more detail in our written submission.

409. Let me touch on clause 17, which is not specifically on the agenda today. My organisation is 80% located within three adjacent conservation areas, and the change from a "no harm" test within the conservation area to an "enhancement" test creates a very significant additional challenge. Within the conservation area, we need to achieve an appropriate balance between preservation and development. Clause 17 raises the bar significantly and, from the university's perspective, it is very subjective. It will become a much more lengthy process. The university believes that clause 17 unnecessarily introduces a level of ambiguity into the planning process and that it has the potential to cause further delays. Rather than improve efficiency and effectiveness, it may actually hamper development.

410. **Ms Gemma Attwood (Community Relations Council)**: I am a policy officer with the Community Relations Council. I thank the Committee for facilitating this conversation. For us, Northern Ireland is still a community emerging from conflict, and the realities of contested space need to be addressed. We cannot afford to think that our divisions are normal, that they will simply disappear and that they do not have any relevance to social or economic goals. We believe that public spaces should have permeable boundaries and should not become anyone's territory. They should be open and welcoming. I have listened to what people have been saying. We believe that the Planning Bill has a huge role to play in moving our society forward, creating shared, open and welcoming spaces, and addressing the issues around contested spaces. Given the conversation around the definition of "sustainability" and "well-being", we think that these will not be natural outcomes unless we get further clarification about what those definitions mean. We would like the Committee to consider that further.

411. **Mr Herbie McCracken (Belfast City Airport Watch)**: *[Inaudible.]* — Belfast City Airport Watch and Cultra residents. I have been asked by my clients to attend this morning to put on record their concern that if the economic aspect is overplayed, it is very likely that — *[Inaudible due to MLA mobile phone interference.]* — 50 years younger.

412. It bothers me a little bit that you may run into trouble with the Aarhus convention. As you probably know, the Aarhus convention was set up in Aarhus in Denmark in 1998. Some 40-plus countries have signed up to be environmental democracies, keep their citizens informed about environmental matters, provide all relevant documentation and not allow legal costs to be prohibitive or unfair.

413. It is quite interesting that Cultra Residents' Association is the only body that has actually taken proceedings to Geneva. We had an oral hearing before a tribunal in the Palais des Nations in Geneva on 1 July 2009. The UK Government had four specialist lawyers there. To our satisfaction, we actually won the case. Before we brought the proceedings, we were told by a

Government Department that the Aarhus convention did not apply to Northern Ireland. Some research showed that it did, and we had the success of a court hearing in Geneva. It seems to me that there is a real danger that if the economic aspect is overplayed, you are going to run into problems with Geneva.

414. **Ms Jonna Monaghan (Belfast Healthy Cities)**: We also agree that it is a question of how we balance these things. We would like to point out that economic benefits do not arise simply from building new estates and developments, but from creating places where people feel safe and welcome and where they want to spend time. It could be about protecting and enhancing green space or our town centres. They can lead to direct new business opportunities. Yes, it can be difficult to quantify those, but that is there. In addition, there are inherent benefits for people that are about enhancing our primary asset, which is our people as well as our environment. There are other economic benefits. For example, if people feel more comfortable about socialising and meeting up in shared spaces, the costs that are associated with community safety can be cut. It can be about reducing ill health and healthcare expenditure, and it can also enhance people's access to local services and reduce their reliance on benefits. We really want to stress that it is important to keep the focus on how planning fundamentally shapes people's lives at the forefront of all of this. We are a bit concerned about the way that sustainable development is defined in the Bill. That is sort of lost. There is a clause on well-being, and it is really important to keep that. We are aware that people have had concerns about how you define that and how it will be operationalised, but it can be identified in a number of ways. For example, planning has a role in creating conditions that help people to access the services and amenities that they need to let them access services, socialise and choose health-promoting behaviours and activities. Through our membership of the World Health Organization's Healthy Cities Network, we have a wide range of contacts across the UK and, indeed, across Europe who are experts in this field and who would be really happy to assist with developing this, if that would be helpful.

415. **Mr Mounstephen**: The Royal Town Planning Institute supports economic development and recognises its importance. Indeed, it recognises the important role that planning plays in relation to it. However, the institute considers that the specific reference to the promotion of economic development undermines a proper understanding of sustainable development, which already includes economic development through what is often referred to as the triple bottom line approach, whereby social and environmental factors are considered alongside economic ones. It is in that context that the institute is concerned about the introduction of a specific reference. Indeed, it is the institute's position that, through sustainable development and a proper understanding of it, we can arrive at having greater well-being, which is one of the other general functions contained in the Bill. In our written submission, we proposed a form of words that further defined sustainable development and made reference to economic, social and environmental objectives, the idea being to try to unite these three important dimensions of sustainability rather than differentiating between them. The benefit of that also is that there is a degree of flexibility built in by balancing those objectives and deciding what weight should be attached to them, perhaps even at different stages of the economic cycle.

416. On the specific mention in clause 6 of economic advantages and disadvantages being material considerations, it is the institute's position that these already are material considerations and, indeed, that they are already addressed and covered through the regional development strategy, PPS 1 and PPS 4. No doubt, they will also be addressed in the single planning policy statement that is to be prepared.

417. **The Chairperson**: David, are you saying that we do not need clause 6?

418. **Mr Mounstephen**: Yes, it appears that way. The institute undertook a consultation exercise with its members and had a consultation discussion afternoon. Although there is a range of views and the institute represents over 560 members, it was understood and recognised that economic considerations do form part of those already considered in the planning process when determining planning applications.

419. **Ms Tanya Jones (Fermanagh Fracking Awareness Network)**: We are deeply concerned about the effect that these clauses may have on the consideration of applications by major invasive industries, such as shale gas exploitation. It is inevitable that the applicant's assertions would be given the greatest weight, especially as other economic effects would be largely unknown, and those potentially affected may not necessarily even know it. Global experience suggests that estimates of jobs, revenue, etc, in these sectors are very unreliable and that they generally end up being revised downwards. Meanwhile, there would be significant economic detriment to existing sectors in Fermanagh, especially tourism and agriculture. There would also be significant economic public costs for infrastructure, the health service, monitoring, etc, that are not easily quantifiable. If something went wrong, as is statistically overwhelmingly likely, there would be increased costs on the emergency services, etc, and if an applicant ceased to be in business, there could be an enormous burden on the public purse for decontamination, etc. So, for all those reasons, we believe that clause 6 is unworkable and that the economic test in clause 2 is not a sufficient measure of the net economic effects for Northern Ireland. We think that, as others mentioned, a properly defined test of sustainable development is necessary to assess all the factors.

420. **Ms Lynn Scott (ASDA)**: The wording of the clause does not suggest to our business that there is an open-door policy for all the applications that we are going to bring forward in Northern Ireland. However, we welcome the promotion of economic development, as it is a positive step towards recognising the important role that land development plays in the economy not just through the bricks and mortar but because it boosts employment opportunities, creates jobs and helps local communities. We are fully aware that it is an assessment of all the factors in the round, so the question is whether it will simply assess what job creation will be provided. You have to look into the financial impacts that any application brings forward.

421. However, we have concerns. If the policy is to be adopted successfully, there would need to be a clear understanding of what will be assessed and how. As part of that, it is key that there is sufficient upskilling of planning officers and councillors so that they can determine all the issues that are in front of them.

422. **Mr James McCabe (Mount Eagles Ratepayers' Association)**: Promoting economic development is a material consideration in the decision-making process, and I have serious concerns about that. Who would police it? Who would enforce it? Who would be the economists? Does the Department have the trained people? Those points come from a community that has suffered greatly in the past as a result of the planning conditions that were given to developers. I am concerned that developers may inflate themselves and their egos again to the point where the bubble may burst for a second time. My main concern with that is that, in my area, an application for 1,200 houses has been ongoing for 12 or 13 years. The builder, who is bankrupt, is a consultant and is now making decisions in my community. That situation should have been redressed in the planning process here. Enforcement should be put into effect more strongly. My point is that we are again looking at a process of economic development, and we do

not have the people or the enforcers to police it.

423. **Ms Sue Christie (Northern Ireland Environment Link)**: There has been a lot of talk today about balance. That seems to reinforce the traditional view of planning, which is very adversarial, as it looks at a versus b and how they balance each other. If you listen carefully to the definition of sustainable development that Diane Ruddock read, you will see that it is about not balancing but how we achieve economic development, how we achieve a better way for our land and how we use our land intelligently. It is then about integrating all those factors to get a good outcome for now and for the children. Trying to look at economic factors versus environmental factors creates a false dichotomy, and we really need to look at how we achieve both.

424. I echo the RTPI's comments that the amendments are not needed and that they will cause problems. They will make the processes in the system take longer; they will not speed them up. Therefore, they will not facilitate what the Bill is trying to achieve. We are dealing with problems of definitions, issues with who benefits and who will be disadvantaged, and who will assess that. There are unintended, unacknowledged and unknown consequences, and all that has to be judged. We need to work together to identify the best way to achieve the economic development that Northern Ireland needs, not think about how we balance out and put economic issues against environment issues. It is a matter of considering how we achieve both.

425. **The Chairperson**: Are there any comments from members, or do you need any clarification from the stakeholders? If not, I will ask the departmental officials to respond to the comments that have been made so far. Angus, you have been scribbling away.

426. **Mr Kerr**: Yes, I have indeed. There are quite a huge amount of comments to respond to, so I apologise if I do not cover everything. It makes me think, Gordon, that you might want to think twice about advising your children to study planning at university. *[Laughter.]* I am only joking — I can fully recommend it.

427. The starting point is that the two policies are key policies that both the Executive and the Minister have brought forward and are fully behind. They feel that they are very much in line with the Programme for Government and the direction that the Executive want to move in. That is the first key point that I, as a civil servant representing the Executive on this particular proposal, need to make. I think that that needs to be brought through very clearly.

428. In a more general sense, the clauses are really not about compromising the wider purposes and principles of the planning system, which some people here today maybe suggested. I do not think that that is considered, from both the Minister's point of view and ours, to in any way be a likely result of the introduction of the clauses. We would not have brought the clauses forward if we did not think that they were legally correct. We are firmly of the view that these clauses, and the Bill in its entirety, are legally correct.

429. The other point that I will make is that economic considerations are already material. We have heard a lot about that today, and we accept that. So, the focus of the clauses is really to confirm and clarify that. They will continue to be material factors as a result of the Bill alongside all the other relevant matters in the decision-making process. The proposed provisions are in no way a direction that gives determinative weight to economic considerations, or, for that matter, more weight to any other considerations that are mentioned in the Bill. The weight that is to be attached to any material factor will be a matter for the decision-maker in the context of the nature and scale of the proposal, all relevant policies, planning considerations and the rationale behind the decision.

430. The promotion of economic development and clause 6 do not seek to elevate

those objectives or considerations in the planning system. By definition, other material considerations are neither subverted nor diminished in importance as a consequence of those provisions, which, in time, will require further policy guidance to ensure that a balanced and proportionate approach is followed. We accept that there are issues about the definitions, understandings and practical outworkings of that guidance.

431. The Department does not intend this to lead to further bureaucracy or complexity, to slow the system down or to impact in any way on the overall character and integrity of the planning system. The inclusion of economic development proposals does not absolve the Department of its sustainable development duty, which is still firmly there. Neither does it divest the Department of any other statutory duties in the habitats directive, the strategic environmental assessment directive, the environmental impact assessment directive or any of the other environmental and other directives that the Department needs to take into account and that apply.

432. There is an issue with definitions, practical outworkings, and so forth. Further elaboration will be set out in the new single planning policy statement, which we believe will deal with the core principles underlying the reformed planning system. It is through that that we will address how economic considerations are to be taken into account along with the other considerations that pertain to the planning system. It will assert the purpose and role of planning, including the sustainable development context. All that will be consulted on widely, and I think that a lot of the concerns and issues that have come forward today will hopefully be addressed through some of that work. Where issues of definition and scope, and so on, are concerned, it is accepted that the planning system does not exist to protect the private interests of one person against the activities of another. That will not change as a result of the Bill; that is not what is intended in these provisions. Private interest can sometimes coincide with public interest, but the basic question is whether the proposal would unacceptably affect the amenities and the existing use of land and buildings that ought to be protected in the public interest. That is a fundamental principle in PPS 1, and I think that it will continue.

433. The economic advantages and disadvantages of any particular proposal would be considered not in the private financial interests of one individual or one group of individuals but as a whole in the wider public interest. As I said, that has to be explained in much greater detail as we move forward with SPPS and further guidance. The Department will publish that guidance, which will identify the scale of developments to which such considerations should apply. So, it is not our intention that someone who is building a small extension or a very small development does a lot of work on economic considerations. The focus is on the system not getting clogged up in that way. The proposed SPPS will set out details of economic considerations based on a balanced and proportionate approach, which, as I said, will work in the public interest. It will look at that in the round and will look to be proportionate. By that I mean proportionate to the scale and type of application that the Department is facing.

434. To finish, I will maybe echo some of the points that some people, including Sue Christie, Greg Lloyd and others, made about those provisions. From our perspective, we do not envisage the system moving forward in an adversarial way; that is not the intention of these clauses. I echo what I think Nigel Lucas said. We do not think that economy and environment have to oppose each other and that to go one way means automatically not going the other. As we move the planning system forward, and informed by this legislation and the other policy and guidance, we want to see a much greater alignment of the two, whereby environment and economy can work together for the benefit of all

and bring a lot more collaboration in the system.

435. That is probably all that I have to say about economic considerations, so I am happy to take questions. I am conscious that I may have missed a number of other points, Chair, and I would be happy to come back to them.

436. **The Chairperson**: I think that you covered the overall gist of the argument. Angus, it is mentioned in the submission, and someone else said today, that clause 2 should perhaps explain very clearly what sustainable development is rather than having this extra element about economic development added on. Would it be easier or more acceptable to people to clearly set out what sustainable development is, including its economic, social and environmental aspects?

437. **Mr Kerr**: It may be more acceptable to people, but through the SPPS and further guidance, we will have to explain and define what those concepts mean and, more importantly, what they mean for planning. There are accepted definitions of sustainable development, many of which we heard today. A sustainable development strategy has been brought forward by the Office of the First Minister and deputy First Minister, I think, and —

438. **The Chairperson**: Should the definition be put succinctly into clause 2?

439. **Mr Kerr**: That is quite a bit of detail to go into for primary legislation. We would not ordinarily do that, but it could be looked at. You may want to put something into subordinate legislation or, as is probably more usual with such issues, into guidance and policy. PPS 1, which sets out the general principles behind the planning system, defines it at the moment, but we think that we need to develop it a lot further to bring it up to the present day and to reflect the pressures that are facing the system at the moment.

440. **The Chairperson**: David Mounstephen from the Royal Institute of Town Planners said that clause 6 is very difficult. The planners in the institute have been consulted, and they disagree, as they think that the definition should be in the Bill. Have you consulted your departmental planners? Have you asked them whether there will be problems implementing it?

441. **Mr Kerr**: Yes, we have. As you know, planning in Northern Ireland is divided between the operational directorates and the directorate on legislation and policy, which I am responsible for. However, we are very closely linked. In a sense, that is one of the advantages of having planning at central government level. Obviously, that will not be the case when we move closer to the post-2015 period and councils take on the more operational aspects of planning. So, we work very closely together. There have been concerns. There are issues, particularly with definitions and practical implications. Clearly, there will be a concern that we do not want to delay or stymie the planning system because of additional assessments and work that may need to be done but that is not necessary. That is why I say that, when we bring forward understandings of what it really means in practice, we need to be very clear that we discuss the scope and extent of the provisions, the types of applications that it will affect and how we handle those considerations for the applications.

442. **The Chairperson**: So, is it right to put that in primary legislation? Should it not be put into guidelines?

443. **Mr Kerr**: Yes. Our intention is to put it into guidelines and policy.

444. **The Chairperson**: It is in clause 6 of this primary legislation.

445. **Mr Kerr**: The intention is to explain in guidance and policy the meaning and definition of clause 6. The Minister and the Executive are very keen to clarify and confirm that those economic considerations are material. That is not to say that they are elevated, but it is important that we explain that and put it on a legislative footing.

446. **The Chairperson**: When you put them into law, they are certainly being elevated. There is no doubt about that.

447. **Mr Kerr**: There is an argument that legislation is the highest form of policy, in a sense. However, I think that you have to look at the wording and at what is actually said. Unlike the case with PPS 24, the view is that it is not giving greater or determinative weight to those considerations. We are simply saying that they are a material consideration, albeit that they are in the highest form possible, which is legislation.

448. **Mr Boylan**: I just want to make a quick point, Chair; I know that we are stuck for time. It is not new for us to discuss economic arguments when talking about planning applications; that has happened previously. However, if this is the way to go and it is approved, I suggest that we look at the actual application process and criteria and try to narrow them down a wee bit more. We could then also introduce new measures for checking for economic advantage or disadvantage. I suggest that the green book approach could maybe be considered. Somebody asked whether there were not economists in the Department. I am sure that there are. If we go forward with that, we could consider that in the process and think about where that would lie in the legislative process.

449. **Mr Kerr**: Absolutely. That is a critical point. We need to look at all the options that are out there for how we would make such assessments and judgements. Instinctively, my view is that we do not want to overburden the system with a lot of complexity and more complex tools than need to be brought to bear. Sometimes some of those considerations can be handled in a more strategic way. In some of the more well-publicised applications that were around in the past, such as those by Runkerry and Rose Energy, where those issues were critical, they really were considered in a fairly strategic sense. So, yes; all of that will be included. That is one of the things that we will look at with the green book.

450. **The Chairperson**: Can I just ask one question about an issue that I think Geraint Ellis from Queen's and James Orr raised? If you are saying that economic development is already a material consideration and that, in a general sense, there is already a presumption in favour of development in some planning, what problem are we trying to solve by introducing the two new clauses on economic development? Is there a problem that we are trying to solve by putting in those new clauses? If so, what is it?

451. **Mr Kerr**: Yes, I understand. The Minister and the Executive really just wanted to clarify and confirm that economic considerations are material and that they should be taken into account in determining planning applications and, under clause 2, in bringing forward policy. That is considered an important approach that they wanted to take.

452. **The Chairperson**: So, we are not talking about addressing a problem as such.

453. **Mr Kerr**: It depends on your view and assessment of the planning system and how it operates at the moment. There would be a presumption and concern out there that some of the work that planning has done in the past has tended to overemphasise some of the other types of assessments. I suppose those are statutory assessments that go through when you are dealing with some planning applications. Perhaps part of what lies behind some of this is that it is about how we make sure that we clarify that the economic considerations are also taken into account and are just as important, although not more so.

454. **Ms Annett**: I would just like a point to be clarified, Chairperson. Am I hearing that there will be two different definitions of economic development in the Department of the Environment, one that is called "sustainable economic development" and one that is called "economic development"? Will they be used at different phases? I think that it is important that we distinguish between development planning and development control. For development control, I

would hope that there is one definition of development, which is sustainable development.

455. Secondly, is it not the case that the Government in Northern Ireland have put themselves behind sustainable development so that, when we get an aquaculture strategy, a coastal strategy or a marine planning strategy, they will all have the word "sustainable" in brackets before the word "aquaculture" or "tourism" or "development", even if it is not stated? That was the point of mainstreaming and of having a sustainable development strategy that all Departments are signed up to. It was also partly the point behind having a biodiversity duty, which came in with the Wildlife and Natural Environment Act. So, I just find it quite odd that there might be two definitions that the Government will support, one called "economic development" and the other called "sustainable economic development". To be honest, I thought that we had moved past that.

456. **Mr Kerr**: We are saying that we are going to have to explain how all this works. You are right to differentiate between development planning and development management, and so on. However, we need to explain how all those concepts work for the planning system, and that includes sustainable development. As I said, there are already definitions out there, and there is a sustainable development strategy that applies to all Departments already. So, this is really about looking at what that means for planning and the different aspects of planning that you referred to. That needs to be set out in the single planning policy statement, and it should go through the consultation, and so forth, which we propose to do as part of that work.

457. **Mr Gerard Daye (Mount Eagles Drive Action Group)**: I have two questions to ask. If there is going to be a definition of economic development and sustainable development, will there be an implication that a part of the economic development would be unsustainable? My view is that it should all be sustainable economic development.

458. Secondly, would additional weight be given to consideration for fracking if that economic development consideration were put through?

459. **Mr Kerr**: Again, that is a definitional point. The Bill is not talking about sustainable economic development; it is talking about the concept of sustainable development, the promotion of economic development and, in clause 6, how that applies to the application process. So, it will be about defining those concepts and what they mean for planning. That will then inform planners and decision-makers about how they should balance some of those decisions in applications. However, no — there will not be a sense of promoting unsustainable economic development, and so forth. That is not the intention behind it.

460. Fracking is an issue to which the provisions of the Bill pertain, and it is another example of a controversial area of planning. Whatever we decide about how we move forward with some of those concepts, it will apply to fracking as much as to any other form of development.

461. **The Chairperson**: I am aware of the time. Some members may have to go fairly soon, and we may lose our quorum, so I will be very strict.

462. Clause 10 is our next discussion, which is on public inquiries. I will ask Elaine Kinghan, Sue Christie and Geraint to give a presentation. I will be really strict. You have three minutes each. Angus, please take notes and we will ask you to respond at the end.

463. **Ms Elaine Kinghan (Planning Appeals Commission)**: Good morning, Chairperson. Thank you for providing me with an opportunity to give my views on this clause on behalf of the Planning Appeals Commission and to participate in today's stakeholder event.

464. Clause 10 will give the Department the power to appoint persons other than the Planning Appeals Commission to

conduct public inquiries and hearings into major planning applications. I have three major concerns that I have set out in detail in my response to the consultation, and I now propose to summarise my views briefly.

465. My first concern is about independence. The proposal would mean that the Department, which takes the final decision on the application, would also be responsible for appointing the person to report and make recommendations to it on the proposal. My concern is that, in the context of public confidence, a person appointed by the Department would not be generally perceived or accepted as independent. Perhaps I can give you an example. Supposing the Department issues a notice of opinion to refuse a major planning application and the applicant decides that they wish to have a hearing into the reasons for refusal, would they feel confident that, if the Department was appointing the person to hear the case, that person would be independent? Similarly, would the person who was appointed feel comfortable if they were to disagree with the Department's view? It is essential that public confidence in the impartiality and independence of the public inquiry process is maintained, and, for that reason, there should be no change to the current arrangements, which are that the PAC, which is an independent body, should continue to conduct the appeals and inquiries.

466. My second concern is a procedural one. The PAC has considerable experience and expertise in what is a very difficult and complex area of work, and we have well-established procedures and practices for running inquiries of this type. Those who are involved in the process are familiar with our procedures and know what to expect. It is inevitable that there will be differences in the way that inquiries and hearings are conducted by the commission and departmental appointees. That would result in confusion for participants and could be considered unfair if there is a difference of approach.

467. My third issue relates to cost. It is worth pointing out that the commission does not charge the Department for its services. We run the administrative arrangements for the inquiries and provide commissioners to conduct those inquiries. I am confident that we have the capacity to do the work, and we will continue to give it top priority. Under the proposals, the Department would have to bear the costs of the person appointed, as well as taking on the administrative burden and costs of the inquiry.

468. Finally, in my response to the Committee, I suggested that, if there are residual concerns about the commission's capacity to undertake the work, an alternative could be to amend article 111 of the Planning Order to allow the chief commissioner to make temporary appointments for specific projects. I already have those powers to appoint assessors to assist commissioners but do not have the powers to appoint them to carry out work in making recommendations to the Department in their own right. However, that would preserve the principle of independent adjudication and ensure consistency of approach.

469. **Ms Christie**: Northern Ireland Environment Link believes that the independence — and the perception of the independence — of those who undertake public inquiries is crucial to maintaining the credibility of the planning system. Any direct appointments by DOE might cast doubt on that, given that it is the role for which the Planning Appeals Commission was established.

470. The PAC can, we understand, appoint temporary commissioners if in-house capacity is not available for a particular inquiry. Whatever procedure is established, it must ensure that there is no actual or perceived conflict of interest between the appointed commissioner and the parties involved.

471. **The Chairperson**: Thank you, Sue. Geraint, could you be as brief as possible?

472. **Professor Ellis**: I will. I was, largely, going to echo what was said, but in doing that I would like to draw on some research that Queen's University did two years ago. It was a far-reaching piece of work that looked at what the public — your constituents — felt about the planning system and the priorities for planning reform.

473. It made rather uncomfortable reading, because it showed a very high level of mistrust, I am afraid to say, in the involvement of the political class in planning, but also in the transparency and accountability of the system. For example, 70% thought that the public interest was rarely or never reflected in planning decisions. That partly relates to clauses 2 and 6 in our discussion, but it is particularly relevant to clause 10.

474. We have a perfectly adequate independent body, the Planning Appeals Commission, the independence of which, as far as I am aware, has never been questioned. Therefore, I do not understand the motives of the Department in wanting to appoint a member who will, inevitably, be at least open to the perception of being impartial.

475. **The Chairperson**: Do members have any questions for the contributors? If not, we will move on to the next discussion, which is about clause 20, on fixed penalties.

476. **Ms Hill**: Thank you for the opportunity to comment on this clause. The RSPB is concerned that clause 20 could be interpreted in such a way that, following the payment of a fine, no other action can be taken against an offender. Further clarity in the clause is required to communicate that fixed penalties should not be seen as an alternative to remedial action and that the offender could be liable to further action if the breach in planning control is not rectified. Payment of a fine should not absolve the offender of remedying the breach of planning control.

477. **The Chairperson**: Thank you, Michelle. We have only one contributor. Does anyone wish to speak on this issue?

478. **Mr Moore**: The previous contributor's opinion is that, once someone has paid a fixed penalty, there would be no further action. That is also our assessment. From that, it follows that, once someone has abused the planning system and has paid the fixed penalty, they can drive a coach and horses through the whole process with total immunity, which is totally wrong.

479. **Mr T McGuinness**: There are probably going to be contamination and rectification costs that will have to be paid from the public purse if people just get a fixed penalty notice. I do not think that any costs should be incurred by the public purse; they should be imposed on the developer.

480. **The Chairperson**: Thank you. If there are no further questions, we will move on. Clause 23 concerns the duty to respond to consultation. I invite Alderman Jim Dillon from the Northern Ireland Local Government Association to speak.

481. **Alderman Jim Dillon (Northern Ireland Local Government Association)**: Thank you very much for the invitation to partake in today's event. As you know, I am representing NILGA. I have been requested to speak about the consideration of clause 23, which proposes that the statutory consultees are to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and DOE. The clause also gives the DOE the power to require reports on the performance of the consultees in meeting their response deadlines. As a councillor of many years, it is my experience that the processing of planning applications is delayed many times due to the late response of statutory consultees.

482. NILGA and our member councils would welcome the removal of the uncertainty and the delay associated with late responses. However, we have a number of queries about how the clause will operate in practice. Who will have the authority to enforce it across the different Departments involved? There is also a worrying lack

of clarity on the resource implications that statutory consultees face because of their responsibilities for planning applications and consents. We in NILGA have noted the potential for deeming no received response by the agreed date as offering a tacit non-objection. We highlight the potential issues that that could cause to public safety. If Roads Service is deemed not to have objected to a project that, in reality, has poorly designed road access, which later results in regular traffic collisions — that has happened in the past — would that not be a serious issue? NILGA is keen to ensure that the agreed targets for response are realistic and achievable so that they can be met. We cannot have any deviation from that. A regular report on performance would be welcomed. We very much hope that that is an improvement.

483. **Ms Scott**: Thank you very much for giving me the opportunity to speak on clause 23. We very much welcome the introduction of a strict 20-day time frame for consultation responses. It should be enforced with suitable penalties. Provision should also be made for applications that can be determined without response. We find that, currently, we can be delayed by up to two years, waiting for consultations to come through.

484. Clause 23 accommodates a get-out clause that allows for certain consultees to amend the prescribed period for providing a response. That would only add uncertainty to the process. It would likely be used to stymie development, as currently occurs. We also have the current issue whereby consultation responses are drip-fed and, hence, extend the time period to determine applications. The get-out clause should be removed and replaced with a policy that, in extreme cases, when a response cannot be provided within a 28-day period, provides for a holding position stating why it cannot be provided and what further work has to be undertaken. If that cannot be agreed, the applicant, at the very least, should be included in the discussions about what the extension of timescale should be.

485. Clause 23(3) states:

"The consultee must give a substantive response to any consultation".

486. That needs to be amended. We believe that the prescribed period should be 28 days. We also think that the applicant should, at the very least, be party to the discussions about amending that prescribed period.

487. In clause 23(4), there is a requirement to provide a substantive response. That needs to be prescriptive; it could be open to judicial review if every consultee does not follow the same route. As a minimum, there should be commentary on the application, a clear recommendation and any conditions that should be applied if they recommend approval. However, we find that many consultees ask for information that is not required at the application stage but relates to later points in the development process. We think that more regard should be given to the use of suspensive conditions by consultees instead of holding up development and the determination of applications with matters that can be dealt with at a later date.

488. **The Chairperson**: Thank you. Are there any comments from the floor?

489. **Mr Lucas**: This is probably the most important provision of the Bill. At present, the planning process is blighted. It requires consultees to respond within a prescribed period, but the blight arises from protracted negotiations in the planning process. In the past, it has not been unusual for a planning application to take two years or more to complete. Much of that delay has been caused by the failure of consultees to respond in a timely manner. The statutory time period has not yet been established.

490. CEF welcomes the clause. If a planning application has been properly made and meets all current planning policy, we recommend that the time period for

the response should be no more than 21 days. However, we emphasise that consultees must give a substantive response within that time period and not hold off until the last day and submit a holding reply only for it to take another two years before the matter is dealt with. That would be totally unacceptable. If that is the case, there should be the right to ask the Department to intervene to require the consultees to give a substantive response within the prescribed timescale and to take enforcement action if that does not happen. In summary, a fixed timescale will bring greater efficiency and much more certainty to the planning process.

491. **The Chairperson**: Thank you, Nigel.

492. **Mr Mounstephen**: The Royal Town Planning Institute understands the motivation for the clause and welcomes it. However, some of our members expressed concern about its potential operational implications. In particular, there is a concern that consultees will send default responses requesting additional, perhaps unnecessary, information to buy more time, which may result in additional costs and delays for people engaging with the system. The duty of consultees needs to be clearly established. Any guidance in relation to procedural matters or what constitutes a substantive response must be drafted in such a way as to ensure the achievement of the objective of the clause, namely timely, final and correct consultations.

493. **The Chairperson**: Thank you, David.

494. **Ms Christie**: We totally support this clause in its efforts to speed up the process of applications and to clarify the position for the applicant. We have some worries about particularly complex and large applications that require detailed environmental impact assessments, because those may take longer than 21 or even 28 days to complete. However, it should be the duty of the consultee to let everyone involved know what the time delay is likely to be. There may be occasions when extra time will be required due to the complexity of the assessment.

495. **The Chairperson**: Your point is that it should not be one size fits all.

496. There are no more comments. Do members have any questions for the people who have spoken? Does anybody want to talk about any issues or clauses that we have not covered so far?

497. **Mr Best**: On a positive note, I want to commend the Department for inserting clause 9. It is a clause for which the Quarry Products Association and the RSPB had lobbied for quite a while. Historically, the only restoration processes to which you could leave a quarry or sand and gravel site were either landfill or agriculture. Now that this clause has been inserted, ecological processes can be included. Obviously, that will help us to enhance biodiversity and improve wildlife sites.

498. **The Chairperson**: Thank you, Gordon. Are there any more comments?

499. **Ms Anne Casement (Ulster Architectural Heritage Society)**: I am conscious that very little has been said about Northern Ireland's outstanding built heritage. As an organisation specifically concerned with the built heritage, the Ulster Architectural Heritage Society is keenly aware of the added threat posed to that heritage and its potential — recognised in a recent debate in the Northern Ireland Assembly — to deliver long-term sustainable economic gains, by the inclusion in the Planning Bill of an additional, specific, statutory requirement to promote non-defined economic developments.

500. In support of that, I remind you that three of the five Northern Ireland Tourist Board signature projects relate directly to our outstanding built heritage. The economic benefits of our heritage are clearly accepted by the Tourist Board. I also point out that the built heritage sector is already significantly disadvantaged by the absence of a very skilled workforce that is capable of dealing with the very particular needs of these projects. There is also an issue

in the fact that VAT is not chargeable on newbuild projects but is chargeable on the repair and alteration of existing buildings.

501. **The Chairperson**: Thank you.

502. **Ms Victoria Magreehan (Ulster Wildlife Trust)**: The Ulster Wildlife Trust offered detailed comments, mostly on clauses 2 and 6. Most of that has been covered today, so I will not go into it again. There is one thing that I feel has been missed and to which I would like to draw the Committee's attention. The Committee will be well aware of the marine spatial planning framework that will be one of the outworkings of the Marine Bill. We urge consideration to be given to how the two planning systems will develop in tandem and to seek some consistency in the approaches taken to terrestrial planning and marine planning. The two systems need to integrate in order to avoid confusion and the potential for a lack of consistency in approach. Think, for example, of coastal developments, which quite often have to work with the two systems. That can lead to much confusion and bureaucracy, which can hold things up. We would like a lot of consideration to be given to how those two things develop in tandem. We feel that that is an important point.

503. We would also like coastal management to be considered in the context of climate change. Predicted impacts and the potential need for managed retreat in certain areas should be considered in that context. That is something to be considered in land and marine policies.

504. Finally, Greg Lloyd mentioned earlier that we would like to see the same leadership that has been shown in Scotland, which has developed a land use strategy. We would like the planning policies and Planning Bill to fit into that. We would like a debate around how we plan to manage the land as a resource for future generations. We would like the outworkings of that to result in a land use strategy for this country.

505. **The Chairperson**: Thank you, Vicky.

506. **Ms Christine Cosgrove (Dundonald Green Belt Association)**: I would like to summarise on a couple of issues. First, clauses 2 and 6 are not required. As you have already said, economic development is considered in the planning system. My other point is on clause 23 and consultation. I agree that there should be a time frame for consultees to return responses. However, I would like to know when the consultation documents will be restored to the Planning Service website. That is the only way that third parties can discover what the responses to an application have been.

507. **The Chairperson**: Angus can answer that point later.

508. **Ms Laura McDonald (Belfast Healthy Cities)**: I want to raise a general point. We believe that there is a need and an opportunity to review the list of statutory consultees. Health bodies should be incorporated, not least to ensure that the impact of major development on healthcare provision can be assessed and planned for. Access to healthcare remains an important need, and the planning system has a duty to ensure that that is aligned.

509. Similarly, we promote that education bodies should be consulted to ensure that school places can be appropriately planned for, as education is one of the key determinants of health and future earnings potential. It is important that the planning system supports equal access to good education for all. In particular, liaising with education bodies can help to avoid creating postcode lotteries, which not only artificially inflate property prices but create economic disadvantage by increasing inequalities in education.

510. **The Chairperson**: Thank you.

511. **Mr Thompson**: This is a personal submission, but I have been involved with the Waringstown Development Association (WDA) and various town development associations since prior to 2011. My experience of the planning system goes back to the public inquiry

into the Craigavon development plan 2010 and the still unresolved planning issues in Waringstown. You will be aware as a Committee generally, if not as individual members, of the failings identified in those processes and the eventual acceptance by the previous Minister that the system was not fit for purpose. In our experience — it is a local planning office, so this may be totally inappropriate to other offices, but I can speak only from my experience — the planners have shown themselves to be virtually incapable of implementing the various changes to the existing system during that period, including — *[Inaudible.]* — PPSs, and so on and so forth. I had a direct phone call from somebody telling me that a PPS was just an advisory document and was irrelevant. We now have something written down that says that it is a mandatory document. That resulted in a situation in Waringstown where a listed building was literally desecrated, which should never have happened.

512. The point is that, in these circumstances, how can I, we and the public have confidence that the planning departments will implement in a genuine, correct manner whatever is decided upon? Surely we need to get the horse before the cart. If you have these ideas — *[Inaudible.]* — you need to have a planning department that can — *[Inaudible.]* — otherwise it becomes an irrelevance. Thank you.

513. **The Chairperson**: Thank you, Paul.

514. **Mr Mounstephen**: On the back of our consultation event with members, there was a discussion about clause 17, which deals with conservation areas. Some of our members feel that the introduction of the higher test would have the unintended effect of a lack of investment in our town and city centres where a lot of conservation areas are designated, and, consequently, derelict buildings in those locations could be affected. The institute questions why the Bill is deviating away from the nationally recognised preserve-or-enhance test by introducing new legislation that is open to interpretation and which will almost certainly be challenged in the courts.

515. If I may, I would like to say one sentence about clause 10, which deals with public inquiries and major planning applications. Our members also expressed concern about the proposal to introduce the option to appoint persons other than the Planning Appeals Commission. Thank you.

516. **The Chairperson**: Thank you, David. I think that Queen's mentioned that, too.

517. **Mr Carr**: I would like to make two quick points about clause 23, the first of which is about resourcing. I think that the councillor highlighted a very important issue. If timescales were tightened, there would need to be, I would imagine, some commensurate additional resourcing of the bodies that are required to make the replies. My understanding is that they already have a heavy caseload, and the consequence of tightened timescales could be an increase in the number of defaults. That would lead to applications being considered on an insufficient-information basis, which could have bad consequences. I sound that cautionary note and seek an approach that involves additional resourcing to make that workable.

518. Secondly, from speaking to planners, I know that there is a grievance from that side of the fence that has not been aired so far, and that is the untimeliness of the responses that are requested from developers. Developers' dilatoriness in providing information is a major cause of slowness in the planning system. If the timescales are going to be tightened on the one side, it would probably be sensible to apply the same logic to all requests for information and to tighten them on both sides.

519. **The Chairperson**: Thank you, Peter.

520. **Ms Annett**: It is also important that the Environment Committee considers what is not in the Bill. There are some important things going on, and this is a chance to sort some of them out.

521. In connection with what the representative from the Ulster Wildlife Trust just said, it is important that, if required, the terrestrial elements of the marine planning process are put into the Bill so that marine planning and terrestrial planning are consistent at the coastline, where they overlap in the intertidal zone. The Marine Bill addresses that, but there are no specific arrangements or mechanisms included in it. There probably needs to be something in terrestrial planning to say the same thing.

522. In order to comply with the water framework directive, it is worth considering the introduction of buffer zones on rivers, lakes, wetlands and coasts to protect their ecological functioning from certain types of development. That would need to be brought in somewhere in terrestrial planning.

523. The prevention of infilling any additional wetland areas in Northern Ireland, designated or not designated for housing or other development purposes, would be important to protect priority species, which also need space outside designated areas, and other biodiversity.

524. Another issue related to compliance with our commitments in the European biodiversity strategy is the retention of hedges and other field boundaries and trees as an unintended product of granting planning permission for housing, particularly in rural areas. In the agricultural measures and single farm payment compliance, there is protection for hedges and field boundaries, but there seems to be no protection in terrestrial planning mechanisms for those linear features that are wildlife corridors.

525. So, there are opportunities for the Committee to consider omissions from the Bill, as well as us commenting on what is already in it.

526. **The Chairperson**: Thank you, Judith.

527. **Mr Best**: I want to make a point about clause 24 on fees and charges. That clause brings in the multiple fee for retrospective planning applications. We fully support that, although we would like clarification from the Department on the definition of "multiple". We have had significant experience of that, particularly in the quarrying industry. In 2001-02, the aggregates levy was brought in. That piece of perverse legislation was supported by a number of the environmental groups that are represented here.

528. Over the past number of years, we have lobbied the Department long and hard for a clear deterrent for the setting up of illegal quarries or illegal manufacturing plants. In fact, earlier this year, for the first time, we as an association put in an objection to a concrete plant near Carrickmore in Tyrone. That plant started up illegally and was harming the legitimate businesses in the area. What did the Planning Service do? It simply sent out a letter asking the operators to submit a planning application within 28 days. So, the plant is still merrily operating away, harming all the legitimate businesses around it. That is a key area where there needs to be much stronger enforcement and an appropriate use of stop notices.

529. **The Chairperson**: Enforcement has always been a concern of the Committee.

530. **Ms Catherine Blease (Northern Ireland Housing Executive)**: I have a couple of questions for Angus. With regard to clauses 2 and 6, you said the decisions have already been taken and that the Minister has asked for the provisions to go into the legislation. Has the decision already been taken to include those in the Act, regardless of the views put forward? If there are amendments as a result of the views put forward by organisations such as the PAC, will they be brought forward into the Planning Act? The Bill is temporary and the provisions will be repealed, so can we be assured that any amendments will be brought into the 2011 Act?

531. **The Chairperson**: Angus can answer that. The Bill will be enacted, hopefully, at the end of this year, and it will be

repealed in 2015 when the Act comes into force. However, the clauses will be permanent and will be in the 2011 Act, which will be implemented from 2015.

532. **Mr J Anderson**: I have a question for Committee members or, indeed, for the Assembly. Given that we have been talking about it for about 10 years, and given that developers have had a right of appeal, why have we no third-party appeal? There has to be a reason behind that. *[Applause.]*

533. **The Chairperson**: OK.

534. **Mr Boylan**: I have a quick point. Our party has tried very hard to get third-party right of appeal.

535. Having heard the comments that have been made, I think that this has been a good exercise, and it has given us food for thought. I think that some people will come back with responses. I want people to think about how we can improve the application process. I know that there has been talk about people responding and giving them time to respond. There are a lot of planning applications out there where a box has not been ticked, and that can be by default or by design. I want people to go away and think about the actual application process. Clearly, there are things that can be improved.

536. **The Chairperson**: I want to ask Angus a couple of questions. First, Judith and Vicky talked about marine planning. I understand that the sustainable development bit in the Marine Bill, which is coming back to us soon, will be taken out. Can you confirm how we correspond between land planning and marine planning in the Planning Bill if that sustainable development element is not in the Marine Bill?

537. Secondly, I recall that the Minister said that he will produce a paper to consult on third-party appeal in the future. Is there any progress on that? Angus, the floor is yours.

538. **Mr Kerr**: Thank you, Chair. Clause 10 deals with the power to appoint independent examiners. That clause is already in the Act, so it has been through the scrutiny process of the Committee and the Assembly. It is born of nothing other than a concern with a lot of the delays that were taking place in the processing of independent examinations for plans and appeals in the past at the heart of the boom. It was considered that it was necessary as a last resort. Where it was not possible for the Planning Appeals Commission to undertake the particular activity, the Department and the Minister would have an opportunity to appoint someone else to do that. It is nothing more than that. There is no hidden agenda to bring in other people. I fully envisage that the normal run and course of events will be that the PAC will undertake the bulk — in fact, possibly all — of the hearings in the future. Nevertheless, at least that option is there.

539. As regards independence, article 123 of the order already gives the Department the power to appoint independent commissioners to undertake a hearing. Roads Service in the Department for Regional Development (DRD) does that for roads inquiries. I think back to my days in DRD and the regional development strategy (RDS), when we appointed independent examiners to undertake the examination in public. It is a normal procedure that government uses in all jurisdictions. Indeed, in the other jurisdictions where a two-tier system is already in place, the appellant body is part of the same department that runs planning. The key thing is that it is independent from the operation of the planning system — the councils, and so on, which undertake that.

540. The usual government processes for hiring will be gone through, and they are designed to ensure impartiality, that there is no conflict of interest and that the person appointed is correctly qualified to undertake the work. That is what happened with the Roads Service inquiries and the RDS inquiry. The procedural approach would be the same as that run by the PAC. There is no desire to move away from such a well-established procedure that has

guidance, and so forth, in place. There would be a charge to the Department to run those things, which is, I suppose, another reason why it would be seen as a last resort.

541. I will move on to comments on the fixed-penalty clause. The approach with fixed penalties is to provide the Department with another enforcement tool. It would be used only for minor breaches. Paying the fixed penalty does not make someone immune from further enforcement action. If they were not to remedy the breach, you would simply issue a further enforcement notice and progress enforcement in that way. So, there is no intention to have the clause operate, in a sense, almost against enforcement, which, I think, was perhaps what some of the concerns were. Scotland has the provision, and we are looking at how it is working there, where it is really in its infancy. We will closely align our approach with lessons learnt from the way that it is used there. However, it is simply another enforcement option for the Department.

542. Clause 23 concerns statutory consultees. The statutory time frames for the provision of substantive responses will provide clarity to all users, and I think that that was broadly welcomed. For larger, more complex applications, the Bill provides the opportunity to agree a slightly longer time frame for response. It must be seen in the context of how we deal in future with elements of planning applications, such as pre-application community engagement and the process of engaging with applicants and developers at the beginning of the process to try to agree what is required for applications to progress. That includes agreeing what information will be needed and getting consultees around the table, where they can say what will be required and start to give commitments about timings and that sort of thing. It has to be seen in that wider context. Obviously, a time frame does not guarantee a response, and the Bill does not at present include provision for some sort of sanction, other than the fact that there will be a requirement for consultees to report on their performance. That can be looked at over time. As we move into a new planning system, with councils in charge, my instinct is that we need to allow a bit of flexibility to see how these things operate in practice. So, at this point, it is not envisaged that there will be financial penalties.

543. Some other issues came up under that. We will look in subordinate legislation at who the particular consultees should be and at the types of applications, and so forth. That will give an opportunity to look at health- and education-related applications, and so on. Peter raised the important issue of resourcing, and we are, again, in discussions with Departments and consultees about the associated resourcing implications. I think that Peter also mentioned the prerequisite that developers need to play their part in providing the information required in order for this to work effectively.

544. On the marine point, as we know, this Bill does not introduce development plan arrangements, but we agree that there is a need to align terrestrial plans with the new marine spatial plan. Under the powers of sections 8 and 9 of the 2011 Act, which will come forward with the plan provisions, the Department can prescribe matters that councils must have regard to in preparing their plans. So, there is an opportunity to build in a marine spatial plan through that.

545. Concern was raised about the reference to preserving and enhancing conservation areas in clause 17. That is actually just a reflection of existing policy as set out in PPS 6. The requirement to enhance applies only where it is possible to do so, so there is an opportunity to take a practical and sensible approach to that.

546. Some issues were picked up on as not being in the Bill, including buffer zones around wetlands, designated areas and hedges. They are probably best dealt with through forward planning from

councils and, to some extent, policy, rather than through the Bill.

547. Gordon Best mentioned multiple fees, which is referred to in clause 24, dealing with fees and charges. That will be set out in legislation. The kind of area that we are looking at is two or three times the fee.

548. Catherine Blease made a point about decisions already being made. No, that is certainly not the case. Decisions have been made to the point that we are at now, in that this is the policy as contained in the draft Bill, but it has to go through the whole process of Assembly consultation and Committee scrutiny, which we are embarking on now.

549. Chair, you raised the issue of third-party appeals. The Minister does not intend to introduce third-party appeals at this time. He wants to assess the need for third-party appeals once some of the reforms in the Bill and the Act have begun to bed in, because he recognises that a lot of the changes that we are making through the Bill and the Act are about front-loading the system and getting engagement and buy-in from communities early on rather than at the end of the system. However, his mind is certainly not closed to the concept, and he wants to come back to that.

550. Has that covered most of the issues?

551. **The Chairperson**: Yes, more or less. As members have no further comments or questions for Angus, that concludes our session.

552. We very much appreciate your coming to this event. I am sure that I speak for the other Committee members when I say that it has been really productive and that your contributions have been wonderful. Thank you for sharing your thoughts and comments with us. The next step of the Committee Stage is that we will publish a Hansard report of today's comments. They will be sent for you to comment on in the next few days. Is that correct?

553. **Deputy Editor of Debates (Office of the Official Report)**: Yes, by this day next week at the latest.

554. **The Chairperson**: The finalised version will then be published on our website under the Planning Bill consultation section. We will continue to look at your comments, and we will have our clause-by-clause scrutiny from next week, with the Department and taking into account the submissions and what has been said here today.

555. Finally, I say thank you to the Assembly's Office of the Official Report for reporting the event, to Assembly broadcasting for providing the recording service and to the catering staff. I thank the Committee Clerk and staff and Committee members for their support today. Once again, thank you very much for coming. We can continue our conversation over lunch.

25 April 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Ms Michelle Bamford	*Department of the Environment*
Mr Brian Gorman	
Ms Irene Kennedy	
Mr Angus Kerr	
Mr Simon Kirk	
Mr Tom Mathews	
Mr Kevin McKeever	

556. **The Chairperson**: I will remind members briefly what clause 1 is about. Most respondents to the Committee's call for evidence supported the concept of a statement of community involvement but felt that further guidance was needed and that there needed to be a definition of community involvement.

557. I welcome Angus Kerr, Irene Kennedy, Tom Mathews and Simon Kirk. I understand that you will bring in other staff as and when needed. Thank you very much for coming. We went through the business very quickly this morning to allow more time for this. We have to look at the entire report, but we will have time next week as well. We will spend more time on the clauses that received most responses and go through the other clauses more quickly.

558. I invite Angus to start with clause 1. I do not think that there is anything particularly controversial in it.

559. **Mr Angus Kerr (Department of the Environment)**: Do you want me to talk about the overarching purpose of the Bill again to refresh people's memory?

560. **The Chairperson**: Yes.

561. **Mr Kerr**: As you are aware, the purpose of the Bill is fundamentally to accelerate the reforms that were in the Planning Act (Northern Ireland) 2011 ahead of the transfer of planning powers to councils. Broadly, the focus of the Act and the Bill is to modernise and strengthen the system to provide faster processing of planning applications; to have a fairer and faster appeal; to enhance community engagement and involvement in the system; to have simpler and tougher enforcement powers; and to enhance some environmental aspects. The reason that we are moving ahead at this time is to provide an opportunity to test the reforms to get a better and fuller understanding of how they work in practice and to allow us to transfer to a reform system that councils, planners, developers and, of course, the public will be familiar with. As the Committee is aware, the quicker we get it in, the more time there will be to test those things in preparation for the transfer of functions. All the changes and provisions in the Bill were in the 2011 Act. Everyone will be familiar with the two exceptions, which are the clauses on the consideration of economic development — clauses 2 and 6 — and the provision for the Department to formulate policy with regard to the desirability of good design. Those are the only things not in the original Act. I will pass over to Irene, who, if you are content, will remind everybody what clause 1 does and deal with some of the issues that came up.

562. **Ms Irene Kennedy (Department of the Environment)**: Thank you, Angus. Clause 1 carries forward a similar provision from section 2 of the 2011 Act and introduces a requirement for the Department to produce a statement of community involvement, which is

its policy for involving the community in its development plan and planning control functions. It is to be produced within one year of the clause coming into operation. Chair, as you mentioned, there was quite a bit of support for that provision. The Department intends to produce guidance for councillors on how statements of community involvement should be produced, and those statements will set out how the Department and councils will engage with communities in preparing development plans and in delivering the development control functions. It is the how, when and where.

563. **The Chairperson**: The Northern Ireland Local Government Association seemed concerned about the timing and the requirement for it to be done within one year. Will it be one statement for everybody or will every council produce its own?

564. **Ms I Kennedy**: The one-year requirement in clause 1 relates to the Department; it does not apply to councils' statements of community involvement, which will be prepared when powers transfer to councils in 2015. I expect that councils will want to produce their own individual statements on how they will involve the community in their area. That is the requirement in the 2011 Act, and it is an opportunity to set out, in conjunction with other initiatives that may involve the community, how the community will be involved in planning. It can be tailored to their individual areas and requirements.

565. **The Chairperson**: Will there not be a time limit for councils to produce it within a year of their formation?

566. **Ms I Kennedy**: No; there will be a link to the production of the local development plan. Before they consult on the planned strategies and their local development plan, they will need to have the statement of community involvement in place. However, it is not a requirement that councils do so within one year.

567. **Mr Elliott**: Thank you very much for that. Did you say that it is already in legislation that councils have to have their own community statement?

568. **Ms I Kennedy**: Yes.

569. **Mr Elliott**: OK. Is there any potential conflict between the councils' community statement and the Department's?

570. **Ms I Kennedy**: No, because the Department's statement of community involvement will cover the Department's functions post-2015, while the councils' statement of community involvement will cover most of the planning functions that councils will look after.

571. **Mr Elliott**: I am trying to get this right. The Department's statement may not have any planning issues in it?

572. **Ms I Kennedy**: Post-2015, the Department will be responsible for processing regionally significant development applications. Those major applications are similar to the article 31 applications that we process currently, so we need to set out how we will involve the community in the processing of those applications.

573. **Mr Elliott**: Therefore, the Department's statement will deal mainly with the bigger issues.

574. **Ms I Kennedy**: Yes.

575. **Mr Kerr**: It will also deal with policy. At that time, the Department will be responsible for the regional policy for planning. We will consult the public on policy.

576. **Mr Elliott**: The councils' community statement will basically be about local planning issues.

577. **Mr Kerr**: Yes.

578. **The Chairperson**: In a way, they are not likely to replicate exactly the Department's statement.

579. **Ms I Kennedy**: There will be some similarities.

580. **Mr Kerr**: Councils may look at what the Department has done, particularly what it does under the Bill as soon as it

comes into effect. In Northern Ireland, the Department will produce the first statement of community involvement, which I suspect will be referred to by councils. I expect councils to look at some of the statements of community involvement that have been prepared by planning authorities in other jurisdictions, of which there is a wide variety and range that deal with all sorts of different approaches to community engagement, participation, social media, and new ways of consulting the public and involving them in planning preparation, and so on. It is important that councils have the flexibility to look at such things. Some councils may be proactive and modern in their approach; others may wish to be a bit more traditional. That will be an interesting dynamic as you move into the new powers of councils.

581. **The Chairperson**: The Bill does not say that all councils have to produce their own statement; only the Department is being asked to produce a statement.

582. **Mr Kerr**: Yes, because the Bill applies only to the Department. The Act that will come into effect when councils get planning functions will state that they have to prepare statements of community involvement.

583. **Mr Boylan**: You are welcome. I see that you brought the whole team today; perhaps you are expecting plenty of questions. I have a simple question. The statement of community involvement sets a guideline or criterion of where you want to go. Are we saying that it is up to the local authority to choose who it wants to be involved? I say that because, in an area plan or anything else in the future rolling on from this, the likes of the community and voluntary sector will be involved. Where does the training come from? Where is the professional expertise and resources that you need to develop that? Where are we going with that? Who pays for it? Is it up to councils to train the community and voluntary sector?

584. **Mr Kerr**: We are engaged in a programme to get ready for the transfer of powers to councils. As part of that, there is a capacity-building programme that will cover a wide range of issues across the whole local government reform and reorganisation front. There is particular work on our side on the planning bit of that. One of the aspects that we will look at is the broader issue of community involvement and engagement. That work is in progress, so we do not have the details of whether there will be sessions on statements of community involvement, pre-application community consultation and so on, but it is likely that there will be. Those will be some of the key areas in which we want to build capacity not just among councils but our staff because this is all new. The planning staff who move across will be new to it as well. That is a part of planning that is developing.

585. **Mr Boylan**: I agree. I bring it up because it is grand us sitting here and putting something on paper. However, it is about how it rolls out on the ground. When we talk to councillors, that is the question that is being asked. It came up earlier in the Committee about the reorganisation Bill and who will participate and what level of participation that will be. Ultimately, that is our endgame and goal. We want to try to tease that out now so that we can get that message down. There are people who need to be involved in the process, especially in the development of plans. We have many complaints about area plans at the minute. It is about community and the departmental operation of community development plans. We are trying to tease all that out.

586. **The Chairperson**: That will be part and parcel of community capacity building. That would be community planning, the community development plan, and so on. Have you appointed anyone to do capacity building in the community?

587. **Mr Kerr**: We are at the scoping stage. We had an announcement recently from the Executive about the funding for capacity building. At the moment, we are scoping out the needs; we are looking at the users and stakeholders in the system. There are different needs

for professional planners, councillors, council officials, and so on. That is all being put together. It will be completed before the summer and will be rolled out through the summer and beyond. The general approach will probably be one of raising awareness; then, the closer we get to the re-organisation and transfer of functions, the more tuned the training and capacity building will become, as we get to know who the councillors are, for example, as we get closer to handover.

588. **Mr Hamilton**: I was going to make a point similar to that made by Tom about the overlap.

589. **The Chairperson**: But it has been answered? OK.

590. There are no other questions. Are members content with the Department's explanation? Do you need more information or would you like the clause to be amended to address any of those issues?

Members indicated assent.

591. **The Chairperson**: We move to clause 2.

592. Let me go quickly through some stakeholders' comments. Most respondents felt that the objective of promoting economic development is already material to the decision-making process, and that, therefore, it does not need to be written into legislation. Some stakeholders were concerned that including a specific reference to promoting economic development would give this consideration greater weight than the other considerations relevant to sustainable development.

593. Concern was also expressed about the level of economic data that would be required and the fact that there would be no legal mechanism to ensure that the claimed economic benefits of an application actually occurred. The argument was also put forward that including an objective to promote economic development would add significant costs to the planning approval process through the employment of economic experts, training existing staff, the preparation of detailed economic assessments by developers and additional court costs due to increased challenges. There were, of course, other stakeholders who supported the clause.

594. Do you want to respond?

595. **Mr Kerr**: The question is whether there is a need for it, and the argument is that, perhaps, there is not. Our view is that there is a need to clarify and confirm that that is a consideration to be borne in mind when we are preparing policy and plans. The clause applies to policy and plans —

596. **The Chairperson**: Can you speak up a little?

597. **Mr Kerr**: The clause applies to policy and plans but, as you know, the Department will not be bringing forward any plans before the transfer of functions, so it applies just to the policy that we will be bringing forward. It clarifies that, along with well-being and sustainable development, economic development and the desire to promote it must be included in the preparation of policies. The argument is that there is a need to put it there, and the clause clarifies and confirms that.

598. I turn to the point about cost, adding a further burden to the system, delay and detailed tools. The intention is that a proportionate approach should be taken to economic considerations. This is straying slightly into clause 6, which sets out that economic considerations are a material consideration in the determination of planning applications. In guidance and in the single planning policy statement that will be introduced, we will want to clarify what is required. The intention will not be to have a detailed economic assessment of every planning application, because that would be very costly and slow down the planning system. That will all have to be dealt with, and there is a recognition in the Department that we need to clarify that.

599. **The Chairperson**: It is right to clarify things. There seems to be a great deal of confusion about what sustainable

development is, and, apparently, there is no one term or definition. Others argue that sustainable development will mean balancing economic and environmental considerations. There are also suggestions from stakeholders that if we were to put in a clear definition of improving or sustainable development, which would include health and well-being and economic and environmental considerations, that would cover it all, rather than having three other objectives. Can we not do that to say that promoting sustainable development is a, b and c?

600. **Mr Kerr**: Ordinarily, you do not use primary legislation to define concepts such as sustainable development, well-being and economic development; those are normally defined and explained in further guidance and policy underneath the legislation.

601. **The Chairperson**: Angus, you have to speak up a bit.

602. **Mr Kerr**: Sorry. Normally, you do not use primary legislation to explain or define how a concept will work in planning, because it is such a complex and detailed area and will apply differently in different situations to different types of planning work, including determining planning applications and developing forward plans. It has always been the Department's intention to explain and clarify what those key concepts mean through the single planning policy statement and the guidance that will probably sit underneath that, which will come up for consultation towards the end of this year. It will come to the Committee for consultation as well. That is where we will want to explain all that and ensure that there is clarity on those issues, particularly on economic development, sustainable development, well-being and, indeed, the good design provision, which is in there now as well.

603. **The Chairperson**: What do we mean by "well-being"?

604. **Mr Kerr**: That is a good question. The concept came in when the Act was scrutinised by the Committee previously.

605. **Ms I Kennedy**: It was an amendment that was introduced by the previous Committee. We will have to elaborate in forthcoming guidance and policy about what we understand it to mean. We are all aware that people's environment has a very important impact on how they live and how they perceive their surroundings. Healthy spaces, safe spaces, access to employment and access to facilities all affect how people feel and their health and well-being.

606. **Mr Kerr**: The key aspect is on the role that planning can play. A concept such as well-being brings in many different Departments and different issues that are beyond government, and it is about trying to articulate what planning can do to assist in those issues. In our work on a single planning policy statement, we will engage with Queen's University, with organisations such as Healthy Cities and with other Departments that may have a greater role in concepts such as well-being to try to bottom out, through that engagement, what we feel is reasonable for planning to do to contribute to that. My concern is always that sometimes there can be raised expectations about what planning can achieve in some of these matters, so there is probably a debate to be had about that. It is a broad concept and a laudable aim, but it will be delivered by a number of activities and agendas across government and, indeed, beyond government.

607. **The Chairperson**: Will it be a legal minefield?

608. **Mr Kerr**: I hope not. You can never be sure, or guarantee, that there will not be judicial challenges.

609. **The Chairperson**: This is so vague. It is open to interpretation by different people and Departments.

610. **Mr Kerr**: That is why we need to take the vagueness out of it through what we bring forward in policy and guidance.

611. **The Chairperson**: How do you respond to stakeholders who object to it so vehemently? How do we respond to them and reassure them that economic

development will not trump all other considerations? They are all serious stakeholders. Queen's University, Belfast Healthy Cities and the Council for Nature Conservation and the Countryside say that the single planning policy statement gives too much weight to economic development. Nobody in this room would argue that we do not need economic development. They all say that they support economic development. We need it, but it is a case of striking a balance and not giving economic development the overall weight so that all the other considerations could be ignored. People are really concerned about that.

612. **Mr Kerr**: We recognise that. As a Department, we are concerned to make sure that the fears expressed by some stakeholders and NGOs do not become a reality. In general, no matter what we put into legislation, the proof of the pudding is in the eating. It is often about how legislation is implemented, brought forward and operated.

613. I think that some comments from NGOs at the stakeholder event last week pointed in the right direction, whereby it is too simplistic to look at the economy and the environment as being in opposition. If we really want to go forward seriously as a society and with a planning system that is effective for a modern society, we need to see how the two areas can be aligned in the way that they operate.

614. There is no intention, in the way that the legislation is written, to have one consideration above the other. It is very much our intention that they go forward together, in the way that the legislation is operated, to produce a system that values the environment and the economy, and recognises the value of the environment to the economy and vice versa.

615. It is difficult to give the absolute and ultimate assurances that some people are looking for because sometimes these things become clear as the system is implemented and rolled out. However, the intention is certainly there to do it in the way that I expressed.

616. **The Chairperson**: People are concerned that the legislation will give developers so much power. It is not just the big developers who will bring economic development, it will be all and sundry — all developers — and they will have the weapon to go to planners and say: "this is in your law and we want it."

617. Community Places and a few other stakeholders suggested amendments to make the wording clearer and to provide definitions. Will you look at those? For example, you could spell out what "well-being" and "social cohesion" mean. Community Places put forward a suggestion for an amendment to avoid confusion. Will you look at that?

618. **Mr Kerr**: Yes, certainly. We would be glad to look at that if the Committee would like us to do so, and we could then come back.

619. **The Chairperson**: Do any members want to come in?

620. **Mr Boylan**: Chair, I am trying to find out exactly where we are going and whether there are examples of economic weight or economic consideration overtaking anything else in planning applications. I have asked for examples of how this would happen. We are saying that economic considerations will be the determining weight on every single application. That is the perception that some people are trying to portray.

621. I want to try to split this up between urban and rural, and central and local: if we are saying that the article 31s will remain central, the local areas will develop their plans with their communities being involved and having their say on what they want for their local areas. Is that right? That is the way we are going forward. If local authorities, along with local communities, are developing areas plans, or a contribution to an area plan, to develop their areas, and they can have a say in the economic weight or considerations, that is one element of it.

622. The other issue is that people are concerned about single applications in rural areas. I know that economics is involved in every application no matter whether it is a single house in the countryside or a building, and I am just trying to tease out exactly where the main economic determining factor would come in.

623. You are right, Angus, we have to take the vagueness out of this for sure. I would like to look at the application process because I think there is an opportunity there. I know people have made this argument to me, and it will be debated again before we make any final decisions on the issue of advantages and disadvantages.

624. The Chair opened by mentioning the extra cost to developers and significant costs, but if you bring forward a business plan and a business development, that is up to you. We do not want to burden people at all; we want to encourage growth and development and we want to encourage people in. I am concerned about how we get round that element of the economic arguments — the advantages and disadvantages — because some people could play it one way or another.

625. **The Chairperson**: Will we leave that until later?

626. **Mr Boylan**: No, I will just throw it in now because it is the same thing in clauses 2 and 6. It equates to the same thing, and the reason I say that, Chair, is because we need answers as to how we actually deal with it. I think it should be through an application process because I do not want to hand this to a local authority only for it to have the same problem. I am concerned about judicial reviews, I am concerned that local councils would not have the resources and expertise to challenge the whole process, but, on the other hand, it is up to them to come forward with their development plan and community plan. So, that is the argument for where we are with all of this. That is my comment on it, Chair.

627. **The Chairperson**: What we are worried about is that it may become counterproductive to try to speed things up and be helpful to businesses but instead add to their burden in that they must provide the economic benefit or economic advantages, and the planners would then have to spend more time training or whatever to try to assess those.

628. **Mr Boylan**: What do you mean by "burden", Chair? If somebody brings forward a development proposal, it is not about burdens. The burden has been the policy up to now, and that is what we are trying to identify and straighten out. That is what I want to do. Nobody has brought an argument forward yet, other than the point that economic consideration will be the deciding factor in anything. I have not seen examples, and nobody has given me examples, of where that has happened in the past. You might be able to pick out one or two major article 31 applications, but I am thinking about how it will happen at local level and with local communities making decisions. I cannot see it happening.

629. **The Chairperson**: People are worried. This legislation will be for the next umpteen years. It is going to give the added weight that we have not seen so far. You will recall that 76% of respondents objected to draft planning policy statement 24, and the Minister then withdrew it. That was on economic development. It was not exactly the same thing, but it also gave extra weight in planning decisions, and we have to take that into account.

630. **Mr Boylan**: If we are concerned that that will be the case, can we look at having a review process, or set it in guidelines or legislation, that if the economic considerations go through, we will look at it, or give powers to councils to look at it, if people believe that too many decisions are being made on that basis? The Minister is doing that under planning policy statement 21 at the minute. I am only throwing that open for discussion.

631. **The Chairperson**: There are a few suggestions. On pages 35 to 39 in the summary of responses in your packs, people have suggested amending the wording to round it up better. On page 35, it states:

"furthering sustainable development which secures: protection and enhancement of the environment; promotion of economic development; promotion of social development; and promotion or improving well-being; and which balances current needs with those that may arise in the future."

632. That is from Community Places.

633. The Northern Ireland Biodiversity Strategy has put another very good comprehensive definition of it, if you want to have a look at that, members.

634. I want to be fair to our stakeholders. We asked them, and the majority said that this was not good. I think that we need to listen to them and try our best to see how we can amend this or make it clearer, in order to have that two-way process with others. If not, there is no point in asking people to come in and make submissions. They all turned up on time. If we were to go away and say "forget about it, that is what it is", I would feel bad about it.

635. **Mr Boylan**: Thanks for letting me in again. We held the stakeholder event only last Thursday. There are issues that we need to read through, but, from our party's point of view, there is still an opportunity to bring something forward. At the stakeholder meeting last week, I asked for examples, and I asked the Department to give us examples of where this could go wrong, in order to allay some fears. We are taking the stakeholders' points of view on board, but that argument is still not coming up. It is still open. We still have another three or four weeks to go.

636. **The Chairperson**: As far as giving economic concerns extra weight, you can look at Runkerry.

637. **Mr Boylan**: It is a "consideration", Chair. It says "economic considerations" criteria as part of an assessment of an application.

638. **The Chairperson**: People were worried about fracking. This would give strong economic emphasis, and people on the ground are worried about that. As I said, it is not the big developments, which we all want and that would bring 500 jobs. We are also talking about small developments in every one of our constituencies.

639. **Mr Boylan**: Yes, Chair. There is no point in me and you getting into a ding-dong over this, but, going back to the original point, the local authorities will be developing plans for their own areas and will have the say on them. Maybe I am wrong about this, but that is my view on it.

640. **Mr Kerr**: It is correct that, as the plans move forward and as this is implemented post-2015, the councils will take economic development into account, because they are required to do so if the provision stays the way it is in the legislation. That will be factored into the zonings, policies and proposals that will be in the plan, in the appropriate way that the council, and the community that the council is consulting with, feel it should be So, that is absolutely right, and that is where it comes forward when it comes to the plan.

641. However, when you move into the clause 6 aspect, which is really talking about material considerations and planning applications, there are a number of points. One is that we need to clarify and explain much more clearly how it will work in policy and guidance. We can say some things. For example, it will be proportionate. It is not the intention that this will be something that applies to every single house in the countryside or to small extensions. If you build an extension to your house, you are clearly contributing to the economy in some senses.

642. **The Chairperson**: Yes, everyone would say that you may increase the price of your house but you block the light of your next-door neighbour.

643. **Mr Kerr**: And you provide work for the contractor who builds it.

644. **Lord Morrow**: You decrease the price of your neighbour's house, and we end up where we started.

645. **The Chairperson**: Yes, that is a disadvantage to him. So, you can argue either way.

646. **Mr Kerr**: The key thing to remember is that the planning system does not exist for private interest. It is fundamentally about public interest. So, economic considerations will take place within that context. Sometimes, public interest can align with private interest. For example, where a developer gets planning permission to do something, it can be very good for him and also good for the wider economy and the public interest aspect of the economy. That is where the focus will be. It will not be on whether there is economic advantage to an individual or a particular company: it will be about the wider community aspects of economic regeneration.

647. As you said, the Runkerry development is a reasonably good example of that. Agree with it or not, that was how the economic considerations were dealt with and pitched at that wider strategic level. It was not about the developer making a lot of money out of it or getting economic advantage. That is not how economic considerations were weighed into that proposal. They were weighed in on the basis of there being economic advantages from the proposal for the wider community of the area and for Northern Ireland as a whole through areas such as tourism and the multiplier effects from that.

648. So, on the one hand, there is work to be done in clarifying and explaining all of that in a lot more detail. However, there are some things that we can say and there is some clarification that we can give on the focus of this, the proportionate approach and the fact that it is focused on public rather than private interest.

649. **The Chairperson**: In the Northern Ireland sustainable development strategy, we mention economic, social and environmental issues. Can we not use our own definition in this, which includes all three, rather than adding something new about well-being and economic development? We have defined the three strands in our sustainable development strategy.

650. **Mr Kerr**: I am thinking back to the last time we discussed this issue. Irene can keep me right, but, if I remember correctly, there was a discussion about whether, given that there was an existing requirement on Departments to take into account or give regard to sustainable development through that strategy, and so on, we needed to include that in the Act. We did in the end, as you know. We can have that discussion now as well.

651. **The Chairperson**: We had that for the Marine Bill.

652. **Mr Kerr**: You had, yes. We have always had it. It came through as a result of the amendments in 2006 to the existing planning order. Throughout that time, and through discussions on the 2011 Act, it was felt important to clarify for the planning system that sustainable development is particularly important for planning. Therefore, it was considered right and proper, at that time, that we should identify that and say that in the legislation. I think that there was some debate about whether we really needed to. In the end, it was considered important that we do, really because of the planning system's fundamental importance as a vehicle to implement sustainable development.

653. **The Chairperson**: If our strategy states that sustainable development means those three things, do we need to repeat it when referring to economic development in this Bill? By repeating it, you imply that it carries one more bit of weight in defining sustainable development. That is what people are arguing about.

654. **Mr Hamilton**: I have a simple question. I listened last week to all the comments made and I have read many of those that came in, so I appreciate that there are concerns about these two clauses. I

also heard some fairly ridiculous things said last week, as people with a vested interest presented their views on how this would work out and be manifested. They did so in a way to actually scare people. One of the phrases used, when we talked about weight, was that this would give "supreme weight" to economic considerations. I want to clarify and have it put on the record: is the Department of the view that the clause does or does not give economic considerations additional, extreme, supreme, determinative, or whatever, weight?

655. **Mr Kerr**: It is the view of the Department that it does not do that.

656. **Mr Hamilton**: In essence, that would be my view as well. Therefore, this is merely a highlighting, an underscoring, or an accentuation, of an element that is already considered and, some of us would argue, forgotten about sometimes and not seen as being an equal consideration. Rather than bringing one element above another, it is about having a level playing field. Some argue that, at the minute, it sometimes appears that economic considerations are afforded less weight than others. It is not about making the issue higher; it is about affording it the same level by highlighting it.

657. **Mr Kerr**: Yes, I think that that is the rationale behind it.

658. **Mr Hamilton**: If the argument is being made that if planners are now going to have to take economic considerations into account, they will have to have training, I think that that will be a good thing. It worries me that it may not have been the case. I think that the provision will allow planners to have a better opportunity to consider these factors, and affording that to them, by whatever means, is positive. I just wanted to check that point.

659. **The Chairperson**: How do you respond to the comment that planners are not economists, so it is not their role to promote economic development?

660. **Mr Hamilton**: Are they environmentalists?

661. **The Chairperson**: Their role is to plan for land use and development. It is not what I say; it is a point that is repeated in the submissions. How do you respond to that?

662. **Mr Hamilton**: What are you using your land for, though?

663. **Mr Kerr**: It is often said that planners are jacks of all trades and masters of none, in a sense. That is because the type of work that we do, in forward planning and in the determination of planning applications requires a level of knowledge across a range of different and complex issues, whether those be the economy, detailed environmental issues or the whole community engagement skills that are required, and that is not to mention having the political nous required to run an effective planning system. It is an area that we have been doing a lot of work on any way, over the past number of years, training planners to take into account and understand the economic impact of decisions and policies, and how they are moving forward. It is an area that has been recognised as a development need, if you like, for planners. That is something that has been concentrated on more recently.

664. Into the future, that is going to remain the case. The facility is always there in the planning system to use experts on any issue. You are all familiar with the approach of consultations with planning applications. The same process goes on for developing policy and plans. A lot of our work is about engaging with the experts and the professionals on particular issues, and then taking that, balancing it all up, taking it into account, considering it and coming forward with an agreed way forward that takes into account, in an appropriate way, all the various issues. I see that as a role of planning, and one that will continue.

665. **The Chairperson**: OK. No other questions? Tom, do you want to speak?

666. **Mr Elliott**: Not really, Chair. It is coming down to a decision, at some stage — I am not saying that it should be made today — on whether you think it gives extra weight to economic development. To some degree, I agree with Simon that, at times, economic weight has not been given enough priority in the planning sector, and sometimes it is maybe given too much in the bigger economic projects. It is my belief that, quite often, there has been almost a weight against some of the small and medium-sized businesses in the planning system, and they feel that a deep unfairness. I suppose it is that balance. It is not really a question, but I am trying to get to that stage.

667. **The Chairperson**: Would members be content if we asked the Department to go and look specifically at some of the suggestions about making it clearer from stakeholders' submissions and to come back with suggestions?

668. **Mr Hamilton**: Surely the Department does that anyway. That is what this process is about. We share the stuff that we get with them; they give their feedback to us. That is why we ask questions. I presume that is what happened. I would be cautious about raising false hope that we are working on an amendment. The Committee has yet to take a position on whether it believes it or not. Asking the Department to go away and work on it, which is what you just said, and to work on an amendment, suggests that we will be supporting an amendment, which is not the expressed position of the Committee at this stage.

669. **Mr Elliott**: Let me ask the reason why the Department felt it necessary to put economic development in there as one of the points on the face of the Bill. It might be interesting. I know the explanation is that economic development gets weight anyway, through the sustainable development aspect, but clearly there had to be a rationale for putting it in there specifically. Maybe if there was an explanation around that, today or in writing. I know the Minister referred to it when the Bill was going through its previous stage in the House. It might be better if we got a clear, definitive view from the Department on why that was specifically put in like that.

670. **The Chairperson**: I support that.

671. **Mr Elliott**: I think it would help us, actually, as well.

672. **The Chairperson**: If there is a problem or issue, putting this in would try to address that problem or issue.

673. **Mr Kerr**: Yes. As I have said already, it was an approach to confirm and clarify something in legislation, which is a practice that goes on in any case. That was a key aim. The other issue that was in there was the point that there are already quite a lot of environmental issues flagged up in legislation. There are habitats directives, environmental impact assessment directives, strategic environmental assessment, and that sort of thing. I think there was a desire to, if you like, balance that up by clarifying in legislation that there also need to be economic aspects to any of these decisions. That was really what was behind this approach.

674. **Mr Elliott**: OK. Maybe there is a feeling from the Department that some economic development proposals did not get enough weight in the past. I will not ask them to comment on that.

675. **Mr Boylan**: We need to be very careful because we may bring forward something here that is to do nothing. I have sat in many a planning clinic on a Wednesday or Friday afternoon with applicants from my area who turn round, and the economic considerations did not add anything. There were people with some good ideas who wanted to develop and create jobs and everything else. I have seen that element of it, and we need to look at it seriously.

676. We had a debate in the Chamber the other day, and we talked about growth and jobs and people leaving the country. We cannot say that we are trying to keep our young people here, and our construction industry, and trying

to develop things, but then create a policy that does not allow for that, or give some consideration to it. That is the word; there is an open-ended interpretation. It is not determinative weight; it is consideration. That is what I would like to see being developed, to be honest. We are still in Committee Stage, and if anyone has any other viable or proper rationale or has serious concerns or examples, I am willing to listen to them, but those have not come forward yet.

677. **The Chairperson**: Runkerry is a good example. People also said it about —

678. **Mr Boylan**: In the grand scale of things, I did refer to article 31s, and we need to look at that. If that is an example, let us tease it out, but I am saying that the majority of businesses in the North of the island are small to medium-sized enterprises, and if they want to grow or develop, or if communities want to develop a plan, economic considerations will be part of that plan. That is the debate that is on the table, and we need to look at it seriously. I think we give serious and good enough scrutiny to all these debates, but no proper examples have come forward.

679. **The Chairperson**: Cathal, local people in many areas in South Belfast, my constituency, would say that those areas have been blighted by over-development.

680. **Mr Boylan**: There are six counties; there are other parts of the country that we need to look at.

681. **The Chairperson**: In one small area, it used to be all detached bungalows and detached houses, and now at least one third of the houses there are apartments. That changes the character of the whole area.

682. **Mr Weir**: You mentioned apartments, and there is an interesting point to be made about taking into account economic considerations. I remember being involved in lengthy planning appeal cases in my constituency relating to apartments. One of the arguments that I and others used, or at least tried to raise, was that there was no economic climate for building apartments and sustaining them. The counter-argument was that that was not relevant because we could not take economic considerations into account and, therefore, the apartments were approved.

683. So, let us remember that this sort of thing can cut both ways. The same applies to clause 6, leaving aside urban settings, which you and I would be more involved with and which are not the same as elsewhere.

684. **Mr Boylan**: That is fair enough, but let us move the policy outside of Belfast.

685. **The Chairperson**: There are plenty of garden-grabbing examples in South Belfast as well, trying to squeeze a house into the back of someone's garden.

686. Members, how do we go forward from here?

687. **Mr Boylan**: I have heard the explanation from the Department.

688. **The Chairperson**: Are you content?

689. **Mr Boylan**: Well, we are just taking evidence.

690. **Mr Hamilton**: We are still doing that.

691. **Mr Boylan**: That is why I asked the question at the start of the meeting.

692. **Mr Hamilton**: There are no decisions.

693. **The Chairperson**: No, but do you want any more research or information?

694. **Mr Hamilton**: No, not from the Department.

695. **The Chairperson**: I am not asking you to approve anything today. We still have the formal stage to go through. Is there any follow-up work that you want to look at?

696. **Mr Hamilton**: Not on the basis of anything that we have had so far. We have more evidence sessions to take.

697. **Mr Boylan**: The one thing about it, Chair, is that obviously people listening to this today may have counterarguments to

some of the points made, and, if they do, they should feel free to write in.

698. **The Chairperson**: To write —

699. **Mr Boylan**: It is up to them. They have put in most of their arguments anyway. I am only saying. I am happy enough with the explanation given.

700. **The Chairperson**: I would quite like to see more done to address the stakeholders' comments. I do not want to raise expectations, as Simon said, but is there any way that we could have economic development in it while assuring people that economic development is not going to add extra weight? I think that that is the overriding concern of the stakeholders who wrote to us.

701. **Mr Milne**: I would just like to say that I have not read the word "weight" anywhere. It is a consideration. I think that, sometimes, there are exaggerations about the whole process here or the whole thing round this. Is somebody saying that there should not be economic consideration, if you know what I am saying? What is wrong with using the word "consideration"? Does consideration not mean that everything is considered?

702. **The Chairperson**: Yes, but what the stakeholders are saying is that sustainable development already includes economic consideration. So, if you add on the promotion of economic development specifically, you add that extra layer. So, people's main concern is that it is just not balanced now.

703. **Mr Weir**: Chair, the only thing I would say is that I understand people's concerns. However, some of those concerns have been overplayed. Some have said that this will give it primacy, that it will be an overriding consideration or whatever, but the language that has been used is not in the legislation. So, I think that we have to be careful not to feed people's false fears. It is important that the Department looks at the responses as a whole.

704. **The Chairperson**: It is clear that there are a lot of concerns and fears about it. I just want to see how we are going to address that.

705. **Mr Hamilton**: There are also — I would not describe them as fears, but there are certainly concerns on the other side of the argument as well. Those concerns may not have been expressed in the same volume as those expressed by others last week, but that does not mean that they are any less important. So, let us not get carried away by thinking that there is only one set of concerns here. The proposed clause is to deal with other people's concerns as well. There are many different stakeholders who have different concerns; it is not just one group.

706. **The Chairperson**: The majority of responses were against it.

707. **Mr Hamilton**: OK. Let us —

708. **The Chairperson**: The likes of the CBI, the construction industry and ASDA wrote in to support it, and quite rightly so. However, it is about striking a balance.

709. **Mr Hamilton**: Is that how we do business? On the basis of a majority? As much as we might like that sometimes. I would fancy my chances in a vote now, right enough, on any matter that we want to put before the Committee. It is about what is right for Northern Ireland, the environment and the economy. It is not about what the majority of people who respond want, because they are not necessarily the majority of the people in the country.

710. **Mr Weir**: It is my experience from individual planning applications that if we took a decision purely on the basis of what the majority response was — maybe people from rural areas are in a different situation — 90% of the time, when there is any level of anybody writing to the Planning Service on a particular application, it is actually coming from someone who does not want it. So 90% of planning applications would basically be rejected if that was the case. That is not the way it should

be. It should be done on the basis of the substance of the submissions rather than —

711. **The Chairperson**: Yes, it is absolutely about material considerations. It is not an emotional thing; "I do not like it."

712. **Mr Weir**: No, it is not a question of that. The point is that with a lot of planning applications, you find that, to be honest, nobody particularly cares one way or the other, and there will be no response at all. In my experience, you will tend to get a response from the applicant — or somebody connected with the applicant — who writes in to say that it is a great thing, and then you may get five, 10, 20, 30 objections on the other side. On that basis, the majority of people who respond on something are nearly always objecting. I think that it is weighted in the majority objection, but that is probably not the appropriate way to run planning.

713. **The Chairperson**: Even a thousand objections, without material aspects to those objections, will not get through — they will not change the mind of planners. However, if you have one person who has serious material aspects that would impact on them, you will look into it. That will sway your decision. It is not the number of people; it is based on the objection.

714. **Mr Hamilton**: It is the quality of the objection.

715. **The Chairperson**: It is purely on material aspects. I would like to see something. Would members object? Do I need to take a vote? Will members be content?

716. **Mr Weir**: There is a better way to deal with this. I would not make it specific. At this stage, where issues are raised, the Department has a duty to respond. If you start boiling it down to a particular issue, you may find that you do not get the response that you want. However, if it is kept on a more general basis, you may find that the Department is producing its thoughts on a range of things without prejudging the Committee's attitude to it.

717. **The Committee Clerk**: We have a written response from the Department in respect of all the written submissions that the Committee received, but of course there was a stakeholder event last week, and we are due to get the Hansard report of that today. We will send that to the Department and, where there are any new issues in it, the Department will have to come back in writing. Therefore, those issues will be brought back to the Committee.

718. **Mr Hamilton**: That is perfect.

719. **The Chairperson**: Would that be fair enough?

Members indicated assent.

720. **Mr Elliott**: Chair, can I just add that I know that Angus went some way to explain it. However, it would be helpful to have the Department's view on why it included the economic development aspect as an issue in itself.

721. **The Chairperson**: The rationale of it. Yes.

722. We move on to clause 3, "Meaning of development", which is under the red tab on page 5.

723. Respondents were split on the clause, with several welcoming it but several objecting as it does not make a distinction between land and building development and economic development. There were also queries as to whether the Department would provide a separate direction exempting demolition in certain areas, and the implications that that would have for the development management process.

724. **Ms I Kennedy**: It is important to distinguish what the clause does and to clarify it. It amends article 11 of the Planning (Northern Ireland) Order 1991, so it needs to be read in conjunction with that. It is really a technical amendment that is required to strengthen the Department's existing policy that the demolition of unlisted buildings within areas of townscape or village character require planning permission. It complements

the provisions in clause 18 in respect of unlisted buildings in conservation areas. It is really saying that the partial demolition of an unlisted building in an area of townscape or village character will now require planning permission. That follows on from a legal case that debated what demolition was.

725. The references to economic development and land building development are slightly different, and they refer to the arguments that we have been having on clauses 2 and 6. This is defining development for the purposes of planning and what requires planning permission. That is a bit of the background, and it might set the context a little bit more. It is very much in line with the provision in the 2011 Act. In our response, we clarified the fact that we may be looking at our existing direction — the direction that was issued in September 2012 — to make sure that it also covers partial demolition.

726. **The Chairperson**: OK. Any questions?

727. **Mr Elliott**: What is the legal case? Was it in regard to a town centre building?

728. **Ms I Kennedy**: Yes. It is a case called Shinuzu, and it goes back some years. It related to the demolition of an unlisted building in a conservation area. It had implications for that. It was quite technical. It said that the partial demolition of the building was a structural alteration, and, therefore, required planning permission as opposed to conservation area consent. What we are doing here is clarifying the Department's policy of ensuring that buildings in areas of townscape character or village character cannot be demolished without approval.

729. **Mr Elliott**: Is that not the case anyway?

730. **Ms I Kennedy**: You need planning permission to demolish a building in an area of townscape character or village character, but there was a debate about whether that would include partial demolition. The amendment will clarify that partial demolition — because that could have an impact on a building or on the character of the area — is also encompassed here and will require planning approval in an area of townscape character.

731. **Mr Elliott**: OK. I have to say that, in principle, I do not like some of the issues around townscape and village character areas, because they significantly restrict developments in small towns and villages. I know that significant amounts of finance have been lost, particularly from the likes of the International Fund for Ireland. The finance was to build new premises in townscape or village character areas and it has been refused, simply because you are not allowed to demolish the existing building unless it is structurally unsound. I have mentioned this to you before, Chair. I know of buildings and structures that have been allowed to fall to ruin because it has not been permitted for them to be taken away and something new put in their place, even though there have been proposals to put the front facade exactly as what was coming away. I do not agree with that whole concept whatsoever, so, in other words, I do not agree with this. I think it is restricting development of small villages and towns.

732. **The Chairperson**: As I was saying to you, that was permitted in Belfast. On Eglantine Avenue there are lots of houses with just the facades and the backs are totally different. They are brand new, and there are even different floors. You can see through the building from the facade. Is there a different interpretation and no consistency with that?

733. **Mr Kerr**: One of the issues we need to think about here, if you like, is that what is in front of us now is really a legislative proposal about whether planning permission is required for partial demolition and so forth. The issues that Mr Elliott is talking about are policy issues, which I sympathise with. That is an important balancing act.

734. **Mr Elliott**: I do not want sympathy; I want change.

735. **Mr Kerr**: It could be that the policy is the area — when we bring forward the single planning policy statement to the Committee in due course — where we can get into that. We recognise that it is an issue and that sometimes the balance is not right. It is a difficult balance to strike in planning, because you do not want buildings to go to rack and ruin, but, at the same time, you want to retain the proper character of the building, and so on. It is an area that can be difficult, but I am not sure that that necessarily means that this clause is not OK.

736. **The Chairperson**: I think the majority of people welcome this. Anybody any questions?

737. **Mr Boylan**: I have just one comment. It just goes to show, because sometimes you try to be flexible and work the policies, even with modern design and everything else, and in other ways people are looking to be more specific and restrictive. We will take it clause by clause.

738. **The Chairperson**: OK. Clause 4 deals with publicity. Most respondents felt that details of all applications should be widely advertised in the popular press, that it should be mandatory for the Department to notify everyone within the affected area of a proposed development and that site notices should be a requirement. One respondent felt that applicants should be banned from issuing public notices of planning applications during July and December.

739. **Mr Hamilton**: During July and December but not August?

740. **The Chairperson**: No; December — school holiday time.

741. **Mr Boylan**: August is a lovely month of the year.

742. **Ms I Kennedy**: It is important to reflect that the clause carries forward provisions in the 2011 Act. It places publicity arrangements for planning applications in subordinate legislation as opposed to primary legislation. The policy behind that is to allow more flexibility in whether we would want to change arrangements to address new forms of media advertising or new ways of publicising an application. Rather than being constrained by what is in primary legislation, putting the arrangements in subordinate legislation allows much more flexibility. There is an acceptance that we need to set out in more detail in the subordinate legislation how that would work.

743. **The Chairperson**: It could change with time.

744. **Mr Boylan**: For clarification: what about neighbour notification, site notices, and so on? That is a key element that we have debated.

745. **Mr Brian Gorman (Department of the Environment)**: We will take those proposals on board. We will look at them for subordinate legislation and decide on the detail.

746. **Mr Boylan**: That is grand.

747. **The Chairperson**: Are members content with the explanation?

Members indicated assent.

748. **The Chairperson**: Clause 5 concerns pre-application community consultation. Most respondents welcomed pre-application consultation but felt that it must be carried out in the context of an up-to-date area plan. Some felt that there must be safeguards to ensure that any group representing a community is genuinely representative of that community, with a mechanism whereby interests are declared to avoid single-issue groups dominating discussions and giving false impressions of community feelings. Does the Department want to respond?

749. **Ms I Kennedy**: Yes. Again, this carries forward provisions in the 2011 Act. The provision inserts a number of articles that put in place pre-application community consultation. That is part of the Department's reform programme. It is trying to make sure that communities are adequately consulted and involved in

applications before they arrive with the Department. It provides an opportunity for many issues to be looked at and resolved before the application arrives. We have piloted that work in some of the major stadium projects that have recently been approved. It has been successful; a number of concerns have been addressed and allayed before an application comes in, and it has reduced the number of objections that are received. The clause sets out —

750. **The Chairperson**: A lot more harmony.

751. **Ms I Kennedy**: Yes. It has worked in other jurisdictions. It is part of what we call the front-loading of the system so that there is an opportunity for more engagement and for people to be aware of the application and what it involves, and for concerns to be addressed, often before the application comes in. The clause simply carries forward the changes in the 2011 Act and allows the Department to use the process before planning powers transfer.

752. **The Chairperson**: One concern from some community groups is that it is only for article 31 developments — that is, major large developments. Is that right?

753. **Ms I Kennedy**: No. The pilots have used major large schemes, but the intention is that it would be significant developments. It would not necessarily be only article 31-type applications.

754. **The Chairperson**: How do we define "significant"?

755. **Ms I Kennedy**: In subordinate legislation, which we will want to consult on and bring back to the Committee, we will have to set out where we feel those thresholds would be, bearing in mind some of the comments that have been received. Obviously, it will depend on the scale of the development. For smaller local developments, there may not be the same requirement to consult the community. We are working to find that level.

756. **The Chairperson**: People also mentioned the prospect of third-party right of appeal. Has the Minister produced a paper for consultation yet, as he promised?

757. **Mr Kerr**: The Minister commented on this recently. His view is that he is keeping an open mind on third-party appeals. In fact, I think that he indicated that he has some sympathy. However, he wants to see how, as Irene described, the front-loading approach that we are bringing through reform works out in practice. In theory, if front-loading is a success, there will not be any need for third-party appeals because proper community engagement will have been brought in at an earlier stage. I believe that that is the right way to do it, and if we can make that work, it is a lot better than a third-party approach at the end. In a way, it is almost a system that does not work because there has to be that check at the end. If it works effectively, hopefully, third-party appeals will not be needed. That is the current position.

758. **The Chairperson**: Angus, given human nature, you will never win everyone over. Some people will still want to object and have the opportunity to have their say at the end of it.

759. **Ms I Kennedy**: That opportunity will still be provided once an application comes in.

760. **The Chairperson**: If an application is approved, people will want the same level playing field as the applicant and to have their say about it, but that is another story.

761. **Mr Boylan**: I welcome the provision because, until we review and renew our area plans, it is a good opportunity for communities to get involved. It is possibly an opportunity for capacity building for the community and voluntary sector to learn the system and contribute to it. I take your point about third-party appeals. The front-loading system is grand if the majority of people are content with what is coming forward. I will leave third-party appeals to another day, Angus. We have discussed that on a number of occasions.

762. **Mr Kerr**: That is an important point that I have not mentioned about the planning process, which is the key area of front-

loading, even before you get to pre-applications. If we can engage people properly in that, it will really make a difference. That is where the system has failed in recent years. People become aware of planning issues only when there is something on their doorstep, and they need to become engaged much earlier and realise the importance of it through the forward-planning aspect.

763. **The Chairperson**: It also makes the planners' job much easier.

764. **Mr Kerr**: Absolutely. That is another reason.

765. **The Chairperson**: They have road maps to work on. Are members content with the Department's response?

Members indicated assent.

766. **The Chairperson**: We move to clause 6. The majority of respondents were opposed to this clause as they felt that it was unworkable in practice and would lead to increased legal challenges and would delay planning applications. They said that it was unclear how the Department could assess economic advantages or disadvantages, that the clause appears to be attempting to use the planning system for a purpose for which it is not designed and that there is no legal mechanism to ensure that the claimed benefits will happen. I ask the Department to respond, and I have a few questions.

767. **Mr Kerr**: In our discussion on clause 2, we touched on this issue. The intent of clause 6 is to confirm and clarify that economic advantages and disadvantages are a material consideration to be taken into account in the determination of planning applications. It is not the intent that it should be given greater weight or determinative weight than the other considerations. It is simply to clarify that it is a consideration in the determination of applications.

768. **The Chairperson**: People are not worried about additional weight. People are worried about pitching one person against another. Lord Morrow gave an example of an individual building an extension and blocking someone else's light. The developer could say that that gives him an economic advantage, but the next-door neighbour could say that that causes him disadvantage.

769. **Mr Weir**: Is that not the case with pretty much any application that anyone objects to? Objectors are essentially pitched against developers, whereas this may mean —

770. **The Chairperson**: It will now be in law that they have to look into it.

771. **Mr Weir**: No, sorry, with respect, all it may do is increase the grounds on which there is competition or contrast, but that is what happens at present. Quite often, the argument runs as follows. Objectors will say that they are opposed to an application because it will mean a loss of amenity and will create a range of problems. That conflict is pitched between a developer and an objector. All clause 6 does is to add a further ground on which there may be such a clash, whether that is right or wrong. It is a false argument to say that this will lead directly to a clash. It may add an additional layer, but in many ways, those clashes are the bread and butter of the planning system as it is.

772. **Mr Hamilton**: Without wishing to seem opposed to what my colleague said, does that not happen in certain cases anyway? If a major supermarket wants to make an application, it has to produce a retail impact assessment, so there is already an assessment of economic advantage and disadvantage. A lot of recent applications — admittedly, article 31-type applications — have been approved, and others have been rejected because of disadvantage. It already happens explicitly in certain cases.

773. **Mr Kerr**: Yes, it does. That is correct.

774. **The Chairperson**: I will follow up on Peter's point. If you are already weighing up the advantages of each side of the coin, why do we want to put it into primary legislation? Many respondents suggested that the clause should just

be scrapped. What harm would it do if we took the clause away?

775. **Mr Kerr**: I will go back to our earlier discussion. The purpose of the clause is to confirm and clarify, in a legislative sense, not that economic considerations or advantages and disadvantages have more weight but that they have weight and are material in the consideration and determination of planning applications.

776. **The Chairperson**: Peter, do you want to come back in?

777. **Mr Weir**: No; I have made my point.

778. **Mr Boylan**: We have already discussed the issue under clause 2. Many of us, as councillors, have sat in meetings at which economic considerations were discussed, but it was neither here nor there with regard to the decision-making process. It is about time that we looked at that. That is what we are saying, and that is what should come forward here. People need to get away from the idea that it is a determining factor in the assessment and decision-making process with applications. I reiterate my earlier point: no arguments are coming forward from anyone in relation to that, which should be taken into consideration. That is my view.

779. **Mr Elliott**: Can you explain the wording:

"considerations relating to any economic advantages or disadvantages".

780. I assume that that happens anyway. Could the words "economic aspects" be used? The current wording seems a wee bit clumsy. Why have those words been used? Why is it pitched in that way?

781. **Mr Kerr**: It is to clarify the point that someone has already made. It is not just about economic considerations being a positive contributing factor towards dealing with planning applications. There can be circumstances in which there are significant economic disadvantages to a proposal. Sometimes, those economic disadvantages lead to a decision, one way or the other, in assessing a planning application. Arguably, if you had a more generic definition, you would have been arguing that both of those be included. It is to clarify that there are advantages and disadvantages.

782. **Lord Morrow**: Do you think that the clause does that, Angus?

783. **Mr Kerr**: In the way that the clause is written, I think that it does. That is the intention.

784. **The Chairperson**: The Royal Town Planning Institute is concerned about the clause. If planners are concerned, we need to be concerned.

785. **Mr Kerr**: As we discussed and recognised, there are a number of concerns. It is important that those are addressed through the way in which it is implemented and operated, and by defining and explaining what it means to the planning system through the strategic single planning policy statement and further guidance. That will allow that enhanced understanding of what is meant and how it will work.

786. **The Chairperson**: The single planning policy statement is going to be massive: it will be the size of a book. You will have to explain all that.

787. **Mr Kerr**: I hope not. The Minister has asked me to produce quite a slim document.

788. **The Chairperson**: How will you do that? Even explaining the advantages and disadvantages will require you to write pages and pages.

789. **Mr Kerr**: We will need to figure out the key elements and put those in strategic policy. We also need to figure out what should go into the guidance. Not everything will go into the strategic planning policy statement. It is important that the strategic policy intent is in the planning policy statement, but there will be a need for more detailed guidance on the procedures involved, and so on.

790. **The Chairperson**: If I recall correctly, in the evidence session with Professor Geraint Ellis from Queen's, he talked

about the lack of case law. He said that, over the past 40 years, the planning system had built up a lot of case law, whereas with this Bill, we will virtually be starting from scratch. We will need case law and that, perhaps, will mean many legal challenges. How do you answer that?

791. **Mr Kerr**: A body of case law has been built up around planning. If I understood correctly what Geraint said, it was that that case law would somehow not be valid as a result of this Bill. We do not accept that. A lot of the case law around planning is well established, and we do not feel that this provision cuts across that. It may be the case that some case law may build up around these clauses over time if challenges are made. We hope that that will not happen, but if it does, that is fine. The Department, councils, and so forth, will learn from that, and it will become part of the planning case law that is associated with those clauses.

792. There is no issue with the way in which this clause comes forward in relation to existing case law. That is all fine and is established. In fact, existing case law will probably help in our understanding and explanation of how this will work in practice — for example, around the concepts that I spoke about earlier about public interest and the focus of the planning system.

793. **The Chairperson**: I will go back to what Tom said earlier. What is the rationale for bringing in clause 2? Are you addressing any particular problem?

794. **Mr Kerr**: As I said, there is a need to confirm and clarify in legislation that that is a material consideration.

795. **The Chairperson**: Someone may say that they cannot be turned down for a fantastic big complex or for fracking that will give us 40 years of energy supply. If they are opposed by an environmental impact assessment that says that such development will not be good for the environment, who will win?

796. **Mr Kerr**: As —

797. **The Chairperson**: I do not want to say that they will "win", but what side would you go with?

798. **Mr Kerr**: As is the current situation, the planning authority, or the Department of the Environment for major applications such as that, will have to balance all the various material considerations, whether they are environmental, economic or part of the development plan, along with the views of objectors and consultees, and arrive at the right planning decision in the interests of the public. It is similar, I suppose, to the approach that was taken with Runkerry, where, to put it crudely, the economic arguments probably had a bit more weight. Another example is Rose Energy, where perhaps environmental issues came to the fore. Although those are massive oversimplifications of the assessments of each of those applications, I use them for illustrative purposes.

799. **The Chairperson**: A lot of people simply say that the clause is not workable and should be taken away. What do your planners feel about it? Do they feel that this will make their job more difficult?

800. **Mr Kerr**: We engage with planners all the time at the operational end. Simon is from the strategic team. There are issues and concerns, but we will work through those in the preparation of guidance and policy.

801. **Mr Simon Kirk (Department of the Environment)**: A proper planning decision must take account of all material considerations. When we deal with large-scale article 31 applications, we will take economic impacts into consideration. However, that always has to be balanced against other factors. The current legislation requires us to take into account the development plan in so far as it is material, and all other material considerations.

802. We have been doing that, and Angus gave two examples: one where there was a decision to approve, when the economic aspects were taken into account and considered to

have significant weight; and another case where the Department clearly understood the economic arguments, but environmental concerns outweighed them. So, in the work that I am doing, and from my staff, I do not have any difficulties.

803. **The Chairperson**: I have certainly heard that some planners have privately expressed concerns about the clause. If you put that in primary legislation, it will be interpreted that economic considerations are an important aspect of the decision-making process.

804. **Mr Kirk**: In many applications, it is an important consideration. In others, however, when the proposal complies with policy and there are no issues, it is simple to deal with because approval would be given. It becomes more of an issue with applications that are finely balanced between approval and refusal — for example, Runkerry or Rose Energy. Another example is the proposal for a large waste management facility at Magheramorne quarry. There were clear economic gains in favour of that application, but the environmental impacts on Larne lough won out.

805. **The Chairperson**: However, the legislation makes it easier for developers to challenge a decision and say, for example, that a refusal will bring economic disadvantage to an area.

806. **Mr Kirk**: No more or less than is currently the case. Case law is clear: a planning authority must take account of all relevant material considerations. In the final analysis, however, the weight that is given to those is a matter for the decision-maker. If you can show that you took all material considerations in account, logically balanced them against each other and arrived at a balanced decision, the courts will not intervene because judicial review is a challenge against process rather than a subjective planning judgement.

807. **The Chairperson**: If we are doing that already, why do we need this extra clause?

808. **Mr Boylan**: To be fair, Chair, that question has been asked many times.

809. **The Chairperson**: Are you not deliberately sending out a signal that this is really important?

810. **Mr Kerr**: No, because there is nothing in the clause that states that any more weight is to be given to economic considerations. That is important and is a clear policy that the Minister and the Department are behind.

811. **The Chairperson**: We will stop there. We made quite a lot of progress. Thank you very much for coming, and we will see you next week.

2 May 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Ian Milne
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Mr Brian Gorman	Department of the
Ms Irene Kennedy	Environment
Mr Angus Kerr	
Mr Simon Kirk	
Mr Tom Mathews	

812. **The Chairperson**: We move to the second session of our initial clause-by-clause consideration of the Bill. Members' meeting papers include a summary of responses to the Planning Bill from stakeholders and the Department's responses to those stakeholders' comments. We will restart our deliberations at clause 7. I welcome the departmental officials, who are here in strength. I ask members to turn to page 27 of the clause-by-clause summary paper.

813. **Mrs D Kelly**: Is this to do with the economic considerations, Chair?

814. **The Chairperson**: Clause 7. We discussed economic considerations last week, but we will come back to that subject later because we omitted to mention a few issues last time. We will talk about it right at the end. We did not ask the officials about a few issues, and we want to be thorough.

815. Clause 7 deals with the power to decline to determine subsequent application. The majority of respondents welcomed the clause, but one respondent called for a clarification of "similar application". Another respondent felt that the clause should not prevent subsequent applications from being determined if they are proposals that are clearly distinguishable from those previously submitted. I invite the Department to respond to those issues.

816. **Ms Irene Kennedy (Department of the Environment)**: Thank you, Chair. A "similar application" is defined in the legislation as similar developments on the same site. The idea of this provision is to prevent repeat applications, which can be quite distracting. In the past, many objectors have been concerned about the same proposal coming in on the same site a number of times. The provision is already in place, and this simply extends it to cover applications that are deemed applications on foot of an enforcement appeal.

817. **The Chairperson**: OK, that is an application on the same site, even if there are changes to it.

818. **Ms I Kennedy**: If there is a significant change, the Department may accept the application and process it. This is to prevent similar applications on the same site coming in on a repeat basis.

819. **Mrs D Kelly**: If I heard you right, Irene, that deals with cases where there is an enforcement action and an application comes in for the exact same thing, which prevents the enforcement action from being taken.

820. **Ms I Kennedy**: Yes, if there is an enforcement action and an appeal on foot of an enforcement notice, there is with that a deemed application. So the person who is making the appeal is also making an application for planning permission for that development. Sometimes, a developer will submit an application in parallel with that.

821. **Mrs D Kelly**: The Pedlow one in Craigavon is a case in point, is it not?

822. **Ms I Kennedy**: I am not familiar with that case.

823. **Mrs D Kelly**: It is an application on a green belt area. Simon knows it very well. The clause is to deal with the like of that. It will not preclude the ability of an applicant to go to the Planning Appeals Commission (PAC) on the initial determination.

824. **Ms I Kennedy**: Yes.

825. **Mrs D Kelly**: OK, that is fine, thank you. I welcome that.

826. **The Chairperson**: It would usually delay things much further. The appeal would have to wait until the new application is determined.

827. **Ms I Kennedy**: That is correct. This provision deals with where a decision has been made on a deemed application with an enforcement. The next provision, clause 8, deals with a parallel application at the same time as enforcement action.

828. **The Chairperson**: OK. Members, is it the case that you do not need more information, do not want the clause amended and are happy to move on?

Members indicated assent.

829. **The Chairperson**: Clause 8 deals with the power to decline to determine overlapping applications. The majority of respondents welcomed the clause, but several felt that the word "may" could be strengthened to the word "shall" to avoid inconsistency in approach. Another respondent felt that a developer should be free to pursue various development options on a specific site at the same time in order to realise the best possible development opportunity within the same time frame, which could stifle development.

830. **Ms I Kennedy**: The word "may", as opposed to "shall", provides for discretion, so there could be circumstances where the Department may wish to accept an application for processing. If an application is significantly different and the proposal is different, the Department will accept that and will look at different options. The whole idea behind these two clauses is really to prevent similar applications on the same site causing confusion.

831. **The Chairperson**: Are members content with the explanation?

Members indicated assent.

832. **The Chairperson**: We move on to clause 9. The majority of respondents welcomed the clause, but one respondent recommended the inclusion of nature conservation as a use for closed mineral works.

833. **Ms I Kennedy**: The current wording "use for ecological purposes" was introduced to the Planning Act by an amendment at Further Consideration Stage by a Member of the House. Our view is that the particular amendment that the Royal Society for the Protection of Birds (RSPB) suggests here is similar in wording. In fact "use for nature conservation" could be included in the wording — "use for ecological purposes" — that is proposed.

834. **The Chairperson**: That is good enough, yes. Are members content with clause 9?

Members indicated assent.

835. **The Chairperson**: Clause 10 is next, "Public inquiries: major planning applications". Responses to it are in a separate part of your meeting papers, set aside for the more controversial clauses.

836. The majority of respondents were opposed to the Department having the power to appoint a person other than the Planning Appeals Commission to hold a public local inquiry. Their view was that to do so would compromise the independence of decisions and introduce the risk of inconsistency in decisions. The view of respondents was that the power to appoint persons other than the PAC should rest with either the PAC itself or the Office of the First Minister and deputy First Minister (OFMDFM).

837. **Ms I Kennedy**: This clause carries forward a provision in the 2011 Act and would allow the Department to appoint an independent inspector other than the Planning Appeals Commission. The Minister and, at the stakeholders' event, the Department clarified that this would be used in very rare circumstances. The first port of call will always be the Planning Appeals Commission for inquiries or hearings on article 31 applications. This provision, however, provides flexibility for the Department of the Environment (DOE) to appoint someone independent. Due process would need to be followed to ensure that the person is independent and is properly appointed to conduct an inquiry. We would imagine the inquiry or hearing procedures being similar to those of the Planning Appeals Commission and, for consistency purposes because people will appreciate the same approach, following the same format.

838. **The Chairperson**: The PAC can appoint people on a temporary basis as and when required, so what is the point of this clause?

839. **Ms I Kennedy**: It is really to make sure that there is the opportunity and flexibility to look elsewhere, were the commission's workload to be such that it could not respond to an inquiry or hearing into major article 31-type applications within a reasonable time frame.

840. **The Chairperson**: A lot of people expressed concerns about the independence of a person who would be appointed and paid for by the Department. How do you manage that public confidence?

841. **Ms I Kennedy**: Clearly, we would have to go through appointment procedures to ensure that independence and probity. It is not unusual. Other Departments go through that route, including the Department for Regional Development (DRD) for roads inquiries. Under article 123 of the 1991 Planning Order, the Department already has the power to appoint independent people other than the PAC.

842. **The Chairperson**: It will cost the Department money to appoint a person. There are going to be extra costs.

843. **Ms I Kennedy**: Yes, and there will be costs for the Planning Appeals Commission for holding inquiries and hearings.

844. **The Chairperson**: But that is not DOE's budget.

845. **Mr Weir**: Whoever is doing the appointment, whether it is the Planning Appeals Commission or DOE — the alternative might be, and people will probably raise their eyebrows at this, planning appeals coming through OFMDFM and another Department doing the appointment — ultimately, the public purse is picking up the tab. One of the reasons why there is a need for this is that there have been a lot of concerns expressed about the backlog that has built up at times in the PAC. Mention has been made that there is a power for it to appoint temporarily. The concern is that it is a power that the PAC has not used that often.

846. We have had debates in the Chamber about the backlog of major planning applications. Whether you are for or against particular applications, people want certainty about what is happening, and they want things done in a timely fashion. If the PAC is taking the thing on fully or is showing a remarkable reluctance to let anybody else tamper with what it regards as its bailiwick, it will inevitably lead to high levels of delay. There has to be something in place, such as the ability to appoint somebody, to ensure that the process moves along in a timely fashion. I assume that the person who would be appointed would be some sort of planning expert. You are probably talking about a lawyer or an academic who would have direct links to planning. Presumably, we are not talking about a man or woman off the street. I do not know if there might be consultancy work for any of us at a later stage. However, on a broader level, it seems to make reasonable sense. If there is a side argument about whether it should be the Department or somebody else doing the appointment,

so be it, but, from a practical point of view, to remove it from the exclusive role of the PAC may be quite helpful.

847. **Mr Elliott**: I do not see why it is necessary. To me, it is blurring the lines. There is a process for going through the PAC, so why do you need a second option?

848. **Mr Weir**: Is the PAC using it? Is that the problem?

849. **Mr Elliott**: Who is to say that the Department will use it? If there were specific reasons given as to when it could be used or why it would be used, I would probably have more confidence in it, but, as it stands, I do not see the purpose of it.

850. **The Chairperson**: The need for it?

851. **Mr Elliott**: Yes, the need for it. I assume that the PAC can appoint people. I accept Peter's point that it may not use it very often, but the power is there. Why does it not use it? An indication could be given that the power would be used if there was not the potential for the inquiry to be dealt with within three or four months by the PAC, but there is nothing like that whatsoever. I know that the officials are saying that it would be used only in exceptional circumstances, but it does not even say that. It is almost carte blanche. It is almost giving a free ticket.

852. **The Chairperson**: Do you want to respond to that, Irene?

853. **Ms I Kennedy**: My understanding is that the Planning Appeals Commission may appoint temporary commissioners to deal with planning appeals. What we are talking about here are major article 31-type planning applications. There would be different appointment arrangements, although you could argue that by appointing commissioners to cover appeals, it would free up the more experienced commissioners to deal with major article 31 applications. It is an option for DOE, if there were a major backlog of applications, to find a mechanism to ensure that major, strategic, significant applications could be processed as quickly as possible.

854. **Mr Angus Kerr (Department of the Environment)**: Obviously, times have changed, but when the policy initially emerged through the Planning Act, there were huge delays in the Planning Appeals Commission, not just with article 31 applications, but with the development plan programme. At that time, there was no move to bring in additional resources in an attempt to move the planning system, as a whole, forward. Eventually, that power, when it comes through in the post-2015 scenario, will apply to both plans and article 31s.

855. At that time, there was huge frustration on the part of the planning Minister and the Department, because there were calls across the board to try to speed up the planning system more generally and the Minister was powerless to do that because it was dependent on decisions by OFMDFM on apportioning additional resources, and so forth. Therefore, it was really only in those quite exceptional circumstances that it was felt that it would be needed. If you do not have it, then that is it: the Minister in charge of planning is really passing over all of that critical aspect of the planning system to another Department to manage and handle in the way that it sees fit. In the work that we were doing in those early days on how to speed up the planning system generally, there were a lot of delays within the Planning Service. A huge number of delays were tied up within the appeal and inquiry system, which were really beyond the control of DOE at that time. That is the background as to why it was considered quite important at that time. If we get into a situation where there is a recovery, things could be very different and the system could begin to grind to a halt again in that way.

856. **Mr Elliott**: Although I totally accept Angus's point on the delays that there were within the Planning Appeals Commission, the Department was not immune to those delays either.

857. **Mr Kerr**: Absolutely; I totally agree.

858. **Mr Elliott**: Not only article 31 applications but ordinary run-of-the-mill applications were extremely slow in being processed, with people having to wait a number of years for outcomes. I am not so sure that we can just look at the delays within the PAC when, around the same time, the same delays happened within the Department. I fail to see how it is of huge benefit. If I were absolutely sure that it was there only to be used as an absolute last resort, I would probably not see a great deal of harm in it, but it does not say that.

859. **Mr Boylan**: I understand Angus's response. When we brought the Act through, there were concerns about the amount of time it took. I have a little bit of concern in relation to independence and the message that has been sent out from the Department. Although it states "major planning applications", I foresee that, in the transition period, until it beds down, it may be that even ordinary appeals increase. They may or may not, but I could see that. We can free up the experienced people for article 31s, but I still think that we may need more people. Is there is a suggestion — it is only a suggestion — that, to address the issue of independence, which is the question here, maybe two Departments could work together in relation to that? Is there an opportunity for that to be put in, so that the likes of DOE and OFMDFM, or whoever, can work jointly? I agree on the principle about appointees and that we will need them in the future. It would address that issue if it was not just your own Department, but if there were an opportunity to work across two Departments. That is only a suggestion around the independence issue.

860. **Mr Kerr**: There may be something in that. From our point of view, this is quite a common process across government, whereby a Department goes through very rigorous appointment procedures to make sure that people who are appointed for different types of work, such as hearings, and so on, have no conflict of interest, are independent and have the proper expertise. You can imagine the types of processes gone through by DRD, for example, to appoint inspectors to carry out the big roads inquiries. I am thinking back to earlier in my career when I worked on the regional development strategy.

861. **Mr Elliott**: Not many would admit that. *[Laughter.]*

862. **Mr Kerr**: It was a long time ago; it was the first one. DRD appointed external examiners to do the public examination for the regional development strategy, including a retired planning academic from Northern Ireland, a planning inspector from England and "A N Other". They were people with the legal planning experience to undertake that work, and their independence was not really an issue at that time. It was just accepted that these people were being brought in to undertake an independent public examination of the regional development strategy, and that is what they did. There might be ways of examining the processes to see whether the involvement of other Departments could make that even more copper-fastened.

863. **Mr Boylan**: What is being said, in layperson's terms, is that the decision-maker and the appointee are one and the same body. That is how it reads. All I am saying is that, because of some of the issues that have been raised, I think it would alleviate the issue if at least responsibility were shared across two Departments. It is just something to consider. I do not know whether that can be done, but I think it might be a way forward.

864. **Mrs D Kelly**: When Ministers and Departments adhere to the standards of public appointments as overseen by the Commissioner for Public Appointments, we can all be safeguarded and reassured in relation to independence, so I do not see why this should be any different.

865. To pick up on the point that Cathal made about how people might see the Department being both poacher and gamekeeper, it is about the Department appointing in cases where we want to get something through. Let us face

it, politicians from every party have complained about the slowness of the planning appeals procedure. Surely this mechanism allows for things to be moved along when there is a logjam. I think we have been reassured about the level of independence of examiners or the inquiry chairs. I support this clause.

866. **The Chairperson**: At what point would you say that delay or logjam is not acceptable and that you would trigger this power? At 10 months? A year?

867. **Mr Boylan**: Chair, it has already happened through the PAC. Once the logjam arose, other people were appointed and it was dealt with. We have already dealt with this situation. I am only responding to some of the remarks made on behalf of some of the consultees. Either way, we agreed at the time on the need for it. The only issue raised last time was who was paying for it. I think, initially, that was the question.

868. **The Chairperson**: What is the process? Would you pass it on to the PAC first and then go ahead and appoint someone if you thought the delay had been unacceptable?

869. **Ms I Kennedy**: The PAC would be the first port of call.

870. **The Chairperson**: Is there any way you can direct PAC to appoint more people?

871. **Mr Kerr**: It is not part of our Department.

872. **Mrs D Kelly**: OFMDFM must give it more resources to do that.

873. **The Chairperson**: OK. If members are content, we will move on.

Members indicated assent.

874. Clause 11 concerns appeal time limits. The majority of respondents welcomed the clause, but one respondent expressed concern that, if more policies are removed, there will be scope for more inconsistency, giving rise to an increased number of appeals. Another respondent felt that time limits should be matched by additional limits, whereby applicants must submit all relevant material and additional information within a defined and reasonable time.

875. **Ms I Kennedy**: I think that the issue of the time limits for submitting information relates more to the application than the appeal.

876. **The Chairperson**: Sorry; say that again.

877. **Ms I Kennedy**: The second issue on time limits relates more to the submission of information during the processing of the application, rather than the appeal stage.

878. The point about inconsistency relates to the strategic single planning policy statement that the Department will bring forward later in the year. It is certainly not the intention to dilute the Department's policy, which would, arguably, lead to more appeals. I think that the comments on that point would perhaps be better addressed and looked at in the single planning policy statement.

879. **The Chairperson**: OK.

880. **Mr Boylan**: Sorry; I missed that. Is this the time limits issue?

881. **Ms I Kennedy**: Yes.

882. **Mr Boylan**: Sorry; I had a point about the next clause.

883. **Ms I Kennedy**: This will simply reduce the time limits for most appeals from six weeks to four weeks.

884. **The Chairperson**: I think that that clause was widely welcomed by stakeholders. If members are content, we will move on.

Members indicated assent.

885. Clause 12 deals with matters that may be raised in an appeal. The majority of respondents welcomed the clause. However, three respondents from the business sector stated that there may be practical difficulties in obtaining full information before an appeal is scheduled for hearing, which could end up delaying an application until all the information is available. They also stated that, if a robust decision is to be

taken, all relevant considerations need to be taken at appeal stage.

886. **Ms I Kennedy**: This brings forward a provision of the 2011 Act. That was discussed at great length by the previous Committee, which encouraged the Department to bring forward an amendment. The policy behind the provision is to encourage developers and applicants to negotiate and to provide as much information as possible during the processing of the application, rather than introducing new matters at the appeal stage.

887. If more information is provided during the application process and options are explored that may address some of the concerns raised by the Department, I think that that should overcome some of the concerns from the development industry that you mentioned. The Department would encourage that.

888. **Mrs D Kelly**: Greater accessibility of planning officers to the public would help.

889. **Mr Boylan**: I agree. Even though I argued the case for third-party right of appeal, this is a front-loading mechanism, and I agree that the more that is done up front, the better. I keep coming back to the point that we need to look at the application process. The pre-application discussion would certainly allow you to tease out a lot of these things. Let us be honest: if an applicant comes forward, they should be prepared.

890. I have only one issue. I am still concerned about a legal challenge to all of this and how this stacks up. I do not want to get into situation in which we support this clause, and colleagues are dealing with applications to support business and encouraging people to bring forward information at the start of the process to try to alleviate time frames and everything else, only for there to be an appeal and a legal challenge. That issue was brought up in the Chamber. I wonder whether the Department will respond about where we are, specifically on the legal challenge aspect. Maybe you could talk about the point that was raised in the Chamber about that.

891. **Ms I Kennedy**: From our point of view, the provision is sound. It is very closely worded to a provision that has been in place in Scotland since, I think, 2006. The wording is very familiar. It was quite controversial and contentious when it was introduced, but it has settled down. We are not aware of any legal challenge to it.

892. **Mr Boylan**: So there is a case proving that it stands up?

893. **Ms I Kennedy**: It is certainly in operation in the Scottish planning system.

894. **Mr Kerr**: There is discretion in the clause. If the circumstances are there, you can still —

895. **Mr Boylan**: Yes. There are some circumstances. That is grand.

896. **Mr Kerr**: — introduce new information if it could not have been brought forward and there is a good reason for that.

897. **Mr Boylan**: I just wanted to check the legal issue. Thank you.

898. **The Chairperson**: The PAC said that the clause, as currently worded, is contradictory because, on the one hand, it seeks to restrict the matters that may be raised at an appeal, and, on the other, it maintains the requirement to have regard to material considerations.

899. **Ms I Kennedy**: We need to produce guidance on how it would work. That is the case in Scotland; they have produced guidance. It is important to clarify what matters can be introduced at a later stage.

900. **The Chairperson**: We will move on to clause 13, which concerns the power to make non-material changes to planning permission. The clause was generally welcomed, but several councils felt that some constraint should be imposed on the Department where it wishes to impose new non-material conditions and it is conceivable that some conditions, if applied, could be impractical if a cut-off date is not established from the outset

in the legislation. The councils also felt that, if the request comes from the Department or the developers, it was not clear who initiates the application for the non-material change to planning permission.

901. **Ms I Kennedy**: I will begin with the second point. It is important to remind ourselves of what the provision does. It is carried forward from the 2011 Act. It is a mechanism to allow insignificant non-material changes to a permission to be approved by the Department. It is to address a situation in which a developer is taking forward a scheme and, as it progresses and they move on site, there is some minor insignificant change that is not material. Rather than having to go through the planning process and submit a planning application, and deal with the delay and cost associated with that, it will allow the minor, insignificant non-material change to be approved. It is important to remember that it is insignificant. It is non-material. It should not impact on any views that have been expressed by, for example, local residents or objectors to the scheme.

902. The legislation allows the Department to apply conditions. However, the Department would have to assess whether something is going beyond the original permission. It is likely that the condition is that the scheme must be completed in accordance with, for instance, revised drawings that have been submitted to illustrate the non-material change.

903. **The Chairperson**: Give me an example of what you think is a non-material change.

904. **Mr Boylan**: I was going to ask about that.

905. **Ms I Kennedy**: It is a fair question. It could be a change to the type of roof tiles from concrete to slate: something that is so insignificant that the Department judges that it really does not make a lot of difference. It must be —

906. **The Chairperson**: That may change the look, though.

907. **Ms I Kennedy**: It could, but it could be a change in the materials and it may not change the look. There will be a matter of fact and degree in each case. The Department would have to judge whether something constitutes a material change. It could be a different type of glass in windows. Finishes are a good example.

908. **Mr Elliott**: I support this. Obviously, a lot of problems are created for genuine developers who want to come back and make fairly minor changes. However, I am more concerned about those developers who make wider and bigger changes and do not look for permission at all. That will help those who do it genuinely and do it right, and I support it.

909. **The Chairperson**: I know of a block of flats where the window glass has been changed from plain glass to frosted glass because neighbours objected.

910. **Mr Kerr**: Sometimes, there are issues around that sort of thing. We can require frosted glass because there have been objections. That would not be considered a non-material change.

911. **Mr Weir**: From a practical point of view, this just reinforces what actually happens. I know that, for various reasons, there can be some frustration for constituents. I am sure that, from practical experience, a lot of us will have had a complaint from someone who neighbours a development. When you go out, the change is, objectively, relatively minor, although it may be beyond what was asked for. The reality is that, when enforcement is being pushed in any way with the planning authorities, they may say that it is so small that they, from a practical point of view, will not knock off those three inches, or whatever the change happens to be. This may be codifying what already happens in practice. To take Tom's point, we need to recognise those who do things genuinely and responsibly, as opposed to those who try to pinch a bit of ground — in a metaphorical sense, pushing the envelope. However, responsible developers will not be in a straitjacket. It probably reflects the reality.

912. **The Chairperson**: I suppose it is a common-sense approach.

913. **Mr Boylan**: I support it, as long as it is not a structural change, which is the key element. Would it apply if the nature of one development affected the amenity of another development? Is there is an opportunity in policy to address that anyway?

914. **Mr Kerr**: That would be a material change so it would require a new application. There are different stages in this. You can have a non-material change and, therefore, no application is required and it is stamped "approved". However, a material change needs approval.

915. **Mr Boylan**: Does that system not exist at the minute? Is there not an opportunity to do that already?

916. **Mr Kerr**: In practice, you will find that the officers use the de minimis system when the change is very small. This is putting that in legislative wording.

917. **Mr Boylan**: It is not for structural changes; it is only for a minor change?

918. **Ms I Kennedy**: Yes, it is really for non-material changes.

919. **The Chairperson**: OK. We will move on to clause 14, which concerns aftercare conditions imposed on revocation or modification of mineral planning permission. This clause was generally welcomed, but one respondent asked the Department to explain why it had chosen "thinks" as the level of certainly. Is that not an unusual word to use in legislation?

920. **Ms I Kennedy**: It is used in legislation; it is quite common. It allows the Department to use its discretion and judgement. It is certainly relatively common in planning legislation.

921. **The Chairperson**: What about the word "deems", which would be stronger than "thinks"?

922. **Ms I Kennedy**: We could look at using different wording. We would need to talk to the legislative draftsmen.

923. **Mr Hamilton**: It says "thinks" does it not?

924. **The Chairperson**: It says "thinks".

925. **Mr Hamilton**: It is good news that the Department "thinks". *[Laughter.]*

926. **Mr Boylan**: So long as it does not say "methinks".

927. **The Chairperson**: I just thought that "thinks" does not sound much like a legal term.

928. Clause 15 is next, which is named "Planning agreements: payments to departments". The clause was generally welcomed, but several councils felt that payments should also be made available to councils and that the English model of the community infrastructure levy should be considered. A respondent from the business sector stated that the system would work in a more efficient and timely manner if such contributions were organised and decided upon by one single Department and recorded in one document.

929. **Ms I Kennedy**: This is a very minor provision that really just confirms that payments under planning agreements may be made to other Departments and not just to DOE. The clause serves to confirm for people what our understanding is.

930. **The Chairperson**: That is the case anyway.

931. **Ms I Kennedy**: Yes, and this —

932. **The Chairperson**: They pay DRD and —

933. **Ms I Kennedy**: This is just confirming it in legislation, to make sure that there is no doubt that that can happen.

934. Councils will be able to receive payments when planning agreement powers transfer to them, although I suppose that a council could, on occasion, be involved in a planning agreement now. The question in response to the consultation related to councils' involvement in planning agreements as the planning authority.

935. The community infrastructure levy was discussed by the previous Committee, and it was agreed at that time that it

needed to be discussed much more widely across the Executive.

936. **The Chairperson**: Are members content with that explanation?

Members indicated assent.

937. **The Chairperson**: Clause 16 concerns increases in certain penalties. The clause was welcomed by the majority of respondents. However, one respondent felt that fines should be proportionate to the scale of the development and the potential value to the applicant, without an upper ceiling. Another respondent stated that the penalty applied should be commensurate with the scale of the breach of the legislation. Those comments are quite valid.

938. **Ms I Kennedy**: Yes; it is important to remember that the clause carries forward provisions in the 2011 Act, which increased the range of penalties. Although the Department can provide penalties within the legislation, it is for the courts to decide on the level of fine in an individual case.

939. **The Chairperson**: Those are not fixed, are they?

940. **Lord Morrow**: Is there a minimum fine?

941. **Ms I Kennedy**: No.

942. **Lord Morrow**: So could it be a fiver?

943. **Ms I Kennedy**: It is very much at the court's discretion.

944. **Lord Morrow**: So, in respect of a development worth £5 million or £6 million, there could be a discretionary fine of £5.

945. **Ms I Kennedy**: Depending on the route of the prosecution — whether it was on summary conviction through the courts or conviction on foot of indictment — I suppose that there would be options to impose an unlimited fine in some cases, depending on the breach. However, it is very much at the discretion of the courts.

946. **Lord Morrow**: I have previously raised the fact that I believe that the fine should be linked because that would serve as a great deterrent. Being asked to pay a £50,000 fine on a very large project worth £5 million or £6 million would be insignificant, and it would eventually be handed on anyway.

947. **The Chairperson**: Is this going with the statutory fine levels?

948. **Ms I Kennedy**: It will apply to some of the breaches. There is a whole series of different offences, some of which will be tied to the statutory level while others will have a figure attached in the legislation. The 2011 Act raised many of the fines from a maximum £30,000 summary conviction to £100,000, which was quite a significant change.

949. **The Chairperson**: Most people welcomed that.

950. **Mr Boylan**: I remember that we had a bit of a debate over the £100,000 figure. I take Lord Morrow's point: the £30,000 fine was set way back 25 or 30 years ago. I agree that the fine should fit the offence. If the development costs £6 million, £30,000 is nothing, so that is something that we need to look at.

951. We have to go back to the process. We are talking about new applications in the future. We have to deal with the issue at the start of the process so that developers in particular know exactly what it is.

952. You have said that subsequent legislation will have to set out a role for, say, a building control officer, to maintain proper checks and balances as a development continues. I would like that to be rolled out, and I want to reiterate that point.

953. We had a debate in the Chamber about incomplete sites. We need to look at completion on a phased basis. That might be difficult, but we need to put in proper checks and balances. There are sites with one phase completed and other sites with no tarmac, lights or finish. In future we need to look at development and that process starts at the beginning.

954. I want to pick up on another point. Clause 14 deals with aftercare

conditions. We need to look at aftercare because there are developers who develop sites and leave; for example, the uncompleted building that the Minister ordered to be knocked down in Portstewart. That needs to be an element of the process. It is not just about giving planning permission and, five years later, allowing the developer to leave behind an uncompleted four-storey building. We need to look at that, and it needs to be talked about at the early development stage. I would like to see some checks and balances in relation to that.

955. **Mrs D Kelly**: I agree with Lord Morrow about enforcement. In Craigavon for example, I recall that the case of an illegal landfill site went to court and resulted in a £100 fine being imposed by the magistrate. Two skiploads paid for that fine.

956. There are illegal car parks around airports, the owners of which can live within their budgets allowing for the fines. Surely there should be a minimum percentage fine linked to the value. That is in no way a detriment. There have been loads of breaches.

957. We need a pragmatic approach. It may well be that an individual may apply to make a minor change to a household dwelling, but that is not a big enforcement notice issue. However, there are absolute breaches, where people are thumbing their nose at the Department. We need to ask the Department to look at some sort of link to the value of the development and have a minimum penalty. A maximum penalty is seldom invoked; we all know that, even where there has been flagrant disregard.

958. Another example is the case of the transfer of functions to the Department of the Environment under the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 and the High Hedges Act (Northern Ireland) 2011. You could have one set of government policies and legislation laughing at the other if the enforcement powers do not help the local authority to take action under the clean neighbourhoods legislation. Does that make sense to you? I would ask the Department to have a look at that.

959. **The Chairperson**: Would members be happy for the Department to look at a minimum penalty, in proportion to the value of the damage?

960. **Lord Morrow**: There is another value that has to be considered here. A terraced row of listed buildings in Armagh was unceremoniously demolished. That can never be restored. How do you put a value on retaining listed buildings of that quality, which, all of a sudden, are no more? Quite frankly, £100,000 would be absolutely nothing. I acknowledge that the Department is trying to address the issue. It had looked at £30,000 and increased that to £100,000. That is a substantial jump in anybody's estimation, and I acknowledge that, but another aspect of it has to be taken into consideration. We ask the Department to do that.

961. **Mr Kerr**: I am not sure whether we should have a look at the possibility of setting a minimum. On first thoughts, I wonder how that would sit with the discretion that the courts have in such circumstances. At a more general level, I heard a number of comments here about the effectiveness of enforcement in its widest sense. The Minister has identified that as a key area. Not so long ago, he held a summit to which he brought in representatives from the Public Prosecution Service, the judiciary, and so on, to discuss the matter. He recognises, and there is recognition, that in Northern Ireland, the value that has been put on some of these issues over the years, with where we have come from, and so on, has not been high. They are, perhaps, not seen as a severe and serious offence, and so on, by the judiciary. I know that the Minister is keen to address that and to move it to a new dispensation. Work is ongoing at an informal level to move things in that direction. At the same time, some of that is beyond the Department's control in a sense, so we should move forward with the stuff that we can control. That

is why we have these proposals here today. There is also the fixed penalty notice proposal, which we will talk about shortly. There are also the procedural improvements in how we undertake enforcement action, the priority we give the Department and the resources that are put towards it. We have been looking at those areas. Certainly, we can take away those thoughts and come back to the Committee on where we stand with it.

962. **Mr Boylan**: I know of a couple of sites on which only one house has been started. There is a site for 28 houses, and a foundation is sitting there. We can argue that that is down to the challenging economic times we live in, but we need to ensure that if, in the future, land is zoned for development — no matter what development — and is given permission, the work has to be undertaken in a set period. We need to set that in stone. I am concerned now, as we transfer the powers to local authorities, we need to give them the proper checks and balances. They will be trying to develop their own communities and grow. They will be given the powers to do that, but also to stop whatever is necessary.

963. **Mr Kerr**: There are powers for the completion notice to require development to be completed by a point in time, and if that is not done, the approval is removed. Although the media have highlighted some recent success, how effective is that in a general sense? If you are a bankrupt developer who does not have the money to move a development forward, it is unlikely that that particular intervention will make a huge difference. If a developer does not have the money, and the bank will not give them the money to do the work —

964. **Mr Boylan**: I understand that, but I am talking about the future. We have problems to deal with now, but, in future, it needs to be set in stone. That is the issue.

965. **The Chairperson**: It is not only a problem up here; it is a problem in the South as well where there are many half-finished houses.

966. **Mr Kerr**: It is a very difficult problem to deal with.

967. **The Chairperson**: I remind members to switch off their mobile phones; we have some interference with the recording machines.

968. **Mr Weir**: Is this truth and reconciliation?

969. **Mr Boylan**: Call in the bouncers.

970. **The Chairperson**: OK. Angus, you and Irene can come back to us with some answers.

971. Clause 17, "Conservation areas", was generally welcomed, but two respondents felt that it should not included because it was a poorly worded and ill-conceived provision. They further felt that if that provision was included, investors were likely to avoid conservation areas strenuously, with the result that they would stagnate, with a consequent increase in dereliction and decay. They felt that there was also a strong likelihood that any development proposals could become mired in legal challenges in relation to whether an opportunity existed to enhance the area.

972. **Ms I Kennedy**: This carries forward a provision in the 2011 Act; it reinforces policy already in the planning policy statement that deals with conservation areas. The provision is in response to a legal ruling some time ago that suggested that new development in conservation areas meant merely that it did not bring harm. The intention in designating conservation areas is to enhance and preserve their character; the legal judgement indicated merely that development needed to do no harm.

973. Our policy has been that efforts should be made in conservation areas to ensure that they are improved, with the consequent benefits to the economy and regeneration. This provision says that, where possible and where there is an opportunity to do so, enhancement should take place; where it is not possible, development proposals should preserve the character of a conservation area.

974. **The Chairperson**: It just raised a gear a bit.

975. **Ms I Kennedy**: The clause clarifies and reinforces the policy that we have in place for conservation areas, which are designated because of their special architectural or historic character.

976. **Mr Hamilton**: I recall this issue being raised by, I think, the Royal Town Planning Institute during our stakeholder event a couple of weeks ago. I thought that it was an interesting point. I appreciate that it is already in the 2011 Act and would be interested to know of any experience that the Department has had of how it has worked in operation.

977. It is a reasonable point that special regard is required for conservation areas to ensure that their character is preserved and enhanced. I think that "enhanced" is the word that caused difficulty. There is a difference between "maintaining" and "enhancing". A conservation area in my constituency has several derelict buildings, one of which recently went on the market. There is no way that you can preserve such a building as it is and get any useful function out of it.

978. Therefore, the likelihood is that the building will be knocked down. Nobody will build a skyscraper on the site, but it will be rebuilt in a style similar to the rest of the street. However, that will not enhance the character or appearance of the area. At best it will restore the character or appearance, and may even slightly diminish them, but that is the only practicable, reasonable and viable thing that could be done to restore that building properly and get it back into economic use. At present, you can see its character. It was a nice building in its time, but it will never be useful as it currently is.

979. There is a concern about enhancing and preserving the character of an area. There are many good examples around Northern Ireland of very old buildings that have been extended or amended. The Grand Opera House, for example, is a very old and distinctive building; it was extended, and a completely different new annex was put onto it and it looks fantastic. It is functional and has not taken away from the original building. It is those sorts of things that win prizes nowadays. You can replicate what was built 50 years ago but not what was built 100 years ago or more. I am concerned about the words "enhancing" and "preserving the character". It might be impossible to preserve the character, and it may be absolutely impossible to enhance it. That is a long-winded way of asking: what does "enhance" mean? How can you ensure that planners are not then saying rigidly "That is not enhancing" and, therefore, nothing happens?

980. **Mr Kerr**: This is like many aspects of planning, particularly when you get into issues of character and design in which subjective judgement is required. That operates on a daily basis with the system as it is at the moment, because 'PPS 6: Planning, Archaeology and The Built Heritage', which sets out the approach, already requires us to look at that. Therefore, you are into the issue of planning judgement. Perhaps the Department thought, in the example that you gave, that the opportunity to enhance is not there, because to do so would mean that the building would never come forward and there would never be anything there so that we would be in a worse position than we were in before. However, we recognise that this is not clear-cut or black and white.

981. **Mr Hamilton**: How do you enhance? A conservation area is not just an area with a line drawn around it; they are created because of a particular character that is there. Clearly, built heritage is an important part of that. How can you enhance something that was built 200 years ago and has been largely maintained, with perhaps a few exceptions? It is hard to enhance that.

982. **Mr Kerr**: If you were renovating a building sensitively, that would be an enhancement. Bringing it back to its former glory is an enhancement, even though it is also, in a way, preservation.

It is not clear-cut. It is not as though you have to do anything over and above that to achieve enhancement.

983. **The Chairperson**: Even when it is an old building, falling down and you really cannot rescue it, you can build something new but sympathetic to all the surrounding buildings; if they are all of red brick and of the same height and style and you build in that way, that would keep the character of the area.

984. **Mr Kerr**: This is something that we will look at again through the new strategic planning policy statement, and it might be something that we can touch on again with the Committee: how to achieve that balance, because it is a balance. Simon, you might want to comment on this, but with respect to how things operate at the moment, this is not a big issue; there have been no judicial reviews on this to my knowledge. Sometimes, people are unhappy with some of the outcomes that we get. Not everyone is happy with the Opera House extension, for example, although I agree that it is very good. However, not everyone likes it, and that is where subjectivity comes in. Generally, it seems to be working OK. However, we can look at it again through the strategic planning policy statement when we get there.

985. **The Chairperson**: I know several architects who do not think that that Opera House extension is at all good.

986. **Mr Hamilton**: It is too adventurous for them.

987. **The Chairperson**: As you say, it is very subjective.

988. **Mr Boylan**: Simon, when you are Minister of Finance and Personnel, you will have all the money you want to do whatever you want and in the end you can keep your area.

989. **Mr Hamilton**: That is a plan. *[Laughter.]*

990. **The Chairperson**: OK. Let us move on. Are members happy with that answer?

991. **Mr Hamilton**: It is more an issue of implementation. You made an interesting point about the reform or review of the planning policy statement. I do not want to disagree with the clause, but I can just see why concerns were raised.

992. **The Chairperson**: Queen's University has expressed concerns about it, as it has a number of building plans for the conservation area. However, many residents in the conservation area are very happy about this new clause. It is a balancing act.

993. **Mr Hamilton**: It is probably not the biggest problem that there is with conservation areas. When you talk to people who live in towns with them, you find that it is not their biggest concern. It is the enforcement of simple things such as signage that cause bigger concern.

994. **The Chairperson**: We move to clause 18, which deals with control of demolition in conservation areas. The clause was generally welcomed, but several councils stated that where demolition is approved in conservation areas, it is considered that the timescale for the rebuilding should be included to ensure the preservation of the overall amenity of the area and be rigorously enforced. Many people will support that.

995. **Ms I Kennedy**: Again, this clause introduces a similar provision from the 2011 Act. Where demolition is approved in a conservation area, under PPS 6, it is normally conditional that prior agreement for the redevelopment of the site is provided. Conditions will normally be imposed prohibiting the demolition of a building until planning permission for redevelopment has been granted and contracts have been signed.

996. **The Chairperson**: Is there a timescale to which they must build after they demolish? Is it two years?

997. **Ms I Kennedy**: It could depend on the case. A link is normally provided.

998. **The Chairperson**: There could be an eyesore or a gap in a row of houses for two years.

999. **Ms I Kennedy**: The aim is to try to keep it as seamless as possible, but individual circumstances may dictate otherwise.

1000. **Mr Boylan**: It depends on what is going there and what it is for. The use of the building will determine how quickly it goes up. I think that it is a reasonable clause.

1001. **The Chairperson**: If there are no more questions, we will move on to clause 19, which is on tree preservation orders (TPO) for dying trees. The clause was welcomed by most respondents, but several councils raised concerns about where some trees have diseases, such as the recent ash dieback outbreak. They felt that the application of this clause could mean that such trees could not be felled and stated that it appears that this scenario has not been taken into account and that there are practicalities in the application of such legislation that require further consideration.

1002. **Ms I Kennedy**: Chair, you will recall that this provision was included in the 2011 Act. This will mean that consent will be required to fell dying trees. If a new disease were to emerge or there was a need for trees to be felled, the Department would consider that; it is not saying that consent will not be granted but that consent will be required.

1003. **The Chairperson**: It is a blanket statement.

1004. **Mrs D Kelly**: Having had recent experience of the turnaround period for the Northern Ireland Environment Agency (NIEA) to issue permits as a no-brainer, one despairs. You mentioned the issue of the consent period, but NIEA is talking about a month to turn around a bit of paperwork, and that was under some pressure. Therefore, you could have the Department of Agriculture and Rural Development calling for the felling of these trees, and you could have some officer sitting somewhere saying that it takes a month to get round to doing the paperwork. There has to be something in the guidance or the regulations to allow for situations where one Department is laughing at the other and the public is being taken for a ride. That is my real experience in the past six weeks: one month to turn around a bit of paperwork.

1005. **The Chairperson**: I am sure that you can take that back to the Department.

1006. **Mr Weir**: I very much concur with what Dolores said. There is a specific good intention behind the provision. We do not want people trying to flout TPOs by way of finding what one might describe as a spurious disease. I do not know, from a technical point of view, just how quickly tree diseases spread, but there may be a need for a degree of urgency on that side of things. Is it possible to make provision for a few people to provide a rapid response or for them to at least have a degree of specialism in that area? I suppose that I agree with Dolores: what we are really looking for is the creation of a "special branch". *[Laughter.]*

1007. **Mrs D Kelly**: Informers.

1008. **Mr Weir**: We cannot get the National Crime Agency, but we might be able to get a "special branch".

1009. **Mr Boylan**: You only meet them on the road.

1010. During the debate in the Chamber, my colleague Willie Clarke said — I loved this comment — that trees are dying from the moment they are born. I hope that we do not cut them all down.

1011. **The Chairperson**: We are all dying from the moment that we are born.

1012. **Mr Boylan**: I thought that that was a class comment.

1013. **Mr Weir**: It is that spirit of sunny optimism from Mr Clarke that we miss on the Committee. *[Laughter.]*

1014. **Mr Boylan**: Born to die.

1015. **The Chairperson**: Apparently, trees can take 100 years or so to die.

1016. **Mr Weir**: I suppose, in all seriousness, some trees can take years to die. As I said, I take genuinely the situation where, for instance —

1017. **The Chairperson**: You need to act quickly.

1018. **Mr Weir**: Yes. It does sometimes require fairly swift action.

1019. **The Chairperson**: OK. Clause 20 deals with fixed penalties. Although most respondents to the Committee's call for evidence were in favour of the use of fixed penalties, many expressed concern about the risk of immunity from prosecution for ongoing breaches. A fear expressed was that a developer would build in the cost of a fixed penalty for breach of a planning condition to the overall development costs and that, once the fixed penalty had been paid, no further action would be taken. Overall, fixed penalties were seen as a useful deterrent but not a remedy to breaches of planning conditions and that it would be useful if guidance was produced on their use. I think that there is concern that once people pay the one-off fine, that is it.

1020. **Ms I Kennedy**: That is certainly not the intention of the provision, which has been carried forward from the 2011 Act. It is to provide an alternative to costly and lengthy prosecutions through the courts. The intention is certainly not to provide immunity from a breach.

1021. **The Chairperson**: Therefore, if they do not remedy it, they would be prosecuted?

1022. **Ms I Kennedy**: We would have to take a look at further enforcement action to address that.

1023. **The Chairperson**: Can you give them daily fines after the fixed penalty to make them sit up and do something quickly?

1024. **Ms I Kennedy**: You can for some breaches of planning control.

1025. **Mr Brian Gorman (Department of the Environment)**: The immunity is about ensuring that somebody cannot pay a fixed penalty and be prosecuted for the offence. The offence is failure to comply with the enforcement notice or breach of a condition notice; it is not the breach of planning controls. There will remain the requirement to remedy that breach, and the Department will not close off further enforcement action. There will be decisions made about where that discretionary power is exercised. It be may be decided, on the merits of a case, that the Department will not issue a fixed penalty but go straight to prosecution, particularly for significant breaches, as the Department will want to ensure that such cases are taken through the courts and publicised. That is not the intention of this. Working through an enforcement case and issuing a fixed penalty is intended to offer an alternative and ensure that the breach is remedied more quickly. If a breach remains outstanding, however, the Department would take further enforcement action.

1026. **The Chairperson**: To warn people that they face the risk of a fixed penalty if they do not do it right?

1027. **Mr Gorman**: Yes. Once again, this is a power that will be carried forward by councils. We may see councils exercise their powers and discretion to ensure that, relevant to their approach to enforcement, that deterrent effect is established.

1028. **Mr Elliott**: Can you give me a brief explanation of the stage at which a fixed penalty would be issued? Would it be after the initial enforcement notice had been given? Often, that has not given the person the opportunity to appeal the enforcement notice.

1029. **Mr Gorman**: An enforcement notice has to be issued because the offence is a failure to comply with that, and failure to comply is after the period set out in the enforcement notice. Therefore, the opportunities will be there to comply with the enforcement notice and — my planning colleagues can correct me if I am wrong — appeal. The Department will have the discretion to dish out a fixed penalty once that compliance

period has been passed and the breach of planning control is still outstanding.

1030. **Mr Elliott**: Does that mean that, if the person put in an appeal application, the fixed penalty notice would not be issued? Alternatively, if they thought that they had permitted development rights, had done a piece of work in discussion with planners and the enforcement notice was issued but the applicant then put in an application, would the penalty notice not be issued?

1031. **Mr Gorman**: Again, that is discretionary, but if that is the case, the notice would not be issued.

1032. **Mr Boylan**: I am slightly concerned. I am glad that Tom raised that point. There may be issues about permitted developments, and people might just act outside the scope of that. Depending on the issue, that could have an impact. We need to be very aware of instances where it could go wrong. You could see a situation where fixed penalties need to be introduced, because once something has been built, it is very hard to remedy it. So, I would be careful of that situation.

1033. **The Chairperson**: We will move on to clause 21, which deals with the Planning Appeals Commission's power to award costs. This clause was generally welcomed, but one respondent strongly objected, as he felt that it created further obstacles for small voluntary groups to raise objections to major projects by large developers. Another respondent felt that the cost should not apply to the developer who initiates the proceedings.

1034. **Ms I Kennedy**: It is important to clarify what this provision does. It carries forward section 205 of the 2011 Act. It allows the Planning Appeals Commission to award costs to parties at an appeal where the unreasonable behaviour of one party has left another out of pocket. It is not in any way seen to put an obstacle in the way for objectors. If objectors made a submission in the case and at the appeal, there is nothing to fear. If they have behaved reasonably in their approach, I cannot see that that will be an issue.

1035. I think that the point relating to costs assumes that it goes beyond the power of the provision, which is really to deal with unreasonable behaviour in the context of an appeal. It is not about dealing with the costs. We often think of cases where someone is taking an action against someone else, but this is about where the unreasonable behaviour of one party has left another party out of pocket.

1036. **Mr Elliott**: Could you give me an example?

1037. **Ms I Kennedy**: Yes, it cuts both ways, in that it could apply to a planning authority, the Department or, in the future, councils that have perhaps produced a reason for refusal that does not stand up when it goes to appeal or was unreasonable. At the same time, there could be evidence coming in late that requires another expert to go off and do work that was not anticipated. So, it is about ensuring that the proceedings move in a timely, reasonable fashion.

1038. **The Chairperson**: We will move to clause 22, which relates to grants. The majority of respondents welcomed this clause, but several councils asked whether they will be required to continue with such funding arrangements. They also asked what level of funding will be required and requested that criteria and clarification be provided on who can avail themselves of that support.

1039. **Ms I Kennedy**: For clarification, the legislation gives the Department the ability to provide funding. It does not talk about councils. It does not apply to councils, so they will not be expected to carry that funding across. The level of funding would depend on the applications that are made to the Department and in individual cases.

1040. **The Chairperson**: What type of grants would those be?

1041. **Ms I Kennedy**: This is the legislation that will allow the Department to provide

funding to groups such as Community Places.

1042. **The Chairperson**: Is that for capacity building?

1043. **Mr Kerr**: Disability Action is another example.

1044. **The Chairperson**: Does that mean that that funding will not be passed on to councils to carry on?

1045. **Ms I Kennedy**: No.

1046. **The Chairperson**: Are there one-off grants or short-term grants for two or three years?

1047. **Mr Kerr**: They are usually for a year at a time. However, I think that it is possible to have a grant for a programme for a period of time, but at the moment —

1048. **The Chairperson**: It applies to voluntary organisations.

1049. We will move to clause 23, which deals with duty to respond to consultation. Several respondents from the non-governmental organisation sector feel that there needs to be recognition of the size, complexity and volume of detailed environmental impact assessments that accompany many larger planning applications, which may require careful and detailed scrutiny by consultees such as the NIEA. Those respondents feel that it would be unreasonable to demand a very quick response to more complex applications. It is not a one-size-fits-all issue.

1050. **Ms I Kennedy**: I think that that is a fair point. Again, the legislation provides for that. The subordinate legislation will prescribe a time period within which consultees should respond. However, it also allows for a time period to be agreed between the Department and consultees where they are dealing with applications that are more complex and require more information and a longer response time.

1051. **The Chairperson**: Are members content with that explanation?

Members indicated assent.

1052. **The Chairperson**: We will now move to clause 24. The majority of respondents welcomed this clause. However, one respondent wants clarification of what the Department means by "multiple". Another respondent feels that retrospective planning applications should not be an option at all, while another feels that the fee should be proportionate to the level of the development, the level of uncertainty surrounding the form of development and the associated provision for permitted development.

1053. **Ms Kennedy**: This clause brings forward the provision, which, again, is in the 2011 Act, to allow the Department to charge a multiple of the fee — perhaps one or two times the fee — where a retrospective application has come in. It is part of the approach to dealing with front-loading and enforcement. So, the application should be made in a timely manner, or there may be a higher fee.

1054. **The Chairperson**: It is a deterrent for people.

1055. **Ms I Kennedy**: Yes, it is a deterrent so that people do not submit a retrospective application. The level of that multiple will have to be set out in subordinate legislation.

1056. **The Chairperson**: So, it could be double or triple the fees.

1057. **Ms I Kennedy**: That is a possibility; yes.

1058. **Mr Boylan**: I agree with that clause, because, when we get all this bedded down, I think that there will be retrospective applications. The only question that I have relates to some of the mineral licences. We have to separate cases in which European regulations or waste licences have applied from ordinary retrospective planning applications where there has been a build. However, those are slightly different issues. Will you talk me through the example of a mineral or a waste licence issue? People may have been operating under a certain licence. The regulations have changed somewhat over the past couple of years, and they then have to change retrospectively.

Obviously, the fee is in tandem with that. I am just trying to find an example, but I know that there have been some changes.

1059. **Mr Simon Kirk (Department of the Environment)**: Nobody will be operating with a waste licence without planning permission; planning permission must be in place first.

1060. **Mr Boylan**: I understand that, Simon, but it is my understanding that, over a number of years, the regulations have changed through European law. Are you saying that there are no cases where people have to reapply? I do not know whether there are any instances of that; I am only asking.

1061. **Mr Kirk**: I do not think so, because, even if you had to amend your waste licence, that may not impinge on your original planning permission.

1062. **Mr Boylan**: I am only trying to find an example; I am not saying that there are any instances.

1063. **Mr Kirk**: You might have to amend your facility, which would be development requiring planning permission in the first place.

1064. **Mr Boylan**: In that case, because of the change in the regulation, it should stand on its own merits as an application as opposed to a retrospective application.

1065. **Ms I Kennedy**: Yes.

1066. **The Chairperson**: We will move on to clause 25. The clause was generally welcomed, but one respondent asked whether the Department will provide examples of what it may include as incidental, consequential or transitional provisions or savings under clause 20. I would also quite like to hear whether that is the case.

1067. **Ms I Kennedy**: The clause provides the Department with the flexibility to deal with issues that may arise as we get to the point where this legislation is being repealed to allow the 2011 Act. At the moment, I am not aware of what examples those may be, but it is something that would often be provided in legislation to offer that flexibility so that, when we get to that stage, if there are any issues that we have not anticipated, they can be covered in the legislation.

1068. **The Chairperson**: Does that mean when that function is transferred to the council?

1069. **Ms I Kennedy**: Yes. If there is some issue, which we have not anticipated now and which will arise as we move from this legislation to the new, this provision will allow us to do that. An order has to be laid and approved by resolution of the Assembly if there are particular issues. So, that is the Assembly control.

1070. **The Chairperson**: Do you anticipate that there will be anything?

1071. **Ms I Kennedy**: It is difficult to say now. It is almost like a fail-safe mechanism that means that, subject to Assembly control, if issues arise, we can address them.

1072. **The Chairperson**: So, that is your safety net to make any changes. Are members happy with that?

Members indicated assent.

1073. **The Chairperson**: We will move on to clause 26, which relates to interpretation. There were no comments on the clause.

1074. We will move on to clause 27, which relates to commencement. The clause was generally welcomed, but one council felt that provision should be included to allow councils to deal with strategic elements of the planning system prior to the full transfer of functions. Another respondent asked whether commencement can be linked to an actual date and/or a sunrise clause to ensure prompt commencement.

1075. **Ms I Kennedy**: Where possible, a lot of the provisions will be commenced on Royal Assent. Other provisions may require subordinate legislation or guidance to be produced before they can be commenced. That is the approach. The Bill is bringing forward many of the

provisions in the 2011 Act. Therefore, it is clear that the intention is that we want to bring in the subordinate legislation or guidance as soon as possible so that we can test the reforms before they transfer to councils in 2015. So, we want to move forward on that with haste.

1076. On the second point about the strategic elements for planning, it is not the intention to transfer those powers until the necessary council structures, ethical standards regime and governance arrangements, etc, are in place. However, the Minister has agreed that officials will engage with the transition committees in taking forward preliminary development plan work in preparation for the transfer of those powers to councils.

1077. **The Chairperson**: That is where capacity building comes in. They need to learn about all that, and the ethics and code of conduct should be put in place first.

1078. **Ms I Kennedy**: Yes.

1079. **The Chairperson**: I agree with you.

1080. **Lord Morrow**: Do we take it that the commencement of the order is not automatic so many days later but that the Department will determine that?

1081. **Ms I Kennedy**: Yes. Some provisions will come in when the Bill receives Royal Assent, and others will come in under the appointed day mechanism — a commencement order — when you have put in place any other arrangements that you need to for subordinate legislation or guidance.

1082. **The Chairperson**: Does that mean that the whole Act will not be commenced at the same time? Are you talking about bits and pieces coming at a later stage?

1083. **Ms I Kennedy**: Yes.

1084. **The Chairperson**: It sounds as though it will commence at the same time, but it will not.

1085. **Ms I Kennedy**: No. That is the case with quite a lot of legislation.

1086. **Mr Boylan**: We need to get the subsequent legislation in place. You get the Act passed, and that is grand, but the guidelines and everything else that go along with it enable you to carry out the work on the ground. That is the main part of it.

1087. **The Chairperson**: When do you think it will be up and running? We really have a very short period between then and the councils taking over.

1088. **Ms I Kennedy**: As quickly as we can get it through the Assembly process.

1089. **The Chairperson**: When will Royal Assent be?

1090. **Ms I Kennedy**: The end of the year, if we go —

1091. **The Chairperson**: This year?

1092. **Ms I Kennedy**: Yes.

1093. **Mr Kerr**: We are already working on the subordinate legislation and the regulations, and so on, so that they can come in as quickly as possible after Royal Assent, thereby allowing commencement.

1094. **The Chairperson**: So, there will be roughly a year and a bit to run before the councils take over. Are members content with the explanation?

1095. **Mr Boylan**: I am grand. It could be a month or anything.

1096. **The Chairperson**: You wonder whether there is any point in doing all this.

1097. **Mr Boylan**: I am 100% content.

1098. **The Chairperson**: The last clause is clause 28, which is the short title. There is no problem with that.

1099. At last week's discussion, the officials agreed to come back with further information on the rationale for including clauses 2 and 6. I think that that was Tom's question.

1100. **Mr Kerr**: We have received a written request for that update, and we will send a written response to the Committee. I think that that is due possibly tomorrow.

You will get that from us. Aside from going back over what we said previously, the written response will hopefully deal with that issue.

1101. **The Chairperson**: Some questions on clauses 2 and 6 were not addressed last week. Can you address the comments made by Daniel Greenberg, who advised the Committee? He used our Planning Bill as an example for better wording. Those questions were not about the policy behind clauses 2 and 6; they were on how the clauses were drafted and why particular terms were used. What is the Department's response to the issues that he raised? Given that he took time to work with us, I think that it is important that we mention those points. What is the risk of excluding the phrase "as the case may be" on each of the four occasions that it is used in clause 2? What are the sanctions if the Department or the commission does not comply with the four duties in clause 2?

1102. **Ms I Kennedy**: On the first point, the use of the words "as the case may be" is very much a matter of drafting style. It follows the usual style used in Northern Ireland. We use the term "as the case may be" throughout our legislation.

1103. **Lord Morrow**: Is that the way that we talk?

1104. **Mr Weir**: Could you not just put "So it is"? *[Laughter.]*

1105. **Mrs D Kelly**: So it is, so it is.

1106. **The Chairperson**: That is a very Northern Irish thing that I could not get my head around at the very beginning. I wondered why people said that.

1107. **Mr Weir**: You are here a brave few years before some of the idioms sink in.

1108. **Ms I Kennedy**: It is very much drafting style rather than substance.

1109. **The Chairperson**: If we were to do away with it, would it cause you any problem?

1110. **Ms I Kennedy**: If the Committee wishes, the Department can raise that further with the Office of the Legislative Counsel (OLC). It is very much a drafting style. As I said, it follows the usual style in Northern Ireland.

1111. **The Chairperson**: Do members want to take Mr Greenberg's advice and check that out with the OLC?

1112. **Mr Elliott**: It is relevant because we are discussing the Bill at the moment. He made a point about something much broader. Instead of putting these officials under scrutiny, it might be a wider issue that you could raise at the Chairpersons' Liaison Group and try to get a meeting with the Chairs and the people who draft the Bills. That might be a better way of going, but it is only a suggestion.

1113. **The Chairperson**: Whether, in general, we should use those phrases —

1114. **Mr Elliott**: It was a much wider point that was being made.

1115. **Lord Morrow**: It is a case for the Bill drafters.

1116. **Mrs D Kelly**: I think that I am right in saying that there is considerable opposition to clause 2 being required. Some contributors noted the fact that sustainable development includes economic growth as part of the overarching sustainable development principle.

1117. I record my objections to clauses 2 and 6. It is my understanding that there may well be a judicial review of those clauses. The Minister, at the Executive, was not in support of the clauses, but in order to get the Planning Bill before the Assembly, they had to be included at the insistence of other parties.

1118. **Mr Weir**: It is good to see that there is no breach of ministerial confidentiality at the Executive.

1119. **The Chairperson**: I think that that is common knowledge.

1120. **Mrs D Kelly**: I do not think that there is any secret that there is considerable opposition —

1121. **Lord Morrow**: There is none now, anyway.

1122. **The Chairperson**: Yes. What sanctions are there if the Department or commission does not comply with the four duties in clause 2?

1123. **Ms I Kennedy**: There would be no sanctions in legislation, but, clearly, the Department would be scrutinised by and accountable to the Committee and Assembly for its compliance.

1124. **The Chairperson**: All the others things are just suggestions about our style.

1125. **Ms I Kennedy**: Again, it is very much drafting style rather than substance.

1126. **The Chairperson**: Could clause 2(1)(b) and clause 2(2)(a) be redrafted to reduce the paragraph subdivisions?

1127. **Ms I Kennedy**: Again, it is a matter of presentation and drafting. We very much followed the suggestions that were made by the previous Committee when that clause was discussed.

1128. **The Chairperson**: Are members content for us to query that?

1129. **Mr Boylan**: We are content. If it is a drafting issue, it needs to be dealt with outside of this Committee.

1130. **Lord Morrow**: Not here.

1131. **Mr Boylan**: Yes.

1132. **The Chairperson**: OK. We will perhaps bring that to the Chairpersons' Liaison Group and query whether we should have a more modern style for drafting legislation.

1133. **Mr Hamilton**: We could use text language, with words like "GR8".

1134. **The Chairperson**: OK, Simon, stop.

1135. There are other things that we omitted the last time. An issue raised by a large number of stakeholders was the difference between "furthering", "promoting" and "improving" in clause 2. Does the Department think that all those terms mean the same thing? If so, should we not use one term rather than three different terms that all mean the same thing.

1136. **Mrs D Kelly**: That might create difficulties for the Department of Enterprise, Trade and Investment, where it is "promoting" rather than "creating" jobs. There may be a difference in law.

1137. **Ms I Kennedy**: There may well not be a difference in law. The Bill reflects amendments that were tabled by the previous Committee, which included phrases such as "furthering sustainable development" and "promoting well-being". We have carried those forward. I suspect that there may not be a significant difference between the terms "furthering" and "promoting".

1138. **Mr Weir**: If a phrase or word has been used in the past, particularly in connection with something, I think that we have to be a little bit careful. If we use a generic word to replace those words, somebody in the future may query whether we are trying to draw a distinction between them. If we choose "furthering" sustainable development rather than "promoting" sustainable development, somebody may think that we used "promoting" in one context and "furthering" in another, and that, for good or ill, we meant the words to have a different emphasis. We need to be careful that we are not making a change for the sake of change.

1139. **The Chairperson**: I am just raising the stakeholders' comments that we omitted the previous time.

1140. I would like the Department to comment on the amendment to clause 2 that was proposed by Community Places. It did not suggest removing the phrase "economic development" from the clause but said:

"the protection … of the environment" and "the promotion of social development"

1141. should be added to it. What is the Department's view of that proposed amendment? Do members have a view on it?

1142. **Mr Kerr**: I think that there was some discussion on this last week, and the Committee gave some thought as to whether it wanted us to look at that.

1143. **Mr Boylan**: We asked you to look at it and come back to us.

1144. **The Chairperson**: Are you going to send that to us in writing?

1145. **Mr Kerr**: I was not clear that there was a specific request for us to look into that.

1146. **The Chairperson**: I do not think that we requested that. Perhaps you can round the clause more so that there is environmental protection and social development.

1147. **Mr Boylan**: Chair, this point was raised the last day and dealt with. Is that correct?

1148. **The Chairperson**: Yes.

1149. **Mr Boylan**: To be fair, we had ample time in the previous meeting to go through all that. Are we revisiting what has already been answered?

1150. **The Chairperson**: I think that the first two were mentioned, but that one —

1151. **Mr Elliott**: Chair, to be helpful, it was discussed the last time. In the Department's response in our table, it just says, "See response to Issue 1", and "Issue 1" was just a general summary and explanation of the clause. In light of that, it might be useful if the Department gave us a specific written response on the proposed amendment from Community Places. I am not saying whether I agree or disagree with it, but it might be useful if we could get that.

1152. **The Chairperson**: Do members agree that we should ask the Department to look at this and come back to us?

1153. **Mrs D Kelly**: I note that the RSPB asked for clarity in how the Department proposes to:

"legally enforce such economic claims (e.g. job creation, or revenue generation for an area)."

1154. It went on to state:

"As far as the RSPB is aware there is no legal mechanism to secure such benefits through planning conditions as they lie outwith the scope of planning."

1155. That concerns clause 6. I am reading across, because the two clauses are connected. I just wonder what sense of interpretation and subjectivity there is going to be within the consideration of the individual. We all know about interpretation across the Planning Service already.

1156. **Mr Weir**: I would be cautious. We covered a lot of this last week.

1157. **Mrs D Kelly**: I apologise for that.

1158. **Mr Weir**: It would be helpful if the Department could get back to us in writing on the issues that have been raised on the various clauses. That would provide clarity. There is a danger of this getting very confusing, because we are touching on exactly the same things as we did last week, albeit from a slightly different angle. It might muddy the waters.

1159. **Mr Boylan**: To be fair, Chair —

1160. **The Chairperson**: Are you going to come back to us in writing about clause 6 as well? We asked about that as well.

1161. **Mr Kerr**: — *[Inaudible.]*

1162. **Mr Boylan**: My understanding from last week is that there were issues to be responded to in writing. I think that the same question was asked in a different way last week about eight times. To be fair, we have exhausted a lot of clauses 2 and 6. We gave those clauses a lot of time. We covered only six clauses last week. We gave them a good scope.

1163. **The Chairperson**: We did spend a lot of time on them.

1164. **Mr Boylan**: If there are other issues on which we need to ask them to come back to us in writing, I propose that we do so. To be fair to the officials, we gave it a good go last week —

1165. **Mr Elliott**: For clarification, more than anything, I want to say that Angus said that he was not sure how the Community Places suggestion was left. Are the officials going to respond in writing to some of the issues that were brought forward last week? If they are, that is fine, and let us leave it at that.

1166. **Mr Kerr**: We are happy to do that. I have to admit that I did not take it from last week that we were to respond on the amendment from Community Places. I thought that we were told not to.

1167. **The Chairperson**: It was a bit vague; I do not think we asked you to. Can we ask you now? Are members happy for Angus to look at Community Places' proposed amendment?

1168. **Mr Boylan**: Was this point raised in the responses?

1169. **Mr Kerr**: Yes.

1170. **Mr Boylan**: So it was responded to —

1171. **Ms I Kennedy**: It was responded to in the table in your papers.

1172. **Mr Kerr**: The response was to refer to issue 1.

1173. **Mrs D Kelly**: Even in the early part of last week, we all recognised that clauses 2 and 6 were going to be the most problematic.

1174. **Mr Boylan**: I think that we gave them a fair hearing, though.

1175. **The Chairperson**: Therefore, you are going to come back to us in writing about the Community Places suggestion.

1176. There are some general comments to be made on the Bill. I would like Irene or Angus to comment on each one of these general comments from stakeholders. The first concerns the lack of proper consultation.

1177. **Mr Kerr**: We have time pressures and the objective of trying to get the Bill through in the time that we have discussed to try to allow us to test the provisions before 2015. The lack of consultation is really in reference to the new clauses, because, obviously, our view is that there was full consultation on the rest of the Bill in the past, as we discussed. The Department is of the opinion that the opportunity provided by Committee Stage and the level of consultation that has gone on in association with that has been effective and allowed the legislation to be scrutinised by the public.

1178. **The Chairperson**: Compared with the previous consultation, which was extensive, how do we stand legally if we put in two clauses with not the same level of public consultation having been undertaken?

1179. **Mr Kerr**: It is our view that it is acceptable to go forward on that basis. There is not an issue.

1180. **The Chairperson**: I think that a lot of people are talking about judicial review, as Dolores said. If there were one, would it delay the whole thing?

1181. **Mr Kerr**: Obviously there could be a delay if there is a judicial review. However, it is speculation as to whether that would take place. I would reflect on the process that we went through with the previous Committee, where, as part of the democratic and Committee process set out in the Assembly, quite a lot of changes were made to the now Planning Act — changes that were not consulted on previously. That to me is just part of the democratic system that we have.

1182. **Mr Weir**: Everyone appreciates the value of consultation, but, from a legal point of view, if it were a question that consultation was required, that would rule out anything that was not consulted on. Then there would be no point in having a Consideration Stage or Further Consideration Stage for any Bill, because there is nothing to stop any of the 108 Members from putting down an amendment on any Bill that they want. Obviously, it would be better if it were consulted on. However, whether or not it is consulted on, it is still legally and technically correct. Probably quite often, given the timescales, you will have some changes at the Consideration Stage of any Bill, which, by definition, there would not physically be the time to consult on. That is the nature of legislation.

1183. **Mr Boylan**: Let me just follow on from that. I could see the point had it not been discussed at all. However, through PPS 24, there was ample opportunity to

discuss the argument, and it has been going on for a long period. It is not as though it has just arrived on the table.

1184. **The Chairperson**: That is the point, though. People can say that, for PPS 24, we went for an extensive consultation but not for this Bill.

1185. **Mr Boylan**: Yes, but there are people on both sides of the argument, do you understand me? What you are trying to make out here is that, because of lack of consultation, people did not get a fair say. I think that they have had a right good opportunity, and there is more opportunity to come over the next period as well, when we go to the Chamber and debate it. I think that it is fair enough.

1186. **The Chairperson**: People can argue that the provision for public consultation is not the same as in the previous process.

1187. **Mr Hamilton**: Chair, let me be absolutely —

1188. **The Chairperson**: I am acting as devil's advocate.

1189. **Mr Hamilton**: Let me be blunt, then. You proposed an amendment the other day to a piece of legislation, and that amendment received no public consultation.

1190. **The Chairperson**: OK.

1191. **Mr Hamilton**: It is part of the process. It is how it works.

1192. **The Chairperson**: The second of the general comments on the Bill is that its introduction will mean added costs. Obviously, there are extra costs involved in bringing it in.

1193. **Mr Kerr**: As part of the process, the Department undertook a regulatory impact assessment, which looked at the additional costs. With the outcome of that, it is our view that any additional costs are offset by the benefits that we will achieve from the various amendments and the changes that the Bill introduces.

1194. **The Chairperson**: That justifies bringing the Bill in and the extra costs. Are members content with that?

Members indicated assent.

1195. **The Chairperson**: What is the extra cost, roughly? Can you quantify it?

1196. **Mr Kerr**: There would be certain provision to be made, including staff training. There are some extra costs to industry as well, when you think of some of the provisions, such as a pre-application community consultation, for example. That will have some impact. Therefore, there is a range of costs, at a very general level, across government and externally.

1197. **The Chairperson**: There will be staff time involved in doing all that. Well, I suppose that that is not an added cost.

1198. OK. The third general comment concerns the need to widen the list of statutory consultees.

1199. **Mr Kerr**: The final list of statutory consultees will be set out in the subordinate legislation. That work is ongoing, and we will come back to the Committee with it. We will certainly look at what we consider to be an appropriate list.

1200. **The Chairperson**: Are members content with that?

Members indicated assent.

1201. **The Chairperson**: Next is the need to work with new councils ahead of the transfer of planning. I think that we answered that question already. Are members content?

Members indicated assent.

1202. **The Chairperson**: The next general comment is the need for a third-party right of appeal.

1203. **Mr Kerr**: I think that we covered that the last time. The point is that the Minister has an open mind on this, but he wants to see how the reforms bed in, and then he will come back to it.

1204. **The Chairperson**: OK. Are members content?

Members indicated assent.

1205. **The Chairperson**: Have you any further comments about the Bill? Are you just hoping that it will be over and done with quickly?

1206. **Mr Kerr**: Yes. As soon as possible.

1207. **The Chairperson**: OK. Now that we have gone through all the clauses informally —

1208. **Mr Boylan**: I have one other comment to make. I want to raise an important point about all this. Obviously, there will be a period of transition, but there is also an issue at present whereby, once we transfer this function to local authorities, they will want to initiate development plans themselves. Each one will want an economic development plan for its own area.

1209. We know, over the past number of years, the time that it has taken to develop area plans. Perhaps the Department will comment on whether there are development opportunities there for councils until we bed down the development plan or area plan for local areas. The reason why I ask the question is that some councils will think that now that they have the powers, they will want to get up and going, and they may believe that they have the power to do this, that or the other.

1210. **Mr Kerr**: There are a couple of things to say on that. We are hoping that the development plans will come in as quickly as possible. That is why we are doing the pilot preparatory plan work across the 11 clusters, which we referred to before. In the gap before those plans come in, there is nothing holding back developers from coming forward with proposals, and councils from assessing those proposals on the basis of the existing policy framework. Actually, the councils will also have the new powers of regeneration, on which they can act immediately. They can immediately go into the areas within their council area that they have concerns about and that they feel need regeneration and start to bring forward schemes, and so forth. There is nothing to hold them back from doing that. It is probably better to do all of that work alongside the forward planning and the wider development planning function, but there is certainly nothing to stop them.

1211. **The Chairperson**: OK, members, we have now completed the initial clause-by-clause analysis. Do you feel that you want any more information from the Department? Do you want any further work from the Assembly Bill Office, Research and Information Service or Legal Services?

1212. **Mr Hamilton**: Not at this stage.

1213. **The Chairperson**: OK, then that is all. Thank you very much, and we hope to see you back in three weeks — on 23 May. Thank you.

16 May 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mrs Dolores Kelly
Mr Barry McElduff
Lord Morrow
Mr Peter Weir

Witnesses:

Mr Brian Gorman	*Department of the*
Ms Irene Kennedy	*Environment*

1214. **The Chairperson**: I welcome Irene Kennedy and Brian Gorman from the Department of the Environment (DOE). We have just been listening to legal advice from Assembly Legal Services to clear up a number of concerns and queries. Will you go through the paper that you sent to us yesterday? I am afraid that the majority of us did not have a chance to read it, because it came just last night. Do you want to go through it, please, Irene?

1215. **Ms Irene Kennedy (Department of the Environment)**: There are two papers, and they are in response to queries raised by the Committee. The first is Committee query 91 (CQ/91/2013), which is a follow-up to the stakeholder event and queries that were raised then. We have reviewed the Hansard report and looked at the responses that we provided, clause by clause. Most issues were fully covered in those documents. There were a couple of issues raised, one by the Institute of Directors, which requested a commitment that the Department consult widely on the proposals before clauses 2 and 6 come into effect. We can confirm that the Department would intend to consult widely on the related policy and guidance in the single planning policy statement before those clauses are commenced.

1216. The Scottish Government's land use planning strategy was also raised at the stakeholder event. The Minister, as you know, pays very close attention to planning initiatives in Scotland, and he asked for a paper to be prepared for him on the land use strategy. We have done that and forwarded it to the Minister. The Committee also asked for the rationale behind clauses 2 and 6. We have set out what that is in the response. Essentially, we believe that it is appropriate, timely and legal to affirm and clarify through the Planning Bill that economic considerations are material when it comes to preparing planning policy and determining planning applications, and that is without prejudice to other material considerations. Those clauses reflect Programme for Government commitments and the direction provided by the Executive on the economy. Those are the responses to the first Committee query. Shall I move on to the second one?

1217. **The Chairperson**: Earlier I mentioned clause 2, on sustainable development, but the DOE's Planning Policy Statement 1 (PPS 1) explaining sustainable development states in the first couple of lines:

"Sustainable development seeks to deliver the objective of achieving, now and in the future, economic development to secure higher living standards while protecting and enhancing the environment."

1218. That is precisely the point that the stakeholders made. Sustainable development already includes economic development, so why do we have to put in "promoting economic development"? Are you not then giving it double points?

1219. **Ms I Kennedy**: PPS 1 does explain sustainable development. We believe that you need to read the objective under clause 2. It is threefold, but it is one objective, with those elements of furthering sustainable development, promoting economic development and

improving and promoting well-being. There is certainly no intention for the wording to elevate the promotion of economic development above furthering sustainable development.

1220. **The Chairperson**: Are you going to rewrite PPS 1 to give sustainable development a different definition?

1221. **Ms I Kennedy**: Yes, we intend to elaborate on what sustainable development means for planning through the single strategic planning policy statement and the other key principles and concepts of the planning system, particularly the reform system, including the reforms in the Bill, the reforms in the Planning Act (Northern Ireland) 2011 and the transfer of powers.

1222. **The Chairperson**: What are you going to say sustainable development is in your guidance?

1223. **Ms I Kennedy**: At this point, it is too early to say, but we want to set out clearly what the principles and key planks of sustainable development are. This relates to the second query. Sustainable development is an evolving concept. The Office of the First Minister and deputy First Minister (OFMDFM) sustainable development strategy acknowledges that it does change and can evolve over time. It may be more appropriate to set that out in a policy document rather than in legislation.

1224. **The Chairperson**: It is going to be in legislation as the promotion of economic development and well-being.

1225. **Ms I Kennedy**: That is certainly the proposal now, but it does not go beyond trying to define what sustainable development is.

1226. **The Chairperson**: With the new clause, are you saying that the three things are different and carry the same weight? In PPS 1, you say that sustainable development is economic development.

1227. **Ms I Kennedy**: It does embrace that. Sustainable development embraces economic, environmental and social issues and concepts.

1228. **The Chairperson**: You see the argument for the stakeholders: already you are saying that sustainable development is economic development, while protecting and enhancing the environment?

1229. **Mr Weir**: Chair, to be fair, there is a consistent danger of putting words in mouths. They have said that it "contains", while you have been saying that it "is" economic development. There is a difference between containing and being the same as economic development.

1230. **The Chairperson**: That is what is on the DOE website under what is sustainable development.

1231. **Mr Weir**: The website indicates in PPS 1 that it "contains" economic development, which means that it is one element of sustainable development. It is not saying that it "is" economic development. They are not one and the same.

1232. **The Chairperson**: I have the full text here. There are several paragraphs, but the first few lines state:

"Sustainable development seeks to deliver the objective of achieving, now and in the future, economic development to secure higher living standards while protecting and enhancing the environment."

1233. It goes on to say that the Department will:

"plan for the region's needs for commercial and industrial development, food production, minerals extraction, new homes and other buildings, while respecting environmental objectives."

1234. It talks a lot about economic development in there. I think that that is the crux of the objection from the stakeholders, because sustainable development has a very strong statement included about economic development already.

1235. **Ms I Kennedy**: I think that it also recognises that there are environmental, social and other considerations as well.

1236. **Lord Morrow**: Do they get the same weight?

1237. **The Chairperson**: Yes, it talks about economic development while also paying attention to environmental issues. If we are saying sustainable development, we are promoting economic development on another line, and that is why people are arguing that you are saying it twice.

1238. **Mrs D Kelly**: Chair, the departmental response in our briefing pack, which we have had the opportunity only to have limited sight of, is helpful. It suggests that sustainable development as a concept is evolving and will continue to evolve over time, and that the provisions in the clause suggest an integrated approach rather than any one trumping the other in seniority or a hierarchical approach. That clarification is very helpful for me for my understanding of the clause. The departmental response to the suggested clause from Community Places highlights the difficulties in the fact that sustainable development as a concept is one that is evolving. I think that that was a very helpful explanation. It may go some way to providing clarification for the Chair. It certainly helped my understanding of it.

1239. **The Chairperson**: From reading PPS 1, sustainable development has a strong emphasis on economic development.

1240. **Ms I Kennedy**: We will be revisiting PPS 1 and those general principles as part of the review of the single planning policy statement. Things will have moved on.

1241. **The Chairperson**: When will that guidance come out?

1242. **Ms I Kennedy**: The intention is to consult on it before the end of the year.

1243. **The Chairperson**: Therefore, when will the Planning Bill receive Royal Assent? In the autumn?

1244. **Ms I Kennedy**: We would hope so, or it will be towards the end of the year. It should be around the same time.

1245. **The Chairperson**: Will there be a gap between the Bill being enacted and the guidance being issued?

1246. **Ms I Kennedy**: We would not propose to commence those clauses until we had consulted on the single planning policy statement.

1247. **The Chairperson**: Do you see what I mean?

1248. **Lord Morrow**: Yes, Chair, I see what you mean. However, I also see something else. It clearly states here:

"Sustainable development seeks to deliver the objective of achieving, now and in the future, economic development to secure higher living standards while protecting and enhancing the environment."

1249. That is all in one sentence. What you are telling us today is that you feel that the greater emphasis is given to economic development, but, by the same token, the paper talks about protection and enhancement of the environment, promotion of economic development, promotion of social development and promotion or improvement of well-being — all in the one breath.

1250. **Mr Weir**: Similarly, on the definition of the aims, even though the reference to commercial and industrial development is qualified, in that it is one of only six bullet points. If you like, it is qualified within one bullet point, and then there are five others. I do not know whether there are other bullet points, because the page ends.

1251. **The Chairperson**: How many points are there on PPS 1?

1252. **Ms I Kennedy**: There are six bullet points. There is also a further paragraph that indicates:

"In formulating policies and plans and in determining planning applications the Department will be guided by the precautionary principle that, where there are significant risks of damage to the environment, its protection will generally be paramount, unless there are imperative reasons of overriding public interest."

1253. **The Chairperson**: OK. We will move on.

1254. **Ms I Kennedy**: Committee query 95 (CQ/95/2013) raises three issues. The first is the suggested amendment from Community Places to clause 2. It states:

"Where the Department or the Planning Appeals Commission exercises any function under Part 2 or this Part, the Department or, as the case may be, the Commission must exercise that function with the objective of furthering sustainable development which secures: protection and enhancement of the environment; promotion of economic development; promotion of social development; and promotion or improving well-being; and which balances current needs with those that may arise in the future."

1255. As background, and as we have already touched on and Committee members have noted, clause 2 as drafted takes forward a formula from the 2011 Act and treats the concept of furthering sustainable development, promoting or improving well-being and promoting economic development as a threefold objective when the Department or the Planning Appeals Commission (PAC) is delivering those functions. The three should be read together as an integrated approach rather than as a selective approach with a hierarchy in it. The suggested amendment to clause 2 puts four elements — the protection and enhancement of the environment; promotion of economic development; promotion of social development; and promotion or improving of well-being — under the one umbrella of furthering sustainable development. It impliedly attempts to define "sustainable development", which has not been defined in planning legislation or, as far as we are aware, other Northern Ireland legislation.

1256. Sustainable development, as we have mentioned, is a concept that has evolved and is likely to continue to evolve over time. The Department is of the view that, although it is well-intentioned, the amendment could have the unintended consequence of limiting or reducing the scope of the concept that it actually wishes to promote. The Department, in line with other jurisdictions, considered it more appropriate to provide a fuller explanation of what sustainable development means in the planning context through policy and guidance. That approach allows greater flexibility to respond as the concept of sustainable development develops and evolves. The Department intends to do so and to elaborate further through the single planning policy statement.

1257. **The Chairperson**: OK. What about the criticism that the Department is using different words, such as "promoting", "furthering" and "improving"?

1258. **Ms I Kennedy**: Yes, we have done that. It is a reflection of the discussions that took place at the previous Committee, when the previous Planning Bill was coming through. "Furthering", "promoting" and "improving" were words that were brought forward in amendments.

1259. Look at the dictionary definition, and you will see that there is an overlap. When we talk about "furthering", the dictionary talks about "promoting", and if you look at the definition of "to promote", the dictionary talks about "to further". "Improving" seems to mean "to add value" or "to achieve a desired effect". Therefore, there are similarities in those words. At this point, they reflect the wordings that were brought forward as Committee amendments and adopted by the Assembly in the 2011 Act. If you wish, we can take a look to see whether there is a way of rationalising them or taking a consistent approach. There seem to be overlaps in meaning, although others may argue that different words mean different things. Certainly, if you look at the dictionary definitions of "furthering" and "promoting", they are interchangeable. Each mentions the other.

1260. **The Chairperson**: Yes. I looked at the thesaurus, and they are all the same but with slight differences in meaning.

1261. **Lord Morrow**: We could fall into the danger of being pedantic.

1262. **Mrs D Kelly**: Perish the thought.

1263. **The Chairperson**: It is legislation. One of the things that many of the stakeholders mentioned is whether there is a difference between those words. It is

confusing for them. Why can we not use one word?

1264. **Mr Weir**: I disagree with Lord Morrow. We may not be falling into the danger of being pedantic; we are collapsing into it. *[Laughter.]*

1265. **The Chairperson**: Yes, words can be argued over in court for hours and days.

1266. Can you come back with a suggestion for a word that covers most of the meanings of "furthering", "improving" and "promoting"? One word that I thought of when I looked at the thesaurus was "advancing". Would "advancing "cover all of them?

1267. **Mr McElduff**: A word that I was conscious of was "enabling". That word was always used in the context of economic development. You "enable" economic development.

1268. **The Chairperson**: Members, would you be content for Irene to go back and look for different words that she can bring back to us? "Enabling" is a good word. "Advancing" and "enabling" are both good.

1269. **Mr McElduff**: Do you remember that, prior to the restoration of the institutions, there was a subgroup on economic challenges? David Simpson represented the Democratic Unionist Party on it, and the word "enabling" was deliberately written into it for planning and economic development.

1270. **The Chairperson**: So that would read "enabling sustainable development", "enabling economic development" and "enabling well-being"?

1271. **Mrs D Kelly**: I think that you run your own risks with those words.

1272. **Mr Boylan**: Did we not agree this in the 2011 Act?

1273. **Mr Weir**: Angels on the head of a pin.

1274. **Mrs D Kelly**: You could lose the will to live here very quickly, Chair.

1275. **Mr Boylan**: We went through all this for months when we worked on the previous Bill in 2011. A lot of the members were content with the meanings at that time, but now we are going to rewrite it because of the economic aspect.

1276. **Mr Weir**: A possible route around this was suggested. To be honest, there is a nice flow of language here, and there is an advantage to that from a stylistic point of view. One route might be that, at Consideration Stage, the Chair could comment on these interpretations in her remarks on behalf of the Committee. The courts will look at what is said in the debate and, in particular, at what the Minister says in the debate, as a form of interpretation. For example, you could seek clarification from the Minister that the three terms used are intended to mean the same thing. If the Minister responded positively, that would officially be in the Hansard report. That might be one way of doing it without getting too bogged down in whether there should be a specific word to encompass all three meanings.

1277. **The Chairperson**: We could do that, but, according to the legal advice, what is said in the debate would not count in a court case.

1278. **Mr Weir**: With the best will in the world, it is one of the things that the court will look to if there is an issue in that regard. However, because we are talking, quite frankly, about definitions and whether there is any difference between "promoting" or "furthering", which seem to match each other very similarly in a thesaurus, I think that we are dealing with a relatively semantic point as is. That might be a better way than trying to search the highways and byways to find a word that is acceptable for all three. I offer that as a suggestion before we entirely sink in the mire on this point.

1279. **The Chairperson**: What do you feel?

1280. **Mr Boylan**: I am happy enough with that, Chair. You can bring in the Oxford dictionary if you wish, but I am happy enough.

1281. **Mr Weir**: You boys would want the translation into Irish as well. That is the only problem.

1282. **Mrs D Kelly**: It is a far more beautiful language.

1283. **Mr Boylan**: Put it in Irish as well.

1284. **Mr Weir**: I am sure that Barry can think of an Irish word that would cover all three.

1285. **Mr McElduff**: I give way to Cathal; he is my leader.

1286. **Mr Boylan**: We are happy enough with that.

1287. **The Chairperson**: You are happy enough with the three words as they are at the moment. We will ask the Minister during the debates to make clear the difference between the three words.

1288. **Mrs D Kelly**: Yes. That would be helpful.

1289. **Mr Weir**: It will give the Minister the chance to say a few more words; he is always very succinct.

1290. **Mrs D Kelly**: I am sure that he will not be found wanting.

1291. **The Chairperson**: It could be an extra half an hour. OK, Irene. Continue, please.

1292. **Ms I Kennedy**: The Committee asked departmental officials to provide a response to the query about the provision for a person or body other than DOE — for example, the Office of the First Minister and deputy First Minister — to have the power to appoint a person other than the Planning Appeals Commission to conduct a public inquiry. The policy of providing an option to appoint independent examiners other than the Planning Appeals Commission to conduct public inquiries or hearings into article 31 or major applications was developed during the peak of the property boom when there was an unprecedented rise in the number of planning applications and appeals to the Planning Appeals Commission. That naturally led to resourcing issues for the Department and the commission. The Department argues that OFMDFM already has the power under article 110 of the 1991 order to appoint commissioners to the commission and to appoint persons to assist the commission in performing its functions. Should the PAC experience an increase in casework, OFMDFM can appoint additional commissioners or persons to address any resourcing implications that might arise, and, as a consequence, curtail any need for independent examiners to be appointed by the Department.

1293. Should the Department decide that a public inquiry should be held, the Department will first approach the Planning Appeals Commission to ask it to conduct the inquiry. If, and only if, the commission cannot conduct the inquiry within a reasonable time frame would the Department consider appointing a person other than the Planning Appeals Commission to conduct the inquiry. The provision is in no way intended to bypass the commission — the commission will be the first port of call — or to permit the Department arbitrarily to appoint independent examiners without first consulting the commission. The option of appointing independent examiners, however, allows DOE to respond proactively to potential future workload pressures to ensure that decisions on major applications are processed as expeditiously as possible.

1294. In assessing time frames, the Department will consider what is reasonable, based on consideration of the facts of each case, including the nature, scale and location of the proposed development. A proposal that could lead to significant environmental or economic benefits or job creation may, in the view of the Department, merit a quicker inquiry than perhaps a proposed development that does not have significant environmental or economic benefits but which may be a departure from a development plan.

1295. The Department has studied how the Department for Regional Development (DRD) appoints examiners to carry out public inquiries for proposed road schemes, and those principles will be used to assist in the development of a protocol for the appointment of independent examiners. DRD has a retained list of suitable persons who

are qualified to conduct public inquiries. That list is used as needed.

1296. **The Chairperson**: I think that the response from people is to ask how you will give them confidence that there is not a conflict of interest when it is DOE appointing the person to conduct the inquiry. How do you get transparency and independence?

1297. **Ms I Kennedy**: I think that it is through transparent processes of appointment and making sure that suitably qualified people without conflicts of interest are appointed to the panel.

1298. **The Chairperson**: That is the last resort really, when you cannot get people from PAC?

1299. **Ms I Kennedy**: The intention is that the Planning Appeals Commission will be the first port of call, but this is an option to be used if there are workload pressures and the commission cannot respond within a reasonable time frame.

1300. **Mr Weir**: We had a debate in the Assembly on that some years ago. Obviously, given current circumstances, there is not that pressure because of the downturn in the market, but it was not that many years ago that there were major concerns from across the Chamber and parts of Northern Ireland that the message coming out from the PAC was that it only had so many staff and effectively could only do one major inquiry at any one time. There were very major things and people, irrespective of what their views on the things were, wanted a decision, but getting a decision was a long way down the pipeline because of that level of restrictions. It seems to be a common sense fallback position.

1301. **The Chairperson**: Should the current system not be improved to get more resources and to get it working rather than creating another system whereby the Department can appoint people?

1302. **Mr Weir**: Again, it depends on your opinion of that. It might be regarded as an improvement on the current system.

1303. **Mr Boylan**: Now that I have had some clarification, I think that the PAC should be the first port of call. When we discussed it, as Peter outlined, we were under severe pressure, but we should look at the decision-making process and the policy itself. A number of single applications for houses in the countryside actually went to the PAC. We should restrict its definition to major applications; it is the major ones that we are talking about.

1304. **Ms I Kennedy**: This provision relates to article 31 applications.

1305. **Mr Boylan**: OK. I am happy with that, as long as the PAC is the first port of call, because there are concerns about the independence of appointments.

1306. **The Chairperson**: As you know, Irene, the PAC was also represented at the stakeholder event. Perhaps there should be better communication with it. We need to give it some assurance.

1307. **Ms I Kennedy**: Certainly, and it will be the first port of call.

1308. **The Chairperson**: OK, we will move on.

1309. **Ms I Kennedy**: The final query raised by the Committee was whether there could be a minimum fine for a range of offences and whether provision could be made to ensure that that fine was proportionate to the value of the development.

1310. Clause 16 increases the maximum level for a range of fines under the 1991 order in line with the 2011 Act. At Committee Stage of the 2011 Act, the then Committee expressed strong views that the level of fines relating to a range of planning offences should be significantly increased. It was argued that existing fines did not reflect the financial gain that could be achieved through intentional breaches of planning control. Subsequently, the 2011 Act increased the level of maximum fines available on summary conviction from £30,000 to £100,000 for a range of offences. That more than threefold increase provides the highest level of financial penalty for planning offences

across the UK Administrations and the Republic of Ireland.

1311. It is worth noting that the 1991 order also provides the option of unlimited fines for a number of offences where a person is convicted on indictment, as well as the option of imposing custodial sentences for certain offences and some reconviction or conviction on indictment — for example, an offence under article 44 on the control of works for demolition, alteration or extension of listed buildings. The Minister has maintained a consistent focus on the level of fines imposed by the courts and highlighted the need for fines to act as an effective deterrent. The level of fine to be imposed in a case is a matter for the courts. However, the increase in the maximum level of fines to be made available under the proposed changes provides additional latitude for the courts to exercise their discretion in sentencing. In addition, the Judicial Studies Board for Northern Ireland recently published sentencing guidelines for a wide range of offences, including certain planning offences. Those include guidance where an offence has been committed on a commercial basis and where financial gain might accrue as a consequence of the offence. An example of the guidance is provided as an attachment to the response. That is about a breach of a tree preservation notice.

1312. The introduction of a set minimum level of fine, aside from those established by the standard scale, would limit the discretion of the courts in determining the level of fine to be imposed after considering the individual circumstances of the case. Compulsory minimum sentencing makes no allowance for the possibility that always exists of an exceptional case and could lead to unintended and unwelcome consequences. The Department believes that it would be prudent to assess the impact of the proposed increases in maximum fines, coupled with the new sentencing guidelines on planning offences, before considering the need for further strengthening the law in this case. Such proposals would require detailed discussions with the Department of Justice and the judiciary.

1313. **Lord Morrow**: I see that we are talking about fines from £30,000 to £100,000. On how many occasions will the maximum fine be imposed?

1314. **Mr Gorman (Department of the Environment)**: One issue that has been raised is that that rarely happens and, when it does, it can sometimes be reduced. At the minute, we are looking to show that there are developments in a number of areas. The first is that there is latitude with a broad range of maxima, and it may also take some time for the sentencing guidelines from the Judicial Studies Board to work their way through. It will also take some time for enforcement cases under the new maximum fines to come through. We hope for informal resolution. I do not have the figures to hand, but I do not think that it is a normal occurrence, Lord Morrow. We are hopeful that the increased focus of the Minister in setting a deterrent and the new guidelines will, at least, lead to an increase in the level of fines so that there is a deterrent factor, particularly for deliberate breaches. That is spelt out clearly in the guidelines.

1315. **Lord Morrow**: We are talking all the time about the deliberate breaches. The paper goes on to say that compulsory minimum sentences make no allowance for the possibility of an exceptional case. Is everything based on the exceptional case?

1316. **Mr Gorman**: No. That is a cautionary note. If somebody is in breach of planning law, and the court is restricted to imposing what it may view as a minimum fine — it may be higher than the court wishes to apply — it may look at an alternative, which could be discharge. That is where you would have a minimum fine imposed on the court. That was the cautionary note about the discretion of the court, yet it provides a much broader range of fines for that discretion to be exercised.

1317. **Mr Anderson**: Thank you for your presentation. You mentioned the guidance for financial gain. How do you judge whether a developer steps outside planning regulations and laws and carries out an operation for financial gain? How do we get the legislation to say, "That is worth £1 million to you"? Who decides that?

1318. **Mr Gorman**: It is done through the courts.

1319. **Mr Anderson**: It is a difficult one.

1320. **Mr Gorman**: Absolutely. However, the advice now through the sentencing guidelines makes that a very specific issue to be considered, and where that is determined by the court, it recommends, in certain cases, the introduction of a minimum fine. That is an issue for the court to decide on the merits of an individual case.

1321. **Mr Anderson**: That case would have been presented to what that level would be. It is not an easy situation to see the end result in financial gain. There is so much involved in it.

1322. **Ms I Kennedy**: You would need to carry out some work to estimate that.

1323. **The Chairperson**: Do you need a quantity surveyor to find out?

1324. **Ms I Kennedy**: You could, yes.

1325. **The Chairperson**: Thank you very much. We will see you next week for the informal clause-by-clause scrutiny.

23 May 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

Mr Brian Gorman	*Department of the Environment*
Ms Irene Kennedy	
Mr Simon Kirk	

1326. **The Chairperson**: I welcome the chief, Irene Kennedy, who has been leading us on this, Brian Gorman and Simon Kirk. Has there been any good news from Angus yet?

1327. **Ms Irene Kennedy (Department of the Environment)**: Yes. Baby Phoebe was born last Thursday.

1328. **The Chairperson**: Very good. You can send our best wishes to Angus. Is he on paternity leave at the moment?

1329. **Ms I Kennedy**: Yes.

1330. **The Chairperson**: Good. Many congratulations.

1331. As you all know, the Bill has 28 clauses and each clause will need to be considered in turn. I remind members that the Committee has not indicated at any point so far that it is minded to amend any clause.

1332. Before moving on to formally consider each clause, the Committee should confirm that it is content not to recommend any amendments. If the Committee wishes to amend any particular clause, that could mean having to defer formal consideration until next week when the Committee is due to consider the first draft of its report on the Bill. The time would be needed to allow the Bill Office to consider admissibility and drafting amendments. If the Committee is agreed that it does not wish to amend any clauses, I will proceed with formal clause-by-clause consideration as set out before.

1333. I want to reiterate that I circulated an amendment to clause 2, and the officials had to come back to explain why they thought that it was not appropriate to make that amendment. Have members any further comments on that? I would be very keen to see an amendment to clause 2, but I understand that this is not the view of members. Can I confirm that members are not content to put it forward as our amendment?

Members indicated assent.

1334. **The Chairperson**: I also want to mention that I talked last time about planning policy statement 1 (PPS 1) whereby sustainable development is economic development balanced by environmental protection and enhancement.

1335. Irene, you said that you would have to rewrite the planning policy statements to have one single, or strategic — you do not call it single now — PPS, which will explain what sustainable development means.

1336. **Ms I Kennedy**: Yes.

1337. **The Chairperson**: Consultation will be held before clauses 2 and 6 are implemented.

1338. **Ms I Kennedy**: That is correct.

1339. **The Chairperson**: I suggest to the Committee that we consider holding the commencement of those two clauses to affirmative resolution. We will want to see the new strategic planning policy statement to determine whether the

Committee is agreeable to it. We want to see the public responses to the consultation on the PPS. Are members agreeable to that?

1340. **Mr Hamilton**: I am not sure. Cathal has a very puzzled face. He usually has just a puzzled face; he has a very puzzled face now. *[Laughter.]*

1341. **The Chairperson**: Have I explained myself?

1342. **Mr Hamilton**: On his behalf —

1343. **The Chairperson**: I will clarify this. Only a number of clauses will commence on receipt of Royal Assent. Clauses 2 and 6 are not going to commence at that time. They will commence as and when the Department sees fit. Is that right? You are going to put forward guidance, upon consultation on the PPS, before those two clauses will be commenced.

1344. **Ms I Kennedy**: That is correct.

1345. **The Chairperson**: That is the procedure as I understand it. Instead of the clauses being commenced automatically by the Department, we can ask for them to be subject to affirmative resolution, which means that they would have to be debated in the Chamber and would need all-party support. I am sorry, it is not all-party support; it is the general position of a majority vote.

1346. **Mr Boylan**: Just for clarification, the two clauses will not be implemented until PPS 1 is —

1347. **Ms I Kennedy**: That is correct; the single planning policy statement.

1348. **Mr Boylan**: It would still be agreed in the Chamber as regards the passing of the clauses. Is that correct?

1349. **Ms I Kennedy**: The commencement provision is clause 27. Normally, we commence provisions by what is called a commencement order. I understand that the Chair is suggesting that that would be subject to an affirmative procedure through the —

1350. **Mr Boylan**: It would be agreed in the Chamber.

1351. **Ms I Kennedy**: Yes.

1352. **The Chairperson**: It is so that it is not going to be automatic; the Department cannot, just by the commencement order, say that it wants to commence clauses 2, 6 and whatever.

1353. **Mr Weir**: I would not be happy with that. I would prefer the normal process of the commencement order. To be fair, this is not something that would come in immediately on Royal Assent anyway. The normal process for any of these bits of the Bill is for later commencement dates on that side of things. We should not put some additional hurdle of an affirmative resolution in front of that. At the end of the day, we are going to approve the legislation or we are not. To have to jump over something else to get to that point does not seem to be particularly practical. I would not support that Committee position.

1354. **Mr Hamilton**: Neither would I.

1355. **Mr Elliott**: On a point of clarification, has the Department said — it is not in the Bill — that the commencement of clauses 2 and 6 will not start until the other measure, whatever it is, comes into place? Is that an addition?

1356. **Ms I Kennedy**: We indicated in our response to the Committee last week that we would not commence until we had consulted on the single —

1357. **Mr Elliott**: Yes, but that is not in the Bill yet?

1358. **Ms I Kennedy**: No. Clause 27 of the Bill lists those provisions that will come in on Royal Assent. If a clause is not mentioned, it will come in at a later stage, normally by an appointed day commencement order.

1359. **Mr Elliott**: Are you suggesting that an amendment is required?

1360. **Ms I Kennedy**: You could put it in, but it is not usual. I have seen it being put in, but it is not usually put in as an affirmative resolution.

1361. **Mr Elliott**: I am not talking about affirmative resolution; I am talking about saying in the Bill that the clauses

would come into effect when that other measure came into place.

1362. **Ms I Kennedy**: I have not seen a connection between the commencement of a clause and a policy document.

1363. **Mr Elliott**: How do you deal with that if it is not in the Bill?

1364. **Ms I Kennedy**: We have given a commitment to the Committee, and the Minister has cleared the position, that we would not be commencing those provisions until we had consulted on the single strategic planning policy statement.

1365. **Mr Elliott**: It is not in the Bill?

1366. **Ms I Kennedy**: It is not in the Bill.

1367. **The Chairperson**: It is workable. It is up to the Department.

1368. **Mr Elliott**: Is that normal practice? I am asking for clarification, because I am not sure. Has this happened before?

1369. **Ms I Kennedy**: It has been done, yes. During the previous Bill, we gave commitments.

1370. **The Chairperson**: Yes. We have done quite a lot of it, Tom. Now and again, the Department will say, "This is a commencement order." We have no power to say that the Department can go ahead —

1371. **Mr Elliott**: I accept that point. My other point was whether it was normal to do it without having it in the Bill, irrespective of doing that for positive resolution.

1372. **Ms I Kennedy**: Yes.

1373. **The Chairperson**: I certainly recall seeing it during the past two years.

1374. **Mr Hamilton**: What is the motivation for not commencing clauses 2 and 6 until a single planning policy statement is published?

1375. **Ms I Kennedy**: It is important to elaborate within the single strategic planning policy statement what we mean by promoting sustainable development in planning. It will provide more elaboration and more guidance.

1376. **Mr Hamilton**: What is the timescale for the publication of that?

1377. **Ms I Kennedy**: The intention is to consult before the end of the year.

1378. **Mr Hamilton**: When will commencement happen? Will it happen when the guidance is published?

1379. **Ms I Kennedy**: We certainly would not want to commence before that. Obviously, when we do consult, there will be some weight attached to the document. As the planning policy statement makes its progress through that process, more weight will be added to it. However, I would have thought that it would be later — into next year.

1380. **Mr Hamilton**: Therefore, clauses 2 and 6 will not be operative until later next year.

1381. **Ms I Kennedy**: Certainly not until after the single planning policy statement goes out to consultation.

1382. **Mr Hamilton**: Where has that appeared from? I appreciate that you have come to the Committee, but is this not a fairly new —

1383. **Ms I Kennedy**: It is a line that we have been taking throughout the process.

1384. **Mr Hamilton**: From the beginning?

1385. **Ms I Kennedy**: It is not necessarily included in the Bill.

1386. **Mr Hamilton**: It is not included in the Bill. It is not that it is not necessarily included: it is not included.

1387. **Ms I Kennedy**: It is not included in the Bill.

1388. **Mr Hamilton**: OK. I am not massively supportive of that approach. I am certainly not supportive of the Minister — my goodness, Chair, I have promoted you —

1389. **The Chairperson**: It may come.

1390. **Mr Weir**: You never know. There are some very strange conversations going on with Alasdair McDonnell.

1391. **Mr Hamilton**: You never know. Alasdair is going to appoint you. It could happen.

1392. Like others, I am not supportive of what the Chair is suggesting, but I am going to give some thought to what the Department is now saying with regard to its intention in taking this forward. It seems that an extraordinary delay is now being put into this. As a legislature, we are in control of the Bill. We can say that this is operative from whatever date we want, and we are now being told that it will be subject to whenever a Minister wants to publish and go through a process of consultation, then further consideration of what comes out of the consultation, and then a finalised version of that.

1393. With respect to the Minister, and other Ministers, that is never a fairly quick process; it is never an easy seamless process. What is being proposed will add inordinate delay to the legislation. The Committee has offered no objection to any of this at this stage, so the Assembly is going to approve this piece of legislation. The Assembly is saying that it wants this piece of legislation and the principles behind it to be in place, but we are now being told that it is going to be subject to the subjective views of a particular Minister.

1394. I am going to consider this, think about it and take it away and look at it, but I think that, by going down the route suggested, the Committee and the Assembly would be giving up control of this piece of legislation, which it supports.

1395. Chair, I am worried about supporting anything that you have put forward now, because of what might happen — you might go for another kiss or something. *[Laughter.]* I am certainly not —

1396. **The Chairperson**: We need to clarify that.

1397. **Mr Hamilton**: We do; the rumours are going to start.

1398. I am also uneasy about this proposal from the Department. If the Assembly passed this Bill today, it would no longer be in control of when it comes into force. That is the nub of what is being said. It will be down to a process, and we cannot time-bound that process. As with any piece of legislation, you cannot say that the strategic planning policy statement must be in place by x and that, therefore, clauses 2 and 6 will become operative at that point. We cannot do that. Lots of things could happen. We are now sort of saying, "Well, whenever it is finished."

1399. **The Chairperson**: Irene, is it your understanding that you would have the strategic PPS in place before Royal Assent?

1400. **Ms I Kennedy**: Work has certainly begun on that and that is what we intend to do.

1401. **The Chairperson**: Yes; that is the intention.

1402. **Ms I Kennedy**: It is important to stress that providing guidance is useful and helpful. There has been a lot of discussion about these two clauses and further elaboration will certainly help understanding.

1403. **Mr Hamilton**: I do not dispute that, but I do not see why it could not be done before. I can see the desirability of doing it in a single strategic planning policy statement; that is clearly the purpose of having everything in one place. It could be done before that and in this piece of legislation if we wanted to. If the Committee and the Assembly thought that it was necessary to have that very clear definition, we could put that into the Bill if we wanted to.

1404. **Ms I Kennedy**: The Committee could certainly suggest that those clauses are brought in at an earlier stage or at Royal Assent.

1405. **Mr Hamilton**: My concern is not that the officials will not do their work in an expeditious fashion. My concern is with consultation processes, which, by their nature, will sometimes throw up things and cause delays. You will then be looking for a Minister to take a decision. With this proposal, I think that the Committee would be giving control

of when this Bill comes into practice to a Minister who may change his or her mind.

1406. I appreciate that you might have a different perspective on that. However, if the Assembly is of a mind that it wants this Bill to happen, surely we would want it to happen as quickly as possible and not put up delays that are beyond our control.

1407. **The Chairperson**: Simon, do you not agree that the two clauses introduce new concepts for planning and for our planners? They need clear guidance, and the strategic PPS is going to provide that guidance.

1408. **Mr Hamilton**: I do not accept that at all. In fact, I am supporting this on the basis that they are not new concepts. They highlight existing concepts. I do not think that promoting economic development, furthering sustainable development or prompting or improving well-being are new concepts. We have heard repeated evidence from the officials who are before us today that they are not new concepts and are already part of the planning process. They are not new.

1409. **The Chairperson**: They are being put on statute now. Before, there was a kind of understanding that those concepts operated, but it is now being put in black and white in legislation.

1410. **Mr Hamilton**: Some of them are already in legislation.

1411. I am very uneasy about the approach that is being proposed by the Department. I smell a rat, and I am concerned. I might be wrong, and hopefully I am. I have been known to be wrong in the past.

1412. **Mr Boylan**: Not often.

1413. **The Chairperson**: No one is infallible; not even Simon.

1414. **Lord Morrow**: Very rarely.

1415. **Mr Hamilton**: I cannot remember when though, Maurice.

1416. **Mr Boylan**: I agree that the principle is grand. My serious concern is that PPS 1 provides the guiding principles for planning, but we are going out to consultation and we could end up in a situation in which those principles are diluted. After consultation, you do not know what is coming, and what we are trying to achieve with this Bill could be diluted. I have serious concerns about that. I am certainly not in favour of affirmative resolution.

1417. This is before us today. I would prefer to go ahead with the Bill the way that it stands and to agree the clauses. There is no point in saying that we are going to leave part of the Bill sitting on the shelf. There is no guarantee that they would run with PPS 1 in tandem with Royal Assent. You are saying to me that we need clarification but the principle of economic weights and everything else in PPS 1 is also clearly stated in the Bill. So you would only be clarifying what is already in the Bill and PPS 1 — well, that is what I assume. We should not wait unless there is a clear guarantee that PPS 1 would run in tandem with the Royal Assent and that the whole document will be implemented at the same time. I cannot see that. Like Simon, I have concerns about how the consultation on the guiding principles of planning in PPS 1 would turn out. We need to seriously look at that now.

1418. My intention was to get through this process today, get the Bill into the Chamber for debate on all these clauses and see where we are going. If any Member wants to table any amendment to try to adjust or amend any part of the Bill, they are entitled to do that. If we could get a guarantee that PPS 1 would run in tandem with the Bill, it would be different. However, there is no guarantee. The Department is going out to consultation, and you cannot predict what is going to happen with that. I have a fair idea, and I could take a stab at it, but I think that there would be issues in relation to the guiding principles. We need to think about that.

1419. **The Chairperson**: We are not stopping the process; we can go ahead with the

process and the passage of the Bill. The Department is going to consult on the strategic planning policy statement, clauses 2 and 6 are going to go through, but commencement will not be until the consultation on that guidance, which is necessary for the planners, has been completed.

1420. **Mr Boylan**: Chair, I mean no disrespect, but you are predicting the results of a consultation process. You are assuming that the consultation will be in favour of whatever is in the Bill. What would be the point of the consultation process, then?

1421. **The Chairperson**: The guidance is so important. We need the guidance to underpin the Bill.

1422. **Mr Boylan**: PPS 1 contains the main guidelines for planning. That is what I am saying. It is the important one.

1423. **The Chairperson**: Absolutely.

1424. **Mr Boylan**: You are saying, on the one hand, that the Bill will go through and, on the other, predicting what will happen in the consultation process. You cannot do that. Do you understand where I am coming from?

1425. **Ms I Kennedy**: It is important that a number of Bill stages are yet to be completed. Those will have to run into the autumn, and the intention is to go out to consultation before the end of the year. They may well run very closely together.

1426. **The Chairperson**: So the intention is that they will happen in parallel: you will have the guidance in place before Royal Assent.

1427. **Mr Hamilton**: For clarity on that point, Chair, you are right: we will not complete our Committee Stage until very close to recess, so we could not possibly have Consideration Stage until the early autumn.

1428. You are saying that the intention is to get the sPPS — I cannot remember whether it stands for "strategic" or "single"; the one with the small "s" — by the end of the year. However, there is no definitive date for finalisation. You are right: they could run close, with one finishing and the other starting, but there will still be a gap. Irene, you said that the Department's view is that it could not become operational until after the sPPS was agreed.

1429. **Ms I Kennedy**: We have indicated that it is important to have it out for public consultation — it may well have weight at that point — so that it provides more guidance.

1430. **Mr Hamilton**: Clauses 2 and 6, and, potentially, others, could not come into effect until after it was agreed.

1431. **Ms I Kennedy**: That was the intention. There is always the means in the legislation to have it in place, with the guidance following on.

1432. **Mr Hamilton**: I appreciate that. You are right: there are options available. I think that it is better not to try to exercise those options and just get it very clear between the Assembly and Department. The concern is that although there may be the best of intentions to get it published by the end of the year, it may not happen by then. It might be the new year. Agreement may not happen until almost a year after it has passed through all its stages in this place. I do not think that that is the sense or intention of the Committee in supporting those clauses. I appreciate that guessing timescales might be difficult, but if experience is anything to go by, it is likely to be a longer period than a shorter one.

1433. **Ms I Kennedy**: It is important to stress that the single strategic planning policy statement is a very important document that we need to get in place as we move to the new planning system. We also need it to support and elaborate on the provisions of the Bill. That is a high priority for the Department.

1434. **Mr Hamilton**: It is exactly that point that concerns me. It is the first time that we have ever attempted to do something of that nature. It will be as contested and disputed, perhaps, as elements of the Bill. That, by its nature, will extend

the period. I do not think that everybody will be happy with everything in the first draft. There will be some debate and discussion; ergo, there will be some delay. That is my concern, which it seems others share.

1435. **The Chairperson**: The need for that single strategic planning policy statement has existed for quite a while. The demand or the request for it has been ongoing, and it has been worked on by the Department for some time. Can you give us an assurance that this will go ahead as soon as possible so that it will come out at the same time as Royal Assent and there will not be further delay?

1436. **Ms I Kennedy**: It is certainly our intention to bring that forward as soon as possible.

1437. **Mr Weir**: Chair —

1438. **The Chairperson**: Sorry, Peter. Tom has been very patient. I need to let him in.

1439. **Mr Elliott**: Thank you, Chair. This sounds a wee bit "chicken and egg" and "cart before the horse". We seem to be doing things the wrong way round, if I am hearing the intention correctly. Obviously, there has been a gap somewhere if there was no review or consultation on the strategic planning policy statement before the Bill was introduced. However, we are where we are.

1440. The correspondence is extremely vague. It states:

"The Department can confirm that it intends to consult widely on related policy within the single strategic planning policy statement by the end of the year, which will be before the Bill receives Royal Assent and these clauses are commenced."

1441. It does not actually say that you will wait to introduce those clauses until everything is complete; it just says that you are going to try to run both in tandem. You said today that the intention is not to introduce those two clauses.

1442. **Ms I Kennedy**: We will certainly leave that until after we have consulted on the single planning policy statement.

1443. **Mr Elliott**: Just consulted on it?

1444. **Ms I Kennedy**: That would bring a certain weight to the policy statement.

1445. **Mr Elliott**: "Consulted" does not mean that the policy is in place.

1446. **Ms I Kennedy**: It adds a certain weight and movement towards the policy being in place.

1447. **Mr Elliott**: So, as soon as the consultation takes place, clauses 2 and 6 would automatically go into effect?

1448. **Ms I Kennedy**: Obviously, we would have to review where we are at that time, but the intention is that guidance and elaboration will be available on clauses 2 and 6 at the time that we commence them. That will provide more elaboration on what is meant by those clauses. It is possible to commence clauses without that guidance being available. You could introduce and commence clauses 2 and 6 without that.

1449. **Mr Elliott**: I have some sympathy with some of the lobby groups about clauses 2 and 6 but, on balance, I am broadly in favour from the economic perspective. I just think we are getting into a bit of a mess. There is no firm outcome, and, as I listen, I am getting even more confused about the process, because we do not know whether clauses 2 and 6 will apply as soon as the consultation is complete or when the draft policy is proposed. Do we wait until the full policy is in place? It is very ambiguous.

1450. I believe that there is a better opportunity for a better system, which is that you could build in a reporting mechanism to the Assembly for those two clauses, and you could say that the Department has to report to the Assembly on their workings. That has applied in other Bills. That could be done over a two-year or a three-year period. I do not mind what period it is, but it would at least give the Assembly an opportunity to review the workings

of those clauses and see how they operate. To my mind, this introduction method has the potential to go wrong. We heard Simon Hamilton say that he is not at all happy. I do not think that this is the proper way to go about it. A reporting mechanism would be much better.

1451. **The Chairperson**: As I understand it, Irene, that is already in place: we can review it in about three years.

1452. **Ms I Kennedy**: Yes. That is from the commencement of the 2011 Act. It requires the Department to review the operation of Part 3 of the Act within three years, and further reviews are required subsequently.

1453. **The Chairperson**: That is already in place.

1454. **Mr Elliott**: Is that a reporting mechanism to the Assembly?

1455. **Ms I Kennedy**: If you bear with me, I will check. I think that the Department has to prepare a review. Section 228 of the 2011 Act states:

"(1) The Department must—

(a) not later than 3 years after the commencement of Part 3 of this Act"

— that is the planning control part —

"(b) at least once in every period of 5 years thereafter,

review and publish a report on the implementation of this Act."

1456. **The Chairperson**: Irene, that will not start until 2015 under this Bill.

1457. **Mr Elliott**: Can we not then build a reporting mechanism into this Bill for those two clauses?

1458. **Ms I Kennedy**: You could. That is certainly a possibility.

1459. **The Chairperson**: That would require an amendment from the Committee.

1460. **Ms I Kennedy**: You would have to decide what the time period would be. It is a possibility, similar to the provision in the 2011 Act.

1461. **Mr Elliott**: I think that that is a better way of doing it.

1462. **Mr Weir**: That is quite an interesting idea, Tom, and there is a lot of merit in it. Presumably, on that same basis, you would have the commencement of those provisions at the same time as Royal Assent?

1463. **Mr Elliott**: Yes.

1464. **Mr Weir**: That would mean that you would have a definitive time. If you had a definitive time for when those would take effect, and, if it were at Royal Assent, it would, to some extent, throw the onus back on the Department to say that there are certain things that need to be done. You would hope that they would be done by such and such a time, and it puts the onus on the Department to get things ready at its end. That means that you would have certainty on the commencement of clauses 2 and 6, with the reporting mechanism.

1465. **Mr Hamilton**: We would have to amend clause 27, which is on commencement. We would have to add clauses 2 and 6 to the list.

1466. **Ms I Kennedy**: That is correct.

1467. **The Chairperson**: We are talking about amending the commencement dates of the clauses. We need to give Tom's suggestion to the Bill Office to look at. We need to ask the Clerk of Bills to look at that and bring it back to us next week.

1468. **Mr Weir**: That would be sensible. If there is a reporting mechanism, the logic of that is that clauses 2 and 6 are linked with the list of the clauses that are coming in at the time of Royal Assent, which requires an amendment to clause 27.

1469. **The Committee Clerk**: May I seek clarification on the process, Chairperson?

1470. **The Chairperson**: Yes.

1471. **The Committee Clerk**: The Committee had intended to do its formal clause-by-clause consideration today, on the

assumption that it did not have any amendments. However, given the issues that have arisen, may I clarify whether the Committee is content to postpone its formal clause-by-clause scrutiny for a week to allow time to look at these issues? The Bill Office can look at them as well, but, usually when the Committee comes up with suggestions for amendments, we would ask the Department to look at them as well. Perhaps we could ask the Department to come back next week with its views on the issues that the Committee has identified today.

1472. **Mr Elliott**: We cannot go ahead with the formal clause-by-clause scrutiny.

1473. **Mr Hamilton**: We have to stop. If we cannot agree a clause, we have to stop.

1474. **The Committee Clerk**: It would be much cleaner to defer it for a week. Any possible amendment could require consequential amendments that the Committee may not be able to anticipate today. The Committee could formally agree a clause, only to realise next week that, in fact, it requires a consequential amendment.

1475. **The Chairperson**: We will leave it until next week. Are members content with that approach?

1476. **Members indicated assent.**

1477. **Mr Weir**: If we are getting advice from the Bill Office about Tom's suggested amendment and an amendment to clause 27, are we to assume that there are no other issues that we need to raise with the Bill Office? There is no point in coming back next week, only for someone to come up with another suggestion. I am not aware of any additional matters, but we may as well clarify that now.

1478. **The Committee Clerk**: That is absolutely right, Chairperson. We have to have the formal clause-by-clause scrutiny next week, and the decisions that will be made at that meeting will be final. If there are any other issues, now is the time to identify them.

1479. **The Chairperson**: OK. I want it on record that I was not content with clause 2. I circulated an amendment that was not agreed by the Committee. I intend to table an amendment in future. I may get lucky. *[Laughter.]*

1480. **Mr Hamilton**: Do not use phrases like "get lucky". *[Laughter.]*

1481. **Mr Weir**: I fear that your dalliance with Simon the last time round was very much a one-night stand. *[Laughter.]*

1482. **The Chairperson**: No more of that. Irene, Brian and Simon, thank you very much. We will see you next week.

30 May 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

Mr Brian Gorman	*Department of the Environment*
Ms Irene Kennedy	
Mr Simon Kirk	
Mr Ian Maye	

1483. **The Chairperson**: I welcome Irene Kennedy, Brian Gorman, Simon Kirk and Ian Maye, who are here to brief the Committee on their response. Irene, do you want to start?

1484. **Ms Irene Kennedy (Department of the Environment)**: Thank you. Chair, we wrote to the Committee yesterday evening, setting out our response to the two potential amendments. Amendment No 1 would mean that, from the date of Royal Assent, policymaking by the Department under part II and part III of the Planning (Northern Ireland) Order 1991 must be carried out with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development, and, in doing so, attention must be paid to the desirability of achieving good design.

1485. In clause 6, an amendment to affirm that the reference to material considerations in the determination of planning applications includes a reference to any economic advantages or disadvantages likely to result from the grant or refusal of planning permission will also apply from the date of Royal Assent. Subject to Executive agreement, the Minister agrees to support this and take it forward as a departmental amendment at Consideration Stage. The Department will work to expedite the associated policy and guidance.

1486. We suggest that clause 27(1) be amended to include reference to clauses 2(1) and 6(1) and have circulated an amendment to that effect.

1487. **The Chairperson**: Do members have any comments on that?

1488. **Mr Hamilton**: That is fine.

1489. **The Chairperson**: Irene, at the last meeting, we talked about whether this amendment would make our three-year review messy, given that we will also review the 2011 Act. There is also mention of a review when it comes into operation in 2015. What will be the timescale for that?

1490. **Ms I Kennedy**: It will depend on when the clause is commenced. What we have drafted — it is really encompassed in amendment No 2 — is that the review will be three years from the date of commencement, which, we hope, will be towards the end of this year. That would mean a review in 2016 specifically looking at clauses 2 and 6. There will be similarities, but I suppose that you are looking specifically at the outworkings of those two areas, and, later, the wider review will also pick those up.

1491. **The Chairperson**: Will the review of the 2011 Act be a wider review?

1492. **Ms I Kennedy**: Yes, it will include the operation of the 2011 Act, the reformed system and the transferred system with most planning functions devolved to council.

1493. **The Chairperson**: Will that be in 2018?

1494. **Ms I Kennedy**: Yes.

1495. **The Chairperson**: OK, so that is a gap of two years. What —

1496. **Ms I Kennedy**: Potentially, it depends on the date of commencement.

1497. **The Chairperson**: All that you can say, then, is that, in 2018, if you have already done the review of clauses 2 and 6, you could skip the —

1498. **Ms I Kennedy**: You would probably provide comment on that. Then, in 2018, you would be looking at the situation with the powers transferred to councils, so that will be a slightly different context.

1499. **The Chairperson**: Are members content with that?

Members indicated assent.

1500. **The Chairperson**: That is really all that we need from you, Irene. Is that right?

1501. **Ms I Kennedy**: Yes, certainly. The Department, in its response, sets out its approach to amendment No 2.

1502. **The Chairperson**: OK. Let me see where we are now.

1503. **Mr Boylan**: Before we go on, Irene, once enacted, by when — date and year — will clauses 2 and 6 be in operation for planning applications?

1504. **Mr Ian Maye (Department of the Environment)**: From the date of Royal Assent.

1505. **Mr Boylan**: Which will be?

1506. **Mr Maye**: It depends on when the Bill completes its remaining stages.

1507. **Mr Boylan**: *[Inaudible due to mobile phone interference.]*

1508. **Mr Maye**: *[Inaudible due to mobile phone interference.]*

1509. **Mr Hamilton**: *[Inaudible due to mobile phone interference.]*

1510. **The Chairperson**: Irene, we hear all the time that the single strategic planning policy statement (SPPS) will be put in place before clauses 2 and 6 are in operation. Can that still happen? Will you have the SPPS ready for planners before the commencement of clauses 2 and 6?

1511. **Mr Maye**: The simple answer is no. We are still on schedule, according to our timetable, to publish the first draft of the SPPS before the end of this calendar year. That is our firm target. It may well be possible to publish in advance of this provision and the Bill receiving Royal Assent, but it may be around the same time.

1512. **The Chairperson**: This will need to go out to consultation, though. Is that what you were saying?

1513. **Mr Maye**: That is only the consultation document. We intend to have in place the final policy statement before the transfer of functions to local government on 1 April 2015, so we have built that into our delivery timetable.

1514. **The Chairperson**: So there will be a gap of a year between your having the final version of the SPPS and the commencement of the new clauses?

1515. **Mr Maye**: Yes, but it will be framed in the context of those clauses. As part of the preparation process, it will be put together with clauses 2 and 6 in mind. The other point is that we have not yet determined what weight will be accorded to the draft single strategic planning policy statement when it is published for consultation. Significant weight may not be attached to it at that point, but it may have some material weight in the planning process.

1516. **The Chairperson**: OK, but, essentially, are the planners still working on all the planning policy statements?

1517. **Mr Maye**: Yes.

1518. **The Chairperson**: Right. So there will be a gap of a year and a half between the existing planning policy statements and the new SPPS when the two clauses are in operation.

1519. **Mr Maye**: Roughly, yes.

1520. **The Chairperson**: How will that impact on the life of the planners? Will they

look at both: the draft SPPS and the current PPS?

1521. **Mr Maye**: Yes, and they do that routinely as we introduce planning policy statements under the existing regime. The existing planning policy statement will continue to carry weight until the final planning SPPS is adopted by the Executive. So a transitional period is built into the preparation of all policy. We deal with that as a matter of course and advise our colleagues in the operational teams on how to deal with those issues and what weight to give policies at various stages of preparation.

1522. **The Chairperson**: Will we be criticised for putting the cart before the horse by commencing clauses 2 and 6 without the SPPS?

1523. **Mr Maye**: That is for others to judge. Certainly, following discussions with the Minister, the Department does not think that it would pose any insuperable problems to the operation of the planning system or the preparation at this point.

1524. **The Chairperson**: How will we reassure stakeholders, many of whom objected to clauses 2 and 6 on the grounds that they would add extra weight to economic development? All along, the assurance from the Department at the stakeholder event or briefings here has been that clauses 2 and 6 would be addressed by the new SPPS, which will define and clarify what economic development is and what constitutes sustainable development requires. So how will we assure stakeholders that clauses 2 and 6 will not add weight to economic development?

1525. **Mr Maye**: On the Department's responsibilities, stakeholders will have to judge us by our actions when the Bill receives Royal Assent and those new provisions bite on the operation of the planning system.

1526. **The Chairperson**: I have a serious concern. I believe that you said that the SPPS would be in place at the same time as the Bill achieves Royal Assent. If that were so, I would be content to support the amendment. However, knowing that there will be a gap, meaning confusion for a year and a half, I feel that I certainly cannot support the amendment. I will put that to other members. Tom has just come in. We are discussing amendment No 2. Tom, you raised the issue of a review. The Department has tabled an amendment on that. Are you content with that?

1527. **Mr Elliott**: Yes.

1528. **The Chairperson**: That means that, in 2016, we will have a review of clauses 2 and 6. In 2018, we will have a review of the Planning Act 2011. Have members any comments on that?

1529. **Mr Hamilton**: I am content.

1530. **Mr Boylan**: It is grand, Chair.

1531. **The Chairperson**: It is grand? I thought that you had raised your hand.

1532. **Mr Boylan**: No, I am fine. I have asked my question. I am just wondering whether anyone else will ask about clauses 2 and 6 before we start.

1533. **The Chairperson**: OK. Members, I would like to put this to a vote. Is that the right way to do it?

1534. **The Committee Clerk**: Chairperson, we are about to embark on formal clause-by-clause consideration. As the Committee goes through each clause, it can indicate whether it is content. If any member wants to raise an objection to a particular clause, that would be the time to do so.

1535. **The Chairperson**: What about the amendments suggested by the Department? Will we deal with them now?

1536. **The Committee Clerk**: We have three proposed amendments from the Department. As you consider each clause in turn, on those with amendments — clauses 2, 6 and 27 — you can just put the Question that the Committee is content with, say, clause 2 subject to the proposed amendment.

1537. **The Chairperson**: OK. We will do that, then. The departmental staff will stay with us. Is that correct?

1538. **Mr Maye**: We will stay.

1539. **Mr Hamilton**: Sure what else would they be doing? *[Laughter.]*

1540. **The Chairperson**: Well, it is fairly straightforward. We will now commence formal clause-by-clause consideration of the Planning Bill. Members, you have been provided with the Bill, written submissions and other documents. Formal clause-by-clause consideration is the final opportunity to discuss the clauses. Any decisions will be final. The Bill has 28 clauses, and the Committee shall now consider each clause in turn.

Clause 1 (Statement of community involvement)

1541. **The Chairperson**: Members previously indicated that they were broadly content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 1 agreed to.

Clause 2 (General functions of the Department and the planning appeals commission)

1542. **The Chairperson**: Members received legal advice on this clause at our meeting on 16 May. The Department also explained why a proposed amendment suggested by Community Places was not acceptable to it. Members then indicated that they were broadly content with the clause.

1543. Is the Committee with the clause 2, as amended?

1544. **Mr Hamilton**: It is not amended.

1545. **The Committee Clerk**: It should be that the Committee is content with clause 2, subject to the proposed amendment.

1546. **The Chairperson**: Sorry. The amendment is in your papers. In page 2, line 1, at end insert

"(3) The Department must, not later than 3 years after the coming into operation of section 2(1) of the Planning Act (Northern Ireland) 2013, review and publish a report of the implementation of this Article.

(4) The Department must make regulations setting out the terms of the review."

1547. **Mr Hamilton**: Do you want to divide on that?

1548. **The Chairperson**: Yes. I want to put this to a vote

Question put, That the Committee is content with the clause, subject to the proposed amendment.

The Committee divided:

Ayes 7; Noes 1.

AYES

Mr Boylan, Mr Elliott, Mr Hamilton, Mrs D Kelly, Mr Milne, Lord Morrow, Mr Weir.

NOES

Ms Lo.

Question accordingly agreed to.

Clause, subject to the proposed amendment, agreed to.

Clause 3 (Meaning of development)

1549. **The Chairperson**: We previously indicated that we were broadly content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 3 agreed to.

Clause 4 (Publicity etc., in relation to applications)

1550. **The Chairperson**: Again, we indicated that we were broadly content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 4 agreed to.

Clause 5 (Pre-application community consultation)

Question, That the Committee is content with the clause, put and agreed to.

Clause 5 agreed to.

Clause 6 (Determination of planning applications)

1551. **The Chairperson**: Members received legal advice on this clause at the meeting on 16 May. Members then indicated that they were broadly content with the clause.

Question put, That the Committee is content with the clause, subject to the proposed amendment.

The Committee divided:

Ayes 8; Noes 1.

AYES

Mr Anderson, Mr Boylan, Mr Elliott, Mr Hamilton, Mrs D Kelly, Mr Milne, Lord Morrow, Mr Weir.

NOES

Ms Lo.

Question accordingly agreed to.

Clause, subject to the proposed amendment, agreed to.

Clause 7 (Power to decline to determine subsequent application)

1552. **The Chairperson**: Members previously indicated that they were broadly content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 7 agreed to.

Clause 8 (Power to decline to determine overlapping applications)

Question, That the Committee is content with the clause, put and agreed to.

Clause 8 agreed to.

Clause 9 (Aftercare conditions for ecological purposes on grant of mineral planning permission)

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clause 10 (Clause 10: Public inquiries: major planning applications)

1553. **The Chairperson**: Members were briefed by the Department on this clause at the meeting on 16 May, when they were informed that the power to appoint persons other than the Planning Appeals Commission (PAC) would be used only as a last resort and only if the PAC's workload was too much. Members then indicated they were broadly content with that explanation and the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 10 agreed to.

Clause 11 (Appeals: time limits)

Question, That the Committee is content with the clause, put and agreed to.

Clause 11 agreed to.

Clause 12 (Matters which may be raised in an appeal)

Question, That the Committee is content with the clause, put and agreed to.

Clause 12 agreed to.

Clause 13 (Power to make non-material changes to planning permission)

Question, That the Committee is content with the clause, put and agreed to.

Clause 13 agreed to.

Clause 14 (Aftercare conditions imposed on revocation or modification of mineral planning permission)

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 15 (Planning agreements: payments to departments)

1554. **The Chairperson**: Members previously indicated that they were broadly content.

Question, That the Committee is content with the clause, put and agreed to.

Clause 15 agreed to.

Clause 16 (Increase in penalties)

1555. **The Chairperson**: Members were briefed by the Department on this clause at the meeting on 16 May, when they were informed that the level of fine to be imposed in particular cases is a matter for the courts. However, the increase in the maximum level of fines to be made available under the proposed changes provides additional latitude for the courts to exercise their discretion in sentencing. Members then indicated that they were broadly content with that explanation and the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 16 agreed to.

Clause 17 (Conservation areas)

Question, That the Committee is content with the clause, put and agreed to.

Clause 17 agreed to.

Clause 18 (Control of demolition in conservation areas)

Question, That the Committee is content with the clause, put and agreed to.

Clause 18 agreed to.

Clause 19 (Tree preservation orders: dying trees)

1556. **The Chairperson**: Is the Committee content with clause 19 as drafted?

Question, That the Committee is content with the clause, put and agreed to.

Clause 19 agreed to.

Question put a second time and negatived.

Clause 20 (Fixed penalties)

Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clause 21 (Power of planning appeals commission to award costs)

Question, That the Committee is content with the clause, put and agreed to.

Clause 21 agreed to.

Clause 22 (Grants)

Question, That the Committee is content with the clause, put and agreed to.

Clause 22 agreed to.

Clause 23 (Duty to respond to consultation)

Question, That the Committee is content with the clause, put and agreed to.

Clause 23 agreed to.

Clause 24 (Fees and charges)

Question, That the Committee is content with the clause, put and agreed to.

Clause 24 agreed to.

Clause 25 (Duration)

Question, That the Committee is content with the clause, put and agreed to.

Clause 25 agreed to.

Clause 26 (Interpretation)

Question, That the Committee is content with the clause, put and agreed to.

Clause 26 agreed to.

Clause 27 (Commencement)

1557. **The Committee Clerk**: There is a proposed amendment to clause 27.

1558. **The Chairperson**: Yes. At last week's meeting, the Committee indicated that it may wish to amend clause 27 to include clauses 2 and 6 in the list of clauses to be commenced at Royal Assent. An

amendment has been proposed, which is amendment No 1.

1559. **Mrs D Kelly**: What is the impact of that?

1560. **The Chairperson**: I will read it out. In page 16, line 31, after "1" insert

" 2(1), 6(1),"

1561. That means that clauses 2 and 6 are to be included in the list of commencements on Royal Assent.

1562. **Mrs D Kelly**: That is grand.

1563. **The Chairperson**: As previously discussed, I want to express concerns that there will be a gap between proper guidance or revised guidance and the commencement of the two new clauses. We need to put this to a vote.

Question put, That the Committee is content with the clause, subject to the proposed amendment.

The Committee divided:

Ayes 8; Noes 1.

AYES

Mr Anderson, Mr Boylan, Mr Elliott, Mr Hamilton, Mrs D Kelly, Mr Milne, Lord Morrow, Mr Weir.

NOES

Ms Lo.

Question accordingly agreed to.

Clause, subject to the proposed amendment, agreed to.

Clause 28 (Short title)

Question, That the Committee is content with the clause, put and agreed to.

Clause 28 agreed to.

Long title agreed to.

1564. **The Chairperson**: We have now concluded the formal clause-by-clause consideration of the Planning Bill. Thank you all for going through the Bill with us. In particular, Irene and Angus, you have been at every meeting, so thank you very much.

4 June 2013

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Sydney Anderson
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Mr Peter Weir

1565. **The Chairperson**: We will go straight into our discussion on the draft Committee report on the Planning Bill. That is at page 14 of members' packs. I hope members have had an opportunity to read through the draft report. Does anybody need any time now to read through it? Are you happy for me to continue?

Members indicated assent.

1566. **The Chairperson**: OK. Obviously, we are just looking at a draft and we can amend the report. The final report will be provided for us on Thursday, and that is when we will have to sign off on it. The Committee Clerk has spotted a number of typographical errors, so there is no need to worry about those. They will be corrected for the final report. I will go through the draft report section by section rather than paragraph by paragraph, if that is OK?

Members indicated assent.

1567. **The Chairperson**: OK. If we turn to pages 18 to 19, paragraphs 1 to 11 contain the Executive Summary. I wanted, before the first sentence of paragraph 6 —

1568. **Mrs D Kelly**: It is the large 18, rather than the small, I think.

1569. **The Chairperson**: Yes, at the top of the page. Sorry.

1570. **Mr Elliott**: Sorry, what was that?

1571. **The Chairperson**: Has everyone got to page 15? Sorry, page 18, at the top right-hand corner. Sorry, left-hand corner. I am looking at my draft because I have made notes on it.

1572. At paragraph 6, I thought we could add a sentence, although I am open to discussion. It could read something like:

"following legal advice and clarification from departmental officials, the Committee is satisfied".

1573. It would just add a bit of preamble.

1574. **Mrs D Kelly**: You could say, Chair:

"the Committee sought and received legal advice and clarification."

1575. **The Chairperson**: Yes, and:

"it is satisfied that this is not the case."

1576. Just a line, half a sentence there. Are members OK with that?

Members indicated assent.

1577. **The Chairperson**: Next, turn over to page 19. In paragraph 10; the second line reads, "that these concerns are unfounded". I thought that might be a bit bald. Do members agree that we use the word "unsubstantiated" rather than "unfounded"? The voluntary sector might say that those concerns are founded on their expertise or their understanding.

1578. **Mrs D Kelly**: Chair, that was in consideration of the legal advice sought. You could set it in the context that there are fears, at this stage, that we believe to be unfounded or unsubstantiated. However, in order to be satisfied that a review — a review is a good idea; the latter part of that is fine.

1579. **The Chairperson**: I think that we should change the word "unfounded" to "unsubstantiated", as it may be a better word. Is that OK?

Members indicated assent.

1580. **The Chairperson**: Dolores, we did say there that we believed that, nonetheless, there would be value in undertaking a review.

1581. **The Committee Clerk**: Apologies for interrupting, Chair, but the reference to "unfounded" in the Executive Summary reflects the fact that the Committee says, later in the document, that it believes that those concerns are unfounded. Is it the Committee's view that we should change those subsequent references as well?

1582. **Mr McElduff**: I would be inclined to change them because both those amendments suggest that your point is rooted in evidence. "Unfounded" suggests that you just do not believe it, but if it is unsubstantiated, it means that there is no evidence to back it up or insufficient evidence to carry it through.

1583. **The Chairperson**: The word "unfounded" appeared a couple of times in the later pages, so we will change that word throughout. Instead of "unfounded" we will use "unsubstantiated". Thanks to the thesaurus, we found a different word.

1584. So, turning to page 20; the recommendations from the Committee are in paragraphs 12 to 16. Are members content?

Members indicated assent.

1585. **The Chairperson**: OK, we will move on then to pages 22 to 24, paragraphs 18 to 37. At the first line of paragraph 27, I think we should add "draft" planning policy statement (PPS) 24; I do not think it was PPS 24 that we went out for consultation on. Can we double check that? I think it was draft PPS 24. Are members content?

Members indicated assent.

1586. **The Chairperson**: OK. Next, we come to pages 25 to 34. There is a word in the second line at the top of page 14, which I think we should change to "implicitly".

1587. **Mrs D Kelly**: Page 27.

1588. **The Chairperson**: Sorry, page 27, the second line should read "It implicitly attempts". I do not think there is such a word as "impliedly".

1589. **Mrs D Kelly**: No, there is not.

1590. **The Chairperson**: OK. That is really all, members. Any other issues up to page 34? No?

1591. Are members content with appendix 1, which contains the minutes of proceedings?

Members indicated assent.

1592. **The Chairperson**: OK. Are members content with appendix 2, which contains the minutes of evidence?

Members indicated assent.

1593. **The Chairperson**: Are members content with appendix 3, which contains the written submissions?

Members indicated assent.

1594. **The Chairperson**: Are members content with appendix 4, which shows the list of witnesses?

Members indicated assent.

1595. **The Chairperson**: Are members content with appendix 5, which comprises other papers submitted to the Committee?

Members indicated assent.

1596. **The Chairperson**: Are members content with appendix 6, which contains the Research and Library Service research papers?

Members indicated assent.

1597. **The Chairperson**: Members, are there any other issues that you might want to address or to be included in the report?

1598. **Mr Elliott**: Was the meeting that we had in the Long Gallery recorded by Hansard?

1599. **The Chairperson**: Yes.

1600. **Mr Elliott**: We will need to attach an appendix for that as well.

1601. **The Chairperson**: That forms part of the minutes of evidence.

1602. OK. We will table and sign off on the final report at our meeting on Thursday. That is it, members. See you on Thursday. Thank you very much.

Appendix 3

Written Submissions

Adrian Guy

Dear Sir or Madam

I would like to object to the new proposals regarding planning as it would have an adverse effect to our local rivers. I agree with the views of Friends of the Earth

regards

Adrian Guy

Alan Tedford

From: Name: On Behalf of Alan Tedford
Address: 58 Mount Michael Park
Belfast BT 8 6JX

My objections to the Planning Bill with proposals for change are as follows and relate to Clauses 2, 5, 6, 10 and 20.

As a general comment, the Bill proposes double counting of economic development; this means primacy for economic development; this is not the objective of the planning system.

1. **Clause 2** should be reworded to include a definition of sustainable development, and the sub-clause regarding economic development should be removed.

I think the following overarching policy on sustainable development be included in Clause 2:

It shall be the principal objective of local and neighbourhood plans to ensure sustainable patterns of development which improve the quality of life of all people, while respecting environmental limits and the ability of future generations to enjoy a similar quality of life.

In order to uphold this objective, all land use policies and decisions must enshrine the principles of:

environmental justice: putting people at the heart of decision making, reducing social inequality by upholding environmental justice in the outcomes of decisions;

inter-generational equity: ensuring current development does not prevent future generations from meeting their own needs;

environmental limits: ensuring that resources are not irrevocably exhausted or the environment irreversibly damaged. This means, for example, supporting climate mitigation, protecting and enhancing biodiversity, reducing harmful emissions, and promoting the sustainable use of natural resources (including those outside Northern Ireland);

resource conservation: ensuring that planning decisions assist in the prudent and sustainable use of finite natural resources (including resources sourced outside Northern Ireland);

the precautionary approach: the precautionary principle holds that where the environmental impacts of certain activities or developments are not known, the proposed development should not be carried out, or extreme caution should be exercised in its undertaking;

the polluter pays: ensuring that that those who produce damaging pollution meet the full environmental, social and economic costs;

the proximity principle; seeking to resolve problems in the present and locally, rather than passing them on to other communities globally or future generations;

public participation; ensuring that there are meaningful opportunities for people to engage in the planning decision-making process.

2. **Clause 5** should include the introduction of a Third Party Right of Appeal.

3. **Clause 6** should be removed from the Bill because it means any applicant can claim economic advantage by gaining permission, lots of people can object claiming disadvantage if something is given permission.

4. **Clause 10** should be amended to allow the Planning Appeals Commission to appoint temporary commissioners as needed.

5. **Clause 20** should be clarified to make it clear that Fix Penalty Notices are not in lieu of enforcement action, and that further action will be taken if breaches are not remedied.

Anja Rosler

Dear Sir or Madam,

I would like to make the following response to the consultation re the above Bill. In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law. My principal reasons for opposing the Bill are:

1. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

2. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists.

3. The planning system would be overburdened and slowed with appeals by developers, making it effectively unworkable.

4. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people.

5. There would be no way of monitoring compliance with the economic conditions of planning approval.

6. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit.

7. It is inappropriate to introduce such devastating change to the planning system in this manner and a full public consultation should be carried out.

In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

Anja Rosler

Antrim and District Angling Association Submission

To the Environmen t Committee

The Antrim and District Angling Association has considered the content of the Northern Ireland Planning Bill 2013 and has major concerns with its content.

For many years the Association's members have struggled with the results of previous planning decisions and more recently were involved in planning decisions associated with Parkgate Quarry, Ballyclare Bypass etc. We have expressed our concerns on many occasions and the Planning Bill as proposed does not give us the protection in terms of our angling and wildlife interests on the Six Mile River System.

The Association has over 400 members and also provides angling opportunities for many members of the public through day ticket sales. It has therefore a major interest in this Bill.

We feel the response to the Bill prepared by the Friends of the Earth reflects our concerns and we have therefore agreed that this be taken as our response to the Bill.

I have attached the FOE document for you attention.

Regards.

Maurice Parkinson, Chairman of the Antrim and District Angling Association.

Antrim Borough Council

Our Ref: DMcC/KS

15 March 2013

Mr Sean McCann
Assistant Clerk
Environment Committee
Northern Ireland Assembly
Room 247
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Stormont Estate
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email - doecommittee@niassembly.gov.uk

Dear Mr McCann

RE: PLANNING BILL - CALL FOR WRITTEN EVIDENCE

The attached paper reflects the corporate opinion of Antrim Borough Council and incorporates discussions that have taken place with other Northern Ireland Councils, the NILGA Planning Working Group and the Transfer of Functions Working Group Planning Sub-Group.

The paper sets out strategic and specific considerations before progressing to a clause-by-clause review of the draft Bill.

Thank you for the opportunity to participate in the consultation exercise.

Yours sincerely

DAVID McCAMMICK
Chief Executive

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Strategic Considerations

The Planning Bill (Clause 2 (1) a, b, c) proposes that the Department or the PAC must exercise their planning function with the objective of:

- Furthering sustainable development;
- Promoting or improving well-being; and;
- Promoting economic development.

The latter two objectives are new additions to the Planning Act 2011 and the 1991 Order. The promotion of economic development is a fundamental change to the purpose of the planning system that is not reflected in comparable legislation in other UK jurisdictions. Promoting economic development can be found in the policy approach in other jurisdictions, but it is not embedded in the legislation.

The current overarching Planning Policy Statement for Northern Ireland (PPS1) outlines the current purpose of the planning system:

"The town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance. It is important to distinguish those matters which planning can influence from those which are outside its control. The central concerns of the planning system are to determine what kind of development is appropriate, how much is desirable, where it should best be located and what it looks like".

PPS 1 outlines 'issues of acknowledged importance' but does not currently single out promotion of economic development as a key objective. When a principle such as this is established in the primary legislation it could introduce an inconsistency with other legal provisions required in respect of environmental obligations. A policy approach through the modification of PPS1 may be a more appropriate mechanism through which to introduce the desire to promote economic development rather than primary legislation.

The promotion of economic development is not in itself a negative provision, but it must be considered in the context of existing environmental and sustainable development obligations. There could be a legitimate risk that the specific introduction of the provision – without adequate balance - into legislation *may* promote the degree of importance attached to such consideration and give it determinative weight in the planning process. This could undermine the provisions within development plans and other matters of acknowledged importance i.e. social and environmental considerations.

Specific Considerations

A number of initial areas are highlighted:

- Clause 6 specifically mentions economic advantages and disadvantages as material considerations. The same concerns as outlined in the strategic considerations would apply – are these considerations going to have greater weight in the decision making process, if not then it is questionable as to the value / appropriateness of their inclusion? And is the Planning Bill necessarily the appropriate vehicle to strengthen economic development considerations?

- Clause 15 relates to payments, under Article 40 Agreements, to be made to any Government Department - not just the DoE. This should be extended to local councils. On a related issue, it should be noted that the Department receives £10,000 for every Environmental Statement (ES) requiring consideration as part of the application process. Whilst the Department receives the ES, it is usually forwarded to consultees - including the Council - for assessment, without any consideration of the re-distribution of fees to reflect the additional work required, and the likely resource impact that this may have. It may be appropriate to consider this matter as part of the payments by to departments in the context of the widened scope to include local councils.

- In all likelihood, local councils would also want to be closely involved in the formulation of the Development Order as outlined in Clause 23, and which will set-out consultation response procedures. This will be a critical element of the potential to improve performance, the ability to enforce compliance with consultation requests, or progress determinations in the absence of responses from other Government Departments will be critical. It may be appropriate that, where no adequate responses are received by the agreed dates, there is provision for this to be considered as a non-objection (at the risk of the consultee).

- Other changes proposed by the Bill relate to achieving consistency with other legislative / EU requirements e.g. Clause 3 on the meaning of development brings consistency with EIA regulations. As outlined above, this could be undermined by the integration of economic considerations into the primary legislation.

Context & Introductory Comments

The Planning Bill (NI) will make legislative changes to improve the efficiency and effectiveness of the planning system agreed by the previous Assembly available to the Department in advance of the transfer of planning functions to councils. It therefore brings forward amendments to The Planning (Northern Ireland) Order 1991 which reproduce provisions in the 2011 Act.

The Bill also introduces additional provisions to underpin the role of planning in promoting economic development through amendments to both the Planning (Northern Ireland) Order 1991 and the 2011 Act.

The local government sector welcomed the publication of the Planning Bill (NI) in 2010, and supports the attempts to introduce the new structures necessary for a more effective planning system. However, there remains concern that so much still relies on the production of secondary legislation and guidance.

This paper in no way supersedes or amends any previous submissions to the Bill. It has been prepared as a direct response to the additional provisions introduced by the Bill which seek to underpin the role of planning in promoting economic development, on a clause by clause basis, each of which are discussed in more detail below.

Some other matters occur:

Financial implications of the Bill:

In the Memorandum, the Department states that *'any potential increase in costs should be offset by the benefits of more efficient processes.'* These observations relate only to the costs of the Department and do not take into account the costs of others involved in the planning process and most specifically the consultees. No account has been taken of the additional resources that may be required to ensure that consultees respond within the new shorter time frame.

It is also noted that in the appeals process, the appellant may recover costs if the Council had made a decision and loses the appeal. As the local government sector will be carrying out an entirely new function with no precedent locally, and possibly without robust Area Plans, policies or procedures in place the Councils could, conceivably, lose a significant number of appeals. This in turn would have significant cost implications for Councils and this would require detailed assessment.

Extent of the Consultation:

It is noted that this consultation exercise was not a public consultation. Whilst it is recognised that this may have extended the time frame in respect of introducing and completing the process, it was felt the nature of the changes proposed ought to have been subject to a public consultation.

Explanatory and financial memorandum:

The Planning Bill has been supported by an explanatory and financial memorandum. It was the view of officers that this memorandum was very useful in assisting in the understanding of the intent of the legislation.

Comment: *In light of all of these factors, the planning reform timetable appears ambitious and may not be achievable.*

Clause 1: Statement of Community Involvement

This clause introduces the requirement for the Department to produce a statement of its policy for involving the community in its development plan and planning management functions within one year of the clause coming into operation.

Comment: *Further regulations will set out how the DOE should go about preparing a Statement of Community Involvement and what it should contain. What evidence does the Department have that the proposed one year delivery timeframe is viable, especially in lieu of the 'in situ' planning deficit within the local government sector? At a practical level, the Department's SCI may not be published until late 2014 if the Bill is commenced in December 2013, leaving Councils only six months prior to the proposed transfer of planning functions. This is not sufficient, and consideration of this is urgently required – perhaps a Clause 1 (b) could be introduced to accommodate a working arrangement between the Department and the 11 council clusters in respect of SCIs in advance of the transfer?*

Furthermore, these regulations are likely to stipulate that community groups and the public should be involved in the preparation of this statement. Again, the details as to how this will happen are scant. As this is a process that the Councils will have to carry on after the transfer of functions (ToF), it is incumbent upon DOE to ensure that the process is efficient, fit for purpose and fully and adequately resourced.

Arguably it is the Council who is better informed regarding the local community whereas the DOE is removed from this local context. Further clarity on this issue is required, particularly with regard to future governance arrangements, the adoption of updated development plans/policies and the attendant resource issues that will play a major part in determining the effectiveness of the local government sector in delivering the new planning system.

Clause 2: General functions of the Department and Planning Appeals Commission

The Bill introduces a new requirement for DOE and the Planning Appeals Commission, and local councils when they take on planning responsibilities, to carry out their functions with the objective of:

- Furthering sustainable development;
- Promoting or improving well-being; and,
- Promoting economic development.

They must also "have regard to the desirability of promoting good design."

Other provisions in the Planning Bill require the economic advantages or disadvantages of granting or refusing planning permission to be considered.

Comment: *Although this looks reasonably innocuous, it represents a fundamental shift in what the planning system has previously represented. It currently balances many material considerations such as environmental, heritage or social issues but this new clause implies that economic considerations may be given greater importance. The provision of the Bill which requires economic advantages and disadvantages to be considered is likely to be difficult in practice. For example, it is unlikely that any developer will put forward a case illustrating the economic disadvantages of a proposed development. The Bill should be re-worded to make it clear how economic benefits will be measured, or to provide a list of criteria with Local Government/councils to ensure regional consistency.*

NILGA has suggested that the inclusion of this clause, as subjective as it appears, may open the process up to scrutiny and challenge which may in turn lead to further delays. This is a very real possibility and as such, may be better confirmed in a PPS rather than primary legislation.

Of some concern is the fact that, following the consultation process in support of draft Planning Policy Statement 24 'Economic Considerations' in January 2011, the Minister determined not to adopt the policy. This clause suggests a change in that stance, and this needs to be clarified.

Clause 3: Meaning of development

This clause amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land to now include the structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.

Comment: *This is to be welcomed as it means that developers, in certain circumstances, can no longer demolish without planning permission. This is in line with Council's previous response to the April 2012 consultation process which considered demolition and development.*

Clause 4: Publicity etc. in relation to applications

This clause substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications for planning permission. The Department must not consider an application if the publicity requirements are not satisfied.

Article 25 as amended also makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination.

Similar amendments are made at Schedule 1 for applications for listed buildings consent.

Comment: *The Council has no objection to this Clause.*

Clause 5: Pre-application community consultation

Clause 5 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation.

Comment: *Pre application consultation will only be carried out for certain types of planning applications. Therefore it is important that the thresholds that are set to determine which applications will require pre-application consultation, and which ones will not, are appropriate. For example, pre-application consultation may not be required for large scale developments that are split into smaller phases (which in turn, may present a loophole that developers may exploit).*

Article 22A places an obligation on developers to consult the community in advance of submitting an application. The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate.

Comment: *There is no indication of what the community consultation requirements might entail. As this is an area which many developers have no experience of, clear guidance from the DOE is essential. Whilst the pre-application consultation is welcomed, it is felt that for it to be effective, it would have to be carried out within the context of an up to date development plan. This is currently absent in many areas of the region. Clarification is needed as to which types of development will be covered by this clause, and in relation to thresholds, guidance will be needed for developers. This should be drafted in partnership with local government.*

Clause 5 also inserts Article 22B which requires the applicant to produce a report indicating what has been done to comply with the pre-application community consultation requirements, and is required to accompany the application. The form of the pre-application consultation report may be set out in Regulations.

In addition Clause 5 inserts Article 25AB. If the pre-application community consultation requirements have not been complied with, the Department must decline to determine the application. The Department can request additional information in order to decide whether to decline the application.

Clause 5 also places a requirement upon the Department to include notices of pre-application community consultations and consultation reports in the planning register prepared in accordance with Article 124 of the Planning (Northern Ireland) Order 1991.

Clause 6: Determination of planning applications

Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

Comment: *See Clause 2 above.* The key issue is how much weight, relative to other factors, is to be given to economic considerations. A more extensive round of public consultation may have been helpful here.

Clauses 7 and 8: Power to decline to determine applications

These clauses extend the DOE's power to decline subsequent and overlapping applications for planning permission or listed building consent. It includes the power to decline applications where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine similar applications made on the same day, as well as the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.

Comment: *This is to be welcomed as it will prevent developers from submitting repeat applications on the same site. The Bill may be better served by strengthening the proposed terminology e.g. with 'shall' instead of 'may' where appropriate.*

Clause 9: Aftercare conditions for ecological purposes on grant of mineral planning permission

Comment: *Council has no objections to this Clause.*

Clause 10: Public inquiries: major planning applications

This clause amends Article 31 of the Planning (Northern Ireland) Order 1991 to allow the Department to appoint a person other than the Planning Appeals Commission to hold a public local inquiry [or hearing] to consider representations made in respect of any application to which Article 31 (major planning application) has been applied.

Comment: *The legislation states that persons other than the PAC can be appointed by the DOE to carry out public inquiries and conduct appeals. However, the Planning Appeals Commission currently falls under the remit of OFMDFM. The power to appoint "persons other than the PAC" should lie with OFMDFM rather than DOE to maintain the independence of these persons from the DOE.*

Clause 11: Appeals: time limits

Clause 11 reduces the period for making an appeal to the Planning Appeals Commission from six to four months or such other period as may be specified by development order.

Comment: *This Clause will ensure that planning decisions are not delayed unnecessarily by lengthy timescales associated with appeal procedures, although the English experience has not been altogether positive in this instance.*

Clause 12: Matters which may be raised in an appeal

Clause 12 inserts "Article 32A" in the Planning (Northern Ireland) Order 1991 so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that its not being raised was due to exceptional circumstances.

Comment: *This is to be welcomed as developers often bring revised or very different schemes to an appeal which may even have been approved in the first instance. This wastes time at an unnecessary appeal and may disadvantage the objectors as they have not had an opportunity to properly review the newly presented material.*

Clause 13: Power to make non-material changes to planning permission

This clause inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to make a change to a planning permission already granted 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. Consultation and publicity arrangements may be set out in Regulations.

Comment: *Council has no objection to this Clause.*

Clause 14: Aftercare conditions imposed on revocation or modification of mineral planning permission.

This clause inserts a provision at Article 38A of the Planning (Northern Ireland) Order 1991 which permits the Department to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under Article 38, provided a restoration condition is included or in place on the land/site.

Comment: *Council has no objection to this Clause.*

Clause 15: Planning agreements: payments to departments

This clause amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland department and not solely the Department of the Environment.

Comment: *This is to be welcomed and may result in monies becoming available for other uses. It is suggested that these payments should also be available to Councils in appropriate circumstances, perhaps in the form of the Community Infrastructure Levy (CIL) as implemented in England and Wales.*

Clause 16: Increase in Certain Penalties

This Clause increases the level of fine that can be handed out by the courts for damage to listed buildings or failing to prevent further damage to a listed building; hazardous substances offences; failure to comply with stop notices and other enforcement offences.

It increases the maximum level of fine, on summary conviction, for a range of offences relating to breaches of planning control or consents from £30,000 to £100,000.

Comment: *Council has no objection to this Clause, but would welcome an early engagement in any conversation on fees.*

Clause 17: Conservation areas

Clause 17 amends Article 50 of the Planning (Northern Ireland) Order 1991 to include provision that the Department must pay special attention to (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.

Comment: *Council has no objection to this Clause, although thought should be given to including applications in such areas within the parameters of the streamlined consultation process. This would, for example, enable applicants to respond more quickly to the regulations of, and ensure compliance with, Dangerous Structures Notices.*

Clause 18: Control of demolition in conservation areas

Clause 18 amends Article 51 of the Planning (Northern Ireland) Order 1991 by adding additional provision that any structural alteration to a building in a

conservation area, where the alteration consists of demolishing part of the building, shall be taken to be demolition for the purposes of Article 51.

Comment: *Council has no objection to this Clause. Effective monitoring and enforcement will be necessary to support this.*

Clause 19: Tree preservation orders: dying trees

Clause 19 amends Articles 65 and 65B of the Planning (Northern Ireland) Order 1991 and Section 125 of the Planning Act (Northern Ireland) 2011 by removing the reference to dying trees. Dying trees are no longer exempt from the provisions of a tree preservation order.

Comment: *Council has no objection to this Clause, although the implications of the recent ash dieback situation may force a re-think of this Clause.*

Clause 20: Fixed Penalties

This clause inserts two articles into the Planning (Northern Ireland) Order 1991. Articles 76C and 76D enable an authorised officer to issue a fixed penalty notice for the offences of failing 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 level of fixed penalty will be prescribed by Regulations and is reduced by 25% if paid within 14 days.

Comment: *Council has no objection in principle to this Clause, but would welcome an early conversation on fees, including fixed penalties.*

Clause 21: Power of planning appeals commission to award costs

Clause 21 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.
Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.

Comment: *Council has no objection to this Clause.*

Clause 22: Grants

Clause 22 amends Article 120 of the Planning (Northern Ireland) Order 1991 to extend the Department's power to grant aid non-profit organisations whose objectives include furthering an understanding of planning policy. The Department of Finance and Personnel's approval to such grants is no longer required.

Comment: *Council has no objection to this Clause, although clarity would be welcomed as to who would have responsibility for grants, post-transfer.*

Clause 23: Duty to respond to consultation

Clause 23 inserts Article 126A which requires those persons or bodies which the Department is required to consult before determining certain applications for planning permission or consent, to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and the DOE. The section also gives the DOE power to require reports on the performance of consultees in meeting their response deadlines.

Comment: *The processing of planning applications is sometimes delayed due to the late response of statutory consultees. This clause therefore removes the uncertainty and delay associated with late responses. However, there is also a question over who will have the authority to enforce this in different Government Departments, and the resource implications they face in terms of their consultee responsibilities are not clear. Council would suggest that no received response by the agreed date should be deemed to be a tacit non-objection.*

Clause 24: Fees and Charges

Clause 24 amends Article 127 of the 1991 Order to enable the DOE to charge multiple fees for retrospective planning applications.

Comment: *As noted in previous responses, the proposal is to be welcomed.*

Clause 25: Duration

This clause allows the Department to make subordinate legislation to repeal provisions in the Bill and to include 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 26: Interpretation

This clause contains interpretation provisions and defines a number of terms used throughout the Bill.

Clause 27: Commencement

This clause concerns the commencement of the Bill and enables the DOE to make commencement orders. Clauses 1,15, 16, 22, 26, 27 and 28 shall come into operation on Royal Assent.

Clause 28: Short title

This clause provides a short title for the Bill.

Comment: *Clauses 25-28 inclusive – no objections.*

ARENA Network, Business in the Community

PLANNING BILL

CONSULTATION

Response From

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Introduction

ARENA Network, Business in the Community plays a key role in advising Northern Ireland's Business community on Corporate Responsibility and Sustainability.

With over 850 members across the UK, including over 250 of these in Northern Ireland, we work in partnership with our members to deliver the best outcomes for our economy and our planet.

The information and opinions provided in this document are that of ARENA Network, Business in the Community. ARENA Network, Business in the Community challenges its members in terms of acting responsibly and keeping sustainability as a key boardroom item. Whilst our members are committed to this type of action in addition to complying with their legal responsibilities as producers, manufacturers and employers, they also strive to demonstrate innovation in the workplace.

1 – General comments

ARENA Network recognises the need to make the planning process in Northern Ireland more efficient, enabling decisions to be reached in a timely manner reflecting our members' experiences of the planning process in both the rest of the UK and the Republic of Ireland. To this end the overarching aim of the bill is to be welcomed.

However there are significant elements of the Bill (in particular Articles 2 and 6) that ARENA Network cannot support. In addition, the truncated public consultation process undertaken concerning changes as significant as those proposed in the draft legislation cannot be regarded as helpful.

ARENA Network understands that the transfer of large elements of the planning process to the new councils will require significant resources and capacity building both within the councils and also within those businesses that will be subject to the new regime. ARENA Network can play an important role in building understanding of the new regime in both the private sector and beyond.

2 – Consideration of Articles

Clause 1

The provision of a timescale for the Department to prepare and publish a statement of community involved is to be welcomed.

Clause 2

There is a lack of clarity around some of the language used and therefore the concepts/processes they describe in this clause. For instance there is no definition given for 'sustainable development'. 'Promoting or improving well-being' is not defined nor any explanation as to how this is to be evaluated. This lack of precision is also reflected in the use of terms such as 'furthering' and 'promoting' (are these interchangeable?) and 'good design' ('good' in terms of what? Evaluated by whom?).

The introduction of 'promoting economic development' as an objective is unnecessary, as economic considerations are inherently part of sustainable development. The inference of having this objective is that disproportionate weight may be given to economic considerations. It sets up the economy in competition with the environment, which is a false approach, as economic development appraisal must include a consideration of environmental considerations (natural capital etc.).

Clause 3

No comment.

Clause 4

No comment.

Clause 5

The principle of increasing community engagement is to be welcomed. However there is a concern that the period of 12 weeks given in the Article will unnecessarily increase the length of time of the planning process. ARENA Network propose that a period of 28 days is stipulated in the legislation rather than 12 weeks.

Clause 6

The insertion of the reference to 'economic advantages or disadvantages' is unhelpful and may skew the balance of the process towards economic considerations rather than all material considerations. The use of the phrase 'economic advantages or disadvantages' is too vague and may be the source of significant litigation from objectors, slowing the planning process down.

Clause 7

This will assist in increasing the speed and efficiency of the planning process.

Clause 8

This will assist in increasing the speed and efficiency of the planning process.

Clause 9

The proposed change is to be welcomed and will help promote biodiversity.

Clause 10

The introduction of the idea of a person appointed by the Department appears to weaken the independence of the process. It would be preferable if they were appointed by the PAC rather than the Department.

Clause 11

This will assist in increasing the speed and efficiency of the planning process.

Clause 12

This will assist in increasing the speed and efficiency of the planning process.

Clause 13

This will assist in increasing the speed and efficiency of the planning process.

Clause 14

This article provides for appropriate control for mineral sites and landfill facilities.

Clause 15

No comment.

Clause 16

The increase in penalties is to be welcomed

Clause 17

No comment.

Clause 18

No comment.

Clause 19

No comment.

Clause 20

The introduction of an administrative penalty will help speed up and increase the efficiency of the planning regime.

Clause 21

The introduction of the power of the PAC to award costs is to be welcomed.

Clause 22

No comment.

Clause 23

No comment.

Clause 24

The provision for charging multiple fees for retrospective applications is to be welcomed.

Armagh, Banbridge & Craigavon Councils

Appendix A

Planning Bill Consultation

Introductory comments

The Council welcomed the publication of the Planning Bill for Northern Ireland in 2010, and are pleased that this Bill seeks to introduce the new structures for a more effective planning system. However there remains concern that so much still relies on the production of secondary legislation and guidance. This response in no way supersedes or amends any previous submissions to the Bill. It has been prepared as a direct response to the additional provisions introduced by the Bill which seek to underpin the role of planning in promoting economic development.

Some other matters occur:

Financial implications of the Bill. In the memorandum the Department states that *'any potential increase in costs should be offset by the benefits of more efficient processes.'* These observations relate only to the costs of the Department and do not take into account the costs of others involved in the planning process and most specifically the consultees. No account has been taken of the additional resources that may be required to ensure that consultees respond within the new shorter time frame.

It is also noted that in the appeals process, the appellant may recover costs if the Council had made a decision and loses the appeal. As the Councils will be carrying out an entirely new function with no precedent locally, and possibly without robust Area Plans, policies or procedures in place the Councils could, conceivably, lose a significant number of appeals. This in turn would have significant cost implications for Councils and this would require assessment.

The extent of the consultation. It is noted that this consultation exercise was not a public consultation. Whilst it is recognised that this may have extended the time frame in respect of introducing and completing the process, it was felt the nature of the changes proposed ought to have been subject to a public consultation.

Explanatory and financial memorandum. The Planning Bill has been supported by an explanatory and financial memorandum. It was the view of officers that this memorandum was very useful in assisting in the understanding of the intent of the legislation. However the respondents would wish to comment on the following aspects, taking each Clause in turn and commenting as appropriate. Where no comment was made that has also been highlighted for clarity.

Comments on each Clause

Clause 1. It is noted that the requirement for *"the Department to prepare and publish a statement of community involvement already exists in the Bill the only difference being that it now must be published within a year and from the day of which this paragraph comes into operation."* While this is to be welcomed, a question arises as to whether all Councils will be able to achieve this deadline when Planning is transferred to Councils in 2015, until governance arrangements are agreed, development plans are updated etc. Moreover, it is not clear what 'community involvement' actually means or what resources will be required to ensure it is carried out in a satisfactory manner. Clearly, there will be resource issues attendant on this dependant on the level of involvement required.

Clause 2. In this clause the Bill cites *'Promoting economic development' 'desirability of achieving good design' in the Bill*. The Bill speaks of:

- 'furthering sustainable development'
- 'promoting or improving well being; and,
- 'promoting economic development.'

The comments in respect of this Clause are that 'good design' needs to be clarified. Is the estimation of good design dependant on the environment or other factors? 'Good design in terms of the building itself or the local setting?' The judgement of this matter can be subjective and aspirational. Also in the current economic climate would this provide a constraint on 'good design?' It is not clear what 'promoting economic development' means? It is also not clear as to where economic advantage would take precedent over the environment? All of this would seem to depend on what tests are going to be applied by the Department and what weighting given to the considerations raised. For instance, if the desirable economic development was to attract jobs that would suggest an approval. However, what about issues of displacement that would be attendant on such an approval? In this area, policy guidance would be useful and yet it is understood that the Department is minded to rationalise policies and that would surely lead to less consistency to the application of Planning in the future. It is not clear how consistency will be achieved after the hand over to Councils in the absence of policies. There is also an issue as to whether all these aspects identified in the Bill are considered to be equal? If, for instance, economic development is singled out how will it be assessed and by whom? Will it take precedent over the other matters? There is also the presumption that in order to evaluate design there would be a design ability required by those carrying out the assessment. Have any stipulations been made regarding the qualifications and experience of those who would be making these judgements. Concerns have also been expressed as to whether economic development emphasis would take precedent over issues such as conservation and heritage or benefits to society.

Clause 3. No comment.

Clause 4. Provision in this clause is to be welcomed and supports the concept of pre-application consultation.

Clause 5. Whilst the pre-application consultation is welcomed, it is felt that for it to be effective it would have to be carried out within the context of an up to date area plan. Across Northern Ireland there are very few plans that are current and up to date with the exception of the Belfast Metropolitan Area Plan (BMAP) and the Banbridge and Newry and Mourne area plan. However, the attempts to front load the application i.e. for all the issues to be identified at the beginning of the process is to be welcomed. Even so, some clarification is needed on what is "the community." How is the community to be defined? Is it people living within a certain distance of the proposed project or is a wider definition envisaged? These matters need to be clarified.

It is also noted that there is no reference to a third party appeal in the Bill which has been raised by some Elected Members.

Clause 6. Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

It is understood that these additional provisions which underpin the role of planning in promoting economic development have *'been recently identified as desirable additions to the Planning Bill and will be subject to consultation and scrutiny during the Assembly process[1].'*

1 N.I. Assembly – Planning Bill Explanatory & Financial Memorandum as Introduced

Public consultation in respect of these additional provisions, according to DOE Planning officials[2], has not been possible due to time constraints. It was further stated that the Single Planning Policy Statement would provide more details along with social and environmental considerations. Councils understand the pressures of legislative timings, but believe, because of the importance of this particular amendment, public consultation should have been sought.

Clause 7. In this clause in the future, if the Bill is accepted, it will not be possible for someone to withdraw an appeal when they feel that an appeal may be refused, only then to submit a slight variation on the application and to go through the process again. From an administrative and practical point of view this is a satisfactory proposal as the process can become bogged down in a series of slightly similar applications being made for basically the same proposal that was subject to refusal.

Clause 8. The suggestion in this Clause, if approved, would stop multiple applications for the same site. This also would allow the process of planning to be more efficient. Indeed there is a view that here and elsewhere in the document the use of the word 'may' could be strengthened to the word 'shall'. The use of the word 'may' could lead to inconsistency in approach. (For comparison, in the Building Regulations, the District Council "shall" enforce the Building Regulations in its district.)

Clause 9. No comment.

Clause 10. In this clause there is a suggestion that persons, other than the Planning Appeals Commission can determine appeals. It is not clear who would do this and whether this would provide an opportunity for the Planning Appeals Commission to sidestep its responsibility. It also raises issues of consistency of decision making when other bodies are involved that may be constrained by different arrangements. It is noted that others selected to carry out the work instead of the Planning Appeals Commission are nominated by the Department. This could lead to governance issues where it would be conceivable for bodies or individuals to be selected to consider an appeal who may have a track record of a potential bias in certain matters. The Governments arrangements are not clear, it would seem, and should be more robust.

Clause 11. The reduction of time to carry out an appeal from 6 months to 4 months is to be welcomed and allows for a more efficient process. However, the English experience is that whilst the reduction was from six to four months it has reverted back to six months because of the incapacity of the system to deal with the shorter time frame. It is also welcomed that the person who has appealed cannot introduce new information into the process. Under the new system someone cannot provide new information whereas an appeal ought to consider information that has already been provided and the Appeal Commission make a determination as to whether the right decision was arrived at initially in considering the planning application. There is also a concern that if more policies are removed there will be scope for inconsistency and this will give rise to an increased number of appeals and this in itself would require funding sources to administer.

Clause 12. The idea of an appeal is reinforced in this clause in that it should be a process that allows review of the design with information that was available to the Department at the time. This will stop the process being used as the equivalent of a plan checking for Agents provided using Planning resources.

Clause 13. It would appear from this clause that it is only possible to make a nonmaterial change to planning permission if the applicant is an owner of the lands. Clarifications as to why an interest of this type is required as it is possible it could lead to difficulties were the person who has an interest in the building is not the land owner. A question arises where the applicant/developer is developing by way of a Development Brief in which legal interest may

2 DOE Planning briefing to Environmental Committee - 10 January 2013

only transfer upon completion. It is also felt that there should be some constraint imposed on the department where it wishes to impose new nonmaterial conditions and it is conceivable that some conditions if applied could be impractical if a cut-off date is not established from the outset in the Legislation. This would assist developers in providing clarity and setting a parameter around what the Department can and cannot do under certain circumstances. Moreover, it is not clear if the request comes from the Department or the developers in respect of who initiates the application for the non-material change to planning permission.

Clause 14. The clause refers to *'aftercare conditions imposed on replication or modification of mineral planning permission'* which introduces general environmental conditions and this is to be welcomed.

Clause 15. No comment

Clause 16. No comment

Clause 17. When dealing with planning applications in conservation areas the Department should consider including these application in a streamlined process, particularly due to the nature of the building in question, the Council may be obliged to issue a Dangerous Structures Notice. A streamlined process would allow applicants who wish to comply with the notice to obtain the necessary planning permissions quickly.

Clause 18. Where demolition takes place in conservation areas it is considered the timescale for the rebuilding should be included to ensure the preservation of the overall amenity of the area, and be rigorously enforced.

Clause 19. In this clause it is noted that trees that are dying are now going to be included in tree preservation orders. This then raises an issue of where some trees have diseases, such as the recent ash die back situation. The application of this clause would mean that those trees could not be felled. This would surely be contrary to policies in other Departments that would be seeking to preserve the integrity of the healthy trees in the locality? It would appear that this scenario has not been taken into account and there are practicalities in the application of such legislation that would require further consideration. It may be helpful to have clarification and possibly some exemptions listed that would cover the situation already mentioned.

Clause 20. Council agrees with the general principle of more robust enforcement. However, the proposal to provide for discounted fines has been found in the experience of officers in Local Government to pose problems administratively and attract additional cost which cannot be recovered. It would be much simpler and more efficient to set a fine that is paid for in full by a particular date. This clause states that *'the Appeals Commission may make an order as to the costs of the parties to an appeal under any of the provisions mentioned under paragraph 2 and as for the parties as to who the costs are to be paid.'* It is not clear if these powers are available to the alternative mechanisms for dealing with appeals referenced in Clause 10. Moreover it is not clear where the monies raised in the fines are accruing to.

Clause 21. No comment.

Clause 22. The offer of grants to bodies providing assistance in relation to development proposals is to be welcomed. However there should be criteria required and clarification of who can avail of this support. Looking beyond May 2015 a question arises, if having established a principle where monies are paid to such bodies, would there be an expectation that Councils would continue such funding arrangements. It is not clear from the Bill as to what the level of funding and those obligations may be?

Clause 23. Currently there are a number of statutory consultees who liaise with Planning. These consultees are the Council, as a body, and the Environmental Health Department in Local Government. In Central Government statutory consultees include the Roads Service and the Northern Ireland Environment Agency. Whereas Local Government tend to respond quickly

to the consultation requests, it is not clear as to how speedily the other Departments will respond. However Clause 23 as proposed will place a responsibility on consultees to provide their responses within a specific time frame. In order for consultees to do this, they would need to be adequately resourced to ensure that appropriate responses could be made with in the specific time frame. The problem is compounded if the quality of the plans is not up to standard and that makes it more difficult to properly assess the proposals and extends the time to complete the response. The concept of a 21 day turn round for consultations to be completed is welcomed in principle and it observes the principle of a slicker system. However the ability of consultees to respond in the appropriate time frames will require appropriate resources and it is not clear as to how those resources would be provided to consultees to ensure that they could meet their statutory obligations. This will have specific implications for Environmental Health in Local Government and clarification is required on this point.

ASDA

Submission to NI Assembly Committee for the Environment on the Planning Bill

15 March 2013

For further information, please contact:
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Introduction

Asda has invested £256 million in Northern Ireland in the past eight years. We are now the fourth largest private sector employer in the region with 5,000 colleagues in 17 stores and a distribution centre. Northern Ireland is a hugely important market to us and we have plans to double our number of stores here; creating more than 5000 new jobs and representing a further investment of £280 million. Our local sourcing policy can mean supplying a couple of shops or all Northern Ireland stores. We have seen double digit year on year growth in local sales and we now work with 111 suppliers on the island of Ireland, bringing around 1,900 lines to customers in Northern Ireland. This month (March 2013) we celebrate the first anniversary of our Community Life programme which is a long term commitment to help stores do the right things for the local communities we serve.

It is widely accepted that the supermarket retail sector is one of the major engines of the Northern Ireland economy and that price competition amongst the supermarkets has been recognised to have a significant downward effect on inflation.

However, the current planning regime hinders Asda and its parent company Wal-Mart from fulfilling its investment and job creation plans. The complex, protracted and inflexible nature of the planning system acts as a barrier to both growth and competition. Timescales are a major issue, with supermarket schemes typically taking between two and four years to complete the process.

The Planning (Northern Ireland) 2011 Act sets the legislative framework for planning reform with the explicit aim of improving its efficiency and effectiveness through: faster decisions on planning applications; enhanced community involvement; faster and fairer appeals; tougher and simpler enforcement; as well as a strengthened Departmental sustainable development duty. The legislation also provides for the transfer of the majority of planning functions and decision making responsibilities to district councils in April 2015.

The Planning Bill, which is currently being considered by the Committee, will accelerate the introduction of a number of reforms contained in the 2011 Act. The Bill also introduces for the first time additional provisions to underpin the role of planning in promoting economic development, which is welcomed.

Planning Reform in Northern Ireland is undeniably a significant and positive step, seeking to deliver 'root and branch' reform of the planning system here. As such, it is important that changes to planning legislation and guidance deliver a new planning system that is efficient with greater certainty for developers and faster processing of planning applications.

This paper sets out our comments on the clauses in the Planning Bill and provides recommendations on how the Planning Bill and the 2011 Act can be strengthened to provide a more efficient and responsive planning system that does not continue to act a barrier to growth and competition

Responses to Clauses

Clause 1: Statement of community involvement

This clause introduces the requirement for the Department to produce a statement in respect of its proposed policy for involving the community in its development plan and planning management functions within one year from this clause coming into operation.

Asda welcomes the steps being taken to provide clear policy pertaining to the involvement of interested persons in the exercise of the Department's Development Plan and Development Management Processes. The requirement for a Statement of Community Involvement was first introduced by the Planning Reform (NI) Order 2006. This clause merely places a time period for completing this statement.

Clarification is sought as to when this provision will come into effect and if the content of the Statement of Community Involvement will be subject to public consultation prior to its implementation.

Clause 2: General functions of the Department and the Planning Appeals Commission

Clause 2 amends Article 10A of the Planning (Northern Ireland) Order 1991. A statutory duty is imposed on the Department and the Planning Appeals Commission in exercising any function under Part 2 or Part 3 to do so with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. In addition where the Department, or as the case may be the Planning Appeals Commission, exercise any function under Part 2 or Part 3 of the Planning (Northern Ireland) Order 1991 they must have regard to the desirability of achieving good design. Corresponding amendments are made to Section 1 and Section 5 of the Planning Act (Northern Ireland) 2011.

The promotion of economic development is a much welcomed and a positive step towards recognising the important role that land development plays within the Northern Ireland economy; not just in terms of 'bricks and mortar' but in boosting employment opportunities, creating jobs and helping regenerate local communities. For this policy to be adopted successfully, there needs to be a clear understanding of what will be assessed, and how.

The promotion of good design and sustainable development are important, but often subjective matters. We believe that the current system has worked well with the promotion of these two elements provided for under existing policy, through PPS 1 and going forward, under the Single Planning Policy Statement.

We do not believe that there is a requirement for these principles to be enshrined in primary legislation nor do we believe that this would be of benefit to local communities. It is our opinion that leaving these elements in policy will allow for local design and character to run through developments and protect subjectivity within the process.

We recommend amending the Planning Bill to remove provision for the promotion of good design, while ensuring they remain strongly promoted within relevant planning policy guidance.

We recommend that the promotion and review of the economic benefits of a development should remain within the Planning Bill given the net effect it can have on NI as a whole.

Clause 4: Publicity etc. in relation to applications

This clause substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications for planning permission. The Department must not consider an application if the publicity requirements are not satisfied.

Article 25 as amended also makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination.

Similar amendments are made at Schedule 1 for applications for Listed Buildings consent.

We understand that the publicity arrangements, which currently rest with the Department, are to be reviewed and introduced through subordinate legislation. Clarification is required on whether the responsibility for publicising an application will remain with the Department or transfer to the applicant.

The current practice is for any representation received to be considered by the Department, irrespective of whether it is outside of the 14 day period specified in Article 21 of the Planning (Northern Ireland) Order 1991. This allows multiple opportunities to lodge objections and draw out the process.

The current system allows for multiple re-notifications of changes to the application, which creates severe delays to its determination. Should re-notification be required, this should be undertaken at the end of the process, particularly if responsibility for publicising the application is to be transferred to the applicant, as there are associated costs resulting from each re-notification. There is a perception that the Department is so blindsided by judicial review risks that there is now a culture of over notification

We recommend that the Planning Bill is amended to limit the period for submitting representations to a reasonable time period at the beginning of the planning application process.

We recommend that Planning Bill is amended to provide for a fixed timescale for determining a planning application, as this would provide certainty for developers.

Clause 5: Pre-application community consultation

This clause places an obligation on developers to consult the community in advance of submitting an application if the development is a major development (as defined by the legislation). The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the applicant.

Asda welcomes the introduction of this requirement and already undertake community consultations on our schemes in Northern Ireland.

Housing Associations are required by the Department of Social Development to undertake a 6 week community consultation exercise on social housing schemes. This demonstrates that effective community consultation can be undertaken in a shorter timeframe. We do not believe, therefore, that anything is to be gained by a 12 week consultation period. It will only serve to delay the development and the benefits it will bring to the local community.

While the minimum consultation requirements will be prescribed in subordinate legislation, these must be prescriptive with no ambiguity around them.

We recommend that the Planning Bill is amended to provide for a reduction in the pre-application community consultation period to 8 weeks.

We would recommend the adoption of the Scottish model for pre-application community consultation, including a requirement for one event along with an advert in the local press and engagement with local community groups. The English definition is currently too wide ranging and can be open to differing interpretation.

Clause 7: Power to decline to determine subsequent application

This clause extends the Department's power to decline subsequent applications for planning permission or listed building consent under Article 25A and paragraph 4A of Schedule 1 of the Planning (Northern Ireland) Order 1991. This now includes the power to decline applications where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.

Asda is concerned that this provision extends the power to decline applications to include applications that have gone to appeal but subsequently withdrawn.

The extent of revisions that may be required to address a previous reason for refusal may not necessarily be substantially different from the previous submission. This provision in the Bill could stifle the ability to develop our sites and could result in significant financial losses being accrued. This runs contrary to the measures being put into effect to promote economic development.

We recommend amending the Planning Bill to provide for the repeal of Article 25A of the of the Planning (Northern Ireland) Order 1991.

Clause 8: Power to decline to determine overlapping applications

This clause extends the Department's power to decline to determine overlapping applications for planning permission or listed building consent under Article 25AA and paragraph 4B of Schedule 1 of the Planning (Northern Ireland) Order 1991 to include the power to decline to determine similar applications made on the same day. It also includes the power to decline a planning application where the same development is subject to a "deemed application" determination by the Planning Appeals Commission arising from an appeal against an Enforcement Notice under which the Commission has not issued its decision.

It is counterproductive for the Department to decline to accept more than one application on the same site. A developer should be free to pursue various development options on a specific site at the same time in order to realise the best possible development opportunity within the same timeframe. This could stifle development and result in significant financial losses being accrued and runs contrary to the provision in the Bill to promote economic development.

We recommend amending the Planning Bill to provide for the repeal of Article 25AA of the Planning (Northern Ireland) Order 1991.

Clause 12: Matters which may be raised in an appeal

Clause 12 inserts "Article 32A" in the Planning (Northern Ireland) Order 1991, so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that it not being raised before that time was due to exceptional circumstances.

We support the recommendation to restrict the amount of new information being submitted post lodging of the appeal. This should ensure fewer adjournments or delays to Public Inquiries and Appeals.

Clause 13: Power to make non-material changes to planning permission

This clause inserts provision within Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to make a change to a planning permission subject to it being satisfied that the change is not material. It includes the power to amend or remove conditions or impose new ones. Consultation and publicity arrangements will be set out in Regulations.

The ability to make non-material changes to planning permissions will help ensure faster decision making for minor alterations.

Clause 15: Planning agreements: payments to departments

This clause amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland Department and not solely the Department of the Environment.

Firstly, it is important to consider the principles of the payment. These should be bound by the following tests:

- relevant to planning
- necessary to make the development acceptable in planning terms
- directly relate to the proposed development
- fair and reasonable in scale and kind
- reasonable in all other aspects.

Secondly, due consideration must be given to the process which governs these payments. We believe the system would work in a more efficient and timely manner if these contributions were organised and decided upon by one single NI Executive Department and recorded in one document. Whilst separate Departments would still make requests for financial support, there needs to be consistency in the level and application of these contributions.

We would also like to see greater understanding amongst Departments of the purpose of these contributions and their collective benefit

We recommend that Guidance is introduced to ensure all Departments understand the role of Article 40 Agreements and when they can be utilized.

Clause 21: Power of planning appeals commission to award costs

Clause 21 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.

Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.

The awarding of costs is welcomed.

We recommend amending the Planning Bill to introduce enabling powers to introduce a standard formula for awarding costs to allow developers to better predict costs and ensure appellants are fully aware of the penalties for failed appeals.

Clause 23: Duty to respond to consultation

Clause 23 inserts Article 126A which requires those persons or bodies which the Department is required to consult before determining certain applications for planning permission or consent to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and the Department. This section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

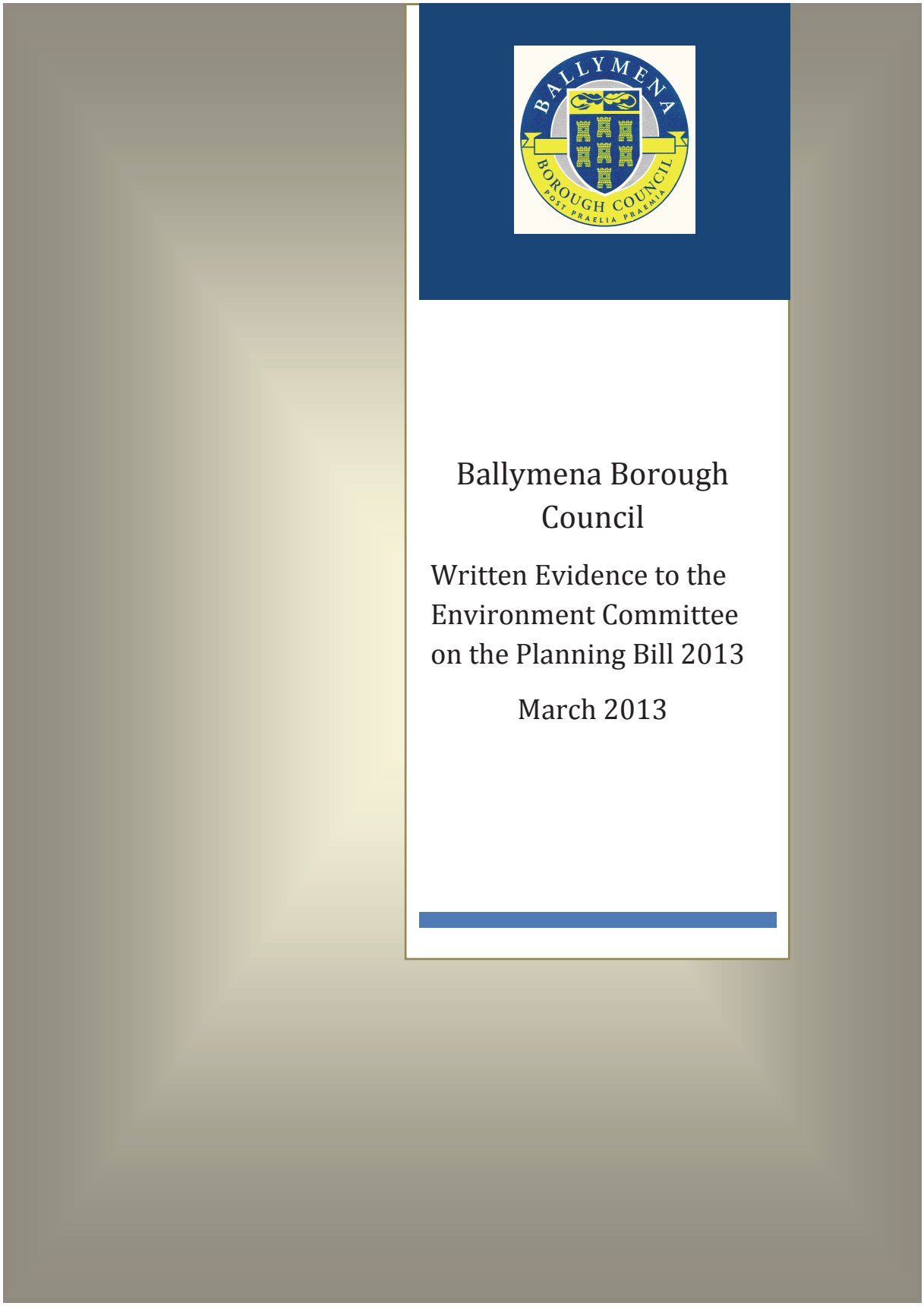
We would welcome the introduction of a strict 28 day time-frame for consultation responses, which should be enforced with suitable penalties. Provided adequate thought is given to the likely response, applications should be able to be determined without a response, should a consultee not provide their response within the timeframe allowed.

Clause 23 accommodates a 'get out' clause, which allows for certain consultees to amend the prescribed period for providing a response. This will only seek to add uncertainty to the process and will likely be used to stymie development as currently occurs. We believe this 'get out' clause should be removed and replaced with a policy that, in extreme cases where a response cannot be provided within 28 days, still ensures a response is given within the statutory period for consideration. Due regard should also be given to how these timeframes will be enforced once decision making is transferred to individual councils in 2015

We recommend amending the Planning Bill to provide a prescribed time-frame for the deadline for the submission of consultation responses, ideally 28 days, which is enforced with suitable penalties.

We recommend that due regard should be given to ensuring the decision making process is robust against legal challenge should a decision be taken without the input of late consultees.

Ballymena Borough Council



Ballymena Borough Council

Written Evidence to the Environment Committee on the Planning Bill 2013

March 2013

Ballymena Borough Council Response to the Planning Bill

Strategic Overview

Ballymena Borough Council has considered this consultation in light of its own Corporate Plan 2012-2016 which is aimed at helping the economy of the Borough to grow over this period and Elected Members are supportive of the Planning Bill. We welcome the modernisation of planning through this Bill particularly in the light of local government reform and the transfer of the planning functions to the 11 new councils. We believe that this Bill will modernise and streamline the planning function prior to its transfer to local government. It is particularly pleasing that this Bill will assist councils in progressing Local Development Plans and the Community Planning function and responsibilities. We believe that the Bill will allow the planning transfer to happen but also to ensure that it happens on the right terms and in the right way handing to the local councils a planning system that will allow local ratepayers — business and domestic — to see real change and real benefit when it comes to the future shape of the council clusters.

We welcome the main elements of the Bill to be introduced in advance of Local Government Reform including:

1. Faster processing of planning applications

We welcome the streamlining mechanism which will support faster processing of applications and decision making. Clause 23 stipulates a duty for statutory consultees to respond to consultation within the timeframe as agreed with the Department. By having a speedier decision making process, development can commence sooner on site and stimulate growth in the construction industry. By sound development, confidence should return to the local economy which will in turn and in time encourage speculative risk takers to enter the arena and contribute to further development projects. All this has to have an improvement in economic terms for the Borough of Ballymena. The local economy is seen as core to the wellbeing of the citizens of Ballymena. Faster processing of planning applications ought to lead to new investment, which will assist in overcoming economic challenges, including pressure on jobs, attracting investment and supporting local enterprise.

Clause 10 includes the appointment of persons other than the Planning Appeals Commission to conduct enquiries and hearings into major planning applications. The Council would comment that such a person should have the requisite skills, experience, qualifications and independence, together with local knowledge to conduct such enquires. However there is an issue here as to whether an independent examiner could be considered truly independent to give the final decision on an application of regional significance.

2. Enhanced Community Involvement

The Council welcomes this proposal in that it puts an obligation on the Department to prepare and publish within one year of commencement an account of its policy for involving the community in its provision of planning functions. Developers will also be required to consult the community before submitting major planning applications and demonstrate they have done so by the production of a report. This enables the viewpoints of community representatives, neighbours, etc. to be included in the early stages of the decision making

process and potential difficulties to be resolved earlier. Community involvement in the planning process is key to improving quality of life for communities and reducing inequality. This system should generate a satisfactory planning outcome to suit the needs of all concerned. The outworking of such will be the improved natural and built surroundings, increased environmental sustainability and improved rural and urban environments.

3. Promoting Economic Development

The Council welcomes the fact that the Bill will reflect that which is already in policy statements, namely the objective of promoting economic development, paying particular regard to the desirability of achieving good design in respect of planning policy. We welcome the fact that the in the determination of planning applications by the Department and, in future, by the councils, material considerations will include a reference to any economic advantages or disadvantages that are likely to result from the approval or refusal of planning permission.

4. Other measures to enhance the environment

We welcome amendments designed to enhance the environment and strengthen the planning system including an amendment to the general functions of the Department and the Planning Appeals Commission to exercise certain roles with the objective of furthering sustainable development. We recognise that this is also supportive of improving well-being and promoting economic development. It pays particular attention to the appropriateness of achieving good design. The Council would welcome this approach since a pleasantly designed environment, particularly in the town and village centres encourages more public to visit and thus spend in the retail environment. This in turn encourages retail growth and stimulates a vibrant local economy within the Borough.

Regeneration, development, inward investment and marking are key pillars for a successful and vibrant Council area. The provision of a modern infrastructure and service provision will produce a desirable place to live and work. Additional measures in relation to Conservation are to be welcomed in order to preserve areas of historical interest alongside the provisions that will allow the continuation of regeneration and revitalisation of the Borough.

The Department's permission must also be given to the felling of trees covered by a tree preservation order which are dying and the control of demolition in conservation areas will also be extended to include the partial demolition of buildings. The power of the Department to grant aid non-profit organisations has been extended to include furthering an understanding of planning policy. This would be viewed by this Council as a welcome attempt to educate citizens regarding relevant planning issues.

5. Faster and fairer planning appeals system

The development of a faster and fairer appeals system through restricting the presentation of new material at appeal is welcomed. The Council would view this as a fairer way to assess the evidence in the appeal process. However we believe that the proposal to reduce the time limit for lodging an appeal from six to four months could create a backlog, due to an increase in appeals and may not give parties sufficient time for gathering evidence in more major appeals. Clause21 to award costs where the unreasonable actions of one party has left another with

unnecessary expenditure would in the Council's opinion require some clarification and guidance in order to ascertain a benchmark or threshold of cost.

6. Simpler and tougher enforcement

We note the objective of delivering simpler and tougher enforcement through increasing fines for a series of offences and Ballymena Council would encourage this approach. The introduction of fixed penalty notices as an alternative to costly and lengthy prosecutions through the Courts is to be encouraged, as well as multiple fees for retrospective planning applications. This ought to deter those who blatantly disregard the rules. However we would raise a note of caution in the implementation of such an increase for those who unintentionally commit an offence and who could under these proposals be unfairly penalised.

Detailed observations on each of the clauses follow below and comments are provided where relevant.

Clause 1: Statement of community involvement

This clause introduces the requirement for the Department to produce a statement of its policy for involving the community in its development plan and planning control functions within one year of the clause coming into operation.

Ballymena Council would endorse this.

Clause 2: General functions of the Department and the Planning Appeals Commission

Clause 2 amends Article 10A of the Planning (Northern Ireland) Order 1991. A statutory duty is imposed on the Department and the Planning Appeals Commission in exercising any function under Part 2 or Part 3 to do so with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. In addition where the Department or as the case may be the Planning Appeals Commission exercise any function under Part 2 or Part 3 of the Planning (Northern Ireland) Order 1991 they must have regard to the desirability of achieving good design. Corresponding amendments are made to Section 1 and Section 5 of the Planning Act (Northern Ireland) 2011.

Ballymena Council would endorse this.

Clause 3: Meaning of development

This clause amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land that for the purposes of the Order are not to be taken to involve development. This now includes structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.

Ballymena Council would endorse this.

Clause 4: Publicity etc. in relation to applications

This clause substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications for planning permission. The Department must not consider an application if the publicity requirements are not satisfied. Article 25 as amended also makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination.

Similar amendments are made at Schedule 1 for applications for listed buildings consent.

Ballymena Council would endorse this.

Clause 5: Pre-application community consultation

Clause 5 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation.

Article 22A places an obligation on developers to consult the community in advance of submitting an application if the development falls within a class prescribed for the purposes of this Article. The prospective applicant must give 12 weeks notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate.

Clause 5 also inserts Article 22B which requires the applicant to produce a report indicating what has been done to comply with the pre-application community consultation requirements. The report must be submitted with the application. The form of the pre-application consultation report may be set out in Regulations.

In addition Clause 5 inserts Article 25AB. If the pre-application community consultation requirements have not been complied with the Department must decline to determine the application. The Department can request additional information in order to decide whether to decline the application.

Clause 5 also places a requirement upon the Department to include notices of Pre-application community consultations and consultation reports in the planning register prepared in accordance with Article 124 of the Planning (Northern Ireland) Order 1991.

Ballymena Council would endorse this.

Clause 6: Determination of planning applications

Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

Ballymena Council would endorse this.

Clause 7: Power to decline to determine subsequent application

This clause extends the Department's power to decline subsequent applications for planning permission or listed building consent under Article 25A and paragraph 4A of Schedule 1 of the Planning (Northern Ireland) Order 1991. This now includes the power to decline applications where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.

Ballymena Council would endorse this

Clause 8: Power to decline to determine overlapping applications

This clause extends the Department's power to decline to determine overlapping applications for planning permission or listed building consent under Article 25AA and paragraph 4B of Schedule 1 of the Planning (Northern Ireland) Order 1991 to include the power to decline to determine similar applications made on the same day. It also includes the power to decline a planning application where the same development is subject to a "deemed application" determination by the Planning Appeals Commission arising from an appeal against an Enforcement Notice under and the Commission has not issued its decision.

Ballymena Council would endorse this.

Clause 9: Aftercare conditions for ecological purposes on grant of mineral planning permission

Clause 9 amends Article 27A of the Planning (Northern Ireland) Order 1991 by extending the list of land uses to be considered when the land is being restored to a required standard to include "use for ecological purposes".

Ballymena Council would endorse this.

Clause 10: Public inquiries: major planning applications

This clause amends Article 31 of the Planning (Northern Ireland) Order 1991 to allow the Department to appoint a person other than the Planning Appeals Commission to hold a public local inquiry [or hearing] to consider representations made in respect of any application to which Article 31 has been applied.

Ballymena Council would generally endorse this with minor reservation.

Clause 11: Appeals: time limits

Clause 11 reduces the appeal periods for making an appeal to the Planning Appeals Commission under Articles 32 (planning decisions), 57 (hazardous substances consent) and 83E (certificates of lawful use or development) of the Planning (Northern Ireland) Order 1991 from six to four months or such other period as may be specified by development order.

Ballymena Council would have reservation about this.

Clause 12: Matters which may be raised in an appeal

Clause 12 inserts "Article 32A" in the Planning (Northern Ireland) Order 1991 so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, 1) that the matter could not have been raised before that time or 2) that its not being raised was due to exceptional circumstances.

Ballymena Council would endorse this.

Clause 13: Power to make non-material changes to planning permission

This clause inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to make a change to a planning permission already granted 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. Consultation and publicity arrangements may be set out in Regulations.

Ballymena Council would endorse this.

Clause 14: Aftercare conditions imposed on revocation or modification of mineral planning permission.

This clause inserts a provision at Article 38A of the Planning (Northern Ireland) Order 1991 which permits the Department to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under Article 38, provided a restoration condition is included or in place on the land.

Ballymena Council would endorse this.

Clause 15: Planning agreements: payments to departments

This clause amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland department and not solely the Department of the Environment.

Ballymena Council would endorse this.

Clause 16: Increase in Certain Penalties

Clause 16 increases penalties in relation to 7 articles in the Planning (Northern Ireland) Order 1991. For offences under Article 49 (acts causing or likely to result in damage to listed buildings) the maximum level of fine, on summary conviction, has been raised to the statutory maximum. Also the fine payable on summary conviction when a person fails to prevent damage or further damage resulting from the offence is raised from one tenth of a level 3 fine to one

tenth of a level 5 fine on the standard scale for each day on which the failure continues. Offences may also be convicted on indictment.

This clause also increases the maximum level of fine, on summary conviction, for a range of offences relating to breaches of planning control or consents from £30,000 to £100,000. This applies to offences under Articles 61 (hazardous substances); 67G (temporary stop notices); 72 (enforcement notices) and 73 (stop notices) of the Planning (Northern Ireland) Order 1991. The fine on summary conviction for an offence under Article 67 D (non-compliance with planning contravention notice) is raised from level 3 to level 5 on the standard scale while the fine for an offence on summary conviction under Article 76 (enforcement notice to have effect against subsequent development) increases from level 5 on the standard scale to £7500. The increased fines do not apply to any offence committed before this clause comes into operation.

Ballymena Council would endorse this.

Clause 17: Conservation areas

Clause 17 amends Article 50 of the Planning (Northern Ireland) Order 1991 to include provision that the Department must pay special attention to (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.

Ballymena Council would endorse this.

Clause 18: Control of demolition in conservation areas

Clause 18 amends Article 51 of the Planning (Northern Ireland) Order 1991 by adding additional provision that any structural alteration to a building in a conservation area, where the alteration consists of demolishing part of the building, shall be taken to be demolition for the purposes of Article 51.

Ballymena Council would endorse this.

Clause 19: Tree preservation orders: dying trees

Clause 19 amends Articles 65 and 65B of the Planning (Northern Ireland) Order 1991 and Section 125 of the Planning Act (Northern Ireland) 2011 by removing the reference to dying trees. Dying trees are no longer exempt from the provisions of a tree preservation order.

Ballymena Council would endorse this.

Clause 20: Fixed Penalties

This clause inserts 2 articles into the Planning (Northern Ireland) Order 1991.

Articles 76C and 76D enable an authorised officer to issue a fixed penalty notice for the offences of failing 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 level of fixed penalty will be prescribed by Regulations and is reduced by 25% if paid within 14 days.

Ballymena Council would endorse this.

Clause 21: Power of planning appeals commission to award costs

Clause 21 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court. Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.

Ballymena Council would generally endorse this with minor reservation

Clause 22: Grants

Clause 22 amends Article 120 of the Planning (Northern Ireland) Order 1991 to extend the Department's power to grant aid non profit organisations whose objectives include furthering an understanding of planning policy. The Department of Finance and Personnel's approval to such grants is no longer required.

Ballymena Council would endorse this.

Clause 23: Duty to respond to consultation

Clause 23 inserts Article 126A which requires those persons or bodies which the Department is required to consult before determining certain applications for planning permission or consent to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and the Department. The section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.

Ballymena Council would endorse this.

Clause 24: Fees and Charges

Clause 24 amends Article 127 of the 1991 Order to enable the Department to charge multiple fees for retrospective planning applications.

Ballymena Council would endorse this.

Clause 25: Duration

This clause allows the Department to make subordinate legislation to repeal provisions in the Bill and to include 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.

Ballymena Council would endorse this.

Clause 26: Interpretation

This clause contains interpretation provisions and defines a number of terms used throughout the Bill.

Clause 27: Commencement

This clause concerns the commencement of the Bill and enables the Department to make commencement orders. Clauses 1,15,16, 22, 26, 27 and 28 shall come into operation on Royal Assent.

Clause 28: Short title for the Bill

Belfast City Airport Watch

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Committee for the Environment,
Northern Ireland Assembly

15th March, 2013

Dear Sir/Madam

Draft Northern Ireland Planning Bill – Consultation Response from Belfast City Airport Watch

I am writing to you on behalf of Belfast City Airport Watch (BCAW), an umbrella organisation which represents 19 affiliated organisations, 18 of which are residents' associations and community groups, and one of which is a trade union branch. BCAW also has 585 individual associate members.

We have studied the Draft Planning Bill and consider that, while it contains some useful improvements, notably in the areas of notification and consultation, there are serious areas of concern which appear to us likely to distort the planning system and lead to further delays and legal challenges. We have enclosed a copy of a paper on the Draft Bill which has been prepared by Professor Geraint Ellis of the School of Planning, Architecture and Civil Engineering at Queen's University. This paper was not commissioned by BCAW. However, we would commend it to the Committee as we believe it makes many important points about the Bill which we support.

There was widespread opposition to the proposed PPS 24 which was subsequently withdrawn. The Bill appears to reintroduce the thrust of PPS 24 by another method. The objectives and aims of the planning system in Northern Ireland are summarised in Paragraph 3 of Planning Policy Statement 1 as follows:

> The town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interest of acknowledged importance. It is important to distinguish those matters which planning can influence from those which are outside its control. The central concerns of the planning system are to determine what kind

of development is appropriate, how much is desirable, where it should best be located and what it looks like.

The Bill at **clauses 2 and 6** appears to us to depart from this central concept. The perils of doing this are set out clearly in Professor Ellis's paper, and we fully support what he says. This Bill makes the requirement to consider economic matters an unnecessarily cumbersome one which introduces an element of time-consuming and inappropriate duplication, as the requirement to consider economic matters in a balanced way is already built into the Planning Act 2011 through the duty to ensure that sustainable development is furthered (in Clauses 2 and 5 of the Act). We would oppose these proposed changes.

Clause 2 also widens the requirement to take account of policy pronouncements from the Office of the First Minister and deputy First Minister beyond those on the issue of sustainable development. This would need to be handled very carefully; if OFMDFM was to issue a pronouncement favouring economic development considerations in planning issues, this could exacerbate the problem referred to above.

We would support the general thrust of **Clauses 4 and 5** which give the Department of the Environment the ability to widen the scope of notification and consultation requirements. However, we believe it is vital that the legislation is more prescriptive where proposed development will clearly affect a wide area; in such cases, it should be mandatory for the Department to notify everyone within that area.

One important example is the current application by George Best Belfast City Airport to vary the terms of its Planning Agreement in such a way as to facilitate a permissible noise output of more than double that currently permitted. In its application, the airport has clearly stated that its proposal would expand the area inside the airport's 57dBA LAeq noise contour to encompass up to 9.3 square kilometres. According to the airport's application, this would potentially affect up to 26,150 people in 12,425 dwellings.

57dBA LAeq is recognised by the UK government as the onset level for "significant community annoyance ". It should therefore be mandatory to notify everyone inside this area. We note that Newham Council, as the planning authority, sent more than 10,000 letters to local residents to notify and consult with them when London City Airport applied in 2007 to vary the terms of its Planning Agreement. In addition, the Council displayed 200 site notices and advertised in a local newspaper.[1]

The Bill at **clause 10** gives the Department the power to appoint persons other than the Planning Appeals Commission to hear planning inquiries. Professor Ellis, in his paper, points out the dangers of such a move, which include the risk of losing the all-important perception of fairness and

[1] London Borough of Newham – Planning Officer's Report on Planning Application by London City Airport, paras. 6.1 and 6.2. Available at: http://mgov.newham.gov.uk/mgConvert2PDF.aspx?ID=18021&J=1

impartiality in the Northern Ireland planning system. We also fully support his views on this as well, and would oppose the proposed change as set out in the Bill.

Professor Ellis makes a number of other important points which we hope the Committee will consider. These include the very fundamental nature of the proposed changes and a number of important considerations which have not been taken into account at all. We believe he is correct about these matters. Like him, we also question why the normal process of public consultation has not been followed with regard to this Bill.

We hope these comments are helpful.

Yours sincerely,

LIZ FAWCETT (Dr),

Chair, Steering Group,
Belfast City Airport Watch

Enc.

Belfast City Council

Chief Executive's Department

COPY

Your reference

Our reference PMcN/gan

Date 13 March 2013

Mr Sean McCann
Assistant Committee Clerk
Environment Committee
Room 247, Parliament Buildings
Stormont Estate
BELFAST BT4 3XX

Dear Mr McCann

PLANNING BILL 2013 – CALL FOR WRITTEN EVIDENCE

Please find enclosed a written submission by Belfast City Council on the draft Planning Bill currently under Committee Stage consideration.

The submission had been approved by the Belfast Voluntary Transition Committee at its meeting on 8 March 2013, however, remains subject to ratification by Full Council on 3 April 2013. I will inform you at that stage if there is any material changes proposed.

Should you have any queries please do not hesitate to contact my colleagues Neil Dunlop on 02890 270231 or Kevin Heaney on 02890 270595.

Yours sincerely

PETER McNANEY
Chief Executive

Belfast City Council, Chief Executive's Department,
City Hall, Belfast BT1 5GS
Tel: 028 9027 0202, Textphone: 028 9027 0405, Fax: 028 9027 0232
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Belfast City Council Written Submission to Planning Bill 2013

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 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. The Council also submitted a detailed response to the subsequent Planning Bill (issued for consultation in December 2010) which provided the legislative basis for planning reform and give effect to the transfer of the majority of functions and decision making responsibilities relating to local development planning, development management plus planning enforcement to district councils as a result of local government reform.

Strategic Comments

The Council would welcome the introduction of the Planning Bill and its stated ambition of enabling the Department to bring-forward and test elements of planning reform to ensure that the functions are fit-for-purpose at point of transfer to local government. The Council would highlight the following strategic issues for the consideration of the Environment Committee in reviewing the Planning Bill.

- **Promotion of Economic Development** - The Bill introduces new provisions regarding the promotion of economic development as a statutory material consideration within the planning decision-making process. This seeks to give similar equivalence to economic development as to environmental and sustainable development considerations. It is important to note that this in line with the key priority of the NI Executive and Programme for Government in relation to supporting economic growth and competitiveness within Northern Ireland.
- **Local Development Plans** – A key function to be undertaken by local government when they receive planning powers is the creation of local development plans. Planning Reform introduces a new local development plan system and associated obligations including a shorter 2-year development plan timetable, preparation of community statements etc. As this will be resource intensive should the Bill not seek to bring forward aspects of this process in advance to enable necessary testing to be undertaken and preparatory work progressed as appropriate
- **Transition Arrangements** – The Council may wish to commend to the Department that due consideration be given to maximising all opportunities to involve local government in the process of reforming the planning system through a programme of focused and meaningful pilot initiatives. This would provide a real opportunity to test new processes, governance arrangements and help develop joint institutional capacity for councils and the Department in lead up into 2015
- **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. It taking forward the implementation of the Planning Bill, the Council would commend that 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 to local government. Again, this is linked to the potential initiation of pilots referred to above.

- **Resources to deliver** – it will be important that appropriate resources are committed by the Department to bring forward the Planning Bill and the necessary subordinate legislation, in parallel with the detailed legislative programme required to bring effect to the wider reform and transfer of functions to local government.

COMMENTS ON SPECIFIC CLAUSES CONTAINED WITHIN THE BILL

Clauses	Belfast City Conucil Comments
Clause 1 Statement of Community Involvement *This clause introduces the requirement for the Department to produce a statement of its policy for involving the community in its development plan and planning management functions within one year of the clause coming into operation.*	The Council has previously supported the introduction of a statement of community involvement but would again request greater clarity in relation to the process that will be undertaken by the department and ultimately local Councils, in addition to the content of the statement itself.
Clause 2 General functions of the Department and the Planning Appeals Commission *The Planning Bill (Clause 2 (1) a, b, c) introduces a new requirement for the Department or the PAC must exercise their planning function with the objective of* • *Furthering sustainable development* • *Promoting or improving well-being; and* • *Promoting economic development* *Clause 2 also introduces a requirement to "have regard to the desirability of promoting good design."* *Other provisions in the Planning Bill require the economic advantages or disadvantages of granting or refusing planning permission to be considered.*	The Council notes that the latter two objectives (i.e. improving well-being and promoting economic development) are new additions to the Planning Act 2011 and The 1991 Order. The Council recognises that the Bill promotion of economic development as a statutory material consideration within the planning decision-making process seeks to give similar equivalence to economic development as to environmental and sustainable development considerations. The Council recognises also that this is in line with the key priority of the NI Executive and Programme for Government in relation to supporting economic growth and competitiveness within Northern Ireland. The Council would commend that any such material considerations should be given equal weighting as the other stated objectives in regards to ' furthering sustainable development' and 'improving well-being'
Clause 3 Meaning of development *This clause amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land to now include the structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.*	The Council would welcome this clause as it is in line with recent environmental case law and would appear to achieve consistency with the requirements of the Planning (Environmental Impact Assessment) Regulations. It is also welcomed as *it means that developers, in certain circumstances, can no longer demolish without planning permission.* Clarification is sought, however, if the Department would intend to provide a separate direction exempting demolition in certain areas as was proposed in the Department's recent consultation: *Demolition and Development* and what implications this will have for the Development Management process.

Clauses	Belfast City Conucil Comments
Clause 4 Publicity, etc., in relation to applications *This clause substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications for planning permission. The Department must not consider an application if the publicity requirements are not satisfied.* *Article 25 as amended also makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination.*	The Council previously welcomed the proposed approach whereby the Department will specify the publicity requirement in subordinate legislation, in this case a Development Order. The Council would request early engagement in the formulation of any such Development Order and associated subordinate legislation.
Clause 5: Pre-application community consultation *Clause 5 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation.* *Article 22A places an obligation on developers to consult the community in advance of submitting an application if the development falls within a class prescribed for the purposes of this Article. The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate.* *Inserts Article 22B which requires the applicant to produce a report indicating what has been done to comply with the pre-application community consultation requirements. The report must be submitted with the application. The form of the pre-application consultation report may be set out in Regulations.* *Inserts Article 25AB. If the pre-application community consultation requirements have not been complied with the Department must decline to determine the application. The Department can request additional information in order to decide whether to decline the application.* *Clause 5 also places a requirement upon the Department to include notices of Pre-application community consultations and consultation reports in the planning register prepared in accordance with Article 124 of the Planning (Northern Ireland) Order 1991.*	The Council is supportive of the proposed requirement for pre-application community consultation. Clause 5 does not define the class of application to which this requirement applies. The Planning Act 2011 specifically refers to 'applications for planning permission for a major development' and thus relates directly to the proposed hierarchy of developments (Regionally Significant, Major, Local). The Bill should provide greater clarity in terms of what applications will be affected by this clause. Clause 5 places the onus on regulation to prescribe the persons to be involved in pre-application consultation. The Council would request early involvement in the formulation of these regulations. The Council previously commented 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 proposal at an early stage. The applicant should be responsible for the community consultation and further clarification of guidance in relation to the relationship with the formal statutory process including details on the statutory consultee is required. Clarification is sought in relation to the requirements and what is considered to constitute both the process and the definition of communities for the purposes of applications potentially broad areas of impact. Liaison with Councils in relation to the proposed arrangement may facilitate the development of effective consultation processes.

Clauses	Belfast City Conucil Comments
Clause 6 Determination of planning applications *Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.*	This Clause amends the established approach in the planning system. Current legislation (the 1991 Order and the 2011 Act) both outline that the Department, in dealing with a planning application, shall have regard to the development plan in so far as material to the application, and to any other material considerations. Clause 6, 'without prejudice to the generality of the existing provisions', introduces a specific requirement to consider any economic advantages or disadvantages likely to result from the planning decision. Whilst the Council recognises the need for introducing such provisions, it would commend that there is no unbalanced weighting given to such considerations as to the other planning objectives in regards to ' furthering sustainable development' and 'improving well-being' The Council would commend that clarification and Guidance is required in relation to the process of framework through which such provisions will be assessed e.g. a form of economic impact assessment, similar to the 'environmental impact assessment' used to assess environmental implications.
Clauses 7 and 8 : Power to decline to determine subsequent and/or overlapping application *These clauses extend the DOE's power to decline subsequent and overlapping applications for planning permission or listed building consent. It includes the power to decline applications where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine similar applications made on the same day, as well as the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.*	The Council has previously stated their support for these clauses as they will prevent developers from submitting repeat applications on the same site.
Clause 9 Aftercare conditions for ecological purposes on grant of mineral permission *Amends Article 27A of the Planning (Northern Ireland) Order 1991 by extending the list of land uses to be considered when the land is being restored to a required standard to include "use for ecological purposes"*	The Council has previously stated their support for these clauses.

Clauses	Belfast City Conucil Comments
Clause 10: Public inquiries: major planning applications *This clause amends Article 31 of the Planning (Northern Ireland) Order 1991 to allow the Department to appoint a person other than the Planning Appeals Commission to hold a public local inquiry [or hearing] to consider representations made in respect of any application to which Article 31 (major planning application) has been applied.*	The legislation states that persons other than the PAC can be appointed by the DOE to carry out public inquiries and conduct appeals. However, the Planning Appeals Commission currently falls under the remit of OFMDFM. Should the power to appoint "persons other than the PAC" should lie with OFMDFM rather than DOE to maintain the independence of these persons from the Department
Clause 11: Appeals: time limits *Clause 11 reduces the period for making an appeal to the Planning Appeals Commission from six to four months or such other period as may be specified by development order.*	The Council has previously stated their support for this clause as it will *ensure that planning decisions are not delayed unnecessarily by lengthy timescales associated with appeal procedures.*
Clause 12: Matters which may be raised in an appeal *Clause 12 inserts "Article 32A" in the Planning (Northern Ireland) Order 1991 so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that it's not being raised was due to exceptional circumstances.*	The Council would support this clause.
Clause 13: Power to make non-material changes to planning permission *This clause inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to may make a change to a planning permission already granted 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. Consultation and publicity arrangements may be set out in Regulations.*	The Council has previously stated their support for this clause.
Clause 14: Aftercare conditions imposed on revocation or modification of mineral planning permission. *This clause inserts a provision at Article 38A of the Planning (Northern Ireland) Order 1991 which permits the Department to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under Article 38, provided a restoration condition is included or in place on the land.*	The Council has previously stated their support for this clause.

Clauses	Belfast City Conucil Comments
Clause 15: Planning agreements: payments to departments *This clause amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland department and not solely the Department of the Environment.*	Clause 15 relates to payments under Article 40 Agreements to be made to any Government Department not just the DoE. This should be extended to Local Councils. On a related issue it should be noted that the Department receives £10,000 for every Environmental Statement (ES) requiring consideration as part of the application process. Whilst the Department receives the ES it is usually forwarded on to consultees, including the Council, for consideration without any consideration of the re-distribution of fees to reflect the additional work required. It may be appropriate to consider this matter as part of the payments by to departments in the context of the widened scope to include Local Councils.
Clause 16: Increase in Certain Penalties *Clause 16 increases penalties in relation to 7 articles in the Planning (Northern Ireland) Order 1991. For offences under Article 49 (acts causing or likely to result in damage to listed buildings) the maximum level of fine, on summary conviction, has been raised to the statutory maximum. Also the fine payable on summary conviction when a person fails to prevent damage or further damage resulting from the offence is raised from one tenth of a level 3 fine to one tenth of a level 5 fine on the standard scale for each day on which the failure continues. Offences may also be convicted on indictment.* *This Clause increases the level of fine that can be handed out by the courts for damage to listed buildings or failing to prevent further damage to a listed building; hazardous substances offences; failure to comply with stop notices and other enforcement offences.* *Clause 16 increases the maximum level of fine, on summary conviction, for a range of offences relating to breaches of planning control or consents from £30,000 to £100,000.*	The Council would have no comment on this clause.
Clause 17: Conservation areas *Clause 17 amends Article 50 of the Planning (Northern Ireland) Order 1991 to include provision that the Department must pay special attention to (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.*	The Council would have no comment on this clause.

Clauses	Belfast City Conucil Comments
Clause 18: Control of demolition in conservation areas *Clause 18 amends Article 51 of the Planning (Northern Ireland) Order 1991 by adding additional provision that any structural alteration to a building in a conservation area, where the alteration consists of demolishing part of the building, shall be taken to be demolition for the purposes of Article 51.*	The Council would have no comment on this clause.
Clause 19: Tree preservation orders: dying trees *Clause 19 amends Articles 65 and 65B of the Planning (Northern Ireland) Order 1991 and Section 125 of the Planning Act (Northern Ireland) 2011 by removing the reference to dying trees. Dying trees are no longer exempt from the provisions of a tree preservation order.*	The Council would have no comment on this clause.
Clause 20: Fixed Penalties This clause inserts 2 articles into the Planning (Northern Ireland) Order 1991. *Articles 76C and 76D enable an authorised officer to issue a fixed penalty notice for the offences of failing 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 level of fixed penalty will be prescribed by Regulations and is reduced by 25% if paid within 14 days.*	The Council would have no comment on this clause.
Clause 21: Power of planning appeals commission to award costs *Clause 21 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.* *Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.*	The Council would have no comment on this clause.
Clause 22: Grants *Clause 22 amends Article 120 of the Planning (Northern Ireland) Order 1991 to extend the Department's power to grant aid non profit organisations whose objectives include furthering an understanding of planning policy. The Department of Finance and Personnel's approval to such grants is no longer required.*	The Council would have no comment on this clause.

Clauses	Belfast City Conucil Comments
Clause 23: Duty to respond to consultation *Clause 23 inserts Article 126A which requires those persons or bodies which the Department is required to consult before determining certain applications for planning permission or consent to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and the Department. The section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.*	The Council requests early engagement in the formulation of future development orders and subordinate legislation. This clause will have initial implications for the Council's current role as a statutory consultee and longer term impacts in terms of decision times. The Council would want to be closely involved in the formulation of the Development Order outlined in Clause 23 which will set-out consultation response procedures. This will be a critical element of the potential to improve performance the ability to enforce compliance with consultation requests or the ability to progress determination in the absence of responses from other Government Departments will be critical. It may be appropriate where no adequate responses are received by the agreed dates there is provision for this to be considered as a non-objection (at the risk of the consultee).
Clause 24: Fees and Charges *Clause 24 amends Article 127 of the 1991 Order to enable the Department to charge multiple fees for retrospective planning applications.*	Previously the Council requested that consideration is 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
Clause 25: Duration *This clause allows the Department to make subordinate legislation to repeal provisions in the Bill and to include 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 would have no comment on this clause.
Clause 26: Interpretation *This clause contains interpretation provisions and defines a number of terms used throughout the Bill.*	The Council would have no comment on this clause.
Clause 27: Commencement *This clause contains interpretation provisions and defines a number of terms used throughout the Bill.*	The Council recognises the benefits of the Department retaining the capacity to commence selected elements of this Planning Bill at suitable times. In this context the Council suggests including provision in this Planning Bill for strategic elements of the planning system to be carried out by Local Councils prior to full transfer of functions, for example, area planning functions prior to 2015.
Clause 28: Short title *This clause provides a short title for the Bill.*	The Council would have no comment on this clause.

Belfast Civic Trust

Dear Sirs

On behalf of the Belfast Civic Trust we would endorse the comments of the NI Environment on this Proposal. We also support the comments of Dr Geraint Ellis of Queens University. The planning bill is particularly ill thought out re the emphasis on economic in planning decisions. These provisions will not work.

David Flinn
(Chairman Belfast Civic Trust) (Solicitor specialising in Environment , Commercial and Energy law)

Belfast Healthy Cities

Response to Planning Bill

Belfast Healthy Cities welcomes the opportunity to comment at this stage of the Planning Bill having previously provided detailed responses and evidence submissions.

About Belfast Healthy Cities

Belfast Healthy Cities is a designated Healthy City and a leading member of the World Health Organization (WHO) European Healthy Cities Network of which there are nearly 100 cities. Belfast has a strong track record of meeting WHO goals and objectives and currently provides the secretariat to the network. Belfast Healthy Cities is a citywide partnership working to improve health equity and wellbeing for people living and 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; Queens University of Belfast and University of Ulster.

Regeneration & Healthy Urban Environments

Regeneration & Healthy Urban Environments is a core area of our work and focuses on highlighting how the physical environment impacts on people's lives, health and wellbeing and indeed health equity. 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. Belfast Healthy Cities lead the Regeneration and Healthy Urban Environments Group which is a subgroup of the Belfast Strategic Partnership.

Comments on the Bill

Belfast Healthy Cities recognises the importance of the Bill and reinforces some of the key messages as outlined in previous more detailed responses. We wish to highlight how planning impacts on health and well-being and how it affects health and social inequalities.

Clause 2 General function of the Department and the planning appeals commission

In light of the Healthy Cities concept and Belfast Healthy Cities work in Health Urban Environments we support *'promoting or improving well-being'* however we would suggest that the concept of *'promoting or improving well-being'* requires further clarification. For example what is the definition of 'well-being' in terms of the bill and what are the guidelines/criteria for this?

Belfast Healthy Cities would reinforce the message that healthy urban planning is 'planning for people' – planning that considers peoples needs and focuses on the positive impact planning can have on their health. Healthy urban planning has an explicit aim to prioritise health within planning. Offer more information on the impact of planning and regeneration is contained in a publication by Belfast Health Cities *'Healthy Places – Strong Foundations'* (2010) which can be accessed at http://www.belfasthealthycities.com/PDFs/HealthyPlaces.pdf

Belfast Healthy Cities also highlights the approach by the Scottish Government as detailed in the implementation plan *'Good Places, Better Health*[1], which can be accessed at. http://www.scotland.gov.uk/Resource/Doc/254447/0075343.pdf.'

'Good Places, Better Health' recognises that the environment that surrounds us is key to our health and ensures greater connection between environment and health policy and actions.

Belfast Healthy Cities supports the objectives *'furthering sustainable development'* and *'promoting economic development'*. Again, we would ask for clarification of the definition of *'sustainable development'* and *'economic development'*. A full and clear definition of 'sustainable development' may cancel out the need for an objective on 'economic development.'

Sustainable development encompasses environmental and economic sustenance and socio-demographic and health dimensions. It means development that meets the needs of the present without compromising the ability of future generations to meet their own needs. In terms of sustainable development Belfast Healthy Cities would as before stress the important of *sustainability appraisal.*

In terms of promoting economic development, it is important to highlight that this should be more than job creation. Belfast Healthy Cities highlights that vibrant places support the economy. Vibrant, active places help sustain existing and generate new local business opportunities, as they increase footfall and people 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 informal economic activity.[2] 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.[3]

Clause 5 (Pre-application community consultation)

Belfast Healthy Cities supports community involvement in the planning process. Community planning involves bringing people together, which may lead to increased social cohesion in an area. It can also help generate confidence and willingness to take action for developing the area.

Clause 6 (Determination of planning applications)

Belfast Healthy Cities would like to stress the importance that economic advantage should not take precedent over health and wellbeing.

A key principle of planning is that it considers issues related to the use and development of land. In introducing the assessment of economic advantages and disadvantages, the planning system could be used for a purpose for which it was not legally designed. Clause 6 seeks to expand the issues that planners need to take into account and as a consequence, the NI planning system will no longer be able to rely on the stability of 40 years of case law that have determined the boundaries of planning considerations – this will have to be redefined, through a series of legal challenges, to establish case law. This will inevitably introduce a great deal of instability and delay into the planning system in NI, potentially making it unworkable.

The inclusion of consideration relating to economic advantages and disadvantages create significant scope for litigation and escalating challenges between competing developers. It

1 Scottish Government (2008) Good Places, Better Health, A new approach to environment and health in Scotland, Implementation plan, http://www.scotland.gov.uk/Resource/Doc/254447/0075343.pdf

2 N Dines & V Cattell (2006) Public spaces and social relations in east London. York: Joseph Rowntree Foundation. Available at http://www.jrf.org.uk/publications/public-spaces-and-socialrelations- east-london.

3 Litman, T (2010). Where we want to be: home location preferences and their implications for smart growth. Victoria Transport Institute, Victoria (CAN) 2007. http://www.vtpi.org/sgcp.pdf

gives objectors considerable weight, where any person who thinks they may be personally economically disadvantaged as a result of a planning decision (for example, one developer losing out to another) may make a valid objection to an application. As a result, this clause could seriously slow down the planning system.

If this clause is to remain the economic advantage or disadvantage needs to be considered within the impact of health and wellbeing of the local population. Belfast Healthy Cities recommends a Health Equity Impact Assessment could be carried out to ensure economic advantage does not have an impact on the local population's health for example, increased air pollution as a result of increase in private car usage resulting in a negative health impact through respiratory and asthmatic conditions.

Clauses 9, 17 and 19

Belfast Healthy Cities welcomes Clause 9 aftercare conditions for ecological purposes on grant of mineral planning permission, Clause 17 conservation areas and Clause 18 tree preservation orders: dying trees - as these clauses promote biodiversity in Northern Ireland and enhancement of conservation and green space areas. We recognise the value of biodiversity and conservation areas in terms of green and open space. These can contribute to addressing inequalities and promote positive health and wellbeing through the following points:[4]

- Access to green space encourages an active lifestyle
- Contact with nature underpins mental wellbeing
- Low cost access to positive environment supports health equity
- Social cohesion can be built within green spaces
- Strengthening green space contributes to economic prosperity
- Urban green space is vital for environmental sustainability

4 Belfast Healthy Cities (2010) Healthy Places – Strong Foundations, Celebrating World Health Day 2010 – Urbanisation and Health, http://www.belfasthealthycities.com/PDFs/HealthyPlaces.pdf

Belfast Holylands Regeneration Association

Planning Bill Number: Bill 17/11-15. To amend the law relating to planning; and for connected purposes.

Introduction

The Belfast Holyland Regeneration Association (BHRA) represents the views of long term residents in the Holyland area of South Belfast. We work in partnership with a range of Agencies, including Belfast City Council, Planners and Universities, to identify suitable measures to help regenerate the area. We are committed, in doing so, to following all relevant statutory planning, consultation and approval processes.

We object to the proposed Planning Bill on the following grounds.

Clause 1 Statement of Community Involvement

We object that the Clause allows Planners to continue to determine policy on community involvement. It therefore fails to resolve the current weaknesses whereby neighbour notification is voluntary and Councils are consulted but do not have statutory authority to represent the public interest.

Elected representatives – not Planners – should be the arbiters of what is in the public interest. Planners have much too narrow a remit to determine what is 'in the overall public interest': their chosen term to repel objectors.

In our experience, Planners have consulted only neighbours nominated by developers on planning applications: and have arbitrarily rejected Council views on planning approvals without explanation, justification or accountability.

Any new regime must not allow Planners to determine their own policy on community involvement or to overrule Council on what is or is not in the public interest. They will only repeat the sins of the past.

In order to secure an appropriate level of community involvement, Clause 1 must:

- Make neighbour notifications of planning proposals a statutory requirement.
- Give Councils statutory authority to determine what is in the public interest
- Require Planners to obtain Council agreement on planning decisions.

Clause 2 General Functions of the Department and Commission

We object that Clause 2 allows Planners / Commissioners to set down policies on economic development (subject to taking account of policies and guidance issued by DoE, DRD and OFMDFM). We further object to allowing Planners / Commissioners to decide on matters to include as appearing to be relevant.

Planners and Commissioners are not qualified to develop or follow sound economic development policies. They operate within a limited framework of policies. They do not consider external policies - (e.g.) housing, health, education, community sustainability, regeneration, public services, public order or economic development. They do not regard these policies as 'material considerations' in making planning decisions: even though negative impacts can extend far beyond the Planning context.

In our experience, Planners persisted in approving applications to convert family dwellings to houses in multiple occupation in the Holyland and other areas of South Belfast. This was despite strong representations from Communities, Council and PSNI on the consequences. The additional annual cost to the 'public purse', in the Holyland alone, is now £3m (Browne Report, Belfast City Council, 2012). The amount covers extra day to day public services such

as cleansing, Wardens and policing, following material demographic changes to the area. It does not cover costs of mass migration from an inner city area to outlying areas, or the consequential costs of e.g. parking and transport strategies to cater for people moving to outlying areas but still working in the city centre.

Planners / Commissioners felt that they were correct to continue to approve applications in the absence of appropriate planning policies, as the consequential impact on other public services was not recognised as a 'material consideration' under Planning Policy (the 'lemming policy').

That Clause 1 extends the range of policies to be taken into account in planning decisions (to DoE, DRD and OFMDFM), is still, in our view, far too restrictive: and remains a recipe for dysfunctionality. Planning decisions have repercussions across all Departments.

We have no confidence that Planners / Commissioners have the will or skill to embrace the extended range of policies specified in Clause 1: never mind the range of policies impacted by planning decisions. We believe they will simply avoid addressing issues by excluding challenging matters on the grounds that they do not appear relevant.

In order to ensure Planning decisions comply with wider government policies, including economic development, Clause 2 must:

- Extend the definition of 'material considerations', in PPS1, to cover considerations which are outside the scope of Planning Policy but which are within the scope of wider government policy.
- Define economic development and specify the scope of Planners / Commissioners authority and any limitations thereon.
- Introduce a procedure to ensure Planners and Commissioners assess planning applications against a checklist / matrix of government policies and policy owners.
- Introduce a statutory requirement to consult with and follow policy owners' advice.
- Require proportionate economic appraisals for planning applications, certified (say, by DFP) as being Green-Book compliant..
- Introduce a statutory responsibility (say, on OFMDFM) to convene policy-owner forums to address cross-cutting issues.
- Make good design **mandatory** rather than 'desirable' as expressed in Clause 1.

Clause 3 Meaning of Development

We object that Clause 3 does not make a distinction between land / building development and economic development. Nor does it define economic development or the scope of Planners role in promoting economic development.

In order to ensure Planners understand their role in promoting economic development, Clause 3 must:

- Define economic development and its place in the context of land / building development.
- Clarify the distinction between sustainable development and (sustainable) economic development.

Clause 4 Publicity, etc., in relation to applications

Clause 5 Pre-application community consultation

We object that Clause 4 and Clause 5 allow developers / speculators (rather than Planners or Council) to undertake and report on community consultation. This would be a dereliction of duty, as developers / speculators have a vested interest in ensuring their application is successful.

In our experience, developers / speculators only list as neighbours people they consider will not object to their application. We are familiar with incidences when objectors have been badgered / bullied into refraining from objecting.

In order to ensure community consultation is properly undertaken, Clauses 4 and 5 must:

- Require community consultation to be undertaken by Planners or Councils

Conclusion

Given the extremely short timescale for responses to the Committee and the extremely dense wording of the Bill, we have not examined all sections of the Bill in any great depth. We have, however, had sight of Professor Ellis's analysis for Friends of the Earth and have satisfied ourselves that we largely concur with the views expressed therein.

Further, analysis (above) of Clauses 1 to 5, leads us to conclude that:

- Clause 1 perpetuates fundamental weaknesses in the current system.
- Clause 2 is beyond the competence of Planners: yet does not go far enough in promoting reform.
- Clause 3 does not define economic development: a fundamental oversight.
- Clauses 4 and 5 skew the system in favour of developers / speculators: contrary to the public interest.

For these reasons, we believe that the Bill is not fit for purpose in promoting reform or improving regulation.

Belfast Metropolitan Residents' Group

Hon. Sec.: R Cameron, 33 Upper Road, GREENISLAND, Co Antrim BT38 8RH
Phone: 028 9086 3187 **Email**: robincameron@btinternet.com

Northern Ireland Environment Committee
Call for evidence on proposed 2013 Planning Bill

THE Belfast Metropolitan Residents' Group (BMRG) is an association of community groups drawn from across Belfast and the Greater Belfast region. The BMRG was founded in 1999 to make a community input into strategic planning issues in Northern Ireland, and has since then taken part in numerous public consultations and inquiries, seen Ministers and made presentations to Assembly Committees on a wide range of planning matters.

While we welcome aspects of the Bill, we are extremely concerned about the adverse impact certain of its clauses are likely to have both on the construction sector and the wider Northern Irish economy. We are also worried about the damage that the Bill could do to the Regional Development Strategy's (RDS's) prime objective of promoting Sustainable Development. This Bill has interdepartmental implications. If policy is to be coherent we feel that the Ministry for Regional Development and the Regional Development Committee should also perhaps be formally involved.

We regret that the Bill has been introduced without public consultation, and are grateful to the Environment Committee for giving the public an opportunity to make their views known.

Clause 1. Publication of a Statement of Community Involvement

We welcome the timed intention to publish this statement and stress the importance of the Department preparing this statement not in an ivory tower, but in partnership with bona fide community groups in order to produce a document that communities can genuinely 'buy into'.

Clause 2. Amendment of the general functions of the Department of the Environment & Planning Appeals Commission to include 'promoting economic development'.

This clause (in conjunction with Clause 6 below), seeks to re-introduce the discredited PPS 24 by the back door. PPS 24 went to consultation at the height of the recession and was rejected by 77% of respondents. Its rejection today would, if anything, be more emphatic.

It also smacks of desperation. Do we really want NI's already permissive planning regime to go the way of those of Portugal, Spain and the Irish Republic? Are these our new role models? Is the Department also determinedly pretending that the recession never happened? Is it aware that this clause lays the groundwork for another round of boom and bust? Can the Department not see that, had these clauses been in place ten years ago, Northern Ireland too would have had ghost estates in every town and city, and five or six times the number of bankruptcies that we have actually experienced?

Giving the industry what it wants is not the answer. The industry's best security lies in strong regulation, that is to say regulation that will save it from its own excesses. This is what enabled the construction sector in NI to get away relatively lightly compared to its equivalent down south, where the regulatory system was bent out of shape by an overly-powerful housebuilding sector and its political allies. This is why England, where the planning regime is more robust again, did not experience anything like the same wave of bankruptcies.

The objectives of sustainable development and improving well-being represent what is best in the NI system. They are our system's intellectual capital. They have served NI better and represent a much more valuable asset than the clause proposed, which sends the industry the wrong message, and will encourage what is worst and most dangerous in it. What is

important now is to show vision, and to rebuild the industry on sustainable lines, creating a sector that is both profitable and socially beneficial. 'Giving the industry its head' is the old, failed formula revisited. The Department must rethink this.

To state the obvious, planning is or should be about land use, not about 'promoting economic development', though that may be an indirect spin-off from good planning decisions. Conversely, bad planning decisions can blight an area and deter economic development so planners should be mindful of their responsibilities in that regard. However to emphasise 'economic development' as an end in itself which Planning should promote is to invite planners to compromise the overriding principle of the Regional Development Strategy, the promotion of sustainable development.

This Bill asks planners to both uphold sustainable development (i.e. to balance social, economic and environmental objectives) and also give economic development some undefined but separate weight, with a strong hint that it is somehow more equal than others. This is an impossible and contradictory task.

This leads on to the issue of mandate. The RDS was the subject of the most extensive and detailed programme of public consultation ever undertaken in Northern Ireland. This award-winning consultation extended over years, saw large scale community involvement, through hundreds of workshops at a cost of hundreds of thousands of pounds. The ideas derived from this consultation were then evaluated by an independent panel and subsequently modified by the Environment Committee, the Assembly and Executive.

The contents of this Bill, by comparison, have no basis in public consent and not even the flimsiest of consultative mandates. All the proposed amendments should be dropped, bar the introduction of an emphasis on good design, which is not however appropriate to this clause, and should be introduced in less aspirational form elsewhere. The wording of the 2011 Act and the 1991 Order should remain unchanged.

Clause 4. Publicity, etc., in relation to applications

We would like the Department to consider banning applicants from issuing public notice of planning applications during the months of July and December, as publication over and during the run up to the Christmas and July holidays is often in effect pseudo-publication, out of which limited public awareness frequently ensues.

Clause 5. Pre-application community consultation

We are not sure to which class(es) of development this refers, so it is difficult to comment, but our view is that this could potentially be a major legitimising aspect of the Bill, so our hope is that it will apply to a wide category of applications, and that it is being seen by the Department not as an additional piece of box ticking, but as a way of potentially detoxifying the whole process for applicants and third parties alike. It will not do this however if it is the applicant who prepares the pre-application community consultation report. This will undo any good that might be done as reports produced in this way will not enjoy public confidence (the potential for misrepresentation is too great). It is imperative that the Department prepares this report.

Clause 6. Material considerations to include economic advantage/disadvantage.

This clause compounds the confusion created by clause 2.

Economic considerations can already legitimately be recognised as a material consideration in determining an application, but under the overriding principle of sustainable development, i.e. development which does not damage the environment or the ability of future generations to meet their own needs.

How though to determine economic advantage/disadvantage? Economists have a poor record in forecasting the economic effects of development, witness the assumption almost universal

among those commenting on the housing market that the property boom of c.2000-07 was a permanent phenomenon. They were advocating the release of more greenfield land to meet the alleged 'burgeoning demand' for houses and apartments right up to within weeks of the bubble bursting.

How could the Planning Service hope to assess the advantages/disadvantages of any application from an economic aspect if professional economists are so discredited, and rarely agree among themselves anyway? The scope for prolonging the whole planning process while economic claim and counter-claim is argued on appeal runs contrary to the objective of speeding the process.

More particularly, the Bill makes no provision for any economic claims made in support of a successful application to be subject to subsequent checking, let alone to any means of punishing the applicant if he or she fails to achieve the claimed economic benefit with the development. This would encourage wild unverifiable claims by applicants in support of their application, coupled with extravagant counter claims by objectors about economic disadvantages they would suffer. As the Knock Golf Course planning application revealed clearly, the Department's ability to tell fact from fiction cannot always be relied on.

In this respect the proposed clause is fundamentally at odds with all other aspects of planning policy, where sanctions can be imposed on applicants who fail to observe conditions or fail to build in accordance with the plans which were approved.

Clause 10. Appointment of non-PAC Personnel to oversee Public Inquiries.

Though BMRG members have sometimes been disappointed by PAC decisions, the PAC's independence, impartiality and integrity has never been in doubt. If one MLA's intervention in the Assembly debate on the Second Reading is correct, the PAC already has the power to appoint independent Commissioners in the event of a business overload.

If that is so, then this clause is not needed. If it is not so, then giving powers to the PAC to do so would be highly preferable to the proposal in this clause.

Public confidence in the Planning System is fragile, and for the DoE itself to appoint persons to oversee inquiries would encourage those who view it with cynicism.

Clause 11. Appeals: time limits.

We support the proposed amendment of appeal lodgement times from six to four months.

Clause 13. Power to make non-material changes to planning permission

We are unhappy with clause 37A. 3 (b), 'the power to remove or alter existing (planning) conditions' upon application. These conditions can involve significant elements of the proposal, such as, for example, the number of dwellings appropriate to a site. When set by the PAC, they are worked out in common view of all contributing parties to an Inquiry. They are generally rescinded however in something akin to a vacuum, as any publicity relating to the revision of conditions is generally missed by the exhausted community, which thinks it's all over, with only Department and applicant party to the decision, and Third parties nowhere to be seen.

This is a major source of public disenchantment. It gives the impression of shady deals done behind closed doors. It is also bad in principle, for such decisions should not be made outwith the Inquiry or separately from the holistic consideration of all aspects of the application. At the very least there should be an onus on the Department to write to all parties who have made representation regarding the application, inviting their comment.

Clause 19. Tree preservation orders.

We support the proposed amendments to Article 65 of the 1991 Planning Order, and section 125 of the 2011 Act suggested here.

Clause 20. Enforcement.

Planning Service's failure to enforce planning conditions and punish other flouting of Planning Law have been a perennial cause of complaint amongst our members and we welcome some of the provisions of the Bill in that regard.

However we object to the proposal of an amnesty for further breaches of planning requirements once a fixed penalty has been paid. This would perpetuate the current situation where certain developers regard breaking planning conditions and the (not very strong) possibility of being fined, as a small price to pay for the savings accrued by continuing to flout them.

Proposal for an additional clause

A clause to this effect may already be in the Bill, if so, our apologies for having missed it.

We would like to see the Department given the power, indeed being obliged to reject applications for which all the required material is not submitted, even after the Department has requested the additional, missing information. Too often, applicants fail to submit material which is necessary for the Department to make a determination. At present, things sit and sit, with the Department often unfairly then being criticised for failing to make a timely decision. This state of affairs is completely unsatisfactory. If the applicant does not submit all sought or relevant materials within two months of tendering his /her initial application, the application should be automatically rejected and the fee retained. This class of rejections should not be eligible for referral to the PAC.

We trust the Committee will take notice of these views, and wish it well in its deliberations.

Yours sincerely,

Peter Carr
Chairman
Belfast Metropolitan Residents Group

Belfast Not for $hale

To the Environment Committee,

this is the fourth attempt in as many years to bring about economic supremacy in planning and it is by far the most insidious. We already have a very weak and permissive system and, in our opinion, these clauses could push us towards chaos.

The fact that there is no formal consultation paper is criminal.

A good planning system gives an economy consistency, fairness and direction. The amendments to the Planning Act (2011), and the Planning Order (1991) will result in both a weakening and slowing down of the planning system by encouraging more speculative applications, increasing the likelihood of legal challenges, contributing to confusion in the interpretation of planning policy and creating inconsistency in decision making.

It is unprecedented for a modern planning system to elevate economic interests above all other valid land-use planning considerations. The role of the planning system is to balance all valid and material interests on a case by case basis in the interests of sustainable development.

Belfast Not for $hale is opposed to the 2013 Planning Bill, its underlying assumptions and the damage it will do to an already weakened planning system. The proposed Bill will have far reaching and adverse implications for communities, the business sector and the future of Northern Ireland's environment.

Michael McEvoy,
Belfast not for $hale.

Bill Donnelly

Dear Sir,

I wish to object in the strongest terms to the latest attempt to bring about further economic prioritisation in planning matters. As a local Cavanacaw Goldmine resident I have first hand knowledge of how three Environment Ministers Wilson, Poots, and now Attwood's pursuance of this approach has resulted in an environmental scandal.

In 2008, with the full knowledge of Ministers Wilson and then Poots, up to half a million tons of potentially acid producing waste rock was removed from the mine without planning permission and used as building aggregate in the construction of the Aughnacloy bypass. Complaints from residents resulted in nothing but inaction from planning service which eventually led to a damning landmark Ombudsman's report which confirmed a catastrophic lack of planning enforcement at the goldmine, and led to a record compensation award of £30,000 to the residents concerned.

Unbelievably in 2012, apparently ignoring all that had gone before, Minister Attwood's department actually approved the removal of a further half million tons of the same potentially acid producing rock for use in the aggregates industry. This was quickly overturned at the Judicial Review Court when the Department unable to defend their actions, conceded lack of proper EIA screening. It is clear that until now environmental issues at the mine have been more or less ignored, so as a mater of urgency, I believe we should be moving the emphasis towards environmental prioritisation in planning and not development at any cost.

Bill Donnelly
18b Laurel Rd Omagh.

Full Ombudsmans Report - http://niomb.blogspot.co.uk/

Castlereagh Borough Council

Consultation Response from Castlereagh Borough Council on the Planning Bill 2013

Introduction

The Council welcomes the opportunity to comment on the Planning Bill 2013. The Council also welcomes the measures which are to be introduced in advance of the transfer of planning functions to local government. This will allow a 'pilot' of these new measures in advance of the radical changes to come. However, there remains a concern that so much still relies on the production of secondary legislation and guidance as the Bill only goes some way towards the implementation of the proposed changes.

This report details the comments of the Members of Castlereagh Borough Council.

Financial implications of the Bill

The 'Explanatory and Financial Memorandum' which was prepared by the Department of the Environment (DOE) in order to assist the reader of the Bill clearly states that *'any potential increase in costs should be offset by the benefits of more efficient processes.'* These observations relate only to the costs of the DOE and do not take into account the costs of others involved in the planning process, more specifically the consultees. No account has been taken of the additional resources that may be required to ensure that consultees respond within the new shorter time frame.

Consultees

The changes to the current Planning Bill provide an opportunity to improve those areas of the planning system which may be considered as deficient. One such area is statutory consultees. Currently only planning and roads issues may be conditioned in planning approvals. Other agencies' comments may become informatives, including comments from Northern Ireland Water (NIW) or Environmental Health, which cannot therefore be enforced by the planning authority, currently DOE Planning. This needs to change in order to prevent situations, for example, where residential developments are inhabited without having functioning sewerage infrastructure.

Comments on each Clause

The comments below follow the Clauses listed in the Bill.

Clause 1: Further regulations will set out how the DOE should go about preparing a Statement of Community Involvement and what it should contain. These regulations are likely to stipulate that community groups and the public should be involved in the preparation of this statement. However, there are no further details of how this will happen. As this is a process that the Councils will have to carry on after the transfer of planning functions, it is incumbent upon the DOE to make sure that the process is fit for purpose. Arguably it is the Council which is better informed regarding the local community whereas the DOE is removed from this local context. Further clarity on this issue is required.

It is noted that the requirement for *"the Department to prepare and publish a statement of community involvement already exists in the Bill the only difference being that it now must be published within a year and from the day of which this paragraph comes into operation."* While this is to be welcomed, a question arises as to whether all Councils will be able to achieve this deadline when Planning is transferred to Councils in 2015, until governance arrangements are agreed, development plans are updated etc. Moreover, it is not clear what 'community involvement' actually means or what resources will be required to ensure it is

carried out in a satisfactory manner. Clearly, there will be resource implications which will be dependent on the level of involvement required.

Clause 2: Although this clause looks reasonably innocuous, it represents a fundamental shift in what the planning system has previously represented. It currently balances many material considerations such as environmental, heritage or social issues but this new clause implies that economic considerations may be given greater importance. The provision of the Bill which requires economic advantages and disadvantages to be considered is likely to be unworkable in practice. For example, it is unlikely that any developer will put forward a case illustrating the economic disadvantages of a proposed development. The Bill should be reworded to make it clear how economic benefits will be measured or to provide a list of criteria for local government to ensure regional consistency.

Of some concern is the fact that, following the consultation process in support of draft Planning Policy Statement 24 'Economic Considerations' in January 2011, the Minister determined not to adopt the policy. This clause suggests a change in that stance. This needs to be clarified.

More clarity is also required on how the DOE intends to measure 'good design' as it may be viewed as a subjective opinion. The principles of good design need to be clearly stated in centrally prepared guidance to be implemented by decision makers consistently.

Clause 3: This is to be welcomed.

Clause 4: Provision in this clause is to be welcomed and supports the concept of pre-application consultation.

Clause 5: Pre application consultation will only be carried out for certain types of planning applications. Therefore it is important that the thresholds that are set to determine which applications will require pre-application consultation and which ones will not are appropriate. For example, pre-application consultation may not be required for large scale developments that are split into smaller phases (which in turn, may present a loophole that developers may exploit).

Whilst the pre-application consultation is welcomed, it is felt that for it to be effective it would have to be carried out within the context of an up to date area plan. However, the attempts to front load the application i.e. for all the issues to be identified at the beginning of the process is to be welcomed. Even so, some clarification is needed on what is "the community." How is the community to be defined? Is it people living within a certain distance of the proposed project or is a wider definition envisaged? These matters need to be clarified.

It is also noted that there is no reference to a third party appeal in the Bill which has been raised by some Elected Members.

Clause 6: The key issue is how much weight, relative to other factors, is to be given to economic considerations. More guidance is needed from the DOE on how this will be assessed.

Clause 7: This is to be welcomed as it will prevent developers from submitting repeat applications on the same site.

Clause 8: The suggestion in this Clause, if approved, would stop multiple applications for the same site. This also would allow the process of planning to be more efficient. Indeed there is a view that here and elsewhere in the document the use of the word 'may' could be strengthened to the word 'shall'. The use of the word 'may' could lead to inconsistency in approach. (For comparison, in the Building Regulations, the District Council "shall" enforce the Building Regulations in its district.)

Clause 9: The Council welcomes this Clause.

Clause 10: The legislation states that persons other than the PAC can be appointed by the DOE to carry out public inquiries and conduct appeals. However, the Planning Appeals

Commission currently falls under the remit of OFMDFM. The power to appoint "persons other than the PAC" should lie with OFMDFM rather that the DOE to maintain the independence of these persons from the DOE.

It also raises issues of consistency of decision making when other bodies are involved that may be constrained by different arrangements. It is noted that others selected to carry out the work instead of the Planning Appeals Commission are nominated by the Department. This could lead to governance issues where it would be conceivable for bodies or individuals to be selected to consider an appeal who may have a track record of a potential bias in certain matters. The Government's arrangements are not clear and should be more robust.

Clause 11: The reduction of time to carry out an appeal from six months to four months is to be welcomed and allows for a more efficient process. However, the English experience is that whilst the reduction was from six to four months it has reverted back to six months because of the inability of the system to deal with the shorter time frame.

Clause 12: This is to be welcomed as developers often bring revised or very different schemes to an appeal which may even have been approved in the first instance. This wastes time at an unnecessary appeal and may disadvantage the objectors as they have not had an opportunity to properly review the material newly presented.

Clause 13: The Council has no objection to this Clause.

Clause 14: The Council has no objection to this Clause.

Clause 15: This is to be welcomed and may result in monies becoming available for other uses. It is suggested that these payments should also be available to Councils in appropriate circumstances and not just government departments. The English model of the Community Infrastructure Levy (CIL) may offer another avenue to investigate.

Clause 16: The Council has no objection to this Clause

Clause 17: The Council has no objection to this Clause.

Clause 18: The Council has no objection to this Clause. Where demolition is approved in conservation areas it is considered the timescale for the rebuilding should be included to ensure the preservation of the overall amenity of the area, and be rigorously enforced.

Clause 19: In this clause it is noted that trees that are dying are now going to be included in tree preservation orders. This then raises an issue of where some trees have diseases, such as the recent ash die back situation. The application of this clause would mean that those trees could not be felled. This would be contrary to policies in other Departments that would be seeking to preserve the integrity of the healthy trees in the locality. It would appear that this scenario has not been taken into account and there are practicalities in the application of such legislation that would require further consideration. It may be helpful to have clarification and possibly some exemptions listed that would cover the situation already mentioned.

Clause 20: Council agrees with the general principle of more robust enforcement. However, the proposal to provide for discounted fines has been found in the experience of officers in Local Government to pose problems administratively and attract additional cost which cannot be recovered. It would be much simpler and more efficient to set a fine that is paid for in full by a particular date. This clause states that *'the Appeals Commission may make an order as to the costs of the parties to an appeal under any of the provisions mentioned under paragraph 2 and as for the parties as to who the costs are to be paid.'* It is not clear if these powers are available to the alternative mechanisms for dealing with appeals referenced in Clause 10. Moreover it is not clear where the monies raised in the fines are accruing to.

Clause 21: The Council has no objection to this Clause.

Clause 22: The offer of grants to bodies providing assistance in relation to development proposals is to be welcomed. However criteria and clarification should be provided on who can avail of this support. Looking beyond May 2015 a question arises, if having established a principle where monies are paid to such bodies, would there be an expectation that Councils would continue such funding arrangements? It is not clear from the Bill as to what the level of funding and those obligations may be.

Clause 23: The processing of planning applications is sometimes delayed due to the late response of statutory consultees. This clause therefore removes the uncertainty and delay associated with late responses. However, there is also a question over who will have the authority to enforce this in different Government Departments.

Clause 24: This is to be welcomed.

Clauses 25-28: The Council has no objection to these Clauses.

Conclusion

The Members of Castlereagh Borough Council welcome the introduction of this Planning Bill however have a number of queries regarding the implementation or detail of the individual Clauses. The Council awaits the outcome of this consultation with interest.

Catharine McWhirter
March 2013

The Cavehill Conservation Campaign

The Cavehill Conservation Campaign exists to maintain and, where possible, to enhance the Cave Hill and the adjacent Belfast Castle Estate. We are linked to Belfast City Council through our relationship with the Belfast Hills Partnership.

Bill No 17/11-15. Bill Type: executive. Bill Sponsor: Minister of the Environment

We object to the proposed Planning Bill on the following grounds.

We object that Clause I (Statement of Community Involvement) allows planners to continue policy on community involvement. Elected representatives should be the arbiters of what is in the public interest.

We object that Clause 2 allows planners/commissioners to set down policies on economic development. Planners and commissioners are not qualified to develop or follow sound economic development policies. They do not consider housing, health, education, community sustainability, regeneration, public services, public order or economic development as material considerations in making planning decisions.

We object that Clause 3 (Meaning of Development) does not make a distinction between land/building development and economic policy. Nor does it define economic or the scope of planners' role in promoting economic development

We object that Clause 4 (Publicity etc in relation to applications) and Clause 5 (Pre-application in community consultation), allow developers/speculators (rather than Planners or Council) to undertake and report on community consultation. This would be a dereliction of duty as developers/speculators have a vested interest in ensuring that their application is successful.

Thus we hold that:

Clause 1 perpetuates fundamental weaknesses in the current system

Clause 2 is beyond the competence of planners but it does not go far enough in promoting reform.

Clause 3 does not define economic development.

Clauses 4 and 5 skew the system in favour of developers and speculators. This is contrary to the public interest.

Edward McCamley
Cavehill Conservation Campaign

CBI Northern Ireland

NI 02 13

CBI Northern Ireland submission to Committee for the Environment's Committee Stage of the Planning Bill

Introduction

CBI Northern Ireland is an independent, non-party political organisation funded entirely by its members in industry and commerce. Across the UK, the CBI speaks for some 240,000 businesses which together employ around a third of the private sector workforce. Our membership in Northern Ireland includes businesses from all sectors and of all sizes. It includes the majority of the top 100 companies, small and medium-sized enterprises (SMEs), social enterprises, manufacturers and sectoral associations.

Overview

CBI Northern Ireland welcomes the opportunity to comment on the Committee Stage of the Planning Bill. It will come as no surprise that the subject of planning is of significant interest to our diverse membership. It is vital that Northern Ireland has a planning system that is fit for purpose – both as a means to enable indigenous businesses to grow, and to indicate to those in the foreign direct investment community that Northern Ireland is open for business. Recent months have seen some improvement in the speed of processing of planning applications; however it is vital that we do not rest on our laurels, particularly as we close in on the key dates linked to the establishment of the new local councils and the transfer of the majority of planning power functions to them as well as the Programme for Government target of ensuring 90% of large scale investment planning decisions are made within six months by 2015 and applications with job creation potential are given additional weight.

The reform of local government, one of the key remaining pillars of the Review of Public Administration, has been long in its gestation and CBI Northern Ireland welcomes that we are now approaching its implementation. However, it is paramount that, with the transfer of planning functions, it is both seen and felt to be a seamless process and, for this to be the case, the Northern Ireland Executive and those with leadership positions in local government must ensure that the reform programme goes without any unforeseen hitches or delays.

With the transfer of powers, the development of a Single Planning Policy Statement and the need to maintain an efficient planning system between now and the spring of 2015, officials in the Department of the Environment are under understandable pressure to deliver. Their work must not be put in jeopardy by an Executive which has, in recent months, lost some momentum on reform and we would strongly urge that Ministers, on this and other areas of public service reform, seek to deliver collective solutions to pressing problems sooner rather than later.

The introduction of this specific Bill is a welcome step given that it seeks to both further deliver on the reform agenda of the current Minister, as well as accelerate many of the reforms contained in the 2011 Planning Act ahead of the transfer of most planning powers to the new local councils in 2015. Our support for the Bill is therefore two-fold: support for the acceleration of reform such as the duty in Clause 22 for statutory consultees to respond within a new statutory period, expected to be 21 days and; support for accelerating reforms that were due to be brought in in 2015 so that, from our point of view, councils, planners and the business community are already familiar with and have confidence in the new system in advance of the transfer itself.

We would also like to take this opportunity to state our view of the critical importance that must be attached to the new council cluster groups working in voluntary, and soon statutory, transition committees to develop and enhance their capacity to deal with the new powers, specifically in relation to planning, that will be at their disposal. Regardless of the issues that remain around the financing of local government reform, each new council should, by way of its cluster, seek to come to terms with its new powers and responsibilities long before the new councils take up their role fully in 2015.

Commentary on Clauses of the Bill

Clause 22: The introduction of a prescribed period for responses from statutory consultees for certain applications is to be strongly welcomed. CBI Northern Ireland members have long held frustrations with the position of the statutory consultees vis-a-vis the perceived holding up of economic development. The introduction of an expected 21-day deadline, unless otherwise agreed with the Department, is an important step forward.

Clauses 1 and 5: While we accept the need for community involvement in the development of most major planning applications as this is best practice, we do have some concern that applicants will now have to give twelve weeks' notice of an application before submitting. In our response to the Planning Reform consultation in October 2009 we also gave our view that such consultations should be voluntary on the part of the developers. However, there is also an argument to suggest that, by having an extended period and subsequent community consultation, developers should further endeavour to submit sound applications which require minimal alteration. On balance however we do believe that, given the separate new addition in the Bill that addresses the promotion of economic development, this is an acceptable clause when viewed in the context of the full Bill.

Clauses 10 and 11: We welcome the reduction in the time limit for submitting appeals to the Planning Appeals Commission from six to four months given that this should enable developments to be commenced at an earlier stage. We also note, and welcome, the additional powers for the Commission in terms of being able to award costs where there is deemed to be unreasonable behaviour of one party in terms of introducing new material at the appeal stage. We however continue to take the view that the Planning Appeals Commission should have continuing flexibility to refuse new evidence if a party is using delaying tactics and should be able to award costs for unreasonable behaviour. We also believe the appeal can provide an opportunity for parties to engage in dialogue to reach a resolution on issues. We therefore disagree that parties should not be allowed to introduce new material at appeal.

Clauses 15, 19 and 23: In respect of those clauses that deal with costs for various offences, we believe that, as far as is practicable, lengthy legal proceedings should be avoided and it is to be hoped that the consequence of having such penalties in place will encourage developers to both submit sound applications and have due regard to the law throughout. Anyone who deliberately sets out to abuse the system should be penalised by heavy fines commensurate with the breach.

New measures relating to the promotion of good design and the promotion of economic development: As these are new measures that were not contained in the 2011 Act, nor have they been consulted on with stakeholders, it is vitally important that they are of sound intention, especially in the context of the planning reform programme in which they fit. We strongly believe that, where an economic case for development has been clearly put, then that development should take place as long as it fits within existing planning policy. Therefore, we welcome the inclusion in the Bill of the measures to promote economic development. We acknowledge that previous attempts in Northern Ireland to underpin the role of planning in promoting economic development have met with difficulty, and have ultimately been dropped and, while there is undoubtedly a potential that their inclusion in this Bill could lead to protracted debate, we would strongly urge the Committee to reflect on the economic climate with which we are currently faced. That is of course not to say that developers should

not have due regard to good design and environmental impacts, but it is to say that a balance that comes out in favour of development is needed. As the Environment Minister indicated in the Second Stage debate of the Bill on 22nd January 2013:

> *"There is a presumption of development in law. Some people do not like that, but there is a presumption of development in law. The purpose of the planning system is, working from that principle, to then mould planning policy and decisions that take into account all the other factors that properly and reasonably should be taken into account."*

This is a sentiment with which we strongly agree.

Concluding remarks

CBI Northern Ireland therefore broadly supports the introduction of this Bill noting specific areas of policy support such as the statutory period in which statutory consultees will have to respond. We also support the introduction of the Bill as an understandable and sensible means by which the new system can bed in in advance of the transfer of the majority of planning functions to the local councils in 2015. However, we have also been clear that the reform of local government is not an area on which the Northern Ireland Executive can afford to fail. Delivery, and indeed timely delivery, is vital and the business community will expect a seamless transition in the transfer of planning powers in 2015. Anything other than seamless will almost certainly have a degree of detrimental impact on the economy and this is something that Northern Ireland can ill afford.

Over the coming weeks and months CBI Northern Ireland looks forward to playing a role in the monitoring of the local government reform process, the development of the Single Planning Policy Statement and we will have a keen eye on the decision that will at some point be taken on what will constitute a regionally significant planning application, and what will not, in the reformed system.

CBI Northern Ireland
March 2013

Chartered Institute of Environmental Health

Comments on Planning Bill

March 2013

1.0 General comments

1.1 The CIEH welcomes the opportunity to respond to the Northern Ireland Planning Bill. However, given the criticality of planning in both sustainability and public health terms, we believe that this consultation should have been a public one.

1.2 While we recognise that the intention of the bill is to reorganise and simplify the planning process in Northern Ireland (NI), it is our opinion that there are parts of this Bill which undermine that overall aim.

1.3 We support the principal of local decisions in local areas. However, there must be a degree of consistency in the decisions. There is also we believe a significant challenge ahead in addressing the transition for local representatives from an advocacy role to that of decision making. Based on our experience of designing similar capacity building training in other jurisdictions we would, we believe, be well placed to assist the department with this task.

1.4 The aim of speeding up the planning application process is again, in principal, a good one. But there is also the need to balance this against sustainable and responsible decision making.

1.5 Sustainable development must be the underpinning philosophy for all planning decisions and this includes economic, social and environmental considerations. We believe this bill this is undermined by the addition of 'promoting economic development' to Clause 2. Adding this suggests a doubling up of the importance of economic development, which is already one of the three pillars of sustainability.

1.6 With the reorganisation of the planning system handing planning powers to councils, there is a risk that the 'promotion of economic development' may be afforded different levels of importance by different planners and anyone else involved in the process. It is our view that the inclusion of economic development, standing alone, is unhelpful, unnecessary and unbalanced.

1.7 Equally, there is a risk that social and environmental considerations are both interpreted and weighted differently across councils.

1.8 There is, we believe, a need for clear, integrated guidance and/or an assessment tool to assist in ensuring that sustainability is considered in planning decisions. There is in our opinion insufficient guidance available at present from any of the departments cited in the 2011 Planning Act. Again we could assist in the development of this.

2.0 Comments specific to clauses

2.1 What is 'good design', in Clause 2, and who judges this or in what way is it evaluated? Again this may be subjective, depending on the evaluator. There is some confusion as to whether 'good design' refers to environmental, aesthetic and/or other conditions.

2.2 CIEH welcomes the enhanced community involvement laid out in Clause 5. This enhances the idea of local decisions for local areas. Having said this, it is felt that Third Party Right of Appeal, which is notably missing from the Bill, should not be excluded, but should be maintained. To not do so erodes democracy.

2.3 We support clauses 7 and 8 in that they will prevent multiple, similar appeals or multiple planning applications for the same site. This will speed up the planning process and allow it to be more efficient.

2.4 CIEH notes that, in Clause 10, The Department will be able to appoint a body other than that PAC to determine appeals. This raises issues with regards to bias or perceived bias of these potential appointed bodies. This also raises problems with a possible lack of consistency regarding decision making given the variation in bodies or individuals. Going forward, there must be a system which would ensure consistency and a lack of bias in those chosen to deal with appeals. A reduction of the time to carry out an appeal from 6 months to 4 months is to be welcomed; however it must be made certain that the intended system has adequate resources to deal with the shortened turnaround time.

2.5 Clarification is required regarding what is a 'material/non material change', referenced in Clause 13.

2.6 CIEH welcomes that this clause aims to help preserve biodiversity, however in certain situations, e.g. tree diseases, there may be exemptions required. This may need to be addressed in the bill.

2.7 Care must be taken to ensure that it is understood fixed penalties are the first step towards prosecution and that further proceedings may follow if the breach is not rectified. We believe that there is a possibility that Clause 20 could be misinterpreted to mean that an offender will be exempt from further legal proceedings as long as they pay a fine. We also suggest that a date should be given by which a fine must be paid in full, as opposed to providing for discounted fines, as also laid out in Clause 20.

2.8 CIEH supports clause 23, that statutory consultees will be expected to respond to consultation requests within a specified time frame. While the concept of shortening the turn around time is positive, it is also important that the timeframes match resources available.

The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

Any enquiries about this response should be directed in the first instance to:

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Ciaran McClean

Dear Committee, i am opposing the bill for the simple fact that the Northern Ireland planning system is already highly legalised, and it is llikely that these clauses will lead to more developer led appeals and Judical Reviews, thus bunging up an already slow system.

In the part of West Tyrone where i live i have been opposing an unauthorised quarry for some years now. Even though the developer has been brought to court on numerous occasions and heavily fined for his damaging actions to the community, the environment and indeed blighting tourism for years to come, he is still able to operate. Thats how bad the current system is in planning. Were he able to cite “economic reasons” to justify his actions then he would have a green light to destroy the Drumnakilly area for once and for all. I urge you to please put a stop to this proposal, it will only cause more mayhem within a planning system under stress.

Regards Ciaran Mc Clean.

Response to Consultation on the Planning Bill March 2013

Community Places
March 2013

Community Places
Response to Consultation on the 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 Planning Bill 2013. 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 overall package of planning reforms and ensure that the aims are realised in practice in the years ahead.

Community Places supports the current reform of the planning system and welcomes many of the proposals particularly those that aim to improve community involvement. Whilst we are supportive of many of the provisions set out in this Bill, we are concerned that some of these will not contribute to the overall aims of Planning Reform, in particular clauses 2, 6, 10 and 20 of the Bill. We are disappointed that the proposals in relation to economic development contained in clauses 2 and 6 have been made without the prior public consultation such far reaching proposals merit.

Our specific comments on clauses contained in the Bill are set out below.

Clause 1

We welcome the requirement set out in the Bill for the DoE to prepare and publish its Statement of Community Involvement (SCI) within 1 year of the Bill receiving Royal Assent. We have sought action on this for many years and have drawn attention to the good practice in community involvement developed in other jurisdictions. This Statement will be a milestone in the development of community involvement in planning and will set a benchmark for the new councils in 2015. It is thus essential that the development of the Statement is through a meaningful and adequately resourced process and that the Department draw on all available community expertise in preparing the Statement.

Recommendations:

We recommend that the Committee recommend to the Department that it ensure meaningful and adequately resourced community engagement in the preparation of a draft SCI and a pro-active community and public consultation thereafter.

Clause 2

Clause 2 introduces a new requirement for the DoE and the Planning Appeals Commission, and local councils when they take on planning responsibilities, to carry out their functions with the objective of:

• Furthering sustainable development;
• Promoting or improving well being; and
• Promoting economic development.

They must also "have regard to the desirability of promoting good design."

Whilst we recognise the importance of economic development it is important that this is balanced against other elements of sustainable development i.e. social and environmental concerns. Listing economic development separately from sustainable development appears to give it more weight and creates the risk that it could be interpreted in this way by planners and subsequent DoE Ministers in the future. This creates uncertainty which could lead to legal challenges, slowing down the planning system. A number of terms in this clause are unclear, furthering this uncertainty. For example, it is not clear how the terms "furthering" and "promoting" are different (if indeed they are).

Recommendations:

We recommend that Clause 2 be amended read:

> "Where the Department or the Planning Appeals Commission exercises any function under Part 2 or this Part, the Department or, as the case may be, the Commission must exercise that function with the objective of furthering sustainable development which secures:
> - protection and enhancement of the environment;
> - promotion of economic development;
> - promotion of social development; and
> - promotion or improving well-being;
>
> and which balances current needs with those that may arise in the future."

Clause 4, Publicity etc. in relation to applications

The Bill allows the DoE to make regulations about how planning applications are publicised and to require the applicant to provide evidence that these requirements have been met. It allows the DoE to refuse to consider an application if these requirements are not met. Further regulations may set out new requirements for advertising planning applications but no details are provided. We welcome the introduction of the power to refuse to consider an application if advertising requirements are not met.

Recommendations:

We recommend that subordinate legislation/regulation ensures that local people are fully informed about development proposals in their area.

Clause 5

We welcome the requirement for pre-application consultation and the power for the Department to decline to determine an application where the requirements for pre-application consultation have not been met. We have discussed the proposal with community groups and reflect their views in the following recommendations.

Recommendations:

We recommend that further regulations are issued as soon as possible specifying the thresholds for pre application consultation and detailing the standards of consultation which will be required. It is important that there is consistency, transparency, fairness and similar standards across the whole region.

We recommend that this guidance should provide a requirement for the pre-application consultation report to include: the extent of community support and objection; a list of objections and how these have been addressed; and any written submissions from the community. Additionally evidence of how the application has changed as a result of the consultation process should be included. The pre application community consultation report should be made publicly available at no charge and a short period if time provided for the community to comment on the report prior to the Department accepting or rejecting it.

To ensure consistent quality and secure a measure of community confidence in pre-application consultation we recommend that the Department identify and maintain a list of approved consultants to undertake this work and require applicants to use one of these consultants.

Clause 6

Clause 6 states that, “any economic advantages or disadvantages likely to result from the granting, or as the case may be, the refusal of planning permission” are a material consideration in the determination of a proposal.”

This clause is unlikely to be workable in practice for a number of reasons. The granting of planning permission generally increases the value of a site. Therefore it could be argued that refusal of planning permission will always create an economic disadvantage. It is unclear how the economic advantages and disadvantages of a proposal would be assessed. In order to address these issues it is likely that an economic impact assessment will be required, placing a greater burden on applicants, objectors and on the planning system including planners and consultees. The requirement to assess economic advantages and disadvantages is untested in case law and therefore open to legal challenge. In combination with the lack of clarity about the assessment of economic advantages and disadvantages, the introduction of this clause is likely to result in instability and delay.

Recommendations:

For the reasons set out above, we recommend that this clause is removed and that guidance on the assessment of economic considerations be addressed through the planning policy development process and following public consultation.

Clauses 7 and 8 Powers to decline to determine applications

The Bill allows the DoE to decline to determine applications which are similar to applications that have already been determined by the DoE or Planning Appeals Commission. This will be welcomed by communities who have had to respond to repeat applications from developers in the past.

Clause 10

This clause states that persons other than the PAC can be appointed by the DoE to carry out public inquiries and conduct appeals. The Planning Appeals Commission currently falls under the remit of OFMDFM and we would have concerns about the perceived independence of persons appointed by the DoE itself. It also seems unwise to (in effect) have two departments responsible for appointing people to hear appeals or conduct inquiries.

Recommendations:

The power to appoint "persons other than the PAC" should lie with OFMDFM rather that DoE to maintain the independence of these persons from DoE.

Clause 11, Appeals: time limits

This clause proposes that where a planning application is refused the time limit to appeal be reduced from six to four months. We welcome this clause which will contribute to streamlining the planning system.

Clause 16, Increase in penalties

This clause increases the level of fine that can be imposed by the courts for damage to listed buildings or failing to prevent further damage to a listed building; hazardous substances offences; failure to comply with stop notices and other enforcement offences. We welcome an increase in these penalties.

Clause 17

We welcome this clause which gives special regard to the preservation and enhancement of conservation areas.

Clause 20

This clause suggests that where a planning condition has not been complied with the offender may be given the option of paying a fine rather than complying with the condition. Although we recognise the benefits of fixed penalty notices to allow swift action in enforcement cases, we have concerns with the suggestion of "offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the Department." Any condition that is attached to a planning application should be both necessary and enforceable. Therefore, it is

difficult to imagine in what circumstances it would be appropriate to allow a breach of condition to continue without taking enforcement action.

Recommendations:

If this clause is to remain in the Bill we recommend that guidance is produced which strictly limits the circumstances in which it can be used.

Clause 22

We welcome this proposal which allows DoE to grant aid non-profit organisations for the purposes of furthering understanding of planning policy.

Clause 24

We welcome multiple fees for retrospective planning applications.

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 recommend to the Department that it provide details within the next three months of its work on preparing for consultation on Third Party Right of Appeal and a target date for issuing a consultation paper.

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Community Relations Council

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12th March 2015

Dear Committee Clerk

Written submission on the Planning Bill

Thank you for your invitation to submit evidence to the Environment Committee in relation to the Committee Stage of the Planning Bill.

NI is a society emerging from conflict and this necessitates dealing with the realities of contested space, therefore the Community Relations Council (CRC) has a key interest in the planning system, particularly its contribution to building a shared and better future. This current consultation process offers a further opportunity to think about how we design and use space in which we live, work, socialize and visit, specifically within the context of a post-conflict and segregated society.

CRC has previously commented on Planning Reform and stated that public spaces should act as places with permeable boundaries, allowing ownership by all, thus preventing the creation of territories. CRC wants to ensure that these issues are taken into consideration in all future planning decisions. It is therefore important that the current Bill reflects these important societal issues and it is within this context that CRC proposes the following amendments:

- Clause 2: General functions of the department and the planning appeals commission.

Currently absent from the Bill is an explicit aim and objective linked to peace building. For that reason, CRC seeks an additional provision in the Bill under clause 2 (1) to place an additional duty on the Department and the planning appeals commission to promote shared spaces. The Bill should be revised to contain:

(d) promoting shared, safe and welcoming spaces.

The above amendment should be replicated in Clause 2 (2) (a), and Clause 2 (3) (a), after 'promoting economic development'.

- Clause 2: General functions of the department and the planning appeals commission.

CRC seeks a further amendment under clause 2 (1A) "to enhance the current duty on the department, or the commission in regards 'to the desirability of achieving good design'". The Bill should be revised as follows:

(1A) For the purposes of paragraph (1) the Department or, as the case may be, the commission must (in particular) have regard to the desirability of achieving good design,

ADD: 'which also promote shared use'.

This addition should be replicated in Clause 2 (2) (b) and Clause 2 (3) (b).

Conclusion

The amendments outlined above offer an opportunity for the Bill to ensure the development and renewal of policies, strategies and corporate plans which have good relations focus.

CRC's proposals highlight the need to encapsulate a post-conflict vision for planning and we look forward to continuing this important discussion with the Committee. If you need clarification please contact Gemma Attwood, Policy Officer at the following email gattwood@nicrc.org.uk

Yours sincerely

Pp Gemma Attwood

Connal Hughes

A personal response to the Planning Bill 2013.

I make this response in a purely personal capacity and I give my consent for it to be shared with members of the committee. However, I do not consent to the publication of my name if these responses are made public.

1.0 Firstly, to try and introduce changes so central to the entire purpose of the Planning System without a full period of public consultation is anti-democratic and extremely disappointing.

Limited scrutiny by members of Environment Committee is not sufficient in this case and to introduce such fundamental changes to the Planning Act without a widespread programme of public involvement and community engagement is very worrying.

1.1 These clauses will change the very intention of the planning system from the sustainable regulation of land use to becoming another political tool to promote a particular interpretation of economic growth. The implications of the shift are enormous and I am greatly troubled by the backdoor fashion in which they have been introduced.

This intention to create an economic primacy consideration has already been rejected twice; once by Minister Attwood and once by the courts. These continued attempts to force it through even after rejection by 75% of the public consultation are extremely damaging to public faith in the institutions of Government. We already have one of the most permissive planning systems in Europe and to further load the die in favour of development will have huge negative impacts on communities and the environment.

2.0 I will now set out my response and reasoning with regard to particular clauses within the bill.

Clause 2 includes ”promoting economic development” in addition to sustainable development.

Even a cursory understanding of sustainable development would recognise that economic development is one of the three pillars to be considered and balanced. This clause introducing economic development effectively nullifies any concern for the long term sustainability of any development. All environment and social concerns can be trumped by the double counting of economic factors.

The Planning Bill should be amended to include the generally accepted definition of Sustainable Development from the Brundtland Commission

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

This is an overriding principle of governing with concern for the future and ensuring adequate resources for people to use in the present. This clause as it stands will dramatically reduce any chance of sustainable development and leave nothing sacred if someone can state that there will be greater economic development with their planning application.

2.1 Clause 6 changes what is deemed a material considerations by suggesting that this should now include the “economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission.”

In my understanding every planning application approval will result in an economic advantage for the applicant and could conceivably be an economic disadvantage for businesses or even homes in the vicinity. I do not understand how the planning service thinks it will be able manage every one of these competing claims.

2.2 Every application refusal will result in economic disadvantage to the applicant and again potentially to the organisations in the vicinity. This is a completely unworkable proposition and should be rejected entirely. I would also appreciate a detailed explanation as to how the individuals who entered this clause ever conceived it would work in practice.

This clause also hugely increases the scope for objectors claiming economic disadvantage relating to house prices, to business competitors or even that the existing pristine environment was central to their business success.

2.3 Economic development and attendant considerations are such a broad concept that it will be very difficult to assess the full impact of any decision. Are all the potential benefits and disbenefits likely to be included and furthermore, to be accurate? Are all externalised costs such as pollution, health and aesthetic impacts going to be appropriately calculated and included?

Planners, applicants and objectors will have to employ an army of economists to make sense of all the claims and counterclaims.

By what measure is economic growth to be measured? Natural disasters such as flooding or mudslide increase GDP but will certainly not be welcomed by the population at large. Should planning facilitate such disasters in the interests of a narrow definition of economic growth?

If jobs are a main determinant of economic development then by what are they measured? Are 12 part time jobs in one application better than the 6 full time jobs promised by another? How will the planning service enforce these applicant's claims of future jobs?

2.4 The economic primacy is such an egregious change that it is not inconceivable that every major project proposed including unconventional oil and gas sites, incinerators, windfarms and all out of town shopping centres would be approved under the new rules. They would further economic development and thus have extra points for consideration. The planning service would be an exercise in rubber stamping development rather than making a balanced judgement having considered all relevant factors.

Summary of changes to the Bill.

3.0 I support the assertion by Friends of the Earth that the following overarching policy on sustainable development be included in Clause 2:

"It shall be the principal objective of local and neighbourhood plans to ensure sustainable patterns of development which improve the quality of life of all people, while respecting environmental limits and the ability of future generations to enjoy a similar quality of life.

The clause referring to economic development should be removed entirely.

3.1 Clause 5 should be amended to include Third Party Right of Appeal. This will provide another layer of insurance for the communities affected by applications and ensure a better process of community consultation from the outset.

3.2 Clause 6 should be removed from the Bill.

3.3 Clause 10 should be changed to prevent the Department from appointing Commissioners to hear Planning Appeals. The ability to pick your own judge is damaging to public faith in the system. Any hypothetical resource problems can be addressed without recourse to appointments of questionable independence.

3.4 Clause 20 regarding Fixed Penalty Notices should be rewritten to clarify that Penalty Notices are not the final sanction for planning condition breaches. Fines cannot be handed out in lieu of remedial action. Those breaking the conditions imposed cannot simply be allowed to pay a tax and carry on uninterrupted. This must be made explicitly clear in the Bill.

3.5 The Bill in its current form will create an unworkable mess of claim and counter claim. The only people likely to benefit will be economists and solicitors arguing the minutiae of these claims.

The drafters have missed an opportunity to genuinely pursue sustainable development for Northern Ireland and put local communities at the very heart of a plan led system.

I believe that the suggestions and omissions I have recommended will help speed the system and ensure a fairer deal for everyone involved. The current plans remove any certainty in the system and could lead to chaos within an already struggling service.

Construction Employers Federation

Submission by the Construction Employers Federation to the NI Assembly Environment Committee on the Planning Bill 2013 [NIA 17/11-15]

Introduction

The Construction Employers Federation (CEF) is the main trade association and employers organisation for the construction industry in Northern Ireland. The CEF represents over 1000 companies who between them carry out approximately 75% of the total turnover of the industry in both the public and private sectors. This makes the construction industry one of the largest and most important industrial sectors in Northern Ireland.

If our economy is to recover quickly from the current recession it is imperative that we have an efficient planning system that is fit for purpose, properly resourced and that can deliver a speedy and efficient service. This will give certainty to the process and attract inward investment and stimulate economic growth.

The construction industry contributes significantly to the multiplier effect in the local economy and therefore the CEF supports and welcomes the opportunity to submit written evidence on the draft Planning Bill 2013. We would also welcome an opportunity to appear before the Environment Committee to support the comments made in this submission if this was considered appropriate.

As requested, our comments are structured to address specific clauses of the Bill.

Clause 1 Statement of Community Involvement

This is a general requirement for the Department to establish a policy on involving the community in its functions. CEF has already been in discussions with DOE Planning about how to develop best practice guidance on community involvement on major planning applications.

Clause 2 General functions of the Department and Planning Appeals Commission

CEF supports this clause as it is consistent with the general proposition that development and construction activity is wholly beneficial to the Northern Ireland economy. We particularly welcome the provision in this clause to give consideration to the promotion of economic development when considering planning applications.

Clause 3 Meaning of development

No comments.

Clause 4 Publicity in relation to applications

No comments.

Clause 5 Pre application community consultation

As already stated the CEF has been in discussions with DOE Planning on the joint production of best practice guidance on community consultations. Secondary legislation has yet to determine the specific type of applications where community consultations will be required but this should be a measured requirement for only major applications. It would be totally out of context and unreasonable to apply this requirement to intermediate or minor applications.

Joint DOE/CEF guidance will be welcome by the industry.

With regard to the requirements and desires of the community, these should always only be considered in the context of planning policy and should not become a 'wish list' that can be used as a means to delay development or impose additional cost burdens on development.

Clause 6 Determination of applications

This is consistent with Clause 2 as it confirms that material considerations in the determining of planning applications includes the economic advantages (and disadvantages) likely to result in granting or refusing a planning application.

Again we welcome this as the construction industry can deliver key economic benefits to the local economy. The multiplier effect of the construction industry into the local economy has been well documented. Inward investment by new incoming businesses will provide long term economic benefits to Northern Ireland as a whole. They will however require some certainty in the process knowing that it is not going to take years to get a decision on a planning application.

Clause 7 Power to decline to determine subsequent applications

This should not prevent subsequent applications from being determined if they are clearly distinguishable proposals from those previously submitted.

Clause 8 Power to decline to determine overlapping applications

No comments.

Clause 9 Aftercare conditions for ecological purposes on minerals permissions

No comments.

Clause 10 Public Inquiries: Major Applications

This provision allows the Department to appoint persons other than the PAC to conduct enquiries. This provision may be useful when the PAC is under resource pressure but the type of individual appointed to undertake such inquiries must have an appropriate background and knowledge of planning matters.

Clause 11 Appeals; time limits

Most developers will know within four months whether they wish to appeal or not.

Clause 12 Matters which may be raised in appeal

This is a significant change in appeal practice. It will require applicants to ensure full information is submitted with planning applications. There may however be practical difficulties in obtaining full information before an appeal is scheduled for hearing. This could end up delaying an application until all information is available.

Clause 13 Power to make non material changes to planning applications

This provides for the Department to make minor changes to planning applications and is giving a legislative basis to what we are advised is already an established practice.

Clause 14 Aftercare conditions on revocations/modifications of minerals permissions

No comments

Clause 15 Planning Agreements: payments to Department

No comments.

Clause 16 Increase in certain penalties

Our only comment is that any the penalty that is applied should be commensurate with the scale of the breach of the legislation.

Clause 17 Conservation Areas

No comments.

Clause 18 Control of demolition in conservation areas

No comments.

Clause 19 Tree preservation orders: dying trees

No comments.

Clause 20 Fixed penalties

No comments.

Clause 21 Power of the PAC to award costs

This is welcome as it should help reduce the likelihood of vexatious or frivolous delaying tactics.

Clause 22 Grants

No comments.

Clause 23 Duty to Respond

This is probably the most important provision in this Bill. It requires consultees to respond within a prescribed period. The industry is suffering from protracted negotiations in the planning process. It is not unusual at present for a planning application to take two years or more to complete. Much of that time delay is caused by the failure of consultees to respond in a timely manner.

The statutory time period has not yet been established. CEF welcomes this clause and we would recommend that that the time period in which to respond should be no more than 21 days. In stating this however, we must emphasise that the consultees must give a substantive response within this time period and not hold off until the last day and then submit a holding reply only to take another two years before the matter is dealt with. That would be totally unacceptable. We believe that if that is the case then there should be the right to ask the Department to intervene to require the consultees to give a substantive response within the prescribed time scale and to take enforcement action if this does not happen.

Clauses 24 to 28

No comments.

Corralea Activity Centre

I would like to make the following response to the consultation re the above Bill. In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law. My principal reasons for opposing the Bill are:

1. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

2. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists.

3. The planning system would be overburdened and slowed with appeals by developers, making it effectively unworkable.

4. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development.

5. There would be no way of monitoring compliance with the economic conditions of planning approval.

6. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit.

7. It is inappropriate to introduce such devastating change to the planning system in this manner and a full public consultation should be carried out.

In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

Yours,

Isabelle Leonard

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Council for Nature Conservation and the Countryside

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15 March 2013

PLANNING BILL 2013

CNCC welcomes the opportunity to provide comment on the Planning Bill 2013 to the Environment Committee of the Northern Ireland Assembly. We appreciate that much of this Bill is intended to introduce reforms already set out in the Planning Act (Northern Ireland) 2011 before planning powers are transferred to local councils, and therefore do not intend to comment in detail on most of the provisions. However the Bill also includes additional measures apparently intended to underpin the role of planning in 'promoting economic development'. Much of our response relates to these measures.

Clause 2: The general functions of the Department of the Environment and the Planning Appeals Commission - Economic development.
Clause 6: The issues to be taken into account when determining planning applications – Economic advantages or disadvantages likely to result from the granting of or refusal of planning permission.

CNCC has serious concerns about these two clauses for a number of reasons:

1. Planning Principles

The purpose of the planning system is clearly set out in PPS1 General Principles, which states:

The town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance. It is important to distinguish those matters which planning can influence from those which are outside its control. The central concerns of the planning system are to determine what kind of development is appropriate, how much is desirable, where it should best be located, and what it looks like.

To use the planning system for purposes that are outside of this remit, such as economic development, leaves it increasingly open to legal challenge. It will also negate a great deal of case law with regard to planning which has been built up over the past forty years or so.

2. Redundancy

These issues are already very well covered by other parts of planning law and guidelines, particularly PPS 4 Planning and Economic Development which clearly states:

This Planning Policy Statement, PPS 4, sets out the Department's planning policies for economic development uses and indicates how growth associated with such uses can be accommodated and promoted in development plans. It seeks to facilitate and accommodate economic growth in ways compatible with social and environmental objectives and sustainable development.

In addition it is clear that economic development is already an important factor in the planning system, enshrined by case history. This is exemplified by the recent granting of planning permission for a golf resort adjacent to the Giant's Causeway 'on economic grounds' in spite of the proposed development running counter to the Draft Northern Area Plan, PPS 1, PPS 6, Draft PPS 16, the Regional Development Strategy and the Planning Strategy for Rural Northern Ireland.

3. Sustainable development

Clause 2 includes the duty of furthering sustainable development, which is again clearly set out in PPS 1 General Principles:

Sustainable development seeks to deliver the objective of achieving, now and in the future, economic development to secure higher living standards while protecting and enhancing the environment.

This is generally recognised as giving equal consideration to economic, environmental and social factors, and therefore selecting one of these components for special emphasis essentially contradicts the overall principle. The proposed wording of Clause 2 is therefore at odds with itself and with most other planning guidance that is already in existence. This contradiction will inevitably lead to increased legal challenges to planning decisions that could prove extremely difficult and costly to determine.

We believe that the lessons of the past few years, both here and in the neighbouring Republic of Ireland, where economic factors were allowed to outweigh other considerations in the appraisal of development, has clearly not been learned, with the result that we are now paying financially as well as environmentally for unsustainable practices.

4. Appraisal of economic data

The inclusion of economic factors in Clauses 2 and 6 raises a number of questions around how these factors will be determined and measured against environmental and social factors. These include

- What level of economic data will be required? Will a very detailed economic assessment along the lines of an Environmental Impact Assessment be demanded, or will it merely be some very crude figures that are difficult to assess? Without detailed information it is not clear how the planning system can make decisions that give weight to economic factors.
- Who will assess the figures put forward? Planning Service does not employ economists or accountants to carry out due diligence procedures, and it is unlikely that Councils will do so in the future. Without rigorous assessment it is unclear how the planning system can make decisions based on economic arguments.
- How will economic data be judged against environmental and social data? While social and environmental factors can increasingly be given some monetary value they inevitably also include intangible benefits which are harder to assess. Some system of determining these values needs to be developed to deal with this problem.
- What time scales will be considered? Most economic figures are calculated for

relatively short time scales, and become progressively less accurate and useful over longer periods. In contrast environmental factors need to be considered over very long time scales.

Unless these important questions are considered and answered it is probable that there will be increasing challenges to the planning process based on the accuracy and assessment of economic data put forward in support of planning applications. If detailed figures are required, which in turn need careful scrutiny and examination, the planning process will inevitably be slowed even further.

5. Definitions

The terms used in Clause 2 and Clause 6, including 'promoting', 'sustainable development', 'well-being', economic advantages' and 'economic disadvantages' are not clearly defined, and as such are open to a wide range of different interpretations. The last two are particularly contentious, since the advantage or disadvantage will generally be to individuals or organisations, and the planning system is intended to operate in the public interest rather than the interest of the private sector. This will inevitably lead to increased legal challenges, and a slower and more expensive system.

6. Precautionary Principle

Paragraph 13 of PPS 1 states:

In formulating policies and plans and in determining planning applications the Department will be guided by the precautionary principle that, where there are significant risks of damage to the environment, its protection will generally be paramount, unless there are imperative reasons of overriding public interest.

If economic factors are to be given particular emphasis, and hence more weight, this important principle is likely to be ignored. It is important to appreciate that the over-riding public interest argument can only really be used convincingly with regard to state-backed infrastructure or defence developments and cannot normally apply to commercial activities which are primarily in the interest of the person or company promoting them. Failure to comply with the precautionary principle as set out in PPS 1 could lead to legal challenges.

7. Strategic Environmental Assessment

CNCC believes that, while the changes brought in by this Planning Bill do not constitute a plan or a programme, the EU guidelines make it clear that a proposal which sets the framework for development consent of projects within the EIA Directive does require a Strategic Environmental Assessment. We believe that the changes proposed in Clauses 2 and 6 set a very different framework for the consideration of planning consents for major developments that would require an Environmental Impact Assessment. At the very least we consider that there should be a screening process to assess any likely effects, as was carried out with the Regional Development Strategy, and that such a process should take place before any change is introduced.

8. Marine Planning

A framework for planning in the marine environment is being introduced in the Marine Bill which is currently making its way through the Assembly. We have regularly recommended that terrestrial and marine planning regimes should be as seamless and consistent as possible but these clauses in the Planning Bill presents a significant difference between them. We are concerned that this will lead to confusion and difficulty when considering coastal developments that involve approval from both planning regimes.

9. Costs

We believe that the provisions of Clauses 2 and 6 could result in significant additional

costs to both the planning authorities and to developers which have clearly not been considered in the preparation of this Bill. These include the employment of economic experts to assess applications, training of staff, a whole suite of new forms for planning applications, and the preparation of detailed economic assessments by developers. In addition the contradictions and ambiguities that these two clauses introduce will inevitably lead to their being tested through the planning appeals system and in the courts, with even more significant costs. Remarkably the Partial Regulatory Assessment which accompanies the Bill fails to consider these potential costs. We would recommend that a complete PRA is completed before this Bill progresses any further if these clauses are to be included in the legislation.

10. Consultation

The contents of the Planning (Northern Ireland) Act of 2011, and the rest of this Planning Bill were subject to a major consultation exercise under the heading of Planning Reform, between July and October 2009. The Department has not held any public consultation exercise on the additional provisions, particularly Clauses 2 and 6, but apparently believes that the scrutiny and consultation that they are subject to through the Assembly process will be adequate. CNCC does not agree with this view, particularly because of the response to the consultation in March to May 2011 on the very similar Draft PPS 24 Economic Considerations, in which 75% of respondents strongly opposed the proposed policy. This led to the outright rejection of the Draft PPS in September 2011 by the Minister, who stated: 'Many rightly argued that economic considerations are already a factor in planning decisions and are already dealt with in a balanced way alongside other material considerations, including social and environmental factors'. We believe that this gives a clear signal of public views of this approach which the Committee and Assembly should take into careful consideration in discussing this Bill.

In addition it is extraordinary that the Bill's Equality Impact Assessment overlooks these provisions in the Bill, suggesting that they were a hasty afterthought. We believe that this is not a sensible or transparent way in which to introduce important legislation.

Conclusions

CNCC firmly believes that these clauses in the Planning Bill are redundant. In their current form they potentially run counter to the principles of Sustainable Development. The importance of economic development is clearly recognised in full context within PPS4 backed by case history. We consider that their introduction will lead to increased legal challenge which will slow up the process, as will real due diligence assessment of economic data provided to accompany any planning application. The production of this data will provide an additional onus on developers, while the data will be subject to increased scrutiny and subsequent objections by third parties, which will provide a further brake on the process. We consider that it introduces ambiguities and contradictions into the planning system that will create further complications. Finally we believe that it undermines the widely-welcomed moves towards a genuine plan-led planning system, with community involvement.

Finally CNCC is concerned that inclusion of these clauses in the Planning Bill will fail to address the problems that lie broadly at the heart of the Northern Ireland economy and more narrowly within the planning system. These clauses are blunt and unsophisticated mechanisms that will cause long-term irreversible damage to our environment while at best producing short term gains in terms of some precarious jobs. There is an urgent need to recognise and fully value the contribution that the environment makes to our economy through the provision of vital services that we currently take for granted. At the same time

we need to address how we are to address in a strategic way the difficult question of how we make the best use of our land and environment in a sustainable manner for an uncertain future. We firmly believe that this cannot be achieved without the development of a clear Land Use Strategy along the lines adopted in Scotland.

This sets out as its vision:

A Scotland where we fully recognise, understand and value the importance of our land resources, and where our plans and decisions about land use deliver improved and enduring benefits, enhancing the wellbeing of our nation.

It goes on to establish three Objectives relating to the economy, environment and communities - the three pillars of sustainability. It also provides a set of Principles for Sustainable Land Use to guide policy and decision making by Government and across the public sector:

- Delivering multiple benefits
- Partnerships with nature
- Linking people with the land

This is a model that we should be seeking to learn from to provide a sustainable future for Northern Ireland.

Clause 5: Enhanced Community involvement

CNCC welcomes this clause generally, supporting the concept of greater involvement of local communities in planning in their area. We would however wish to see some safeguards to ensure that any group representing a community is genuinely representative of that community, with a mechanism whereby interests are declared. Without this it is possible that single-issue groups could dominate discussions and give false impressions of community feelings.
We would also like to see the planning system working with local communities to maximise the opportunities for biodiversity and ecosystem services in the planning and design of their local environments. We would commend the approach taken by the Town and Country Planning Association in Britain in its guide *Biodiversity by Design,* which sets out important principles relating to green infrastructure, landscape character and local distinctiveness.

Clause 9: Extending the range of uses for which mineral sites may be reclaimed.

CNCC welcomes the addition of 'ecological purposes' to the potential uses for mineral sites. We have approved the designation of a number of former mineral workings as ASSIs, for both their geological and biological importance which has resulted by accident rather than design. We believe that many more sites could become valuable habitats for wildlife with a proactive approach to their management.

Clause 10: Public Inquiries for Major Planning Applications.

This clause allows the appointment of persons other than the Planning Appeals Commission to oversee planning inquiries. CNCC is opposed to this because it believes

that the independence of Planning Appeals Commissioners is critical in the planning process. The appointment of other people to fulfil this role would lead to doubts about independence since it is not clear who is making the appointment and how they are they are selecting the person. It could also lead to a lack of consistency in making decisions that affect us all.

Clause 16: Raising the penalties for a range of planning offences.

CNCC welcomes the increases in penalties to levels that indicate that planning crime does not pay.

Clause 22: Grant aid for non-profit organisations to further an understanding of planning policy.

CNCC welcomes this approach which should help to widen public interest and participation in the planning process.

Clause 23: A duty for statutory consultees to respond to consultations within a prescribed timescale.

CNCC is broadly in favour of a faster processing of planning, but we believe that there needs to be a recognition of the size, complexity and volume of detailed Environmental Impact Assessments that accompany many larger planning applications, and which require careful and detailed scrutiny by consultees such as NIEA. We believe that it will be unreasonable to demand a very quick response to more complex applications, and doing so will put consultees in an impossible position. NIEA for example has a duty to protect the environment which could be severely compromised by a duty to respond very rapidly to a planning application. At best this will lead to damage to valuable habitats, while at worst it could result in infraction proceedings from the European Commission. We therefore recommend that response times are set to reflect the scale of the proposed development rather than the adoption of a 'one size fits all' policy.

CNCC looks forward to the opportunity to discuss these issues further with the Committee next month.

Patrick Casement
Chairman

David Bolton

I am responding to the proposed changes to the planning laws and regulations. As I only heard about this today I am relying on the response prepared by another respondent. I fully endorse this response.

My principal reasons for opposing the Bill are:

1. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

2. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists.

3. The planning system would be overburdened and slowed with appeals by developers, making it effectively unworkable.

4. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people.

5. There would be no way of monitoring compliance with the economic conditions of planning approval.

6. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit.

7. It is inappropriate to introduce such devastating change to the planning system in this manner and a full public consultation should be carried out.

In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

David Bolton
Tempo
Co. Fermanagh

David Noble

From: Name David Noble
Address 403 Park Avenue Apartments, 12 Bankmore Street, Belfast, BT71AQ

My objections to the Planning Bill with proposals for change are as follows and relate to Clauses 2, 5, 6, 10 and 20.

As a general comment, the Bill proposes double counting of economic development; this means primacy for economic development; this is not the objective of the planning system.

1. **Clause 2** should be reworded to include a definition of sustainable development, and the sub-clause regarding economic development should be removed.

I think the following overarching policy on sustainable development be included in Clause 2:

It shall be the principal objective of local and neighbourhood plans to ensure sustainable patterns of development which improve the quality of life of all people, while respecting environmental limits and the ability of future generations to enjoy a similar quality of life.

In order to uphold this objective, all land use policies and decisions must enshrine the principles of:

environmental justice: putting people at the heart of decision making, reducing social inequality by upholding environmental justice in the outcomes of decisions;

inter-generational equity: ensuring current development does not prevent future generations from meeting their own needs;

environmental limits: ensuring that resources are not irrevocably exhausted or the environment irreversibly damaged. This means, for example, supporting climate mitigation, protecting and enhancing biodiversity, reducing harmful emissions, and promoting the sustainable use of natural resources (including those outside Northern Ireland);

resource conservation: ensuring that planning decisions assist in the prudent and sustainable use of finite natural resources (including resources sourced outside Northern Ireland);

the precautionary approach: the precautionary principle holds that where the environmental impacts of certain activities or developments are not known, the proposed development should not be carried out, or extreme caution should be exercised in its undertaking;

the polluter pays: ensuring that that those who produce damaging pollution meet the full environmental, social and economic costs;

the proximity principle; seeking to resolve problems in the present and locally, rather than passing them on to other communities globally or future generations;

public participation; ensuring that there are meaningful opportunities for people to engage in the planning decision-making process.

2. **Clause 5** should include the introduction of a Third Party Right of Appeal.

3. **Clause 6** should be removed from the Bill because it means any applicant can claim economic advantage by gaining permission, lots of people can object claiming disadvantage if something is given permission.

4. **Clause 10** should be amended to allow the Planning Appeals Commission to appoint temporary commissioners as needed.

5. **Clause 20** should be clarified to make it clear that Fix Penalty Notices are not in lieu of enforcement action, and that further action will be taken if breaches are not remedied.

David Scott

I would like to make the following response to the consultation regarding the above Bill. In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law. My principal reasons for opposing the Bill are:

1. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists.

2. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

3. The planning system would be overburdened and slowed with appeals by developers, making it effectively unworkable.

4. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people.

5. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit.

6. There would be no way of monitoring compliance with the economic conditions of planning approval.

7. It is inappropriate to introduce such devastating change to the planning system in this manner and a full public consultation should be carried out.

In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

I would further commend the excellent submission produced by Friends of the Earth. I concur fully with its conclusions.

Yours sincerely

David Scott

Development Media Workshop

Dear DOE Committee,

I am writing to send my response to the consultation re the above Bill. In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law. My principal reasons are:

1. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

2. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists.

3. The planning system would be overburdened and slowed with appeals by developers, making it effectively unworkable.

4. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people.

5. There would be no way of monitoring compliance with the economic conditions of planning approval.

6. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit.

7. It is inappropriate to introduce such devastating change to the planning system in this manner and a full public consultation should be carried out. In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

Dr Michael Brown
Director
Development Media Workshop
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Donaldson Planning

14 March 2013
by email to NI Assembly Environment Committee

Response to Planning Bill Consultation

Introduction

Donaldson Planning is an independent planning consultancy which was set up by David Donaldson in 2010. David is a chartered town planner with many years experience in both DOE Planning and the private sector. He was previously a Director in one of Europe's largest multi-disciplinary consultancies and has worked with many leading developers, lending institutions, individuals, statutory agencies and government departments.

Donaldson Planning welcomes the opportunity to comment to the Environment Committee on the Planning Bill.

This Submission follows the same sequence as the Bill.

Clause 2- General Functions of Department and planning appeals commission

Donaldson Planning fully supports the Executive's priority to deliver economic growth. However we are concerned that the proposals set out Clause 2 of the Bill may not be the best way to achieve this.

Donaldson Planning believes that the Department should focus upon the provision of clear planning policy to encourage growth, rather than seeking to add unnecessary and untested complexities into the legislation.

The proposed 'three - pronged' objective in Clause 2 is complex and confusing. It is not a single objective, but three separate objectives. The tension between the phrases used will inevitably result in legal challenge in relation to the emphasis which plans and policies must give to the varying legislative provisions.

In particular, it is questionable whether it is the role of the planning system to *'promote'* economic development. Certainly it can be used to help facilitate development, but requiring it to 'promote' development implies a whole new range of responsibilities. As PPS 1 states (para 3) *'the town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance'.* The planning system must remain able to adopt a measured and balanced approach to all material factors.

The Planning Bill obliges the Department to take account of policies and guidance issued by the Department, DRD, OFMDFM, and any other matter which appears to be relevant. In such a context there is no necessity to require the promotion of economic development in legislation. Conditions that encourage and facilitate economic development can be created by policy. For example the National Planning **Policy** Framework requires the planning authorities in England to operate a *'presumption in favour of sustainable development.'*

Donaldson Planning notes the requirement to *'have regard to the desirability of achieving good design'*. Whilst a similar provision is included within the 2008 Planning Act in England, good design is a matter which ought to be guided by policy, not enforced by legislation.

Clause 6: Determination of planning applications

Economic development is, and should remain, at the forefront of the Executive's priorities. However Donaldson Planning can see no reason why planning legislation needs to be amended to make specific reference to economic advantages or disadvantages as material considerations in planning applications. Economic considerations are **already** material considerations in the planning process.

Instead of improving the planning system, such a provision could actually result in increased bureaucracy, slower decisions, greater expense, and a rise in legal challenges.

Clause 10: Public Inquiries

Donaldson Planning considers that there is no need to make provision for public inquiries to be conducted by persons other than the Planning Appeals Commission. The Commission has proven over many years that it is professional and impartial. Appointment of any other person by the Department could undermine public confidence in the inquiry process.

Clause 17: Conservation areas

Whilst few could disagree that conservation areas deserve legislative protection, this is a poorly worded and ill conceived provision. The concept of requiring 'enhancement' of anything through planning proposals is a difficult one, especially as the planning system is founded upon the principle that development should be approved unless harm will be caused. The existing 'no harm' test in conservation areas is well established in UK law.

If this provision is included then investors are likely to strenuously avoid conservation areas, with the result that they will stagnate, with a consequent increase in dereliction and decay. There is also a strong likelihood that any development proposals which do come forward could become mired in legal challenges in relation to whether or not an opportunity exists to 'enhance' the area.

Donaldson Planning advises that this clause should not be included in the Bill.

Conclusions

Donaldson Planning requests that the Committee consider carefully whether the proposed legislative amendments will improve the planning system in Northern Ireland. Our view is that the legislation should be simple and straightforward and that economic development should be encouraged through effective government policy rather than legislation.

David Donaldson
BSc Hons MRTPI
Donaldson Planning
50a High Street
HOLYWOOD
BT18 9AE

02890423320

14 March 2013

Dr Carroll O'Dolan

14. 03. 2014

Dear Department of the Environment for Northern Ireland.

I would like to make a submission/response to the planned chamges to the Northern Ireland Planning bill that is making its legislative progress through Stormont presently.

I would like to make the following response to the consultation re the above Bill. In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law. My principal reasons for opposing the Bill are:

1. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

2. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists.

3. The planning system would be overburdened and slowed with appeals by developers, making it effectively unworkable.

4. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people.

5. There would be no way of monitoring compliance with the economic conditions of planning approval.

6. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit.

7. It is inappropriate to introduce such devastating change to the planning system in this manner and a full public consultation should be carried out.

In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

Dr Carroll O'Dolan 14. 03. 2013
Member of the Royal College of General Practitioners
10 Newtate, Florencecourt
Fermanagh BT92 1FW.

Dr Miriam de Burca

Dear Committee for the Environment,

Please find attached Friends of the Earth's response to your 2013 Planning Bill. I trust you have read through and given very careful thought to their objections to fracking.

I am one of many, extremely concerned citizens of Ireland about the possibility that fracking might be allowed to go ahead in Ireland. It is not, and never will be, a positive introduction to this country, whether on economic nor indeed ecological grounds. It might appeal economically on the short term because of the bankers' greed causing economic collapse, but the myopia of such a decision would cost us on the long term a far, far greater price than the initial financial gratification. Please look at the long term, not short term solutions, do not replace bankers' greed with fracking companies' greed; they will come here, extract the resources out of our ground and take most of the profits away with them. It happens all over the world; they come, they take, they leave a sorry mess behind. And Ireland will be no exception to the rule.

I sincerely hope that you, the Committee for the Environment will be able to make an objective, intelligent, forward-thinking decision on this, and for the sake of our children, make a unambiguous and absolute stand against fracking in Ireland.

Dr Miriam de Búrca

Dundonald Green Belt Association

Consultation Response to the Planning Bill 2013 on behalf of the Dundonald Green Belt Association.

Secretary: Mrs C Cosgrove. 32 Dunlady Manor BT16 1YP.

The Dundonald Green Belt Association

The Dundonald Green Belt Association was founded in 1987, in the wake of the publication of the draft Belfast Urban Area Plan. Over the past 26 years, the group has sought to promote the best interests of Dundonald and has submitted papers in response to many regional and local issues including the Regional Development Strategy and draft Belfast Metropolitan Area Plan and taken part in these public inquiries.

We wish to see clauses 2,6,10 and 20 removed from the Bill.

Clause 2: Promotion of Economic Activity

There should be no amendment to the general functions of the Department of Environment or the Planning Appeals Commission to include "promoting economic development".

It is not the job of the planning service to promote economic development. The job of the planning service is to manage the built environment. Its ability to do this effectively will be compromised if it takes on this additional and contradictory role.

Planning should not have to "carry the can" for the failure of the Department of Economic Development to create employment.

In 2011-12, the Northern Ireland planning service approved c.92% of planning applications. This does not indicate a system which is restrictive or a barrier to growth. If anything it indicates the opposite, that the system is too laissez faire.

Taking on the function of "promoting economic development" would push the system in the direction of the planning systems of the Irish Republic and Spain, potentially creating an unhealthily inflated construction sector and inviting that sector back into the familiar, destructive cycle of boom and bust.

In today's economic climate where developers are claiming to provide an economic benefit or jobs for the local area without a legally binding contract, there would be nothing to prevent a developer from withdrawing from the proposed scheme if economic circumstances change, for example Woodbrooke Village (Lisburn) or Millmount (Dundonald), now in its 14th year where the promised village centre has not been built or the 'spine road' completed. The promises that obtained the initial planning approval have not been delivered, notwithstanding the supposed 'guarantee' of article 40 agreements. Clause 2 would make the system even more open to abuse than it is at present.

Clause 6: Material considerations to include economic advantage/disadvantage

The key principle of planning is to consider issues related to the use and development of land. Clause 6 seeks to extend the issues which planners need to take into account to include weighting in favour of economic development.

Economic advantage or disadvantage is difficult to quantify. The Planning Department, instead of reducing paperwork and decreasing time for an application to be considered, would have to employ an 'economic division' to carry out an 'economic assessment'. No two economists agree on policy, therefore this clause could result in long discussions and perhaps legal action when a decision is made. At present planners have flexibility through imposing

planning conditions. These must be applied to the use and development of land. There is no legal mechanism to ensure claimed benefits actually occur as these issues cannot be secured through planning conditions, because they are beyond the planning system, (see our Millmount example, above). The consequence could be that developers are likely to exaggerate economic development impacts knowing they cannot be held to account for their claims.

The overwhelming opposition to the consultation on the proposed PPS 24 indicates it is highly unlikely that the proposed Clause 2 would have public support. 77% of respondents to that consultation opposed the introduction. To introduce it now, against the background of such a decisive consultation response would be quite wrong.

The public perception is that the planning system is already overly weighted in favour of developers. This will deepen that perception, and indeed verify it as a correct assessment if the Department wants to increase public cynicism about planning in Northern Ireland. It will also, in the absence of transparency about who funds political parties in Northern Ireland, foster the perception that developers "buy" politicians, serving to bring politics in Northern Ireland further into disrepute.

Clause 10: Appointment of non Planning Appeals Commission personnel to oversee public inquiries

This clause is not required. The Planning Appeals Commission was established as an Independent Appellate Body and as such maintains the credibility of the planning service. This credibility would be put at risk if Department of Environment officers or Ministers directly appointed someone for an Appeal hearing. The independent process would be undermined.

Clause 20: Enforcement

This clause also threatens to undermine credibility by limiting the opportunities for enforcement action, already seen as a weak part of the Northern Ireland Planning System. Fixed penalty fines are all very well and allow swift action against those who fail to comply, but the Bill suggests that someone fined in this way for failing to comply with enforcement, would be exempt from any further prosecution. This is a dangerous suggestion and opens up an opportunity for those guilty of abusing the planning system, to be sheltered from prosecution.

Given the Department's poor record on enforcement, and the lack of meaningful penalties, including reinstatement, this suggestion of an amnesty for further breaches of planning or enforcement would leave the Planning Department open to ridicule.

I trust the Committee will consider the DGBA's views in their response to the Department.

Dungannon and South Tyrone Borough Council

Thank you for the opportunity to provide comments to the Planning Bill.

Dungannon & South Tyrone Borough Council would seek further consideration of the following:

3rd Party Appeals - consideration and consultation is sought on 3rd Party Appeals.

Penalties - consideration for penalties to be commensurate with the value of the site/ proposed development.

Planning Gain - consideration of planning gain for development infrastructure and impact of sensitive or contentious development on areas.

Dungannon and South Tyrone Borough Council
Comhairle Dhún Geanainn agus Thír Eoghain Theas
Rathgannon Sooth Owenslann Burgh Cooncil

P Please consider the environment before printing this e-mail

Fermanagh District Council

FERMANAGH DISTRICT COUNCIL

COMHAIRLE CHEANTAR FHEAR MANACH

Our Ref: DR/cj

Your Ref:

13 March 2013

Committee for the Environment
NI Assembly

For the attention of Roisin Mooney

Dear Sirs

Proposed Planning Bill

I am writing in response to your email of 26 February 2013 requesting the Council's written comments on the proposed Planning Bill.

I wish to inform you that the Council has already submitted a response in respect of the Planning Bill when it had been initially published, by the Department, for consultation. The Council do not have any further comments to make in respect of the Bill.

Yours sincerely

Desmond Reid
Director of Regulatory Services

Brendan Hegarty B.S.Sc. F.C.A. Chief Executive

Townhall, 2 Townhall Street, Enniskillen, County Fermanagh, Northern Ireland, BT74 7BA
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Fermanagh Trust

Planning Bill – Committee for the Environment
Consultation response by the Fermanagh Trust, Friday 15th March 2013

FAO Committee for the Environment,

The Fermanagh Trust welcomes the opportunity to express its views on the Planning Bill.

The Fermanagh Trust aims to promote any charitable purpose and to support initiatives which will lead to social and community development, thereby improving the conditions of life for people in Co. Fermanagh and its immediate hinterland. Since being established in 1995, the Trust has supported hundreds of community based projects in the county.

The Trust which is a registered charity, manages a range of funds and programmes dedicated to strengthening and improving local communities and finding solutions to the pressing community needs in Co. Fermanagh.

Please do not hesitate to contact the Fermanagh Trust if you have any queries regarding our submission.

Yours faithfully,

Graeme Dunwoody
Research and Policy Officer

Planning Bill

The Fermanagh Trust's submission focuses on a number of clauses outlined in the Planning Bill (as introduced):

Clause 1. Statement of community involvement

The Fermanagh Trust welcomes the requirement for the DOE to prepare and publish a statement of community involvement.

The Fermanagh Trust understands that further regulations will be made regarding how the Department will prepare a statement of community involvement and what this should contain. The Trust believes that the regulations should actively involve communities in the production of the statement of community involvement.

Clause 2. General functions of the Department and the planning appeals commission

The Fermanagh Trust has concern with the addition of 'promoting economic development' which could be interpreted as giving more weight to economic considerations as opposed to other considerations. It is important that the planning system promotes economic development; however this must be balanced against other considerations such as environmental and social issues.

The Planning Bill should therefore be reworded to provide clarity.

Clause 4. Publicity, etc., in relation to applications

The Planning Bill allows the Department to make regulations relating to how planning applications are publicised and for applicants to provide evidence that requirements have been met. The Fermanagh Trust would encourage the Department to produce strong regulations surrounding how planning applications are publicised. Currently in Northern Ireland, the level of publicity surrounding developments is poor and needs to be improved.

Clause 5. Pre-application community consultation

The Fermanagh Trust believes that the pre-application community consultation report needs to demonstrate how comments raised during their engagement have been taken into consideration, and that the public and community groups should have the opportunity to provide feedback on the pre-application consultation report.

Consultation with communities should be comprehensive and take into consideration concerns raised. Consultation with communities should not be viewed as simply a hurdle which applicants have to overcome into order to obtain planning permission.

Pre-application consultation will only be needed for certain types of planning applications. The Department will therefore need to clarify the thresholds which will be used to determine which applications need pre-application consultation. The rapid expansion of renewable energy development in Northern Ireland is a prime example of why the Department needs to be robust and thorough when deciding upon these thresholds.

Northern Ireland has a target of achieving 40% of electricity consumption from renewable sources by 2020. In response to a written question in the NI Assembly (AQW 19727/11-15), Minister Attwood noted that as of 31st December 2012, there were a total of 639 applications for single wind turbines in Northern Ireland. According to a DOE source as of 10/12/2012 , there were 35 proposed planning applications for wind farms in Northern Ireland.

Much of this proposed development is located in the north and west of Northern Ireland. Communities are however raising concern regarding this level of development, and recently there has been vocal opposition to wind farm development in areas such as West Tyrone with the emergence of an anti-wind lobby.

Given the scale of future onshore wind energy development and significant impact on 'host' communities and the environment throughout Northern Ireland, it is vital that the Department sets the correct thresholds for determining which applications need pre-application consultation.

The example of renewable energy development also shows the importance of the pre-application community consultation process as a whole, and the need to get it right. The Fermanagh Trust would therefore encourage the Department to consult the public regarding:

- which types of applications will require pre-application consultation;
- details of the contents of the pre-application community consultation report;
- how engagement with communities should be conducted.

Clause 10. Public inquiries: major planning applications

The Planning Bill allows the Department to appoint persons / commissioners other than the Planning Appeals Commission to deal with inquiries. The Fermanagh Trust is concerned with clause 10, as it could potentially bring into question the independence of the planning system and creditability of public inquiries.

The Fermanagh Trust believes that the Planning Appeals Commission should be allowed to appoint persons / commissioners as required.

Further comments

The Planning Bill must reflect the concept of Community Planning. The development of neighbourhood plans in England is a positive development. This is based on the principal of communities having the **right** to influence planning decisions, with communities having the ability to advise where they want new developments such as commercial developments to be built. Following this process, neighbourhood plans are submitted for independent examination and then submitted to a local referendum. These carry weight in final planning decisions.

Let's ensure the Planning Bill puts communities first.

Fiona Jones

REF:Bill Number: Bill 17/11-15
Bill Type: Executive
Bill Sponsor: Minister of the Environment

I am writing to oppose **Bill Number**: Bill 17/11-15 and the double counting of economic factors when considering planning applications.

This paves the way for those whose interests are purely financial to dictate and have more weight than citizens and residents with a vested interest in keeping the environment and country clean and healthy.

We can learn from others mistakes and create a more balanced society however allowing this bill to pass will mean an end to everything that is unique and allow those for whom money and power is everything to have their way.

Thanks.

Fiona Jones

Friends of the Earth

Introduction

A good planning system gives an economy consistency, fairness and direction. The amendments to the Planning Act (2011), and the Planning Order (1991) will result in both a weakening and slowing down of the planning system by encouraging more speculative applications, increasing the likelihood of legal challenges, contributing to confusion in the interpretation of planning policy and creating inconsistency in decision making.

It is unprecedented for a modern planning system to elevate economic interests above all other valid land-use planning considerations. The role of the planning system is to balance all valid and material interests on a case by case basis in the interests of sustainable development.

Friends of the Earth is opposed to the 2013 Planning Bill, its underlying assumptions and the damage it will do to an already weakened planning system. The proposed Bill will have far reaching and adverse implications for communities, the business sector and the future of Northern Ireland's environment.

This briefing outlines our objections.

Summary of objections

A detailed critique of the Planning Bill can be found in Appendix 1. In summary our concerns are that:

1. Clause 2 – In the *Pyx Granite vs Minister Housing and Local Government (1958)* case Lord Denning confirmed the legal principle that planning law should only apply to the use and development of land. Clause 2 challenges this long held principle by suggesting broader economic issues need to be taken into account;
2. Sustainable Development already includes economic considerations (Clause 2). Including an additional economic considerations clause will in practice give greater weight to the economy over the social and environmental elements of sustainable development;
3. Clause 6 renders the Bill unworkable. Every developer is likely to claim an economic advantage so this additional consideration is likely to lead to more speculative applications, which will slow down an already overburdened system.
4. Developers will be burdened with the requirement to produce an economic assessment, while objectors will have to establish an economic disadvantage;
5. Advantage and disadvantage considerations create complexity and increase grounds for objections (Clause 6). The Northern Ireland planning system is already highly legalised, and it is likely these clauses will lead to more developer led appeals and Judicial Reviews, further slowing down the system;
6. Economic considerations that go beyond land use, such as job creation or profitability, cannot be adequately assessed or enforced (Clauses 2 and 6). Planning law has no mechanism for imposing economic conditions, such as profitability or job creation, as part of planning consent, and no way of applying sanctions if economic claims do not materialise. Developers can make grandiose claims to support an application, but these claims cannot be monitored or enforced;

7. Planners have no expertise in assessing detailed economic assessments. They are not economists, they are land use specialists who balance and mediate competing interests to achieve sustainable development;
8. The proposed duty to promote economic development could be inconsistent with the EU Environmental Impact Assessment Directive (Clause 2). If planners endeavor to comply with the process of the EIA they will very likely be challenged if they reject a planning application or impose conditions that might reduce a claimed economic advantage.
9. Clause 10 allows for the Department to appoint Commissioners to conduct appeals normally carried out by the PAC. It is debatable that such commissioners could be considered independent. The independence of appointees could be open to challenge under human rights law;
10. Fixed Penalty Notices are a useful deterrent, but they are not a remedy to breaches of planning conditions (Clause 20). The Bill suggests that no further action will be taken if a Fixed Penalty Notice is paid. Enforcement notices can be reissued but this is an extra burden on the system contrary to the stated objective of simplifying and speeding up planning. It must be made clear that fines should not be applied in lieu of remedial action. Breaches of planning conditions must be rectified;
11. The requirement for a pre-application community consultation is welcome (Clause 5). All such consultations must be adequately resourced if they are to be effective and gain buy-in for communities. Front loading should not be viewed as an alternative to full access to justice. A Third Party Right of Appeal should be introduced for circumstances in which the system fails;
12. The consultation is being managed through the Environment Committee. The Planning Bill has potentially far-reaching and game changing implications for the planning system and it is a dangerous precedent for the Government to allow 'the difficult and controversial bits' of a Bill through the back door. It should be afforded the rigours of a full public consultation. The Committee's role is to scrutinise legislation coming from the house. It is not to be used as a proxy to manage consultation on a controversial new provision, a version of which has already been challenged in the courts, and was rejected by 75 percent of people at consultation.
13. The Bill is a missed opportunity to introduce significant reforms such as third party rights of appeal and commence the plan-led system that would create a better planning system for everyone;
14. Orthodox economic practice measures success in mathematical terms through the contribution to GDP, financial projections, or job creation figures. GDP measures all economic activity, even if it is insurance claims resulting from bad weather events due to climate change, open cast mining, deforestation, or pollution clean-up. The planning system has no methodology for assessing economic success criteria. Moreover, there is no balancing of these mathematical projections with similar criteria on well-being, ecological services, sustainable development or economic disadvantages.

Unintended consequences

It is our assertion that the clauses on economic considerations could have serious unintended consequences. The ambiguity of the clauses, coupled with political pressure to pursue economic develop at any cost, could result in weak planning approvals that could not otherwise be justified in planning terms..

In this section we present several hypothetical planning applications and explore some unintended consequences.

1. Inflated jobs claims

A developer submits a planning application for a light industrial facility on the site of a former retail unit. The application states the industrial process will be labour intensive, and will therefore create a significant number of skilled,

long-term jobs. The process necessarily involves some potentially serious environmental impacts, such as noise, traffic volumes, and discharges to waterways, but the job claims are considered to outweigh the negative impacts so the application is approved.

After receiving planning consent, the developer decides to invest in considerable automation of the process, so the actual number of jobs created is a small fraction of those stated in the economic appraisal. The original job creation claims cannot be enforced as a planning condition.

2. Economic environment changes

Similar to the previous example, a developer submits an application for a small manufacturing unit on a rural site. The economic assessment included with the application states the facility will employ 50 people. The application is approved on the grounds of a significant economic advantage to the area.

However, after receiving planning consent the economic environment changes significantly and the developer reluctantly decides to outsource the manufacturing process to China, and utilises the new facility as a distribution depot employing 10 people. The new depot will involve significant disruption of the once quiet rural community in the form of increased traffic levels, noise and light pollution, but with little or no economic advantage for the community. Local job creation cannot be made a condition for planning consent.

3. Greater advantage in selling the land

A developer submits an application for a commercial facility that will employ a significant number of people. Approval is granted based on the economic assessment.

After receiving planning consent the developer realises the value of the land has increased greatly and so decides to sell it. The revenue raised from the sale of the land is used to finance a development overseas.

In this case, the original applicant could argue an economic advantage to planning consent on the grounds that receiving consent would increase the value of the land. It is a perversion of the planning regime that merely receiving consent is itself an economic advantage, regardless of any advantage the proposed development may or may not have.

4. Burden to developers and objectors

A farmer submits and application to build some farm buildings in order to modernise and expand his farm. A neighbour, a business man from Belfast who owns a cottage for hire adjacent to the farm, objects on the grounds that the new buildings will be unsightly and so will damage his business, and devalue his land, thereby inflicting an economic disadvantage, which now has to be taken into account.

Both the farmer and the objector will have to provide an economic appraisal, at their own expense. Planners will have to assess both economic cases, slowing down the decision making process, despite having no expertise in economics. The farmer will have an additional ground for appeal if the application is rejected, and the objector may have additional grounds for Judicial Review if the application is approved.

Unintended absurdities

In this section we offer some hypothetical planning applications that demonstrate the absurdity of the proposed statutory duty on economic considerations. None of these hypothetical proposals are beyond the realm of possibility, and are consistent with a robust application of the clauses in the Planning Bill 2013.

1. The Cathedral

A consortium submits an application to demolish St. Anne’s Cathedral and build a high end shopping complex with prestige anchor

tenant, shops, cafes, restaurants, bars, and entertainment complex. It would be called 'The Cathedral', both as a homage its location on the former site of St. Anne's, and to reflect its role as a driver for an economic renaissance of the Cathedral Quarter.

St. Anne's Cathedral contributes little to the economy and is not a major employer' although it is recognised that it has some heritage value, but this is difficult to quantify. However, the developers of 'The Cathedral' have a precise projection of jobs it would create and figures that suggest it would serve as a catalyst for the redevelopment of the Cathedral Quarter. The demolition and construction of such a major structure could take up to two years to complete, so the project would be a major boon for the construction industry. Once completed, the complex would be a major long-term employer.

2. Historic teas

A local entrepreneur submits an application to demolish Carson's Statue and erect a kiosk for selling teas, coffees, and light refreshments. Stormont estate is a haven for people walking their dog, jogging, or out for a stroll with their family. After their exercise they may want a quick cup of tea and Danish before heading back down the mile to their car. As "economic advantage" is now a key planning criteria, the Department of the Environment feels, on balance, it should grant it permission.

This would be one of a chain of facilities. Other potential sites include:

- The space currently occupied by the Republican plot in Milltown Cemetery. Visitors to the cemetery, for funerals or Cemetery Sunday would appreciate a cup of tea on a cold day;
- Bishop's Gate, L/Derry. The historic walls attract many visitors who are likely to want a warm cup of tea as they explore the site on a typical windy day;
- The summit of Cave Hill, on the site frequented by the United Irishmen. Cave Hill is popular with walkers, mountain bikers, and families. After trekking to the top, visitors would enjoy some light refreshments while they enjoy the views over the city.

3. Funfair in Botanic Gardens

A well-established funfair company submits an application to build a funfair in Botanic Gardens. The development would involve extensive landscaping, the removal of many mature trees and the demolition of existing buildings. Included in the scheme are rides, a bar, and a café.

Botanic Gardens currently generates little money and could be a financial burden on Belfast City Council. The development would create a significant number of seasonal jobs, in addition to year round jobs in the bar and café.

What the Bill doesn't say

No evidence has been presented that there is a problem that these offending economic amendments are trying to solve. On the other hand our research[1] has revealed evidence of a crisis of confidence in the planning system

Furthermore, the three pillars on which planning system is based (development plans, enforcement and development management) have been subject to intense criticism over many years. No new development plan has been started for 8 years, the enforcement system has been described in recent Assembly debates by prominent politicians as a farce, there is a general acceptance of retrospective applications for major developments, such as quarries, and we already have the most permissive planning system in the UK.

Recent approvals such as the demolition of the Athletic Stores listed building in Belfast, the Viking village development on the shores of Strangford Lough and the approval of the Runkerry resort in the protected landscape around the Giants Causeway demonstrate a

[1] http://www.foe.co.uk/resource/reports/public_and_stakeholder_opi.pdf

laissez faire approach to planning which is unprecedented in healthy and advanced economies.

It is remarkable that the Bill, in the light of the evidence, does not address these real problems by commencing the introduction of the plan-led system, developer contributions and third party rights of appeal.

Recommendations

Clause 2 should be reworded to include a definition of sustainable development, and the sub-clause economic development should be removed. The purpose of planning should be to achieve sustainable development as defined by the World Commission on Environment and Development in 1987: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

The UK Sustainable Development Strategy 2005 sets out five guiding principles:

- Living within environmental limits
- Ensuring a strong, healthy and just society
- Achieving a sustainable economy
- Promoting good governance
- Using sound science responsibly

These principles should be set out in Planning Bill in relation to the purpose of planning.

Friends of the Earth recommends the following overarching policy on sustainable development be included in Clause 2:

“It shall be the principal objective of local and neighbourhood plans to ensure sustainable patterns of development which improve the quality of life of all people, while respecting environmental limits and the ability of future generations to enjoy a similar quality of life.”

In order to uphold this objective, all land use policies and decisions must enshrine the principles of:

- **environmental justice**: putting people at the heart of decision making, reducing social inequality by upholding environmental justice in the outcomes of decisions;
- **inter-generational equity**: ensuring current development does not prevent future generations from meeting their own needs;
- **environmental limits**: ensuring that resources are not irrevocably exhausted or the environment irreversibly damaged. This means, for example, supporting climate mitigation, protecting and enhancing biodiversity, reducing harmful emissions, and promoting the sustainable use of natural resources (including those outside Northern Ireland);
- **resource conservation**: ensuring that planning decisions assist in the prudent and sustainable use of finite natural resources (including resources sourced outside Northern Ireland);
- **the precautionary approach**: the precautionary principle holds that where the environmental impacts of certain activities or developments are not known, the proposed development should not be carried out, or extreme caution should be exercised in its undertaking;
- **the polluter pays**: ensuring that that those who produce damaging pollution meet the full environmental, social and economic costs;
- **the proximity principle**; seeking to resolve problems in the present and locally, rather than passing them on to other communities globally or future generations;
- **public participation**; ensuring that there are meaningful opportunities for people to engage in the planning decision-making process.

In addition to these principles, the sequential test is essential in order to achieve sustainable development and travel patterns, and to protect and conserve areas of recognised environmental and amenity importance.

Friends of the Earth recommends the following policy be included:

"Plans and planning decision making should apply the sequential test to ensure the most sustainable use of land."

The sequential test is as follows:

1. the re-use of previously developed land and buildings (brownfield sites) within urban areas;
2. other previously developed land well connected to public transport links;
3. new locations within urban areas subject to the need to protect and conserve areas of recognised environmental and amenity interests;
4. on other sites and locations which reduce the need to travel, and are sustainably located.

Clause 5 should include the introduction of a Third Party Right of Appeal.

Clause 6 should be removed from the Bill.

Clause 10 should be amended to allow the Planning Appeals Commission to appoint temporary commissioners as needed.

Clause 20 should be clarified to make it clear that Fix Penalty Notices are not in lieu of enforcement action, and that further action will be taken if breaches are not remedied.

Conclusion – worse than PPS24

The Planning Bill 2013 will lead to an unnecessary burden to planners, developers, and objectors. It will result in more legal challenges as the ambiguities are sorted out. Economic considerations could trump other considerations, leading to a proliferation of speculative planning applications. The clauses will be unworkable and unenforceable. The appeals process is likely to lose its independence, at least in the eyes of the public.

The statutory basis to these new economic considerations will deliver economic supremacy in a way that is more far reaching than draft PPS24 which was previously rejected by Minister Attwood.

PPS24 was only a *policy* but these clauses provide a new *statutory* duty; dPPS24 related to major applications where economic considerations were 'significant', where these clauses relate to all applications; dPPS24 only related to development management (that is the processing of planning applications) whereas these clauses relate to all decisions of the Planning Appeals Commission, all future development plans, and all future planning policies; dPPS24 gave 'substantial weight' whereas these clauses creates an additional duty to promote economic development even though economic considerations are already embedded within sustainable development

The clauses mark a terminal shift away from what the debate should be about – the difference between good planning and bad planning. They polarise the debate from having a quality planning system and shift the focus in the direction of creating an adversarial, mechanistic and legalistic theatre around the planning system. The 'jobs versus environment' debate was always a false argument but these clauses now give this false argument a statutory basis. Planning should be about resolving disputes in the public interest but these clauses make them worse.

In short, the Planning Bill is likely to result in the disintegration of the planning system.

Appendix 1

10 REASONS WHY THE NORTHERN IRELAND PLANNING BILL 2013 IS UNWORKABLE

Prof. Geraint Ellis
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In January 2013 the Department of the Environment presented the 2013 Planning Bill to the Assembly. The main purposes of the Bill are to further legislatively prepare the planning system for a transfer of major planning responsibilities to local authorities in 2015 and to continue the trajectory of planning reform. In this context, many of its provisions are sensible and reflect legislative developments in other parts of the UK.

- Clause 2: Amendment of the general functions of the Department of the Environment and the Planning Appeals Commission, to include "promoting economic development" in addition to the existing duties of "furthering sustainable development" and "promoting or improving well-being";
- Clause 6: Amending the issues to be taken into account (i.e. the "material considerations") when determining planning applications by ensuring that this should now include the "economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission";
- Clause 10: Public inquiries: major planning applications allows the appointment of people other than the Planning Appeals Commission (PAC) to oversee planning inquiries;
- Clause 20: Fixed Penalties, allowing the Department of the Environment to issue a fixed penalty notice for the offences of failing to comply with an enforcement action.

The last two clauses are inappropriate because they threaten to further weaken the credibility of the Northern Ireland planning system, which has already been seen to be very low amongst the public[2].

Clause 10 is simply not needed – the independence, and the perception of independence, of those overseeing public inquiries plays a paramount role in maintaining the credibility of the planning system and any direct appointments by the DoE would inevitably cast doubt on this, given that the PAC has been established for precisely this role. Indeed, this clause is not required – a simple solution would be to facilitate the PAC to appoint temporary Commissioners if they did not have the in house capacity to oversee an inquiry at any particular time.

Clause 20 also threatens to undermine credibility by limiting the opportunities for enforcement action, already seen as a weak part of the Northern Ireland planning system. While on the one hand Fixed Penalty Notice promises to allow swift action against those who fail to comply with enforcement, the Bill also suggests that they then be immune from any further prosecution once a fine has been paid. The danger with this provision is that it could be used as a shelter from prosecution by those guilty of abusing the planning system. While a Fixed Penalty Notice may be a useful initiative, this should not be accompanied by immunity from prosecution.

However, it is the first two clauses mentioned above (Clauses 2 and 6) which are the most dangerous and inadequately constructed parts of the Bill. These potentially introduce very fundamental changes to the Northern Ireland planning system.

The dominant aim of planning reform in Northern Ireland has been to streamline and speed up the process for making planning decisions. Members of the Northern Ireland

[2] http://www.foe.co.uk/resource/reports/public_and_stakeholder_opi.pdf

Executive also regularly state that they wish to see the planning system do more to assist economic recovery. Although there appears to be a number of major misconceptions of how the planning system relates to economic growth (which will not be discussed here), if we assume that these clauses have been introduced with the aim of supporting such objectives, it is against these that they should be evaluated. However, these new clauses are actually *counter*productive to such objectives and have the potential to build in a number of very significant problems for the Northern Ireland planning system, including many enhanced, yet unnecessary, opportunities for legal challenge.

There are at least ten reasons why these clauses are unworkable:

1. The Bill undermines the key principle of planning that it should only consider issues related to the use and development of land[3]. Clause 6 seeks to expand the issues that planners need to take into account and as consequence, the Northern Ireland planning system will no longer be able to rely on the stability of 40 years of case law that have determined the boundaries of planning considerations. As a result of this, the materiality of certain issues will have to be redefined through a series of legal challenges to establish case law. This is likely to introduce a great deal of instability and delay into the Northern Ireland planning system – we infer that this is not the intent of the Department and its legislators;
2. Clause 6 appears to be attempting to use the planning system for a purpose for which it is not legally designed to do. Because planning is strictly about the use and development of land, to try and use it for a purpose that is not strictly related to this – such as reviving the broader regional economy, could be judged as being ultra vires[4] and of course, will provide additional opportunities for challenges in the courts;
3. The Bill also appears to introduce the potentially dangerous precedent of having to routinely consider personal circumstances when deciding planning decisions. This also arises from Clause 6 which suggests that economic dis/advantages need to be taken into account. An economic advantage cannot belong to a piece of land and must belong to a real person or organisation as only they can realise the fruits of an advantage (or suffer the consequences of a disadvantage). Indeed any economic dis/advantage will vary according to whom it belongs – something that may be inconsequential to a multi-national could be a critical economic advantage to a small local firm, thus raising the necessity of considering the personal circumstances of the applicant or owner when deciding a planning application. This is again unprecedented and could also prove to be a fertile area for legal challenge;
4. A further consequence of this is it that it provides opportunities for objections on "non-planning" grounds. Clause 6 broadens the issues that planners have to take into account when deciding planning applications and this will be open to exploitation from both applicants *and* objectors. In particular Clause 6 notes that the planners should take into account economic *dis*advantage as a result of a planning decision – suggesting that any person who thinks they may be disadvantaged as a result of a decision, for example a developer of a competing scheme, an existing business that may be threatened by a proposed activity (such as retail or manufacturing) and even someone suffering a loss of property value, may find some currently unavailable traction in making a valid objection to a planning application.
5. At present planners have additional flexibility to award planning permission because they can secure safeguards for the public interest through imposing planning conditions on a prospective development - these must be related to the use and development of land. As explained

[3]For example, Stringer -v- Minister of Housing and Local Government [1971] 1 All ER 65; Westminster City Council -v- Great Portland Estates plc [1985] AC 6610

[4] Lord Denning established a long standing principle that the planning system could not be used for what he described as "ulterior objects" in an ulterior object, Pyx Granite C. Ltd. v. Minister of Housing and. Local Government [1958] 1 Q.B. 554, 572

above, Clause 6 suggests that planners should now take economic dis/advantages into account – yet for the reasons explained above, this may well include issues that cannot be enforced through the planning system. For example, if it is claimed that a development will result in 100 jobs, this could become a key criteria for awarding planning permission. However, there is no legal mechanism to ensure the claimed benefits actually occur as such issues cannot be secured through planning conditions because they lie beyond the scope of the planning system. The consequence of this is that developers are likely to exaggerate economic development impacts, knowing they cannot be held to account on their claims. This provides a very shaky basis for land use regulation;

6. The Bill introduces a circular argument that undermines effective regulation. Any planning approval inevitably results in an 'unearned' increase to the value of a property. If a planner has to consider the economic dis/advantages of refusing or awarding planning permission, this will always result in an argument *for* planning permission as otherwise the increase in property value would be lost. This may even be the case if the development would be judged otherwise unsuitable on normal planning grounds. This could therefore create *a fait accompli* for approving planning applications, thus fundamentally eroding the basis of effective planning regulation and actually challenging the very reasons for having a planning system;
7. This legislation introduces the ambiguity over the concept of economic development into the consideration of planning applications. It does not define what it means by economic development and indeed, there is no single definition that is accepted by economists, thus reducing the clarity of the existing planning legislation. Economic development is generally *not* considered to be as simple as promoting growth through job creation, as it implies a longer term perspective which would therefore have to take into account issues such as job displacement, impact on the balance of payments, multiplier effects and the evaluation of alternative development options. It also implies that indirect impacts on economic development need to be considered, such as the potential cost to public services, health impacts or the economic consequences of traditional planning considerations, such as local increases in traffic congestion. This clause will need extensive and detailed guidance to become operable;
8. Following from the above, the Bill will increase the paperwork for planning applicants and the bureaucracy of making decisions. Far from streamlining the planning process, in adding economic advantage/disadvantage as a material consideration (Clause 6), it will require planning applicants to provide additional information in order to be able to determine a planning application. This will also require further training and guidance for planners and potentially the employment of specialist economists in the Department of the Environment. It is not clear what sort of economic assessment will be required, although across Government the most commonly accepted is a *Green Book Assessment*[5] and it is difficult to see how anything less than this could provide the complete picture of the economic impact of a development. The Green Book covers issues such as competition impacts, distributional impacts, small firm impacts, additionally, consequences for labour supply and how to adjust for risk and optimism bias. A full economic assessment also requires the evaluation of non-market impacts such as those arising from pollution or any time-savings arising from infrastructure investment or improvements in accessibility. A *Green Book Assessment* is a sophisticated process requiring expert input and potentially original research for every development – this clearly is not in the spirit of other measures taken to speed up the planning system;
9. The Bill introduces a lack of clarity in the role of the DoE and PAC. Under the existing 2011 Act these planning authorities have the duty to deliver their planning responsibilities in order to promote sustainable development and well-being. The concept of sustainable development aims to secure a long-term balance

[5] http://www.hm-treasury.gov.uk/data_greenbook_index.htm

between social, environment and economic issues. The fact that economic development becomes *an additional and separate* consideration means that planners will have to, first balance economic considerations as part of their duty to deliver sustainable development, *and then* balance sustainable development with economic development. This appears to be an absurd and overly complex reasoning, providing unnecessary complexity to land use regulation;

10. Finally, the Bill does not appear to fix any current problem with the planning system, but introduces many more difficulties. At present, planning approval rates in Northern Ireland are the highest in the UK and there is no robust evidence that planning regulation itself is a barrier to economic development. These clauses appear to offer a solution to a problem that actually does not exist, while at the same time introducing many opportunities for snarling the planning system into an extended process of legal challenges and instability. These factors more than anything will deter potential investment.

This discussion not only highlights the many legal and procedural problems that may be encountered should this legislation be enacted, but it also highlights the fundamental nature of the proposed changes. It is therefore surprising to see that the Department has not highlighted the significance of such changes – for example it does not propose the normal process of public consultation that would be expected to accompany changes with such far reaching implications. No Equality Impact Assessment undertaken on these provisions and perhaps most remarkably given the comments above, the Bill's "Partial Regulatory Assessment" overlooks the costs of the new provisions. These could potentially include:

- Training of planning officers in how to evaluate economic development;
- Costs of changing planning application forms to include the required information;
- Costs to developers of including additional information with their planning applications to address the new definition of material considerations, particularly if the economic development criteria is to be based on a Green Book assessment which includes 118 pages of guidance, plus another 14 documents of supplementary guidance[6] amounting to a substantial increase in regulatory guidance to be included in a planning application;
- Potential employment of economists by the Department of the Environment;
- As noted above, because these clauses change some of the fundamental principles underlying the determination of planning applications and introduce a range of ambiguities into planning regulation, it is highly likely that its interpretation will be tested in the courts. This will inevitability lead to a range of costs, including delay to any planning decision subject to challenge and legal costs incurred by the Department.

Clauses 2 and 6 therefore raise a range of deeply significant issues for the Northern Ireland planning system, introducing substantial ambiguities, providing the potential for delay and unintended opportunities for legal challenge and an increase in the bureaucracy associated with planning control. These are clearly not the reasons why the Planning Bill has been introduced. If we wish to reform the NI planning system into one which is effective, democratic and efficient, these proposals should be reconsidered and more time taken to assess what the planning system really needs. Inappropriate decisions hastily made now will potentially result in years of litigation and pressure on the public purse that every player in the planning and development arena can do without.

[6] http://www.hm-treasury.gov.uk/data_greenbook_supguidance.htm

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Front cover image courtesy of Prehen Conservation Society

Geraint Ellis

10 reasons why the Northern Ireland Planning Bill 2013 is unworkable

In January 2013 the Department of the Environment presented the 2013 Planning Bill to the Assembly. The main purposes of the Bill are to further legislatively prepare the planning system for a transfer of major planning responsibilities to local authorities in 2015 and to continue the trajectory of planning reform. In this context, many of its provisions are sensible and reflect legislative developments in other parts of the UK.

However, the Bill also contains four very weak clauses that should be dropped from the bill, for reasons explained below:

- **Clause 2: Amendment of the general functions of the Department of the Environment and the Planning Appeals Commission**, to include "promoting economic development" in addition to the existing duties of "furthering sustainable development" and "promoting or improving well-being";
- **Clause 6: Amending the issues to be taken into account (i.e. the "material considerations") when determining planning applications** by ensuring that this should now include the "economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission".
- **Clause 10: Public inquiries: major planning applications** allows the appointment of people other than the Planning Appeals Commission (PAC) to oversee planning inquiries.
- **Clause 20: Fixed Penalties,** allowing the Department of the Environment to issue a fixed penalty notice for the offences of failing to comply with an enforcement action.

The last two clauses are inappropriate because they threaten to further weaken the credibility of the Northern Ireland planning system, which has already been seen to be very low amongst the public[1].

Clause 10 is simply not needed – the independence, and the perception of independence, of those overseeing a public inquiries plays a paramount role in maintaining the credibility of the planning system and any direct appointments by the DoE would inevitably cast doubt on this, given that the PAC has been established for precisely this role. Indeed, this clause is not required – a simple solution would be to facilitate the PAC to appoint temporary Commissioners if they did not have the in house capacity to oversee an inquiry at any particular time.

Clause 20 also threatens to undermine credibility by limiting the opportunities for enforcement action, already seen as a weak part of the Northern Ireland planning system. While on the one hand fixed penalty notice promises to allow swift action against those who fail to comply with enforcement, once a fine has been paid, the Bill suggests they then be immune from any further prosecution. The danger with this provision is that it could be used as a shelter from prosecution by those guilty of abusing the planning system. Yes, we should consider a fixed penalty notice, but this should not be accompanied by an immunity from prosecution.

[1] http://www.foe.co.uk/resource/reports/public_and_stakeholder_opi.pdf

However, it is the first two clauses mentioned above, Clauses 2 and 6, which are the most dangerous and poorly thought out parts of the Bill. These potentially introduce very fundamental changes to the Northern Ireland planning system.

The dominant aim of planning reform in Northern Ireland has been to streamline and speed up the process for making planning decisions. Members of the Northern Ireland Executive also regularly state that they wish to see the planning system to do more to assist economic recovery. Although there appears to be a number of major misconceptions of how the planning system relates to economic growth (which will not be discussed here), if we assume that these clauses have been introduced with the aim of supporting such objectives, it is against these that they should be evaluated. However, in my opinion these new clauses are actually *counter*productive to such objectives and have the potential to build in a number of very significant problems for the Northern Ireland planning system.

I have listed below ten reasons why I think these clauses are unworkable.

1. This legislation introduces the **ambiguity over the concept of economic development** into the consideration of planning applications. It does not define what it means by economic development and indeed, there is no single definition that is accepted by economists. Economic development is generally *not* considered to be as simple as promoting growth through job creation, as it implies a longer term perspective which would therefore have to take into account issues such as job displacement, impact on the balance of payments, multiplier effects and the evaluation of alternative development options. It also implies that indirect impacts on economic development need to be considered, such as the potential cost to public services, health impacts or the economic consequences of traditional planning considerations, such as local increases in traffic congestion. This clause will need extensive and detailed guidance to become operable.
2. Following from the above, the Bill will **increase the paperwork** for planning applicants and the bureaucracy of making decisions. Far from streamlining the planning process, in adding economic advantage/disadvantage as a material consideration (Clause 6), it will require planning applicants to provide additional information in order to be able to determine a planning application. This will also require further training and guidance for planners and potentially the employment of specialist economists in the Department of the Environment. It is not clear what sort of economic assessment will be required, although the across Government the most commonly accepted is a *Green Book Assessment*[2]and it is difficult to see how anything less than this could provide the complete picture of the economic impact of a development. The Green Book covers issues such as competition impacts, distributional impacts, small firm impacts, additionality, consequences for labour supply and how to adjust for risk and optimism bias. A full economic assessment also requires the evaluation of non-market impacts such as those arising from pollution or any time-savings arising from infrastructures investment or improvements in accessibility. A Green Book Assessment is a sophisticated process requiring expert input and potentially original research for every development – this clearly is not in the spirit of other measures taken to speed up the planning system;

[2] http://www.hm-treasury.gov.uk/data_greenbook_index.htm

3. The Bill **undermines the key principle of planning that it should only consider issues related to the use and development of land[3].** Clause 6 seeks to expand the issues that planners need to take into account and as consequence, the Northern Ireland planning system will no longer be able to rely on the stability of 40 years of case law that have determined the boundaries of planning considerations – this will have to be redefined, through a series of legal challenges to establish case law. This is likely to introduce a great deal of instability and delay into the Northern Ireland planning system.
4. Clause 6 appears to be **attempting to use the planning system for a purpose for which it is not legally designed to do**. Because planning is strictly about the use and development of land, to try and use it for a purpose that is not strictly related to this – such as reviving the broader regional economy, could be judged as being ultra vires[4] and of course, open to challenge in the courts.
5. The Bill also appears to introduce the **dangerous precedent of having to routinely consider personal circumstances when deciding planning decisions**. This arises from Clause 6 which suggests that economic dis/advantages need to be taken into account. An economic advantage cannot belong to a piece of land and must belong to a real person or organisation as only they can realise the fruits of an advantage (or suffer the consequences of a disadvantage). Indeed any economic dis/advantage will vary according to whom it belongs – something that may be inconsequential to a multi-national could be a critical economic advantage to a small local firm, thus raising the necessity of considering the personal circumstances of the applicant or owner when deciding a planning application. This is again unprecedented and could prove to be a fertile area for legal challenge.
6. A further consequence of this is it that **it provides opportunities for objections on "non-planning" grounds**. Clause 6 broadens the issues that planners have to take into account when deciding planning applications and this will be open to exploitation from both applicants *and* objectors. In particular Clause 6 notes that the planners should take into account economic disadvantage as a result of a planning decision – suggesting that any person who thinks they may be disadvantaged as a result of a decision, for example a developer of a competing scheme, an existing business that may be threatened by a proposed activity (such as retail or manufacturing) and even someone suffering a loss of property value, may find some currently unavailable traction in making a valid objection to a planning application.
7. At present planners have additional flexibility to award planning permission because they can secure safeguards for the public interest through imposing planning conditions on a prospective development - these must be related to the use and development of land. As explained above, Clause 6 suggests that planners should now take economic dis/advantages into account – yet for the reasons explained above, this may well include issues that **cannot be enforced through the planning system.** For example, if it is claimed that a development will result in 100 jobs, this could become a key criteria for awarding planning permission. However, there is no legal mechanism to ensure the claimed benefits actually occur as such

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issues cannot be secured through planning conditions because they lie beyond the scope of the planning system. The consequence of this is that developers are likely to exaggerate economic development impacts, knowing they cannot be held to account on their claims. This provides a very shaky basis for land use regulation.

8. The Bill introduces a **lack of clarity in the role of the DoE and PAC.** Under the existing 2011 Act these planning authorities have the duty to deliver their planning responsibilities in order to promote sustainable development and well-being. The concept of sustainable development aims to secure a long-term balance between social, environment and economic issues. The fact that economic development becomes *an additional and separate* consideration means that planners will have to, first balance economic considerations as part of their duty to deliver sustainable development, *and then* balance sustainable development with economic development. This appears to be a rather absurd and overly complex reasoning, providing unnecessary complexity to land use regulation.
9. The Bill **introduces a circular argument that undermines effective regulation.** Any planning approval inevitably results in an 'unearned' increase to the value of a property. If a planner has to consider the economic dis/advantages of refusing or awarding planning permission, this will always result in an argument *for* planning permission as otherwise the increase in property value would be lost. This may even be the case if the development would be judged otherwise unsuitable on normal planning grounds. This could therefore create *a fait accompli* for approving planning applications, thus fundamentally eroding the basis of effective planning regulation and actually challenging the very reasons for having a planning system.
10. The Bill does not fix any current problem with the planning system, but introduces many more difficulties. At present, planning approval rates in Northern Ireland are the highest in the UK and there is no robust evidence that planning regulation itself is a barrier to economic development. These clauses appear to **offer a solution to a problem that actually does not exist**, while at the same time introducing many opportunities for snarling the planning system into an extended process of legal challenges and instability. These factors more than anything will deter potential investment.

This discussion not only highlights the many legal and procedural problems that may be encountered should this legislation be enacted, but it also highlights the **fundamental nature of the proposed changes**. It is therefore surprising to see that the Department has not highlighted the significance of such changes – for example it does not propose the normal process of public consultation that would be expected to accompany changes with such far reaching implications. **No Equality Impact Assessment** undertaken on these provisions and perhaps most remarkably given the comments above, **the Bill's "Partial Regulatory Assessment "overlooks the costs of the new provisions**. These could potentially include:

- Training of planning officers in how to evaluate economic development;
- Costs of changing planning application forms to included the required information;
- Costs to developers of including additional information with their planning applications to address the new definition of material considerations, particularly if the economic development criteria is to be based on a Green Book assessment which includes 118 pages

of guidance, plus another 14 documents of supplementary guidance[5] amounting to a substantial increase in regulatory guidance to be included in a planning application ;

- Potential employment of economists by the Department of the Environment;
- As noted above, because these clauses change some of the fundamental principles underlying the determination of planning applications and introduce a range of ambiguities into planning regulation, it is highly likely that its interpretation will be tested in the courts. This will inevitability lead to a range of costs, including delay to any planning decision subject to challenge and legal costs incurred by the Department.

These two clauses therefore raise a range of deeply significant issues for the Northern Ireland planning system, introducing substantial ambiguities, providing the potential for delay and unintended opportunities for legal challenge and an increase in the bureaucracy associated with planning control. These are clearly not the reasons for why the Planning Bill has been introduced. If we wish to reform the NI planning system into one which is effective, democratic and efficient, these proposals really need to be dropped.

Prof. Geraint Ellis,
Queen's University, Belfast.
14th February 2013

[5] http://www.hm-treasury.gov.uk/data_greenbook_supguidance.htm

Economic Development Impacts of a typical Out of Town Shopping Centre

Potential Positive Economic Impacts	Potential Negative Economic Impacts

Geraldine Cameron

TO The DOE committee,

I have heard about your attempt to change planning laws in order to make economic factors the main concern of planning. This is unheard of in any other state. Health, well-being, a safe enivornment appear to have been side-lined. You have no way to guarantee that a planning proposal will produce jobs and no way to enforce any measures against a developer who cannot keep up with inflated promises. As for regulation, the Britsih Government and N.I government have proved they are unable to regulate even their own financial system. I am a mother of six children - you are going to destroy many more jobs than you will create. Planners are not tarined economists and cannot possibly be asked to follow these new rules. They are unfair to everyone. I want to raise my strongest objections.

Geraldine Cameron.

Geralyn McCarron

DOE Committee
Northern Ireland Assembly
Stormont.

Re Northern Ireland Planning Bill 2013

According to the World Commission on Environment and Development the purpose of planning should be to achieve sustainable development; that is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

Clause 2 should be changed. Short term "economic development" which takes precedence over sustainable use of resources and protection of a healthy living environment for our people now and into the future is inappropriate. Sustainable development should be defined and reference to economic development removed.

Clause 5 needs to include a third party right of appeal.

Clause 20 is a definite concern as it appears that no further action will be taken if a fixed penalty is paid. It is essential that breaches of planning permission are rectified. Paying a fine must not provide immunity from prosecution.

Prior attempts in Northern Ireland to prioritise "economic development" over sustainable development have been rejected both by the courts and overwhelmingly by the public. Public consultation on the proposals in this bill is absolutely essential.

Geralyn McCarron
(from Tempo, County Fermanagh)

13/03/13

Gerard Daye

Dear sir/madam,

I object to the inclusion of the clauses listed below in the proposed new Planning Bill:

Clause 2: Amendment of the general functions of the Department of the Environment and the Planning Appeals Commission, to include "promoting economic development" in addition to the existing duties of "furthering sustainable development" and "promoting or improving well-being";

Clause 6: Amending the issues to be taken into account (i.e. the "material considerations") when determining planning applications by ensuring that this should now include the "economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission".

Clause 10: Public inquiries: major planning applications allows the appointment of people other than the Planning Appeals Commission (PAC) to oversee planning inquiries.

Clause 20: Fixed Penalties, allowing the Department of the Environment to issue a fixed penalty notice for the offences of failing to comply with an enforcement action.

Yours,

Gerard Daye

47 Mount Eagles Drive
Belfast BT17 0GX

Greenisland Heritage and Environment Group

Hon. Sec: Robin Cameron, 33 Upper Road, GREENISLAND, Carrickfergus BT38 8RH
Phone: (028) 9086 3187 **email**: robincameron@btinternet.com

Consultation response to the 2013 Planning Bill from Greenisland Heritage & Environment Group

The Greenisland Heritage & Environment Group (GHEG) was formed in 1996, originally to resist closures of local footpaths. It soon became involved in the Belfast Whitelands Public Inquiry of 1997, later in the 1998 Inquiry into the Draft Carrickfergus Area Plan and more recently in the BMAP Public Inquiries. It continues to monitor planning issues and planning policies as they affect Greenisland.

Clause 2. Para 2 (1) (a) (1) (c)

'Promoting economic development' should not be a primary function of the Planning System. The planning system exists to bring forward orderly development in the public interest; this is a wider role than merely concentrating on economic benefit.

The planning system's role is to deliver sustainable development which must consider the environmental and social impacts of development in addition to economic benefits. In 1981 the "presumption in favour of development" was introduced to the Province, placing an onus on the Planning Service to grant permission for development, lest refusals vitiate other government policies designed to create employment.

This policy was disastrous in terms of the quality of urban design produced through the 1980s and 1990s and resulted in the creation of poorly designed, car dependent, amenity and facility-starved suburbs in most towns. The Planning Service was forced by the late 1990s to recognise the damage it had done and introduce the Quality Initiative, Creating Places and Planning Policy Statement 7 to offset the damage. Unfortunately these policy initiatives have only been partially successful.

Should this focus on economic development be reintroduced, it is very likely our countryside and towns will be further blighted by ugly and inappropriate developments of poor design quality. Northern Ireland's natural and built heritage has often been badly served by the existing planning system which in itself must have had a negative effect on economic development, and this situation should not be exacerbated.

The Planning system should concentrate on land use decisions, promoting good design and allocating appropriate locations for sustainable development, not short term 'economic development promises' which can burn themselves out quickly and often leave indelible scars on landscape and townscape for generations to come.

Several examples can be seen in our own Carrickfergus Borough, where bad choices of locations for short-term 'economic developments' have reduced the historic town's potential for development as a visitor and tourist destination.

Clause 6. Para (1) (1A) and (2) (1A)

These are allied to Clause 2 provisions and would be almost unworkable. How could Planners adjudicate on the economic balance between the advantages and disadvantages of a particular application? Notoriously no two economists agree on such matters. Asking a Planner to do this would give an unfair advantage to a rich or powerful applicant with the resources to employ expensive lawyers and consultants to make his or her case.

More seriously there would be no way of holding the applicants to their promises after extravagant claims had swung otherwise dubious approval decisions in their favour. Again Carrickfergus Borough can show examples of housing developments with unfinished infrastructure, delivery of which was promised as part of the application (and believed at the time).

Clause 20. Para. 76C (5)

Planning Service's enforcement (or rather the lack of it) of planning conditions and its ignoring of blatant flouting of approved plans has been a source of dismay in several instances in the Borough. While the proposal for fixed penalties in the Bill are welcome, they should form part of a range of escalating enforcement options available to Planning Enforcement.

We therefore object to this clause as it stands, which would seem to prevent further fixed penalties or sanctions being applied for breaches in a particular activity once one fixed penalty has been paid.

GHEG, 14th March 2013.

Heather McDermott

From Heather McDermott
35 Shore Rd
Annalong
BT34 4TU

E: maythorn1@aol.com

12/03/13

Planning Bill Response:

As a member of Friends of the Earth I have read their Planning Bill Response and agree with the content.

But my own personal response will deal only in areas I am confident of understanding and therefore responding to.

New Reform Promoting Economic Development

Planners are trained to Plan how the land is used, without planning there would be chaos everywhere. Planning has to consider human beings, wildlife, water and history etc. In short it is all about life and how we live, the term Economic Development is I believe a term that can be abused by unscrupulous persons to achieve monetary gain and therefore should have no place in planning.

How would this reform be policed? Planners do not have the expertise to navigate the techniques and morality of persons enthralled by the possibility of achieving power through economic gain.

In the same way that multi national companies have exploited the loopholes in the UK tax legislation, I feel certain that this new reform giving economic development a higher value than environment will be exploited.

I live in the Mournes and notice every time I walk there that a new area of Heather Moorland has been grubbed, dug over, burned and fertilised for use as grazing land. This demonstrates that because money can be made from destroying the wilderness, the heather moorland has no value in itself. But please try to imagine not being able to walk for hours in a wilderness without roads, houses and people. I believe humans need wilderness areas (not to mention all the wild animals and plants). The new reform would mean that roads, hotels, houses, golf courses etc could eventually be placed in our last true wilderness in Northern Ireland: The Mourne Mountains.

Lastly I must ask how this new reform will interact with the EU Environmental Impact Assessment Directive (clause 2). It will require planners in effect to serve two opposing masters!

The new reforms must not go ahead without a proper public consultation.

Yours sincerely,

Heather McDermott

Henry Deazley

Dear Sir,

Planning Bill Number: Bill 17/11-15. To amend the law relating to planning; and for connected purposes.

I apologise for sending this mail through my mothers account.

As a resident of the Holyland area of Belfast BT7 and a member of Belfast Holyland Regeneration Association (BHRA), I wish to object to the Current Planning Bill, which I believe is now at Committee stage.

I would like you to refer fully, to all the comments and objections raised in the attached papers, compiled by our local community representatives and also those by Geraint Ellis, as I fully endorse them also.

I thank you for taking my comments on board and I would like you to acknowledge this communication, for my records.

Yours Sincerely.

Henry Deazley
10 Penrose St. Malone Lower, Belfast. BT7 1QX. email henrydeazley@hotmail.com

Dear Sirs,

The following is a response to your call for comments on the Planning Bill curently under consideration.

Holywood Conservation Group response to the proposed Planning Bill 2013.

Introduction

The Holywood Conservation Group has some 200 members representing a large section of the community. It was founded to preserve the unique features of the town and ensure future development enhances rather than spoils the area.

While we agree with some of the aims of the proposed Planning Bill, we object to it on the following grounds

Clause 1 Statement of Community Involvement

We object that this Clause continues to allow Planners to determine policy on community involvement. It allows them to concentrate on major projects and virtually ignore minor ones which are just as likely to arouse confrontation and conflict. The policy which has to be prepared within one year must make it a statutory requirement that discussions with neighbours have taken place before applications are submitted. The elimination of problems at such an early stage will reduce conflict and time absorbing objections at a later stage thus promoting the object of a faster process.

Councils may be consulted but currently do not have statutory authority to represent the public interest. Elected representatives and community based groups, rather than Planners, should decide what is in the public interest. Planners have much too narrow a remit to determine what is ‘in the overall public interest’: their chosen term to reduce the number of objectors.

Clause 2 General Functions of the Department and Planning Appeals Commission

While agreeing that good design should be included in the criteria to be considered, we object that this clause allows Planners/Commissioners to set down policies on economic development. Currently they take account of policies and guidance issued by DoE, DRD and OFMDFM. We further object to allowing Planners/Commissioners to decide on which matters to include as appearing to be relevant. This could lead to heritage and environmental factors being overruled by spurious arguments of economic benefit.

There appears to be no developed definition for economic benefit or sustainable development. The increase in the value of a parcel of land as a result of a planning decision will bring economic benefit the owner but may adversely affect many more householders in the neighbourhood through a reduction in value, thereby creating an overall negative benefit for a larger area. The inclusion of these phrases will lead to many further time wasting legal challenges thereby obstructing the declared aim of this bill.

Clause 3 Meaning of Development

We object that Clause 3 does not make a distinction between land/building development and economic development. Nor does it define economic development or the scope of Planners’ role in promoting economic development. We welcome the decision to ensure that parts of listed buildings cannot be demolished at will. Again the definitions of economic development and sustainable development are not tightly defined and will probably prove to be a lucrative source of work for the legal profession and wasted time for the planning staff who get involved.

Clause 4 Publicity

We support any effort to ensure all proposals, including listed building consent, are publicised as widely as possible rather than in the most obscure way but hope that the Department will take all comments into consideration no matter how small the organisation making the comment.

Clause 5 Pre application community involvement

We believe that this form of consultation is essential for all applications but the clause appears to limit the need for community consultation to large projects. If the requirement is applied to applications from individuals as well, much friction could be resolved at an early stage thus speeding the processing of such applications.

Clause 6 Determination of planning applications

We believe that far from streamlining the process, adding the criteria of economic (dis) advantage will create excessive amounts of paperwork both for the applicant and the planning staff having to deal with the application. The use of outside consultants to assess the application is unlikely to be of any benefit as we have never heard of a case where such consultants have failed to agree with an applicant.

Clause10 Public enquiries

We disagree with the proposal to allow the appointment of a person other than the PAC to hold a public enquiry. This will allow further legal expertise, which is normally of the adversarial style, to replace any attempt at finding a compromise where there are disagreements on a proposal.

Clause 16 Increase in certain penalties

While we agree that the penalties need to keep pace with inflation, we would point out that they are only a deterrent if they are imposed with widespread publicity.

Clause17 Conservation Areas

We approve of all measures which will improve the appearance of Conservation Areas.

Clause20 Fixed penalties

We object to this clause because it threatens to undermine the creditability of the planning system. It appears that once a fixed penalty fine has been paid there is no opportunity for further action by the enforcement authorities. From this follows the opinion that once someone who has abused the planning system has paid a fixed penalty he can proceed to drive a coach and horses through the regulations with immunity

Clause 21 Power of PAC to award costs

We strenuously object to this clause as it creates further obstacles for small voluntary groups to overcome in their usually justifiable objections to major projects by large, well financed, developers. Experience has shown that PAC cases can get bogged down by unnecessarily highly paid lawyers who fail to accept that PPS documents are written by Planners for Planners and introduce unnecessary alternative definitions of words and phrases for the benefit of their clients. Small voluntary groups will not want to risk their private means while pursuing such cases.

In summary, we believe that the Bill creates more ambiguities than the current position and fails to solve any of the criticisms of present situation and should therefore be dropped.

Holywood Conservation Group 15 March 2013

John S Moore, Chairman of the Holywood Conservation Group

Institute of Directors

14 March 2013

committee.environment@niassembly.gov.uk

Planning Bill: IoD response to the Environment Committee consultation

The Institute of Directors (IoD) is a non-party political organisation representing the views of around 40,000 individual business leaders in the UK with over 900 members in Northern Ireland. Members are drawn from the private, public and voluntary sectors.

The IoD has taken a keen and active interest in the evolution of Planning Reform and very much welcomes the opportunity to submit views on this draft Bill to the Committee on the Environment.

Background

For a number of years the IoD has lobbied successive Ministers and planning officials vigorously for major reform of the planning system in Northern Ireland. We gave a comprehensive response to the Department's consultation exercise: 'Reform of the Planning System in Northern Ireland – Your Chance to Influence Change' - back in September 2009 and have closely monitored progress on the matter since. While we were encouraged to see that many of our proposals, aimed at achieving good planning decisions taken within realistic timescales, were subsequently imported into the Planning Act, we were disappointed to note the absence of any recognition in legislation of the need to take full account of the economic impact of development proposals in the process of determining planning applications.

The Current Bill

As we understand it, the primary objective of the Bill is to accelerate the implementation of the reforms contained within the 2011 Planning Act. We also understand that the primary motivation for this is to ensure that the provisions, relating to: faster processing of planning applications; simpler and tougher enforcement of planning offences; enhancement of the environmental aspects of planning; fairer and faster consideration of planning appeals; and enhanced community involvement in the planning process, are fully embedded in the planning regime before the transfer of responsibility for planning matters to district councils. We welcome this, having argued in the past against the 'big bang' approach whereby major reform and transfer of function would be introduced at the same time.

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The matter for consideration in the context of the Committee's consultation is, therefore, not the question of whether these reforms should be implemented at all (given that they have already been given legislative authority through the Planning Act), but whether it is right that they should, all or in part, be implemented in advance of the original timing proposed by the Planning Act. As we have already stated, we agree with the proposal to accelerate implementation so we do not take issue with this aspect of the Bill.

However, the Bill goes beyond proposing the acceleration of the implementation of these reforms by introducing two additional provisions: promoting economic development and promoting good design. It is on these issues that the Committee will pay special attention and on which it is particularly keen to hear views. The first of these proposals - promoting economic development – is likely to prove the most controversial.

Economic considerations

As we have previously stated, IoD has pressed long and hard for economic considerations to be included in the menu of factors of which planners must take account in determining planning applications. Indeed, we are surprised that it has taken so long for this to happen given that building the economy has been the touchstone of successive Programmes for Government.

We are aware, however, of scaremongering by those opposed to this provision to the effect that it will represent a form of charter allowing developers to ride roughshod over all other considerations, not least those relating to the protection of the environment. On the contrary, there is nothing in the draft Bill to suggest that this consideration will eclipse all others. This point was stressed by Minister Attwood in the Assembly on 22 January when he said "I want to make it very clear that, whatever else the Bill proposes, it does not state, as PPS24 suggested, that economic considerations should be given determinative weight."[1] The Bill merely states that, when it comes to the material factor of economic impact, an assessment should be made of the economic advantage and/or disadvantage.

We believe, therefore, that it is axiomatic that this provision should be included in the Bill. The key question, however, is how the proposed assessment will be made, who will make it and what form it will take. In this regard, the Minister has stated that, beyond the law, there will be a requirement to have further policy if not guidance[2]. It is therefore crucial that careful thought is applied to the design of this policy and guidance and we in the IoD would be very happy to contribute to this process.

[1] Official Report -22 January 2013

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Good design

As to the second of the new proposals, we support the **principle** of promoting good design. However, as with promoting economic development, it is in the execution of the principle that the acid test of effectiveness lies. Good design is, by its nature, subjective and more consideration needs to be given to how decisions on what constitutes good design in relation to individual developments might be reached in a fair and objective manner.

Stakeholder event

Finally, we look forward to having the opportunity to amplify our views on these issues to the Committee at the proposed stakeholder event on 18 April.

Contact
Linda R Brown
Director
IoD Northern Ireland
linda.brown@iod.com

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[2] Official Report – 22 January 2013

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J Cosgrove

Consultation Response to Environment Committee on the Planning Bill 2013

J Cosgrove 32 Dunlady Manor BT16 1YP

Clause 1: Statement of Community Involvement

Clause 1 must

- Make neighbour notification of planning proposals a statutory requirement
- Give Councils statutory authority to determine what is in the public interest
- Require Planners to obtain Council agreement on planning decisions

Planners should not arbitrarily reject Council views on planning approvals. They should not determine policy on Community Involvement.

Clause 2: Promotion of Economic Activity

There should be no amendment to the functions of the Department of Environment or the Planning Appeals Commission to include "promoting Economic development". Instead of increasing the effectiveness of the planning system, this clause would increase the paperwork and time required to process applications.

Clause 6: Material considerations to include economic advantage/disadvantage

The key principle of planning is to consider issues related to the use and development of land. Clause 6 seeks to extend the issues to include weighting in favour of economic development. Again this would slow up the process of consideration of applications. A new 'economic division' would be required to carry out an 'economic assessment' and as no two economists agree on policy, it would open the door to delay and perhaps legal action.

There would be no limit to what a developer could promise in 'economic development' and local jobs unless an agreement was legally binding and within a limited time frame.

Clause 10: Appointment of non Planning Appeals Commissioner personnel to oversee public inquiries.

This clause is not required. The Planning Appeals Commission was established as an Independent Appellate Body and as such maintains the credibility of the planning service. It is vitally important that the professional standards of the PAC are not diluted by bringing in non PAC personnel with various different areas and levels of expertise.

Clause 20: Enforcement

Given the Department's lamentable lack of enforcement, low staffing numbers and minimal penalties being imposed for lack of compliance, this clause would further undermine the credibility of the planning service. The Bill suggests an amnesty for further breaches of planning. This is a ludicrous suggestion as developers could find it financially beneficial to pay the small fixed penalty and then continue as if nothing had happened. They could ignore Tree Preservation Orders or carry on knocking down property early on a Sunday morning without fear of further prosecution. Planning permission on a site must include all trees and hedges until these are considered under 'reserved matters'.

I wish to thank the Committee for the opportunity to comment on clauses which were not previously available for consultation and hope that my views will be considered by the Committee in their response to the Department.

Jim Gregg

Subject: N.I. Planning Bill

Dear Committee

I am writing in support of the Friends of the Earth submission.

In that you intend to put the economic considerations at the top of your list when it comes to granting permission for planning

This is short-sighted and can be damaging to our environment and in the long term costly in terms of repairing the damage done and in some cases un- repairable .

It is evident that more and more public interest is being taken up by groups on environmental protection issues due to the failure of government to act in the public interest .

Let's hope we have some common sense and forward thinking for a change

Thanking you,

Jim Gregg

Jim Martin

Dear Committee Members,

I am writing in support of the Friends of the Earth submission. It would appear that you intend putting economic consideration at the top of your list when it comes to granting permission for planning. This is shortsighted and damaging to our environment as has been witnessed many times in the past. As a member of the Six Mile Water River Trust and Antrim Angling Club I have witnessed the damage done from industry. Four years ago there was a massive fish kill in the Six Mile Water River which affected all the river life, and don't forget this river runs into Lough Neagh which provides our drinking water. It is a constant battle to keep our rivers from pollution and were it not for the diligence of volunteers would be in a much worse state than at present. Goverment couldn't possibly employ enough staff to police and monitor discharges from whatever source and this is why it is vitally important, although realising the economic situation, that the environment takes preference over any planning.

We have a duty to our children and grandchildren to leave this place as well, if not better, than it is now. Our stewardship is all-important and they won't forgive us if we fail in that duty.

Thanking you,

Jim Martin

Joe McGladeDear, Sir,

I am contacting you to express my concerns regarding the impact on the environment the proposals contained in the Planning Bill might have in the long term. It appears to me that, if the Bill goes through, undue weight will be given to the claimed economic benefits of a development proposal, to the detriment of the environment and the public. This is a retrograde step.

Developers can and will make wholly unrealistic claims regarding the economic benefits a development will bring to an area or community. These claims are rarely verifiable and in any case the circumstances can change overnight, often resulting in the developer disappearing. On the other hand, undertakings regarding the measures that will be taken to protect a community or environment are easily forgotten or worked around once a development gets under way, and the impact is there for ever unless someone, usually with public money, undertakes to put matters right.

I would suggest that these are widely held perceptions and I am most disappointed that the Department did not feel the need to hold a full public consultation on the Bill – rather than just a limited consultation being held by the Committee. These perceptions might easily have been corrected had the public been given more information about the Bill and an appropriate period of time in which to reach a more informed conclusion.

Regards,

Joe McGlade,
32 South Parade
BT7 2GP

John Anderson

NI Assembly Environment Committee request for views on NI Planning Bill 2013

Response from J H Anderson March 2013

Statement of Community Involvement

Considerable care will be needed in the defining of Community Involvement and particularly relating to the concept of Community Planning.

In general, whilst a Community will express an opinion on what it does, or does not, want, often with a strong emotional weight of feeling, it is less usual for this to be expressed in a structured manner with reference to Planning Policy statements. Sometimes a Community opinion or input may actually be, in effect, a political or developer lobby, and indeed may have been created specifically for such purpose.

Clearly, it is sound sense to encourage genuine Community involvement in the Planning Process, but it would be a serious mistake to elevate the concept to a status equal to, or above that, of professional Planning Staff and their operation of established policy.

As has happened from time to time in the past, it should be accepted good practice to both assess Community input for the influence of vested interests and to ensure that Communities have impartial guidance available to translate their aspirations into formal and relevant contribution to the planning process.

Clauses 2 & 6 (promoting economic development etc)

It is apparent that Clauses 2&6 as read were not in the paper presented to the Assembly for debate but are a later addition constructed within the Executive.

It is natural to assume that this is a further attempt to embed into the planning process an element of economic gain carrying significant weight, following the failure at Judicial Review of the previous Ministerial inserts.

Considerable risk to proper process would result from the adoption of such ill defined and open ended requirements especially in the light of an apparent wish to bypass the necessary public consultation.

Existing process clearly allows for sustainable economic benefit for the greater good, or disbenefit against the same, to be a material consideration in determining an application. This is quite proper and might apply, for instance, to the construction or expansion of an industrial plant or to certain infrastructure projects.

However, clauses 2&6, lacking definition as they do, will enable and encourage almost every applicant to cite, if they wish, economic development and the associated wellbeing of the applicant as carrying considerable weight in favour of approval.

This will place considerable onus on planners and subsequently local councillors to assess applicants' economic claims with independent Economic Appraisals (EAs) using bought in expertise. These often commissioned from a core of consultants who will also derive considerable income from preparing EAs for applicants. It also opens the floodgates for a rash of Appeals, JRs and the setting of damaging bad planning precedent in localities where public apathy is prevalent.

It should be remembered that the 'Gold Rush' for planning approvals experienced over the past 10 years, where any development of land was seen primarily as a instrument of economic boom, enabled us to build our way into a double recession. Hardly a recipe for sustainable economic development and well-being?

Clauses 7&8 Power to decline subsequent or overlapping applications

These clauses appear to duplicate legislation already in place since the introduction of the Planning Reform Order (NI) 2006 Article 9 which amended the 1991 Order

The intention is to outlaw the 'twin tracking' of applications. This is a 'tactic' sometimes used by applicants to put planners and the system under severe stress with the aim of 'forcing through' approvals.

As an illustration, the long running Larne Marina Article 31 Application, recently discussed on several occasions by the Environment Committee was allowed to be 'twin tracked' in 2007 (when the 2006 Order was already well established) The ramifications of this have yet to be explored and should also be looked at in respect of the efficacy of the 2013 Bill.

Clause 10 Power of Department to Appoint…

It is unacceptable for the Department to appoint persons to adjudicate on Public Inquiries and Major Planning Applications. It is pointless to invite suggestions that the Department is 'Judge and Jury' and such appointments should be left to the PAC.

Clause 11 Appeals…. time limits for notification

These time limits should be matched by additional limits whereby applicants must submit all relevant material and additional information within a defined and reasonable time. Failure to comply should consistently result in a refusal by default.

Again the example of the Larne Marina Article 31 arises, where the application has been strung out for 13 years at enormous cost to the system in time and resource. Deadline after deadline has been missed by the applicant with the Department apparently powerless to define an end point.

Clause 20 Fixed Penalties

A dangerous lack of clarity in this clause gives the impression that payment of a fixed penalty will (similarly to that issued for a minor traffic offence) draw a line under the offence, leaving the Department unable to either further enforce or to prosecute. This must be clarified or the consequence will be the obvious flaw being exposed in court to the disadvantage of the Department and the public interest.

John Anderson via email

John Martin

To whom it may concern

I would wish to register my concern as a member of the public to the content of the Planning Bill, and particularly the way in which additional clauses on ecomonic development are being slipped in without proper public consultation.

I fully support the submission on behalf of Friends of the Earth Northern Ireland and do not intent to add to its comprehensive assessment of the dangers and questionable motives behind this attempt at introducing plannning policy by the back door and without proper public consultation.

As a member of the public I am also concerned that this will set a dangerous precedent and beleive that the elected representatives who are attempting to railroad this through are showing a contempt to to the public and the due law making process. I do not believe this would be allowed to happen in any other jurisdiction.

I would commend the Environment Committee for affording the public this opportnity to express its view on this issue, but remain worried that it does not represent adequate and proper public consultation as should have been the case for such significant changes to planning legislation. However it is recognised that it has been placed in this invidious position by the SDLP Minister of the Environemnt and his attempts to underhandedly introduce new clauses to this important piece of legislation.

It is important to note that the recent failed attempt by this same party (SDLP) to introduce last minute change to the Justice bill, to alter the law on abortion without public consultation, sends a clear message that, despite its title, the SDLP is neither social nor democratic.

Sinn Fein, the Alliance Party and Green Party are all to be commended for their principled stance in standing up for the public interest by blocking the SDLP's attempt to undermine proper law making process in its desire to force through contraversial changes to the Justice Bill by the back door. Therefore I would call on the Sinn Fein and Alliance Party members of the Committee to demonstrate consistency and oppose the SDLP Minister's undemocratic and biased attempt at law making.

Like the stance adopted on the Justice Bill, this is a critical matter of public principle for Sinn Fein, the Alliance Party and Green Party, and as with that Bill, the Planning Bill should, if necessary be opposed with a Petition of Concern.

Please acknowledge receipt of this e-mail

Thank you

John Martin

Kenneth Dougherty

Dear Sir or Madam

I would like to object to the new proposals regarding planning as it would have an adverse effect to our local rivers. I agree with the views of Friends of the Earth.

Regards Kenneth Dougherty

Lagan Valley Group Residents' Association

Response to consultation on the planning Bill (NI) 2013

Clause 1: Statement of community involvement.

Agree.

Clause 2: General functions of the Department and the Planning Appeals Commission.

Since most developments have an economic agenda to the developer/applicant, we have concerns that although the three elements in this clause are to be considered together ('furthering sustainable development', 'promoting well-being' and 'promoting economic development'), 'economic development' will become the over-riding precedent and ultimately be given greater weight in planning decisions. We are not sure what is meant by 'well-being' or how it can be promoted. Planning decisions should be about planning (i.e. use of land, environment, ecology, built heritage etc.) Does the Planning Service employ an economist to give advice on 'economic development? If not, how can they come to a realistic decision?

Clause 4: Publicity etc, in relation to applications

Agree.

We assume that the applications will still be advertised in the press, on the Planning Service website and through neighbourhood notification (which could be expanded a little, since presently, not all neighbours affected by a new development are notified. A notice board at the proposed development site could perhaps be considered)

We are concerned that some 'streamlined' approvals maybe decided too quickly before time for consultation.

Clause 5: Pre-application community consultation.

Agree.

We appreciate that this clause to consult the community is intended to prevent delays to development by objectors' concerns etc. following the advertisement of an application. Can we be sure that the community concerns will be taken on board and not that the developer/applicant will treat the exercise as a mere formality and then proceed with his development. Will there still be an opportunity to object if the community feel their concerns have been ignored or has this now been eliminated? Possibly there should be an impartial observer to monitor the community and developer views and write a report. This will be helpful when the planners/council make their decision (which is often subjective).

Clause 6; Determination of planning applications.

It is unclear how economic advantages/disadvantages could be assessed, especially since an application could have economic advantages to the applicant but disadvantages to the immediate neighbourhood. (e.g. a large supermarket versus local shops). We also have concerns, as in clause 2, that the perceived economic aspect would take precedent.

Clause 7: Power to decline to determine subsequent applications.

Strongly agree.

We also think that a subsequent application for a site which immediately follows an approval given for that site (whether or not it has been to the PAC) should be refused. This could be a means of upgrading an application by stealth to something which, if it had been submitted originally, would have been unlikely to succeed.

Clause 10: Public enquiries: major planning applications.

The PAC is an independent body. What are the criteria to appoint another person to hold a public enquiry? If appointed by the DOE will that person be truly independent? Would it not be preferable for the PAC itself to appoint another suitable person?

Clause 11: Appeals: Time limits.

Agree.

Clause 12: Matters which may be raised in an appeal.

Agree.

Clause 13. Power to make non-material changes to planning permission.

Any changes should be advertised (or those who could be affected by the change should be notified) before permission for changes are given. This could be a way for an applicant to get permission for something which would not have been passed in the original application.

Clause 16: Increase in certain penalties.

Agree.

There should be a reasonable mandatory minimum level of fines/penalties to act as a deterrent, clearly defined and therefore not left to the discretion of the magistrate/court. Fines should also be proportionate to the scale of the development and the potential value to the applicant, without an upper ceiling to act as a positive deterrent. (Whereas a £100,000 fine could be a serious matter for the small developer, for a big development it could considered to be merely an additional expense, not punitive and therefore not a deterrent).

However, since we know that the Planning Service does not have the facility to monitor developments once permission has been granted, how will the planners/councils actually know that the terms of the planning approval have been complied with? They should not have to rely on residents for information.

Clause 17: Conservation areas.

Agree.

Areas of Townscape character must also be included.

We are concerned that 'established residential areas' (PPS 7 2nd addendum) will no longer be considered of value especially if there is to be a revision of all the PPS documents into a single document.

Clause 18: Control of demolition in conservation areas

Agree.

Clause 19: Tree preservation orders: dying trees.

Agree

Dead or dying trees offer a habitat for many small creatures and plants and unless they are in a dangerous condition should not be felled.

However, since we know that the Planning Service does not have the facility to monitor developments once permission has been granted, how will the planners/councils actually know that a dying tree with a TPO has been felled?

Clause 20: Fixed penalties.

If offenders have not complied with an enforcement notice, and thus an offence has been committed, it does not seem appropriate for them to be exempt from going to court or to be able to pay a reduced fine.

Clause 21: Power of planning appeals commission to award costs.

Agree

Clause 22: Grants.

Agree.

Clause 23: Duty to respond to consultations

Agree.

(Apart from the unnecessary delay caused – it is bad manners and poor business practice).

Clause 24; Fees and charges

We do not think that retrospective planning applications should be an option at all.

This response has been submitted by the Lagan Valley Group Residents' Association

Chairperson: Carolyn M Gilbody,
5, The Plateau, Piney Hills,
Belfast BT9 5QP

Landscape Institute Northern Ireland

Landscape Institute Northern Ireland

Planning Bill 2013

Consultation by NI Assembly Committee for the Environment.
Response of the **Landscape Institute Northern Ireland branch** (LINI).
15 March 2013

The Landscape Institute is the chartered institute in the United Kingdom for landscape architects, incorporating designers, managers, and scientists, concerned with conserving and enhancing the environment. The Landscape Institute promotes the highest standards in the practice of landscape planning, design, management and research, and represents members in private practice, at all levels of government and government agencies, in academic institutions and in commercial organisations.
The Landscape Institute is an educational charity and chartered body whose purpose is to protect, conserve and enhance the natural and built environment for the benefit of the public. It champions well-designed and well-managed urban and rural landscape. The Landscape Institute's accreditation and professional procedures ensure that the designers, managers and scientists who make up the landscape architecture profession work to the highest standards. Its advocacy and education programmes promote the landscape architecture profession as one which focuses on design, environment and community in order to inspire great places where people want to live, work and visit. The Landscape Institute is committed to the principles of sustainable development by improving the quality of design of urban and rural environments and to the protection and enhancement of our physical and natural environments.
The Landscape Institute Northern Ireland branch (LINI) represents the professional membership within Northern Ireland and is particularly concerned with design, management and planning for the protection, conservation and enhancement of the natural and built environment of Northern Ireland.

LINI welcomes the opportunity to consider the contents of the NI Planning Bill 2013 and submit the following response to the Committee for the Environment for consideration.

Note: As members of Northern Ireland Environment Link (NIEL) Landscape Institute Northern Ireland (LINI) also endorse the response submitted by NIEL

Whilst LINI consider the overarching purpose of this Bill well intentioned and accept the Department have considered it necessary to revise the planning legislation in advance of planning function being transferred to the new Local Authorities in 2015; LINI have identified a number of issuesin this Bill which may cause unintended consequences.

Comment for specific clauses are outlined below – however please note were no comment has been assigned, LINI accept the proposals relating to that clause.

Permitted Development for Agricultural Buildings and Anaerobic Digestion Plant.

Landscape Institute Northern Ireland

Clause 2 (General function of the Department and the planning appeals commission)

Professional experience has shown that an undefined word or ambiguous statement in 'Law' and specifically in this case 'Planning Law', can result in multiple interpretation and indeed misinterpretation.
The result of a well intended proposals in this context can often have far reaching and unforeseen negative consequences.

LINI believe that it is singularly important that all proposals and terminology set out in this Planning Bill are clearly defined to avoid or at least minimise future misinterpretation and legal challenge.

LINI consider that some of the terminology in this Bill requires clearer definition, includes the following:

- **'Sustainable Development' -** Whilst Article 10A of the 1991 Order makes reference to Sustainable Development within a Development Plan context; LINI maintain that the planning legislation requires a universally accepted definition and meaning for this term.
  Formation of this definition should be a priority, and incorporated through this Bill into the legislation to avoid doubt post transfer of planning function. 'Sustainable Development' should from the foundation of decision making in our planning system, and clarity of this term would negate any need to include specific clauses which single out particular issues that currently form part of the decision making process, for example, inclusion of a clause for the 'promotion of economic development'.

  The economy is already an integral part of 'Sustainable Development', and so repeating it explicitly essentially increases its weight in any assessment of considerations (the need for this addition in this Bill suggests ambiguity about the term 'Sustainable Development').

- **Economic Development -** Whilst a prosperous economy is obviously desirable, LINI do not consider it necessary to set out 'promotion of economic development' in the legislation in a manner which could be misinterpreted by various authorities as determinative.
  LINI consider that our Planning Departments are not currently equipped to define and establish 'economic need', in relation to proposed development applications. Therefore in order to reach conclusions on economic benefits as a material consideration (which this clause will create), authorities will rely on assessments submitted by developers agents.
  These submission will inevitably be convincing (and bias) in favour of the development they are proposing / promoting.
  However it is unlikely that the authorities will be furnished with balanced counter economic arguments or data when reaching decision on economic matters.

Permitted Development for Agricultural Buildings and Anaerobic Digestion Plant.

Landscape Institute
Northern Ireland

Put simply developers will always state that there is 'need' and will always argue that there will be job creation and value to the economy.
This has always been the case – however raising this to a 'Material consideration' places a greater burden on the authorities to offer counter economic arguments.

- **'Furthering' and 'Promoting'** Clause 2 sets out to 'Furthering' Sustainable development whilst 'Promoting' Economic development – it is considered that some clarification to the variation in emphasise of these terms is required.

- **'Well-Being' -** The concept of promoting well-being' is welcome and again clearly well intentioned, however this needs further clarification – what are the criteria for 'well-being' and who decides how or whether these are met?

- **'Good Design' -** The LINI welcome this inclusion however feel that further clarification of this definition is required. Design can be considered subjective and it can be interpreted in many ways - Is the intention that certain applications be referred to independent design panels for review?

Clause 6 (Determination of planning applications)
LINI are concerned that this clause may reinforces potential for legal challenge and conversely slow determination of applications.

It does not seem necessary to add this clause which like clause 2 would be dealt with by clearer definition of 'Sustainable Development'

It is clear how a development application may be submitted with a strong business case for job creation and high estimation of turnover etc, making arguments for economic advantage.
However it is not clear how a counter economic argument could be formulated to protect for example highly valuable tourism market thorough perceived degradation of landscape character.

Further an individual development application may only presents a minor negative impact, however LINI are concerned that cumulative impact of multiple individual applications are not being fully considered with the gradual continued erosion of landscape and urban character.

Clause 9 (Aftercare conditions for ecological purposes on grant of mineral planning permission)
LINI welcomes this clause, however would highlight that clarification be given within the Article to the meaning of ecological.

Clause 19 (Tree preservation orders: dying trees)
LINI welcomes removal of this term.

Permitted Development for Agricultural Buildings and Anaerobic Digestion Plant.

Landscape Institute Northern Ireland

Concluding comments

LINI are disappointed that the contents of this Planning Bill did not follow the normal process of public consultation.

Inclusion of a universally accepted definition of 'Sustainable Development' would negate the need for specific clause relating to the 'Economy'

LINI accept the need for a more efficient planning system however stress that the system must not become imbalanced and prejudicial.
LINI believe that clauses 2 and 6 undermine this overarching goal and will result in over-complication and opportunity for legal challenge.

The Landscape Institute Northern Ireland branch would like to thank the Committee for the Environment for the opportunity to contribute to the consultation process.
For any queries and further discussion relating to this response, and for future consultations, please contact:

The Chairman,
Landscape Institute Northern Ireland Branch
PLACE Built Environment Centre,
40 Fountain Street, Belfast BT1 5EE
www.linireland.org
www.landscapeinstitute.org
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Prepared for Landscape Institute Northern Ireland (LINI) by Pete Mullin CMLI (Chair & Policy Officer). Direct Tel 07775752010

Permitted Development for Agricultural Buildings and Anaerobic Digestion Plant.

Laurence Speight

Dear Sir/Madam,

I wish to express my resolute opposition to the proposed Planning Bill.

The ethic and practice of environmental sustainability should never be compromised and this should be enshrined in the Planning Bill. The Planning Bill must be based on the fact that economy is based on ecology and every measure in law must taken to protect it.

The proposed Planning Bill must protect the interests of future generations.

Yours faithfully,
Laurence Speight

Lecale Conservation

Planning Bill 2013
Submission by Lecale Conservation

Whilst Lecale Conservation welcomes the opportunity to make its views known to the Committee, we are of the opinion that the proposal to introduce such radical amendments as are included within Clauses 2 and 6 of the Bill demand to be subjected to public scrutiny.

Clause 2: General Functions of the Department and the Planning Appeals Commission

For several reasons Lecale Conservation is opposed to the Bill requiring planners to 'promote economic development':

1. if, as is implied by the wording of this clause, the Department is obliged to take positive action to 'promote' economic development, how will this economic value be accurately, objectively and legally measured?

2. it is currently the role of the planning service to come to judgments that are in the best public interest. By introducing the need to 'promote' economic development the Bill risks introducing a new and potentially conflicting objectives.

3. with the need to 'promote' economic development how will for example, the needs of sustainable development be addressed or the UK and International strategies aimed at reducing carbon emissions, protecting the marine environment and maintaining biodiversity be fairly and legally addressed?

Lecale Conservation believes that the answer lies in continuing to place the principles of sustainable development (which are already enshrined in the 2011 Act), at the heart of the planning system.

Clause 6: Determination of planning applications

We believe this clause leaves so much open to different interpretations and legal challenge that it will slow down rather than speed up the planning system in NI.

We would also like to raise the importance of third party right of appeal as part of a healthy and robust planning system. A good planning system gives an economy consistency, fairness and direction. Lecale Conservation is opposed to the 2013 Planning Bill, its underlying assumptions and the damage it will do to an already weakened planning system.

Whilst Lecale Conservation supports many of the elements of the Planning Bill, we strongly believe that clauses 2 and 6 undermine the aim of streamlining the NI planning system.

Mairead Gilheaney

Address 1 The Gables,
Cairnshill Road,
Belfast,
BT8 6UJ

My objections to the Planning Bill with proposals for change are as follows and relate to Clauses 2, 5, 6, 10 and 20.

As a general comment, the Bill proposes double counting of economic development; this means primacy for economic development; this is not the objective of the planning system.

1. Clause 2 should be reworded to include a definition of sustainable development, and the sub-clause regarding economic development should be removed.

I think the following overarching policy on sustainable development be included in Clause 2:

> *It shall be the principal objective of local and neighbourhood plans to ensure sustainable patterns of development which improve the quality of life of all people, while respecting environmental limits and the ability of future generations to enjoy a similar quality of life.*

In order to uphold this objective, all land use policies and decisions must enshrine the principles of:

- **environmental justice**: putting people at the heart of decision making, reducing social inequality by upholding environmental justice in the outcomes of decisions;
- **inter-generational equity**: ensuring current development does not prevent future generations from meeting their own needs;
- **environmental limits**: ensuring that resources are not irrevocably exhausted or the environment irreversibly damaged. This means, for example, supporting climate mitigation, protecting and enhancing biodiversity, reducing harmful emissions, and promoting the sustainable use of natural resources (including those outside Northern Ireland);
- **resource conservation**: ensuring that planning decisions assist in the prudent and sustainable use of finite natural resources (including resources sourced outside Northern Ireland);
- **the precautionary approach**: the precautionary principle holds that where the environmental impacts of certain activities or developments are not known, the proposed development should not be carried out, or extreme caution should be exercised in its undertaking;
- **the polluter pays**: ensuring that that those who produce damaging pollution meet the full environmental, social and economic costs;
- **the proximity principle**; seeking to resolve problems in the present and locally, rather than passing them on to other communities globally or future generations;
- **public participation**; ensuring that there are meaningful opportunities for people to engage in the planning decision-making process.

2. Clause 5 should include the introduction of a Third Party Right of Appeal.

3. Clause 6 should be removed from the Bill because it means any applicant can claim economic advantage by gaining permission, lots of people can object claiming disadvantage if something is given permission.

4. Clause 10 should be amended to allow the Planning Appeals Commission to appoint temporary commissioners as needed.

5. Clause 20 should be clarified to make it clear that Fix Penalty Notices are not in lieu of enforcement action, and that further action will be taken if breaches are not remedied.

Majella McCarron

Planning Bill Response – 15th March 2013

From: Majella McCarron
5 Wynchurch Road
Belfast BT6 0JH
majella.mccarron@gmail.com

My objections to the Planning Bill with proposals for change are as follows and relate to Clauses 2, 5, 6, 10 and 20.

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5. Clause 20 should be clarified to make it clear that Fix Penalty Notices are not in lieu of enforcement action, and that further action will be taken if breaches are not remedied.

Marian Silcock

I object to the inclusion of the clauses listed below:

Clause 2: Amendment of the general functions of the Department of the Environment and the Planning Appeals Commission, to include "promoting economic development" in addition to the existing duties of "furthering sustainable development" and "promoting or improving well-being";

Clause 6: Amending the issues to be taken into account (i.e. the "material considerations") when determining planning applications by ensuring that this should now include the "economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission".

Clause 10: Public inquiries: major planning applications allows the appointment of people other than the Planning Appeals Commission (PAC) to oversee planning inquiries.

Clause 20: Fixed Penalties, allowing the Department of the Environment to issue a fixed penalty notice for the offences of failing to comply with an enforcement action.

Regards Marian Silcock
68 Mount Eagles Avenue
BT17 0GT

Mark Crean

Planning Bill Response – 15th March 2013

From: Mark Crean
5 Wynchurch Road

My objections to the Planning Bill with proposals for change are as follows and relate to Clauses 2, 5, 6, 10 and 20.

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Mark Kearney

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Clause 20: Fixed Penalties, allowing the Department of the Environment to issue a fixed penalty notice for the offences of failing to comply with an enforcement action."

marytkearney1@live.co.uk

Martina Tedford

From: Name :Martina Tedford

Address : 58 Mount Michael Park

Belfast BT 8 6JX

My objections to the Planning Bill with proposals for change are as follows and relate to Clauses 2, 5, 6, 10 and 20.

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Mount Eagles Ratepayers Association

To whom it may concern,

I am writing on behalf of Mount Eagles Ratepayers Association (MERA) to formally object to the Planning Bill NIA 17/11-15.

MERA is a community group based in Mount Eagles Lagmore, established in 2010 to deal with issues in relation to open space management, roads, sewers, insulation defects and bad workmanship on the houses. Our association has created a dedicated Facebook group for residents to communicate and exchange information. The Facebook site contains documents with approximately 100 photos showing maintenance works not done. Currently there are approximately 160 members on our facebook site.

MERA fully endorses the objections (attached) submitted by Professor Geraint Ellis on behalf of Friends of the Earth and Belfast Holylands Regeneration Association (BHRA). Both letters of objection are extremely articulate and cover all the main issues/ concerns that MERA would like to highlight.

It is the view of MERA that if the planning bill goes ahead in it's current form this will have detrimental consequences for Mount Eagles. This could result in the destruction of Lagmore Glen a unique natural habitat that will be designated as an Urban Landscape Wedge (ULW) as the economic consideration would take precedence. Residents lives in Mount Eagles have been blighted by poor planning which has been acknowledged by Planning Appeals Commission (PAC) in their BMAP Lagmore report. Lagmore is essentially an urban desert with little or no community infrastructure/ services and an over saturation of houses. This planning bill does nothing to address this!

Regards,

Orla McCabe
Mount Eagles Ratepayers Association

National Trust

Planning Bill – consultation by the Environment Committee

Comments from the National Trust

March 2013

1. Introduction

The National Trust welcomes the opportunity to respond to the Environment Committee as part of its scrutiny of the Planning Bill. In particular, we appreciate the fact that the Committee is facilitating this important opportunity for consultation on the proposed new reforms in the Bill.

As Northern Ireland's largest conservation charity, the National Trust works to look after and protect our precious heritage of buildings and landscapes for everyone's benefit. In doing so, we help care for and provide access to many of the places local people and international visitors value most, e.g. Northern Ireland's only World Heritage Site at the Giant's Causeway, our highest mountain Slieve Donard, the internationally important and ecologically rich Strangford Lough, and mansions and gardens including Mount Stewart and Castle Coole.

As a conservation charity with a Northern Ireland-wide remit, we have responsibilities spread across landscape protection, nature conservation, providing access to the countryside and caring for our built heritage and historic environment. We also play key roles in sustainable tourism, providing local employment, supporting economic opportunity and working with local farming families to ensure environmentally friendly management of the farmland in our care.

2. Our interest in the planning system

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, which secures social, economic and environmental benefits in a balanced way. 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 wise use of land and resources in Northern Ireland. We are concerned about the need to protect Northern Ireland's natural, built and cultural heritage, while at the same time securing sustainable economic growth. 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. We have these key issues in mind when we consider the potential implications of the Bill.

Our comments on the Bill are set out below. These points focus mainly on the new additions to the Bill which have not previously been subject to public consultation.

3. Aims

In principle we have no issue with the aims of the Bill: *faster processing of planning applications; simpler and tougher enforcement of planning offences; enhancing the environmental aspects of planning; fairer and faster consideration of planning appeals and enhanced community involvement in the planning process.* However, we believe that the new economic clauses introduced to the Bill will not contribute in any way to these aims. Instead they are likely to slow down the decision making process and have a negative impact on the environment.

We would also caution that 'faster' and 'simpler' outcomes do not always equate to better outcomes, and we would urge the Committee to ensure that the Bill in its final form focuses

on securing the best possible outcomes from the planning system – for people, for the economy and for the environment.

4. Economic issues

4.1 Clause 2 General Functions

Clause 2 amends the general functions of both the DoE and the Planning Appeals Commission by adding the objective of **'promoting economic development'** alongside the objectives of 'furthering sustainable development and promoting or improving well-being'.

We are strongly opposed to the inclusion of this additional clause. We believe this clause is unnecessary and will have unintended consequences. The introduction of a separate and additional objective of promoting economic development undermines a proper interpretation of sustainable development which is a balanced approach to achieve social, environmental and economic goals for the present and future.

It would be much more appropriate to include in this Bill a clear definition of sustainable development. For example the Bill could reiterate the statement included in PPS1 General Principles: *Sustainable development seeks to deliver the objective of achieving, now and in the future, economic development to secure higher living standards while protecting and enhancing the environment.* If the Bill provided a clear definition of sustainable development – which includes economic development alongside social and environmental concerns – there would be no need for a further, separate duty in relation to economic development.

We therefore recommend that the clause should be dropped.

An alternative approach would be to expand the wording in the clause to include a fuller and balanced statement of sustainable development, e.g.:

The Department or Planning Appeals Commission '…must exercise that function with the objective of furthering sustainable development which secures:

- protection and enhancement of the environment;
- economic prosperity;
- a strong, healthy, just and equal society.'

There are other good reasons to drop this clause:

- It elevates the promotion of economic development to a statutory duty for all aspects of planning which would require the Department to promote economic development as a specific objective of the planning system. We believe this is inappropriate and goes beyond the purpose of planning which is clearly set out in PPS1 General Principles:

'The town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance. It is important to distinguish those matters which planning can influence from those which are outside its control. The central concerns of the planning system are to determine what kind of development is appropriate, how much is desirable, where it should best be located, and what it looks like.' Any focus on economic development should be dealt with in planning policy which is more readily reviewed, rather than in legislation.

- Adding an explicit economic clause will increase the weight applied to economic development at plan making and development control stages. While we note that the Minister asserts this is not the intention (Planning Bill Second Stage debate, 22 January 2013), the wording creates this expectation and is clearly open to this interpretation in the future.

- As currently drafted, decision makers will be faced with having to balance and weigh up promoting economic development, promoting well-being and furthering sustainable development (which properly includes the first two, along with environmental concerns). Does this mean that economic considerations should be factored in twice? The complexity and lack of clarity introduced is likely to lead to more appeals and legal challenges.

4.2 Clause 6 Determination of planning applications

(Given the close relationship with Clause 2, it is more appropriate to comment on this clause here.) The proposed additional wording adds as a material consideration *'…consideration relating to any economic advantages or disadvantages likely to result from the granting of, or as the case may be, the refusal of planning permission'.*

We are strongly opposed to this clause which poses many challenges:

- It puts an unwarranted additional focus on economic factors;
- The range of factors to be assessed (economic advantage and disadvantage against both approval and refusal of an application) is complex, yet it is unclear what level of assessment would be required. This could range from detailed economic appraisal to unsubstantiated assertions about jobs and investment;
- Currently there is limited expertise available in economic assessment and financial appraisal to assess such factors; a great deal of additional resources and expertise would need to be added into the planning system, particularly after the RPA. This will require additional staff at local council and departmental level.
- There is no framework or assessment criteria and therefore the clause will be open to vastly different interpretations.
- The clause shifts the focus of the planning system from its core purpose of the orderly and appropriate development of land in the public interest, and expects the planning system to deliver something it is not designed to do;
- While economic development brings public benefits, the issues of economic advantage or disadvantage are often focussed on private interest and the potential for this clause to prompt more objections and counter objections, appeals and legal challenges is very high;
- The clause focuses only on economic advantage/disadvantage and does not provide any requirement to also weigh social and environmental factors in the balance;
- Economic advantage/disadvantage is usually measured in the short term, while environmental and social factors need to be assessed over much longer time frames. Thus decisions weighted towards current economic advantage may fail to take into account longer term environmental costs or benefits.
- In the event that this clause is applied and economic advantage is given determinative weights, there is no mechanism within the planning system to ensure the purported benefits are delivered. For example, there is no means of redress if the promised jobs are not delivered or sustained in the long term.

For all of these reasons, **we recommend that this clause should be dropped.**

4.3 Comparisons with PPS 24

It is worth reiterating the strength of opposition to proposed PPS 24 Economic Considerations. In rejecting PPS 24 in September 2011, the Environment Minister noted that 75% of those who responded to the consultation opposed the policy and he stated: *'Many rightly argued that economic considerations are already a factor in planning decisions and are already dealt with in a balanced way alongside other material considerations, including social and environmental factors.'* Those who opposed or expressed concerns about PPS 24 included environmental NGOs, residents and community groups, some non-departmental public bodies and some local councils.

We believe that the same arguments put forward and accepted by the Minister then are equally valid in relation to the economic clauses in the Planning Bill and they should also be set aside.

5. Good design

In Clause 2, we also note the addition of the clause that the Department or PAC *'must (in particular) have regard to the desirability of achieving good design.'* We certainly support the importance of good design. However, the wording of this clause lacks clarity, and some explanation of how terms like 'in particular', 'desirability' and even 'good design' are to be interpreted would be necessary. Greater clarity would enhance the inclusion of this clause in the Bill.

6. Clause 5 Pre-application community consultation

We welcome and support enhanced community involvement in the planning process. We believe this is an area in which all participants – developers, communities and local authorities – will need capacity building and support to ensure the process works as effectively as possible.

However, we would urge that **third party rights of appeal** should also be introduced as an additional safeguard. This provision would build confidence in a system which will face many challenges as the reform process takes place and responsibilities are devolved.

7. Clause 10 Public Inquiries

We do not support the provision to allow persons other than the PAC to undertake planning inquiries. In order to allay any concerns about independence or perceived independence of individuals appointed outwith the PAC, we would much prefer to see a facility to increase the resources available to the PAC and increase the number of its commissioners, even if on a temporary basis.

8. Clause 17 Conservation Areas – suggested additional clause.

We fully support the provisions of this clause and we would recommend the inclusion of an additional separate clause in relation to the protection of World Heritage Sites. In light of the recent judgement in the National Trust's application for judicial review of the decision to grant planning permission for a major golf resort development within the buffer zone of the Giant's Causeway World Heritage Site, we are very concerned that the protection afforded to the WHS and its distinctive landscape setting (as defined in the draft Northern Area Plan) is not sufficient. We would therefore urge that this should be addressed in an additional clause in this Bill. For example, wording could be included as follows:

'Where any area is for the time being designated as a World Heritage Site, any development within the World Heritage Site or its buffer zone/setting must comply with the development plan and any other material considerations. Furthermore, special regard must be had in the exercise of any powers under this Order, with respect to any buildings or other land in that area, or in the agreed buffer zone surrounding that area, to the desirability of –

- Preserving the character or appearance of that area; and
- Protecting the Outstanding Universal Values for which the WHS was inscribed.

9. Clause 20 Fixed penalties

This clause needs clarification. While a fixed penalty notice has the benefit of allowing swift action against those who fail to comply with enforcement, this should not lead to immunity from prosecution if there is an ongoing failure to address a breach.

10. Clause 22 Grants

We welcome these proposals to allow DoE to grant aid no-profit organisations for the purposes of furthering understanding of planning policy. This will be especially important during the forthcoming transition period when there needs to be a significant focus on capacity building, to change the culture of planning in Northern Ireland.

11. Conclusion

We support the principle of bringing forward this Planning Bill to give effect to elements of the 2011 Act, with the intention of handing a 'tried and tested' system over to new local authorities in 2015.

However, we strongly object to the proposed introduction of economic development clauses at Clause 2 and Clause 6. They are inappropriate for the planning system, they are unworkable and unenforceable, and will lead to an increase in the number of appeals and legal challenges. Far from creating a fit for purpose, streamlined and efficient planning system, these clauses will mean that the new local authorities, grappling with the new role of planning decision maker, will be handed a more complex, more confusing, and more contested planning system than ever before.

We hope that through the Environment Committee's scrutiny stage, these clauses will be removed and the Bill will be revised to focus on the key priority for planning: to encourage development where it can do the most good, and discourage it where it can do the most harm. This is what society expects of a planning system which is fit for purpose.

We look forward to the opportunity to discuss our comments with the Committee, and we would be happy to provide any further information on request.

For further information, please contact:

Diane Ruddock,
External Affairs Manager,
The National Trust,
Northern Ireland

Tel: 028 9751 2301
e-mail: diane.ruddock@nationaltrust.org.uk

15 March 2013

Newry and Mourne District Council

Appendix A

Planning Bill Consultation.

Introductory comments.

The Council welcomed the publication of the Planning Bill for Northern Ireland in 2010, and are pleased that this Bill seeks to introduce the new structures for a more effective planning system. However there remains concern that so much still relies on the production of secondary legislation and guidance. This response in no way supersedes or amends any previous submissions to the Bill. It has been prepared as a direct response to the additional provisions introduced by the Bill which seek to underpin the role of planning in promoting economic development.

Some other matters occur:

Financial implications of the Bill. In the memorandum the Department states that *'any potential increase in costs should be offset by the benefits of more efficient processes.'* These observations relate only to the costs of the Department and do not take into account the costs of others involved in the planning process and most specifically the consultees. No account has been taken of the additional resources that may be required to ensure that consultees respond within the new shorter time frame.

It is also noted that in the appeals process, the appellant may recover costs if the Council had made a decision and loses the appeal. As the Councils will be carrying out an entirely new function with no precedent locally, and possibly without robust Area Plans, policies or procedures in place the Councils could, conceivably, lose a significant number of appeals. This in turn would have significant cost implications for Councils and this would require assessment.

The extent of the consultation. It is noted that this consultation exercise was not a public consultation. Whilst it is recognised that this may have extended the time frame in respect of introducing and completing the process, it was felt the nature of the changes proposed ought to have been subject to a public consultation.

Explanatory and financial memorandum. The Planning Bill has been supported by an explanatory and financial memorandum. It was the view of officers that this memorandum was very useful in assisting in the understanding of the intent of the legislation. However the respondents would wish to comment on the following aspects, taking each Clause in turn and commenting as appropriate. Where no comment was made that has also been highlighted for clarity.

Comments on each Clause

Clause 1. It is noted that the requirement for *"the Department to prepare and publish a statement of community involvement already exists in the Bill the only difference being that it now must be published within a year and from the day of which this paragraph comes into operation."* While this is to be welcomed, a question arises as to whether all Councils will be able to achieve this deadline when Planning is transferred to Councils in 2015, until governance arrangements are agreed, development plans are updated etc. Moreover, it is not clear what *'community involvement'* actually means or what resources will be required to ensure it is carried out in a satisfactory manner. Clearly, there will be resource issues attendant on this dependant on the level of involvement required.

Clause 2. In this clause the Bill cites *'Promoting economic development' 'desirability of achieving good design' in the Bill.* The Bill speaks of:

- *'furthering sustainable development'*
- *'promoting or improving well being; and,*
- *'promoting economic development.'*

The comments in respect of this Clause are that 'good design' needs to be clarified. Is the estimation of good design dependant on the environment or other factors? 'Good design in terms of the building itself or the local setting?' The judgement of this matter can be subjective and aspirational. Also in the

current economic climate would this provide a constraint on 'good design?' It is not clear what 'promoting economic development' means? It is also not clear as to where economic advantage would take precedent over the environment? All of this would seem to depend on what tests are going to be applied by the Department and what weighting given to the considerations raised. For instance, if the desirable economic development was to attract jobs that would suggest an approval. However, what about issues of displacement that would be attendant on such an approval? In this area, policy guidance would be useful and yet it is understood that the Department is minded to rationalise policies and that would surely lead to less consistency to the application of Planning in the future. It is not clear how consistency will be achieved after the hand over to Councils in the absence of policies. There is also an issue as to whether all these aspects identified in the Bill are considered to be equal? If, for instance, economic development is singled out how will it be assessed and by whom? Will it take precedent over the other matters? There is also the presumption that in order to evaluate design there would be a design ability required by those carrying out the assessment. Have any stipulations been made regarding the qualifications and experience of those who would be making these judgements. Concerns have also been expressed as to whether economic development emphasis would take precedent over issues such as conservation and heritage or benefits to society.

Clause 3. No comment.

Clause 4. Provision in this clause is to be welcomed and supports the concept of pre-application consultation.

Clause 5. Whilst the pre-application consultation is welcomed, it is felt that for it to be effective it would have to be carried out within the context of an up to date area plan. Across Northern Ireland there are very few plans that are current and up to date with the exception of the Belfast Metropolitan Area Plan (BMAP) and the Banbridge and Newry and Mourne area plan. However, the attempts to front load the application i.e. for all the issues to be identified at the beginning of the process is to be welcomed. Even so, some clarification is needed on what is "the community." How is the community to be defined? Is it people living within a certain distance of the proposed project or is a wider definition envisaged? These matters need to be clarified.

It is also noted that there is no reference to a third party appeal in the Bill which has been raised by some Elected Members.

Clause 6. Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

It is understood that these additional provisions which underpin the role of planning in promoting economic development have *'been recently identified as desirable additions to the Planning Bill and will be subject to consultation and scrutiny during the Assembly process*[1]*.'*

Public consultation in respect of these additional provisions, according to DOE Planning officials[2], has not been possible due to time constraints. It was further stated that the Single Planning Policy Statement would provide more details along with social and environmental considerations. Councils understand the pressures of legislative timings, but believe, because of the importance of this particular amendment, public consultation should have been sought.

[1] N.I. Assembly – Planning Bill Explanatory & Financial Memorandum as Introduced

[2] DOE Planning briefing to Environmental Committee - 10 January 2013

Clause 7. In this clause in the future, if the Bill is accepted, it will not be possible for someone to withdraw an appeal when they feel that an appeal may be refused, only then to submit a slight variation on the application and to go through the process again. From an administrative and practical point of view this is a satisfactory proposal as the process can become bogged down in a series of slightly similar applications being made for basically the same proposal that was subject to refusal.

Clause 8. The suggestion in this Clause, if approved, would stop multiple applications for the same site. This also would allow the process of planning to be more efficient. Indeed there is a view that here and elsewhere in the document the use of the word 'may' could be strengthened to the word 'shall'. The use of the word 'may' could lead to inconsistency in approach. (For comparison, in the Building Regulations, the District Council "shall" enforce the Building Regulations in its district.)

Clause 9. No comment.

Clause 10. In this clause there is a suggestion that persons, other than the Planning Appeals Commission can determine appeals. It is not clear who would do this and whether this would provide an opportunity for the Planning Appeals Commission to sidestep its responsibility. It also raises issues of consistency of decision making when other bodies are involved that may be constrained by different arrangements. It is noted that others selected to carry out the work instead of the Planning Appeals Commission are nominated by the Department. This could lead to governance issues where it would be conceivable for bodies or individuals to be selected to consider an appeal who may have a track record of a potential bias in certain matters. The Governments arrangements are not clear, it would seem, and should be more robust.

Clause 11. The reduction of time to carry out an appeal from 6 months to 4 months is to be welcomed and allows for a more efficient process. However, the English experience is that whilst the reduction was from six to four months it has reverted back to six months because of the incapacity of the system to deal with the shorter time frame. It is also welcomed that the person who has appealed cannot introduce new information into the process. Under the new system someone cannot provide new information whereas an appeal ought to consider information that has already been provided and the Appeal Commission make a determination as to whether the right decision was arrived at initially in considering the planning application. There is also a concern that if more policies are removed there will be scope for inconsistency and this will give rise to an increased number of appeals and this in itself would require funding sources to administer.

Clause 12. The idea of an appeal is reinforced in this clause in that it should be a process that allows review of the design with information that was available to the Department at the time. This will stop the process being used as the equivalent of a plan checking for Agents provided using Planning resources.

Clause 13. It would appear from this clause that it is only possible to make a nonmaterial change to planning permission if the applicant is an owner of the lands. Clarifications as to why an interest of this type is required as it is possible it could lead to difficulties were the person who has an interest in the building is not the land owner. A question arises where the applicant/developer is developing by way of a Development Brief in which legal interest may only transfer upon completion. It is also felt that there should be some constraint imposed on the department where it wishes to impose new nonmaterial conditions and it is conceivable that some conditions if applied could be impractical if a cut off date is not established from the outset in the Legislation. This would assist developers in providing clarity and setting a parameter around what the Department can and cannot do under certain circumstances. Moreover, it is not clear if the request comes from the Department or the developers in respect of who initiates the application for the non-material change to planning permission.

Clause 14. The clause refers to *'aftercare conditions imposed on replication or modification of mineral planning permission'* which introduces general environmental conditions and this is to be welcomed.

Clause 15. No comment

Clause 16. No comment

Clause 17. When dealing with planning applications in conservation areas the Department should consider including these application in a streamlined process, particularly due to the nature of the building in question, the Council may be obliged to issue a Dangerous Structures Notice. A streamlined process would allow applicants who wish to comply with the notice to obtain the necessary planning permissions quickly.

Clause 18. Where demolition takes place in conservation areas it is considered the timescale for the rebuilding should be included to ensure the preservation of the overall amenity of the area, and be rigorously enforced.

Clause 19. In this clause it is noted that trees that are dying are now going to be included in tree preservation orders. This then raises an issue of where some trees have diseases, such as the recent *ash die back* situation. The application of this clause would mean that those trees could not be felled. This would surely be contrary to policies in other Departments that would be seeking to preserve the integrity of the healthy trees in the locality? It would appear that this scenario has not been taken into account and there are practicalities in the application of such legislation that would require further consideration. It may be helpful to have clarification and possibly some exemptions listed that would cover the situation already mentioned.

Clause 20. Council agrees with the general principle of more robust enforcement. However, the proposal to provide for discounted fines has been found in the experience of officers in Local Government to pose problems administratively and attract additional cost which cannot be recovered. It would be much simpler and more efficient to set a fine that is paid for in full by a particular date. This clause states that *'the Appeals Commission may make an order as to the costs of the parties to an appeal under any of the provisions mentioned under paragraph 2 and as for the parties as to who the costs are to be paid.'* It is not clear if these powers are available to the alternative mechanisms for dealing with appeals referenced in Clause 10. Moreover it is not clear where the monies raised in the fines are accruing to.

Clause 21. No comment.

Clause 22. The offer of grants to bodies providing assistance in relation to development proposals is to be welcomed. However there should be criteria required and clarification of who can avail of this support. Looking beyond May 2015 a question arises, if having established a principle where monies are paid to such bodies, would there be an expectation that Councils would continue such funding arrangements. It is not clear from the Bill as to what the level of funding and those obligations may be?

Clause 23. Currently there are a number of statutory consultees who liaise with Planning. These consultees are the Council, as a body, and the Environmental Health Department in Local Government. In Central Government statutory consultees include the Roads Service and the Northern Ireland Environment Agency. Whereas Local Government tend to respond quickly to the consultation requests, it is not clear as to how speedily the other Departments will respond. However Clause 23 as proposed will place a responsibility on consultees to provide their responses within a specific time frame. In order for consultees to do this, they would need to be adequately resourced to ensure that appropriate responses could be made with in the specific time frame. The problem is compounded if the quality of the plans is not up to standard and that makes it more difficult to properly assess the proposals and extends the time to complete the response. The concept of a 21 day turn round for consultations to be completed is welcomed in principle and it observes the principle of a slicker system. However the ability of consultees to respond in the appropriate time frames will require appropriate resources and it is not clear as to how those resources would be provided to consultees to ensure that they could meet their statutory obligations. This will have specific implications for Environmental Health in Local Government and clarification is required on this point.

Northern Ireland Biodiversity Group

3/13/2013

Judith A Annett
Chair Northern Ireland Biodiversity Group

Response to consultation on the Planning Bill

Thank you for the opportunity for the Northern Ireland Biodiversity Group to respond to the consultation on the Planning Bill.

Northern Ireland Biodiversity Group is a Non Departmental Public Body charged with monitoring progress towards the objective of halting biodiversity loss in Northern Ireland and safeguarding natural ecosystems that provide 'public goods' and underpin the well-being of the population. The chair of the body is appointed by the Minister for the Environment.

We consider the Planning System in Northern Ireland to be one of the most important tools in safeguarding biodiversity both on individual sites and within landscapes and ecosystem where there is a dependency between sites, for example along a river valley, a coastline or areas of continuous wildlife corridor where consistency of policy is required. As we move into a new biodiversity action planning period we need to ensure that the tools we have are fit-for-purpose.

NIBG welcomes the intention of the Bill which is to modernise and strengthen the planning system by providing faster decisions on planning applications; enhanced community involvement; faster and fairer appeals; tougher and simpler enforcement; and a strengthened departmental sustainable development duty. We would also note that as part of the Wildlife and Natural Environment Act the Department already has a duty to conserve and where possible enhance biodiversity in the way that it conducts its own affairs and influences those of others.

NIBG wishes to make an adverse comment however on the proposed introduction of **Clause 6** which we believe is a tautological error. Economic development is already included in the Clause 2 referring to the objective of sustainable development. Sustainable development sits on three linked pillars of economic development, social development and environmental considerations so inevitably involves a consideration of economic advantage and disadvantage and looks at the receptors of those advantages and disadvantages. It considers the impact of development on both private and tradable goods and public goods which need to remain accessible to all. A good planning system deals with all of these in an integrated way and does not need to be reminded that economic advantage and disadvantage is a part of the decision-making process. The only kind of development that is NI Government's policy to promote is sustainable development.

The wording,

"considerations relating to any economic advantages or disadvantages likely to result"

if not removed entirely (which would be our preference as we consider that the matter is covered within Clause 2) should be amended to read

"considerations relating to any public or private economic effects likely to result"

We know, from the National Ecosystem Assessment which has been carried out throughout the UK and includes a detailed chapter on Northern Ireland, that there are important ecosystems within Northern Ireland that need to retain their functions for us to be able to continue to maintain and improve our water quality, air quality, flood water retention, food production, carbon storage and other services to human health and well-being. These natural services may be referred to as public goods and it is one of the functions of the Planning System to retain

these where a development may evidently or on closer scrutiny remove or degrade the services or the species and habitats that underpin their value. In the case where an ecosystem ceases to function optimally there are significant costs to Government and society and sometimes no potential for restoring these services.

Both UK and Ireland are signatories to the Nagoya Protocol (Convention on Biological Diversity – Conference of the Parties 10), and will be required in due course to account for our natural capital in decisions that are made about development. It will be important that this becomes an integral part of the consideration of the benefits and disbenefits of a planning application. At present the use of natural capital is not accounted for in the procedures for making a planning application in the normal event and is poorly covered within current EIA , SEA and Habitats Regulations Assessment guidance that support decisions.

Providing proper guidance on considering the value of public goods, biodiversity and ecosystem services within planning decisions will be of critical importance as we move into this next phase of planning legislation and planning practice and the devolution of planning to local government.

In respect of **Clause 23** of the Bill - one of the factors in the reliance on NIEA, and the slow responses to consultation in planning applications has been the lack of any ecological expertise within the planning system to provide any level of filtering. NIBG recommends that there should be in-house expertise in both the Planning Service and in local authority planning units in ecology, biodiversity and the ecosystem approach.

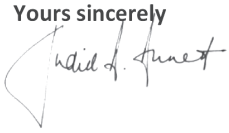
Sometimes opportunities for economic development whilst demonstrably beneficial to the promoter and to a community in terms of short term benefits, lead to the inadvertent loss of something more important to humans in the long term such as temperature regulation services or pollination services. It is the job of planners to know more than developers including about economics so that a long term informed view can be taken on society's behalf. This is why applications for funding are subject to economic appraisal to provide an independent view of the costs and benefits to society from taking a particular course of action.

Furthermore in respect of Clause 23 we agree that there is a difficulty with NIEA as a statutory consultee as part of the DoE and propose that an alternative statutory consultee is charged with commenting on the nature conservation, biodiversity, ecosystem , habitats and species aspects of planning applications as a support to a strong-in-house capacity.

As a final point, this legislation could and should take the opportunity to place on a statutory basis the arrangements for coherence between terrestrial development plans and the marine planning process.

We would value the opportunity to make a presentation to the environment committee on these matters, should you find this useful.

Yours sincerely



Judith A Annett
Chair Northern Ireland Biodiversity Group

Northern Ireland Biodiversity Group - Further comments on Planning Bill

Dear Mr McCann

I would be grateful if you would add the following comment to the evidence that Northern Ireland Biodiversity Group has submitted in respect of the draft Planning Bill.

This does not refer to any clause but rather highlights an omission or lost opportunity in the Bill.

We have targets to meet for the Water Framework Directive. Planning legislation could assist by establishing the principle that there will be buffer strips adjacent to rivers, wetlands, lake shores and coastlines where there will be a presumption against development. Buffer strips provide a number of benefits including filtration of sediment, arrest of nutrients entering the water from diffuse pollution and run –off and provision of wildlife corridors and food sources for aquatic life. Conversely development that abuts a watercourse removes the ecological conditions required for otter, bats, salmonids and important birds such as kingfisher and building on wetlands through infilling them removes a range of important ecological services to both humans and wildlife.

We would ask that the Environment Committee considers omissions from the Bill as well as the existing clauses and thinks through the planning legislation that will be required to

- Protect rivers, lakes, wetlands and coasts from development that impacts on their ecological functioning (to assist Water Framework Directive compliance and to stem biodiversity loss)
- Establish the terrestrial aspects of the requirement for consistency between terrestrial and marine planning at the coastline (to assist in meeting the requirements of the Marine Strategy Framework Directive, Integrated Coastal Zone Management and the protection of biodiversity at the coast)
- Prevent infilling of additional wetland areas in Northern Ireland for housing and other development purposes (to protect priority species and other biodiversity)
- Prevent widespread removal of hedges and other field boundaries as an unintended by-product of providing planning permission for housing in rural areas. (maintaining landscape scale natural corridors that are important to biodiversity)

I do not intend to raise these issues tomorrow morning at the Evidence session, unless the Chair wishes to do so. I see that there are no wider issues of omission on the agenda, but I would like this considered as evidence to the Bill consideration process.

Yours sincerely

Judith A Annett

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Northern Ireland Environment Link

Planning Bill

Comments by

Northern Ireland Environment Link

15 March 2013

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 62 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 made on behalf of 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.

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NIEL welcomes the opportunity to comment on the Planning Bill, many aspects of which are most welcome in attempting to streamline the NI planning system. However, some serious issues arise which we suggest may, perversely and counter to the intention of the Bill, result in slowing down the planning system and potentially impacting negatively on the environment. We stress that it is a *good* planning system that is needed in Northern Ireland, and that does not always mean *fast*. The goal of streamlining the planning system is laudable – however, some assessments of planning applications (impacting on, for example, migratory birds) require longer term monitoring and research. This should be recognised and, accordingly, there should be a mechanism in place to allow for longer consideration times when necessary.

Specific clauses are dealt with below.

Clause 2 (General function of the Department and the planning appeals commission)
The concept of 'promoting well-being' needs further clarification – what are the criteria for 'well-being' and who decides how or whether these are met?

A clear definition of 'sustainable development' should negate the need to include a further objective of 'promoting economic development' (see following paragraph).

NIEL believes that including the objective of 'promoting economic development' within this clause is unnecessary and unhelpful. We are concerned that the Bill provides a statutory duty to consider the promotion of economic development in the planning process (where it never was before). The economy is already an integral part of 'sustainable development', and so repeating it explicitly essentially increases its weight in any assessment of considerations (and suggests a misunderstanding of the term 'sustainable development'). While the Minister has stated that this does not give economic considerations determinative weight (Hansard, Planning Bill: Second Stage), there is a clear risk that the clause could be interpreted differently by different planners, or subsequent Ministers.

There are major questions introduced by this clause: How is the 'promotion of economic development' defined (for whom, and on what timescale)? Who determines what it is? Who assesses it? In light of these questions, the clause seems to increase scope for (and even invite) litigation, leaving the system open to legal challenges by any who are refused development permission or those who object to specific applications. The NI planning system is not equipped to define economic need, therefore in order to reach conclusions on economic benefits as a material consideration (which this clause will require), the authorities are likely to rely on assessment of developer-submitted materials. These submissions are likely to be biased in favour of the development they are proposing / promoting.

There is a danger in explicitly stating the promotion of economic development as an objective of the planning system because it frames the economy as competing against the environment – rather than recognising that the two must be fully integrated (the environment is the envelope within which the economy exists). A true economic valuation of natural capital / ecosystem services within NI would support economic development as well as promoting an educated and responsible attitude toward the environment. An understanding of this, along with 'sustainable development' should be reflected in the Bill. Having a separation of one aspect rather than recognition of their inter-relationships within the concept of sustainable development, undermines this and invites confusion and difficulties in practical determinations.

If economic factors are to be given particular emphasis, and thus potentially more weight, the precautionary principle (PPS1, paragraph 13) is likely to be ignored. It is important to appreciate that the over-riding public interest argument (stated in PPS1) can only really be used convincingly with regard to state-backed infrastructure or defence developments and cannot normally apply to commercial activities which are primarily in the interest of the person or company promoting them. Failure to comply with the precautionary principle as set out in PPS 1 could lead to legal challenges.

Clarification is required on the difference between 'furthering' and 'promoting'; is there a 'hierarchy', or what is the difference in emphasis?

'Good design' needs further clarification – what are the criteria and who decides? Does 'good' refer to aesthetics, function or both? While we are aware of multiple design guides in NI, there needs to be clarity on which carries the most weight. In all of these issues, ill-defined concepts will increase the time needed to process applications, running counter to the aim to speed the process, and encouraging litigation.

NIEL suggests the following wording for clause 2(a):

"(1) Where the Department or the Planning Appeals Commission exercises any function under Part 2 of this Part, the Department or, as the case may be, the Commission, must exercise that function with the objective of furthering sustainable development, which secures:

- Protection and enhancement of the environment;
- Economic prosperity; and
- A strong, healthy, just and equal society."

Clause 4 (Publicity, etc., in relation to applications)
NIEL suggests that notice of applications should be placed on site, as well as publication and neighbour notification.

Clause 5 (Pre-application community consultation)
Enhanced community involvement in the planning process is welcomed by NIEL in reducing objections to applications and facilitating the development of local spaces valued at local community level. We would however wish to see some safeguards to ensure that any group representing a community is genuinely representative of that community, with a mechanism whereby interests are declared.
We stress, however, that community consultation should not be considered to be *in lieu* of third party right of appeal, which should be in place as a safeguard if community consultation breaks down.

Clause 6 (Determination of planning applications)
A key principle of planning is that it considers issues related to the use and development of land. In introducing the assessment of economic advantages and disadvantages, the planning system could be used for a purpose for which it was not legally designed. Clause 6 seeks to expand the issues that planners need to take into account and, as a consequence, the NI planning system will no longer be able to rely on the stability of 40 years of case law that have determined the boundaries of planning considerations – this will have to be redefined, through a series of legal challenges, to establish case law. This will inevitably

introduce a great deal of instability and delay into the planning system in NI, potentially making it unworkable.

The inclusion of considerations relating to economic advantages and disadvantages creates significant scope for litigation and escalating challenges between competing developers. It gives objectors considerable weight, where any person who thinks they may be personally economically disadvantaged as a result of a planning decision (for example, one developer losing out to another) may make a valid objection to an application. As a result, this clause could seriously slow down the planning system. We stress that the planning system is intended to operate in the public interest rather than the interest of the private sector or the interests of any individual developer (PPS1 General Principles).

Furthermore, in relation to assessing economic advantages and disadvantages, it is clear that a development application may be submitted with a strong business case for job creation and high estimation of turnover and hence proposed economic benefit. However, there is no clear mechanism by which planning authorities may assess the quantitative negative implications which a development may have on, for example, our tourism market, other public goods, other proposed developments or local communities.

For the reasons stated above, and in the interests of streamlining the planning system, NIEL believes that this clause should be removed from the Bill.

Clauses 7 and 8 (Power to decline to determine subsequent application / overlapping applications)
NIEL welcomes these clauses as contributing to streamlining the planning system.

Clause 9 (Aftercare conditions for ecological purposes on grant of mineral planning permission)
NIEL welcomes this clause, in seeking to promote biodiversity in NI.

Clause 10 (Public inquiries: major planning applications)
NIEL believes that the independence, and the perception of independence, of those undertaking public inquiries is crucial to maintaining the credibility of the planning system. Any direct appointments by the DoE may cast doubt on this, given that this is the role for which the PAC was established. The PAC could itself appoint temporary commissioners if in-house capacity was not available for a particular inquiry. Whatever procedure is established must ensure that there is no actual or perceived conflict of interest between the appointed commissioner and the parties involved.

Clause 11 (Appeals: time limits)
NIEL welcomes this clause as contributing to streamlining the planning system.

Clause 12 (Matters which may be raised in an appeal)
NIEL welcomes the restriction of new materials raised during appeals as contributing to streamlining the planning system.

Clause 13 (Power to make non-material changes to planning permission)
Guidance is needed as to what constitutes material/non-material change, and who determines that distinction. Ostensibly contributes to the streamlining of the planning system, but may have deleterious effects on environment (depending on definitions).

Clause 16 (Increase in penalties)
NIEL welcomes an increase in penalties as reflecting the seriousness of breaching planning conditions.

Clause 17 (Conservation areas)
NIEL welcomes this clause which actively gives special regard to the preservation and enhancement of conservation areas.

Clause 19 (Tree preservation orders: dying trees)
NIEL welcomes this clause promoting the preservation of biodiversity.

Clause 20 (Fixed penalties)
NIEL suggests that clarification is needed within this clause as to how many times fixed penalties may be given for a specific offense if the breach is not rectified. One possible interpretation of the clause 20 (2) (b) is that, once a fine has been paid, the offender is immune from further prosecution. The Bill should make it clear that the fixed penalty is the first step in enforcement and that offenders are subject to further prosecution if the breach of planning is not remedied after the fixed penalty is paid.

Clause 22 (Grants)
NIEL welcomes proposals allowing DoE to grant-aid non-profit organisations for the purposes of furthering an understanding of planning policy.

Clause 23: (Duty to respond to consultation)
NIEL supports the faster processing of planning applications as a general principle, but we believe that there needs to be a recognition of the size, complexity and volume of detailed Environmental Impact Assessments that accompany many larger planning applications, and which require careful and detailed scrutiny by consultees. We believe that it is unreasonable to demand a very quick response to more complex applications. NIEA, for example, has a duty to protect the environment which could be severely compromised by a duty to respond very rapidly to a planning application with potentially large environmental consequences. At best this could lead to damage to valuable habitats, while at worst it could result in infraction proceedings from the European Commission. We therefore recommend that response times are set to reflect the scale of the proposed development.

Clause 24 (Fees and charges)
NIEL welcomes multiple fees for retrospective planning applications, as a deterrent for breaches in the planning system.

Concluding comments
NIEL would like to register its discontent that the Planning Bill did not follow the normal process of public consultation that would be expected to accompany changes with such far-reaching implications. We appreciate that there are time constraints with the transfer of planning powers to local councils looming - however, fast law does not necessarily mean good law.

We again highlight that the objective of 'promoting economic development' in clause 2 gives a statutory duty to economic considerations – this has never been the case before, and is much stronger than, for example, guidance as part of a PPS. We feel that this is wholly unnecessary, given a full and proper understanding of the term 'sustainable development'.

A framework for planning in the marine environment is being introduced in the Marine Bill which is currently making its way through the Assembly. Terrestrial and marine planning administration should be as seamless and consistent as possible. However, clauses 2 and 6 in the Planning Bill are at odds with the sections of the proposed Marine Bill. NIEL is concerned that this will lead to confusion and difficulty when considering coastal developments that involve approval from both planning systems.

NIEL would like to take this opportunity to stress the importance of ensuring that the transfer of planning powers to new councils and community planning are properly resourced. Capacity building must be a crucial part of this process, and NIEL wishes to play a significant role in this.

We would also like to raise the importance of third party right of appeal as part of a healthy and robust planning system. The Minister has voiced his desire to bring forward third party right of appeal (Hansard, Planning Bill: Second Stage), and we would fully support this. This is particularly important in a situation in flux, as will be the system over the next few years due to transfer of powers to local authorities.

Finally, in light of the need for streamlining in the NI planning system, we support many of elements of the Planning Bill. However, we strongly believe that clauses 2 and 6 undermine this overarching goal and will lead to over-complication and serious scope for legal challenge, resulting in a slowing rather than speeding of the planning process.

NIEL looks forward to discussing these matters further with the Committee.

Northern Ireland Housing Executive

Northern Ireland Housing Executive

Chief Executive
Dr John McPeake

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Belfast BT2 8PB

Room 247
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

11th March 2013

Dear Sir or Madam,

Re: The Housing Executive's response to the Planning Bill (January 2013)

The Housing Executive welcomes the opportunity to respond to the Planning Bill introduced to the Northern Ireland Assembly on 14th January 2013.
Our comments are as follows:

12. The Housing Executive would like to see supplementary guidance published to give direction on how some of these reforms can be implemented. We would like to see a definition of well-being with measurable criteria. Guidance will also be need on pre application community consultation. Details are needed on what is considered adequate consultation, for example, newspaper adverts, letters, meetings and what should be contained in an applicant's consultation report.

13. The Housing Executive believes that the clause for planning authorities promote economic development is inappropriate in legislation. We believe that the presence of this clause in legislation is too prescriptive and could lead to complex legal challenges. The Housing Executive would like to see considerations on the environment and society given equal weight with economic considerations and these should be contained in the planning policy.

14. The Housing Executive considers the word 'promote' in relation to economic development is not suitable. Planning functions, through approving applications and zoning land for industry, can facilitate economic development but we are unsure how planners can further promote economic development. The Housing Executive believes that the promotion of economic development would be better seated in a community planning framework which can support and integrate economic development programmes and regeneration, tailored to local circumstances and with community involvement.

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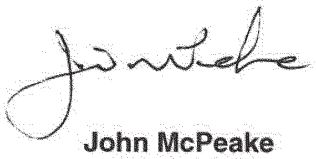
Northern Ireland Housing Executive

15. If this clause remains within legislation there will need to be detailed guidance on how the promotion of economic development will be assessed. There will be a skills gap for planners in assessing applications from an economic perspective. The future economic impacts of development proposals will be difficult to measure. While a proposal may have a positive impact in one area, it could lead to the future decline of another. Applicants may also need to provide economic statements, with planning applications, which will need to be independently verified. This could lead to delays in the planning system.

16. Economic factors will also need to be assessed against sustainable development.

Yours sincerely



John McPeake
Chief Executive

Northern Ireland Local Government Association

PLANNING BILL (NI) 2013

NILGA Evidence to the NI Assembly Environment Committee

The following paper has been developed collaboratively between the NILGA Planning Working Group, officers from a number of councils, and the Transfer of Functions Working Group (Planning Sub-Group). The paper sets out strategic and specific considerations before progressing to a clause-by-clause review of the draft Bill. Further policy in relation to the proposed Bill and related secondary legislation will also be developed using a collaborative approach.

Councils were invited to use this paper in drafting evidences to the Environment Committee. Should you wish to discuss any of the content, please contact Karen Smyth k.smyth@nilga.org

Derek McCallan
Chief Executive, 13th March 2013.

1.0 Background

The primary objective of the Bill is to accelerate the implementation of reforms contained within the 2011 Planning Act. The Planning Bill aims to change numerous elements of the Planning Order (NI) 1991 and the Planning Act (NI) 2011 in advance of the transfer of functions. The Bill not only updates existing legislation, it also introduces some new key principles.

DoE intends to transfer planning functions to councils in 2015 in line with the Executive's commitment to reform local government. The Planning Act (Northern Ireland) 2011 provides for the transfer of the majority of planning powers to councils and for the modernisation of the planning system.

The Planning Bill was introduced to the Assembly on 14 January 2013, and will bring forward reforms in the 2011 Act (Royal assent received on 4th May 2011). It also brings forward provisions to underpin the role of planning in promoting economic development through amendments to both the Planning (Northern Ireland) Order 1991 and the 2011 Act.

The Bill represents an interim measure that will allow elements of the planning reforms to be introduced sooner than at the time of transfer, most of which will remain in place only until it is possible to fully develop the 2011 Act. In keeping with the 2011 Act, the Bill aims to modernise and strengthen the planning system by providing faster decisions on planning applications, enhanced community involvement, faster and fairer appeals, tougher and simpler enforcement as well as a strengthened departmental sustainable development duty.

If the Bill is progressed and introduced in advance of the transfer of planning functions it will also mean that DoE will transfer a system with which councils, planners, developers and the public are familiar BEFORE 2015.

The local government sector welcomed the publication of the Planning Bill (NI) in 2010, and supports the attempts to introduce the new structures necessary for a more effective planning system. However, there remains concern that much still relies on the production of secondary legislation and guidance.

2.0 Strategic Considerations

1. **NILGA is deeply concerned by the increasing time pressures on councils to deliver reform and transfer.**

2. The Planning Bill (Clause 2 (1) a, b, c) proposes that the Department or the PAC must exercise their planning function with the objective of:

- Furthering sustainable development;
- Promoting or improving well-being; and;
- Promoting economic development.

The latter two objectives are new additions to the Planning Act 2011 and the 1991 Order. The promotion of economic development is a fundamental change to the purpose of the planning system that is not reflected in comparable legislation in other UK jurisdictions. ***Promoting economic development can be found in the policy approach in other jurisdictions, but it is not embedded in legislation.***

The current overarching Planning Policy Statement for Northern Ireland (PPS1) outlines the current purpose of the planning system:

"The town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance. It is important to distinguish those matters which planning can influence from those which are outside its control. The central concerns of the planning system are to determine what kind of development is appropriate, how much is desirable, where it should best be located and what it looks like".

PPS 1 outlines 'issues of acknowledged importance' but does not currently single out promotion of economic development as a key objective. When a principle such as this is established in the primary legislation it should avoid introducing an inconsistency with other legal provisions required in respect of environmental obligations. A policy approach through the modification of PPS1 may be a more appropriate mechanism through which to introduce the desire to promote economic development - rather than primary legislation.

The promotion of economic development is in itself a positive provision, but it must be considered in the context of existing environmental and sustainable development obligations. There could be a legitimate risk that the specific introduction of the provision – without adequate balance - into legislation *may* promote the degree of importance attached to such consideration and give it determinative weight in the planning process. This could undermine

the provisions within development plans and other matters of acknowledged importance i.e. social and environmental considerations.

3.0 Specific Considerations

A number of initial areas are highlighted:

- Clause 6 specifically mentions economic advantages and disadvantages as material considerations. The same concerns as outlined in the strategic considerations would apply – if these considerations are not going to have greater weight in the decision making process, it is questionable as to the value / appropriateness of their very specific inclusion. **NILGA would query whether the Planning Bill is the appropriate vehicle to strengthen economic development considerations whilst recognising and supporting the need to sustainably develop local economies.**

- Clause 15 relates to payments, under Article 40 Agreements, to be made to any Government Department - not just the DoE. This should be extended to local councils. On a related issue, it should be noted that the Department receives £10,000 for every Environmental Statement (ES) requiring consideration as part of the application process. Whilst the Department receives the ES, it is usually forwarded to consultees - including the Council - for assessment, without any consideration of the re-distribution of fees to reflect the additional work required, and the likely resource impact that this may have. It may be appropriate to consider this matter as part of the payments to departments in the context of the widened scope to include local councils.

- In all likelihood, local councils would also want to be closely involved in the formulation of the Development Order as outlined in Clause 23, and which will set-out consultation response procedures. This will be a critical element of the potential to improve performance. The ability to enforce compliance with consultation requests, or progress determinations in the absence of responses from other Government Departments, will be critical. It may be appropriate that, where no adequate responses are received by the agreed dates, there is provision for this to be considered as a non-objection (at the risk of the consultee).

- Other changes proposed by the Bill relate to achieving consistency with other legislative / EU requirements e.g. Clause 3 on the meaning of development brings consistency with EIA regulations. As outlined above, this should not be undermined by the integration of economic considerations into the primary legislation.

4.0 Commentary on the Clauses in the 2013 Bill & suggested responses

As stated, the primary objective of the Bill is to accelerate the implementation of reforms contained within the 2011 Act. The following section offers a review of each of the proposed clauses with some suggested amendments included.

Clause 1: Statement of Community Involvement (SCI)

This clause introduces the requirement for the Department to produce a statement of its policy for involving the community in its development plan and planning management functions within one year of the clause coming into operation.

Comment: Further regulations will set out how DoE should go about preparing a Statement of Community Involvement and what it should contain. NILGA would question the evidence for the viability of the proposed one year delivery timeframe, especially in lieu of the 'in situ' planning deficit within the local government sector. At a practical level, the Department's SCI may not be published until late 2014 if the Bill is commenced in December 2013, leaving Councils only six months prior to the proposed transfer of planning functions. This is not sufficient, and consideration of this is urgently required – a Clause 1 (b) could be introduced to accommodate a working arrangement between the Department and the 11 council clusters in respect of SCIs in advance of the transfer as a solution.

Furthermore, these regulations are likely to stipulate that community groups and the public should be involved in the preparation of this statement. Again, the details as to how this will happen are scant. As this is a process that councils will have to carry on after the transfer of functions (ToF), it is incumbent upon DoE to ensure that the process is efficient, fit for purpose and fully resourced.

Arguably it is the Council that is better informed regarding the local community whereas the DoE is removed from this local context. Further clarity on this issue is required, particularly with regard to future governance arrangements, the adoption of updated development plans/policies and the attendant resource issues that will play a major part in determining the effectiveness of the local government sector in delivering the new planning system.

Clause 2: General functions of the Department and Planning Appeals Commission

The Bill introduces a new requirement for DoE, the Planning Appeals Commission, and local councils (when they take on planning responsibilities), to carry out their functions with the objective of:

- Furthering sustainable development;
- Promoting or improving well-being; and,
- Promoting economic development.

They must also "have regard to the desirability of promoting good design."

Other provisions in the Planning Bill require the economic advantages or disadvantages of granting or refusing planning permission to be considered.

Comment: Although this looks reasonably innocuous, it represents a fundamental shift in what the planning system has previously represented. It currently balances many material considerations such as environmental, heritage or social issues but this new clause implies that economic considerations may be given greater importance. The provision of the Bill which requires economic advantages and

disadvantages to be considered is likely to be difficult in practice. For example, it is unlikely that any developer will put forward a case illustrating the economic disadvantages of a proposed development. The Bill should be re-worded to make it clear how economic benefits will be measured, or to provide a list of criteria with local government to ensure regional consistency.

NILGA would suggest to the Committee that the inclusion of this suggested clause may open the process up to scrutiny and challenge which may in turn lead to further delays. This is a very real possibility and as such, may be better confirmed in a PPS rather than primary legislation.

Of some concern is the fact that, following the consultation process in support of draft Planning Policy Statement 24 'Economic Considerations' in January 2011, the Minister determined not to adopt the policy. This clause suggests a change in that stance, and this needs to be clarified.

Clause 3: Meaning of development

This clause amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land to now include the structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.

Comment: This is to be welcomed as it means that developers, in certain circumstances, can no longer demolish without planning permission. This is in line with previous local government responses to the April 2012 consultation process which considered demolition and development.

Clause 4: Publicity etc. in relation to applications

This clause substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications for planning permission. The Department must not consider an application if the publicity requirements are not satisfied.

Article 25 as amended also makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination.

Similar amendments are made at Schedule 1 for applications for listed buildings consent.

Comment: NILGA has no objection to this Clause.

Clause 5: Pre-application community consultation

Clause 5 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation.

Comment: Pre application consultation will only be carried out for certain types of planning applications. Therefore it is important that the thresholds that are set to

determine which applications will require pre-application consultation, and which ones will not, are appropriate. For example, pre-application consultation may not be required for large scale developments that are split into smaller phases (which in turn, may present a loophole that developers may exploit).

Article 22A places an obligation on developers to consult the community in advance of submitting an application. The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate.

Comment: There is no indication of what the community consultation requirements might entail. As this is an area which many developers have no experience of, clear guidance from DoE is essential. Whilst the pre-application consultation is welcomed it is felt that, for it to be effective, it would have to be carried out within the context of an up to date development plan. This is currently absent in many areas of NI. Clarification is needed as to which types of development will be covered by this clause, and in relation to thresholds, guidance will be needed for developers. This should be drafted in partnership with local government.

Clause 5 also inserts Article 22B which requires the applicant to produce a report indicating what has been done to comply with the pre-application community consultation requirements, and is required to accompany the application. The form of the pre-application consultation report may be set out in Regulations.

In addition Clause 5 inserts Article 25AB. If the pre-application community consultation requirements have not been complied with, the Department must decline to determine the application. The Department can request additional information in order to decide whether to decline the application.

Clause 5 also places a requirement upon the Department to include notices of pre-application community consultations and consultation reports in the planning register prepared in accordance with Article 124 of the Planning (Northern Ireland) Order 1991.

Clause 6: Determination of planning applications

Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.

Comment: See Clause 2 above. The key issue is how much weight, relative to other factors, is to be given to economic considerations.

Clauses 7 and 8: Power to decline to determine applications

These clauses extend DoE's power to decline subsequent and overlapping applications for planning permission or listed building consent. It includes the power to decline applications

where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine similar applications made on the same day, as well as the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.

Comment: This is to be welcomed as it will prevent developers from submitting repeat applications on the same site. The Bill may be better served by strengthening the proposed terminology e.g. with 'shall' instead of 'may' where appropriate.

Clause 9: Aftercare conditions for ecological purposes on grant of mineral planning permission

Comment: No objections.

Clause 10: Public inquiries: major planning applications

This clause amends Article 31 of the Planning (Northern Ireland) Order 1991 to allow the Department to appoint a person other than the Planning Appeals Commission to hold a public local inquiry [or hearing] to consider representations made in respect of any application to which Article 31 (major planning application) has been applied.

Comment: The legislation states that persons other than the PAC can be appointed by DoE to carry out public inquiries and conduct appeals. However, the Planning Appeals Commission currently falls under the remit of OFMDFM. The power to appoint "persons other than the PAC" should lie with OFMDFM rather than DoE to maintain the independence of these persons from the DoE.

Clause 11: Appeals: time limits

Clause 11 reduces the period for making an appeal to the Planning Appeals Commission from six to four months or such other period as may be specified by development order.

Comment: This Clause is welcomed as it will seek to ensure that planning decisions are not delayed unnecessarily by lengthy timescales associated with appeal procedures, although the English experience has not been altogether positive in this instance.

Clause 12: Matters which may be raised in an appeal

Clause 12 inserts "Article 32A" in the Planning (Northern Ireland) Order 1991 so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that

the matter could not have been raised before that time or that its not being raised was due to exceptional circumstances.

Comment: This is to be welcomed as developers often bring revised or very different schemes to an appeal which may even have been approved in the first instance. This practice can waste time at an unnecessary appeal and may disadvantage the objectors as they have not had an opportunity to properly review the newly presented material.

Clause 13: Power to make non-material changes to planning permission

This clause inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to make a change to a planning permission already granted 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. Consultation and publicity arrangements may be set out in Regulations.

Comment: NILGA has no objection to this Clause.

Clause 14: Aftercare conditions imposed on revocation or modification of mineral planning permission.

This clause inserts a provision at Article 38A of the Planning (Northern Ireland) Order 1991 which permits the Department to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under Article 38, provided a restoration condition is included or in place on the land/site.

Comment: NILGA has no objection to this Clause.

Clause 15: Planning agreements: payments to departments

This clause amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland department and not solely the Department of the Environment.

Comment: This is to be welcomed and may result in monies becoming available for other uses. It is suggested that these payments should also be available to councils in appropriate circumstances, perhaps in the form of the Community Infrastructure Levy (CIL) as implemented in England and Wales.

Clause 16: Increase in Certain Penalties

This Clause increases the level of fine that can be handed out by the courts for damage to listed buildings or failing to prevent further damage to a listed building; hazardous substances offences; failure to comply with stop notices and other enforcement offences.

It increases the maximum level of fine, on summary conviction, for a range of offences relating to breaches of planning control or consents from £30,000 to £100,000.

Comment: NILGA has no objection to this Clause, but would welcome a partnership approach on fee dtermination, utilising its Planning Working Group and other bespoke structures within the sector.

Clause 17: Conservation areas

Clause 17 amends Article 50 of the Planning (Northern Ireland) Order 1991 to include provision that the Department must pay special attention to (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.

Comment: NILGA has no objection to this Clause, although thought should be given to including applications in such areas within the parameters of the streamlined consultation process. This would, for example, enable applicants to respond more quickly to the regulations of, and ensure compliance with, Dangerous Structures Notices.

Clause 18: Control of demolition in conservation areas

Clause 18 amends Article 51 of the Planning (Northern Ireland) Order 1991 by adding additional provision that any structural alteration to a building in a conservation area, where the alteration consists of demolishing part of the building, shall be taken to be demolition for the purposes of Article 51.

Comment: NILGA has no objection to this Clause. Effective monitoring and enforcement will be necessary to support this.

Clause 19: Tree preservation orders: dying trees

Clause 19 amends Articles 65 and 65B of the Planning (Northern Ireland) Order 1991 and Section 125 of the Planning Act (Northern Ireland) 2011 by removing the reference to dying trees. Dying trees are no longer exempt from the provisions of a tree preservation order.

Comment: The implications of the recent ash dieback situation may force a re-think of this Clause. NILGA is concerned that very specific issues such as dead trees may pose a public safety issue.

Clause 20: Fixed Penalties

This clause inserts two articles into the Planning (Northern Ireland) Order 1991. Articles 76C and 76D enable an authorised officer to issue a fixed penalty notice for the offences of failing 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 level of fixed penalty will be prescribed by Regulations and is reduced by 25% if paid within 14 days.

Comment: NILGA has no objection in principle to this Clause, but would welcome an early conversation on fees, including fixed penalties, throught its Planning Working Group and related bodies.

Clause 21: Power of planning appeals commission to award costs

Clause 21 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.
Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.

Comment: NILGA has no objection to this Clause.

Clause 22: Grants

Clause 22 amends Article 120 of the Planning (Northern Ireland) Order 1991 to extend the Department's power to grant aid non-profit organisations whose objectives include furthering an understanding of planning policy. The Department of Finance and Personnel's approval to such grants is no longer required.

Comment: NILGA is supportive but seeks clarity as to responsibility for grants, post-transfer.

Clause 23: Duty to respond to consultation

Clause 23 inserts Article 126A which requires those persons or bodies which the Department is required to consult before determining certain applications for planning permission or consent, to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and DoE. The section also gives DoE power to require reports on the performance of consultees in meeting their response deadlines.

Comment: The processing of planning applications is sometimes delayed due to the late response of statutory consultees. This clause therefore removes the uncertainty and delay associated with late responses. However, there is also a question over who will have the authority to enforce this in different Government Departments, and the resource implications they face in terms of their consultee responsibilities are not clear. NILGA notes the potential for deeming no received response by the agreed date as offering tacit non-objection, but would highlight the potential issues this may cause for public safety e.g. in relation to poorly designed roads access.

Clause 24: Fees and Charges

Clause 24 amends Article 127 of the 1991 Order to enable the DOE to charge multiple fees for retrospective planning applications.

Comment: NILGA welcomes this proposal.

Clause 25: Duration

This clause allows the Department to make subordinate legislation to repeal provisions in the Bill and to include 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.

Comment: NILGA has no objection to this Clause.

Clause 26: Interpretation

This clause contains interpretation provisions and defines a number of terms used throughout the Bill.

Comment: NILGA has no objection to this Clause.

Clause 27: Commencement

This clause concerns the commencement of the Bill and enables the DOE to make commencement orders. Clauses 1,15, 16, 22, 26, 27 and 28 shall come into operation on Royal Assent.

Comment: NILGA has no objection to this Clause.

Clause 28: Short title

This clause provides a short title for the Bill.

Comment: NILGA has no objection to this Clause.

5.0 Other Considerations

Financial implications of the Bill:

NILGA would assert that crucially, in the Memorandum, the Department states that *'any potential increase in costs should be offset by the benefits of more efficient processes.'* These observations relate only to the costs of the Department and do not take into account the costs of others involved in the planning process and most specifically the consultees. No account has been taken of the additional resources that may be required to ensure that consultees respond within the new shorter time frame.

It is also noted that in the appeals process, the appellant may recover costs if a council had made a decision and loses the appeal. As the councils will be carrying out an entirely new function with no precedent locally, and possibly without robust area plans, policies or procedures in place, the councils could, conceivably, lose a significant number of appeals.

This in turn would have significant cost implications for councils and this would require robust, sector agreed, assessment.

Extent of the Consultation:

It is noted that this consultation exercise was not a public consultation. Whilst it is recognised that this may have extended the time frame in respect of introducing and completing the process, it was felt the nature of the changes proposed ought to have been subject to a public consultation.

Explanatory and financial memorandum:

The Planning Bill has been supported by an explanatory and financial memorandum. NILGA would highlight that this memorandum was very useful in assisting in the understanding of the intent of the legislation.

Northern Ireland Renewables Industry Group

NIRIG
NORTHERN IRELAND
RENEWABLES INDUSTRY GROUP
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NIRIG response to the Planning Bill 2013

15th March 2013

The Northern Ireland Renewables Industry Group (NIRIG) is the voice of the Irish Wind Energy Association and RenewableUK in Northern Ireland. NIRIG provides a conduit for knowledge exchange, policy development support and consensus on best practice between all stakeholders in renewable energy. NIRIG welcomes the opportunity to submit its opinion on the Planning Bill to the Committee for the Environment.

On the whole, NIRIG welcomes the publication of the Bill as it will allow for the expedition of a number of planning reforms contained within the Planning (Northern Ireland) Act 2011. NIRIG would comment on specific clauses as follows:

Clause 2 – NIRIG supports the establishment of a statutory duty towards sustainable development, promoting or improving well-being, and promoting economic development. NIRIG feels that this is consistent with PPS18, and appreciates that, in practice, all current planning decisions balance these competing considerations anyway.

Clause 5 – NIRIG welcomes the codification of pre-application community consultation. To a certain extent, this merely formalises the best practice, responsible approach currently employed by most NIRIG member companies who implement a number of techniques to gather public opinion, e.g. public exhibitions, open days, questionnaires, door to door visits etc. NIRIG has consistently supported an appropriate community consultation process, as indicated in our response to the consultation on Local Government Reform 11th March 2011

"NIRIG would support the concept of 'An Effective Community Planning Process' – which would involve community consultation from an early stage in the planning process. Clarification in terms of what degree this would take in the Development Plan, Planning Policy and Development Managements is also required. The provision of guidance in this area would allow for more transparency in this area. NIRIG would therefore request that guidance for this area should go through the formal consultation process"

NIRIG recommends that a standardised approach would be helpful, to provide clarity on expectations as regards pre-application community consultation. We suggest that this go through a formal consultation process and we are keen to engage with DOE on this matter.

Clause 6 – NIRIG welcomes the emphasis on economic benefits as consistent with PPS18 and the genuine benefit from investment in renewable energy infrastructure.

Clause 7 – NIRIG would like the term 'similar application' clarified in the context of Clause 7.

Clause 12 – NIRIG would note that all relevant considerations need to be considered at appeal stage if a robust decision is to be taken

Clause 23 - NIRIG very much welcomes the introduction of this duty to respond to consultation. The response must be sufficiently substantive so as to give an opinion as opposed to a holding response. Additionally, NIRIG would suggest a response period of no longer than 21 days, after which it will be accepted by the Department that no response is going to be forthcoming.
The ability of consultees to respond rapidly will be supported by an appropriate and functioning pre-application discussion process. NIRIG understands that guidance notes are currently being drafted and look forward to continued engagement with DOE on this matter.
Furthermore, in order for this response time to work for Wind Farm planning applications these applications should be considered to be regionally significant applications and should remain centrally within the remit of the Strategic Projects Team in DOE.

We hope that this submission is of use and we welcome the opportunity to respond.

For further information please contact:

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NIRIG
NORTHERN IRELAND
RENEWABLES INDUSTRY GROUP

Northern Ireland Retail Consortium

Planning Bill 2013

The Northern Irish Retail Consortium (NIRC) welcomes the opportunity to contribute to the Planning Bill 2013. This paper sets out the NIRC's views on the proposed Planning Bill and outlines the sector's priorities in this area.

About The NIRC

The NIRC represents multiple retailers operating in Northern Ireland, including large supermarkets, department stores, DIY, furniture and homeware, electricals, jewellery, pharmacy/health and beauty, fashion and shoe retailers, stationers and bookstores, fast food outlets and the Post Office. We also represent small retailers in Northern Ireland who are members of our constituent specialist retail trade associations. The retail sector in Northern Ireland employs over 80,000 people and our members invest millions of pounds each year in new stores as well as refurbishment. Through the Northern Ireland supply chain our members buy over £750 Million of agri-food produce making them a key player in the Northern Ireland economy.

Overview

The NIRC broadly supports the aspirations and measures set out under the Planning Bill NI 2013 and welcomes the opportunity to set out the position and key concerns of the retail sector. The existing planning policy framework has often been complex and unwieldy and has led to a lack of confidence in the planning system in Northern Ireland for the retail sector. The NIRC therefore strongly welcomes efforts to streamline the planning process to enable swifter decision making for planning application and to enable a fair and simplified framework for Northern Ireland. Anything that brings clarity to the process and expedites planning to allow future investment must be welcomed

Retailers are continuing to invest during very challenging times in the economy. In this respect we strongly support the delivery of clarity within the planning process and recognise that this could deliver real confidence for the retail sector further contribute to economic growth in Northern Ireland.

While we welcome the overarching aspiration of the Planning Bill it will be the way in which it is implemented that will determine its success. As such we have a number of key concerns for the retail sector that we have outlined below. We do realise that this Bill is a facilitation Bill and the real detail will be contained in the regulations which we await with interest.

Enhanced Community Engagement

Developers will be required to demonstrate that they have undertaken a series of community engagement consultations before submitting major planning applications. While we recognise the importance of an inclusive approach to development it is unclear as to what such engagement would need to address or which approach would be most appropriate. It is important that any such measure within the Planning Bill NI 2013 delivers certainty to developers and investors alike in order to remove ambiguity and to enable a level playing field. Any confusion in this regard could result in either significantly increased cost to the developer or in poorly implemented consultations. From our discussions with the Department we do understand that our members as a matter of course go above and beyond the standards which are common throughout the UK. We would like to have clarity on the new standards that are being proposed for Northern Ireland.

Clear and Robust Enforcement

We recognise the importance of a clear and robust enforcement and therefore welcome the approach taken under the Planning Bill to speed up and simplify enforcement within the planning framework. We are concerned however that multiple fees for retrospective planning applications could significantly increase costs for existing planning applications and could derail investment in the future. While we broadly support the enforcement measures under the planning Bill it is vital that they are implemented in a fair and proportional manner in reference to the severity of the infringement and the development size.

I hope that this letter helps to set out the NIRCs' position and outlines the retails sectors concerns in relation to the Panning Bill NI 2013. I look forward to working closely with you on implementation of the Bill.

Yours sincerely

Aodhán Michael Connolly
Director
Northern Ireland Retail Consortium

Omagh District Council

DANIEL McSORLEY Chief Executive

Omagh DISTRICT COUNCIL

Your Ref:
Our Ref: Misc/1 **M/L 14962**
Date: 15 March 2013
Being dealt with by: Chief Executive's Dept
Email: daniel.mcsorley@omagh.gov.uk

Mr Sean McCann
Assistant Clerk
Environmental Committee
Room 247
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

Dear Sir/Madam

RE: Planning Bill

I am writing on behalf of Omagh District Council regarding the consultation on the proposed Planning Bill, to advise that this Council fully endorses the response submitted by NILGA and which is a collation of the prevalent issues relevant to all the local authorities.

On behalf of the Council, I wish to thank you for the opportunity for to respond to the Committee

Yours sincerely

pp Sonya McBrulla

D McSORLEY
Chief Executive

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
Employer Council for Western Area Group Environmental Health and Building Control Services

Patricia Pederson

Dear Sir

I wish to make the following response to the consultation re the above Bill. I totally oppose the Bill as I believe it would not benefit the people, economy or environment of Northern Ireland and should not become law.

My principal reasons for opposing the Bill are:

1. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

2. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. If economic development is given precedence this would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and wealth of our people.

3. The economic value of a proposed development is impossible to accurately assess.

4. There would be no way of monitoring and enforcing compliance with the economic conditions of planning approval.

5. It is inappropriate to introduce such devastating change to the planning system in this manner without a full public consultation.

I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs", ie a policy that includes the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

Patricia Pedersen

Paul Thompson

Dear Sirs,

I wish to express my grave concerns with regard to the proposals contained in the above Bill.

My experience of the existing system goes back to the Public Enquiry into the Craigavon 2010 Development Plan and involvment with the still unresolved planning issues in Waringstown.

You should be fully aware of all the failings identified in the above processes and the eventual acceptance, by the Minister, that the system was “not fit for purpose”.

The “ Planners” have shown themselves to be virtually incapable of implementing the various changes, to the existing system, introduced during the past twelve plus years.

Therefore how can the public have any confidence in their ability to implement the new proposals? Any attempt to proceed with new legislation will highlight the folly of “putting the cart before the horse”!

It is essential that a totally competent Planning Department be created, tried and tested prior to any consideration of major changes.

Yours faithfully,

Paul Thompson
17 Oakwood,
Waringstown,
Craigavon,
BT66 7TB

Planning Appeals Commission

Park House
87/91 Great Victoria Street
Belfast
BT2 7AG

Tel: (028) 9024-4710
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Date: 14 March 2013

Mr Sean McCann (by e-mail)
Assistant Clerk
Committee for the Environment
Northern Ireland Assembly
Room 247, Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Dear Sir

The Planning Bill

1. Thank you for your letter of 25th January 2013. I welcome the opportunity to set out the Planning Appeals Commission's views on the Planning Bill.

2. The Planning Appeals Commission is an independent statutory tribunal which adjudicates on a wide range of land-use planning, environmental and related issues. It determines appeals against planning decisions made by the Department of the Environment. It also conducts independent examinations, public inquiries and hearings into matters referred to it by the Department, including major planning applications and objections to development plans.

3. I understand that a principal purpose of the Planning Bill is to accelerate the implementation of reforms contained in the Planning Act (Northern Ireland) 2011, which are not expected to come into force until planning powers are transferred to local government in 2015. I note, however, that the Bill also contains some new provisions that are not in the Act. I wish to comment on key clauses of the Bill that relate directly to the Commission's tribunal work and to suggest some additional provisions which might usefully be included.

Clause 4

4. Article 21 of the Planning (Northern Ireland) Order 1991 requires the Department to advertise planning applications in the local press. Articles 32(6) and 69(7) apply the requirements of Article 21 to planning appeals and appeals against enforcement notices. Similar publicity requirements apply to appeals concerning

listed building consent and hazardous substances consent. Clause 4 of the Bill proposes to amend Article 21 so that the detailed publicity requirements for applications for planning permission and related consents would instead be set out in subordinate legislation.

5. The Commission queries whether it is necessary to re-advertise planning and similar proposals at appeal stage. When an appeal is lodged, the Department passes copies of any representations made at application stage to the Commission and the Commission writes to the people concerned offering them an opportunity to present written and/or oral evidence. The requirement to advertise could be construed as the Commission actively seeking new representations from parties who were not originally involved in the process. It appears to run counter to the proposal in Clause 12 to prohibit the introduction of new material at appeal stage that was not before the Department when it made its decision. The Commission recommends that consideration is given to adding a new paragraph to Clause 4 to delete the requirement to advertise appeals from the 1991 Order and the 2011 Act to ensure consistency with Clause 12.

Clause 10

6. Clause 10 would give the Department the option to appoint persons other than the Commission to conduct public inquiries and hearings in relation to major planning applications. While the Department is on record as saying that the Commission will and should remain the first port of call, there is nothing in the Bill that gives statutory force to this undertaking.

7. For nearly 40 years, this type of work has been done exclusively by the Commission and over that time a high level of public confidence in its independence has accrued. The need for independence is especially important where the hearing to be conducted arises from a notice of opinion issued by the Department in which the Department had already declared its views. The Commission does not believe that Departmental appointees would be generally perceived or accepted as being independent of the Department. For example, there could be a perception that the Department had appointed persons likely to sympathise with its views. Appointees might be influenced subconsciously by the thought that if they were to provide a report critical of the Department, they might not be appointed again.

8. It is not obvious that there is a readily available pool of people in Northern Ireland outside the Commission who have the combination of planning expertise and tribunal experience required to perform this specialist type of work. If the Commission's services were not being used, the substantial amount of administrative work involved in setting up and running a public inquiry would fall on the Department. In addition, there would be costs associated with such appointments by contrast with the current arrangements whereby the Commission does not charge the Department for public inquiry work.

9. There would inevitably be differences in the way inquiries and hearings would be conducted by the Commission and by Departmental appointees and in the degree of scrutiny to which the Department's case and that of other parties would be subjected. This would be confusing for participants and could be considered unfair.

10. There is no necessity for Clause 10, even as a contingency measure. The backlog of planning appeals arising from the introduction by Direct Rule Ministers of a strict policy presumption against development in the countryside has been dealt with. The Commission's work on the present suite of development plan examinations is nearing completion. All current hear-and-report work is progressing as rapidly as it can be progressed. I can give a firm assurance that in the period to 2015 the Commission will continue to give top priority to inquiries and hearings into major planning applications.

11. The Commission recommends that Clause 10 is omitted from the Bill. Any residual concerns that the Commission might become overloaded with work could be addressed in a different way. Article 111(2)(b) of the 1991 Order makes provision for the Chief Commissioner to appoint an assessor to sit with members of the Commission. A new

provision could extend this power to allow for the appointment of persons to conduct inquiries or hearings (unaccompanied) for a temporary period or for a specific task. Such arrangements would preserve the principle of independent adjudication so vital to public confidence in the planning system, and would ensure consistency of approach.

Clause 12

12. The Commission is aware that the submission of revised proposals at appeal stage may be perceived as unfair, particularly by third party objectors. The ability to amend a planning application is governed by case law which establishes that there must be no change to the substance of the proposal and that no one must be deprived of their right to be consulted on the changed proposal. The Commission carefully scrutinises all revisions to proposals against these principles and not infrequently declines to admit such revisions for consideration. Where revisions are found to be compliant with case law, the Commission ensures that the Department and any third parties have sufficient time to examine the new proposals.

13. Clause 12 as currently worded is contradictory. On the one hand it seeks to restrict the matters which may be raised at an appeal but on the other maintains the requirement to have regard to material considerations. Where new matters are raised that are material they could not be ruled out. The Commission foresees significant difficulty in interpreting and applying these provisions, especially in the current litigious climate.

Clause 21

14. The Commission welcomes Clause 21, which would empower it to award costs in circumstances where the unreasonable behaviour of one party has left another out of pocket. The Commission believes that this provision would provide an important restraining influence on parties' behaviour and encourage all concerned to approach appeals in a responsible, cost-conscious manner.

15. I now turn to some additional provisions which the Commission suggests could usefully be included in the Bill.

Submission Notices

16. Article 24(2) of the 1991 Order and Section 44(2) of the 2011 Act provide for notices requiring planning applications to be made. Such notices are often referred to as "submission notices". The Department's Planning Policy Statement 9 - The Enforcement of Planning Control lists submission notices among the main enforcement powers available to the Department. It indicates that the Department uses a submission notice in preference to an enforcement notice where its objective is to bring unauthorised but acceptable development under planning control.

17. Article 24(2) of the 1991 Order and Section 44(2) of the 2011 Act set out in identical terms the grounds of appeal against a submission notice. These grounds are much narrower than those available to the recipient of an enforcement notice under Article 69(3) of the Order and Section 143(3) of the Act. It seems perverse that there is a more restricted right to appeal against a submission notice where the development is considered to be acceptable than against an enforcement notice where it is considered unacceptable.

18. A person who appeals against a submission notice is debarred from arguing that planning permission has already been granted for the development; that the development has already been permitted by a development order or that he or she is not the owner or occupier of the land. As things stand at present, the recipient of a submission notice wishing to make those arguments would be put to the trouble and expense of having to challenge the notice through the Courts. The Commission, as a

technical tribunal, is better placed than the courts to assess issues such as these and can do so at much less cost.

19. The Commission recommends, therefore, that a new clause is inserted in the Bill to amend the grounds of appeal against a submission notice in the 1991 Order and the 2011 Act to the following:-

(a) that the matters alleged in the notice have not occurred;

(b) that at the time when the notice was issued those matters did not constitute development;

(c) that the development alleged in the notice was not carried out without planning permission, if such permission was required in accordance with this Part, or without any approval of the Department/council, if such approval was required under a development order;

(d) that the period of five years referred to in Article 23(2)/section 43(2) had elapsed at the date when the notice was issued;

(e) that at the time when a copy of the notice was served on him, the appellant was neither the owner nor the occupier of the land to which the notice relates.

Independent Examination

19. Article 7 of the 1991 Order was amended in 2006 to provide for an independent examination to be carried out by the Commission to consider objections to a development plan. Previously Article 7 had provided for a public inquiry. This change has been carried forward into Sections 10 and 16 of the 2011 Act. A public examination enables the Commissioner to lead the questioning, whereas a public inquiry involves cross-examination and can therefore become unnecessarily dominated by lawyers and unduly protracted.

20. Article 123 of the 1991 Order and Section 231 of the 2011 Act empower the Department to cause a public local inquiry to be held for the purpose of the exercise of any of its planning functions. The Commission can be, and has been, called upon to carry out such inquiries. The provision is broad in scope and caters for a wide variety of contingencies. It seems to the Commission that there would be merit in broadening it further by providing the additional option of holding an independent examination. The Commission recommends that a new clause is inserted in the Bill to amend the 1991 Order and the 2011 Act to that effect.

Conclusion

21. I trust the Committee will find this response of assistance in its deliberations. I attach a one-page summary for ease of reference. If the Committee would like me to elaborate on particular points in the response or to comment on anything else, please let me know.

Yours faithfully

Elaine Kinghan
Chief Commissioner

The Planning Bill:

Summary of the Planning Appeals Commission's Views

The Planning Appeals Commission is an independent statutory tribunal which, among other things, determines appeals against planning decisions made by the Department of the Environment and conducts independent examinations, public inquiries and hearings into matters referred to it by the Department.

The Commission recommends that consideration is given to adding a new paragraph to Clause 4 to delete the requirement to advertise planning appeals.

The Commission recommends that Clause 10 is omitted from the Bill because it does not believe that persons appointed by the Departmental to conduct public inquiries and hearings in relation to major planning applications would be generally accepted as being independent of the Department.

The Commission foresees significant difficulty in interpreting and applying the provisions of Clause 12, which seeks to restrict the matters which may be raised at an appeal unless they are material considerations.

The Commission welcomes Clause 21, which would empower it to award costs in circumstances where the unreasonable behaviour of one party has left another out of pocket.

The Commission recommends that a new clause is inserted in the Bill to broaden the grounds on which an appeal may be brought against a submission notice.

The Commission recommends that a new clause is inserted in the Bill to give the Department the option to cause an independent examination to be held rather than a public inquiry.

Professor Greg Lloyd

Professor MG Lloyd
School of the Built Environment
University of Ulster

March 2013

Introduction

Context is, as ever, all important. There is a wider canvas to the Northern Ireland case and it is important to be cognisant of this. Ideas flow across territories and this has proven to be (and continues as such) important in the context of land use planning. Devolution in the UK has resulted in a number of divergences in public policy, and institutional and organisational practices across England, Wales, Scotland and Northern Ireland. Reform and modernisation of the statutory land use planning system is a case in point.

Each devolved state has (and continues to be) engaged in a process of modernisation and change in its land use planning arrangements with a view of meeting specific challenges, opportunities and circumstances. The differences in approach between the devolved administrations are becoming more marked – and have continued to evolve through recent times. The variations offer telling insights into how land use planning is perceived in the processes of government/ governance and policy implementation. At one end of the ideological spectrum, England, for example, has gone further in articulating a market infused approach - streamlining local planning arrangements and creating what is in effect a non-strategic approach by devolving planning responsibilities to local communities. The national press documents the sensitive issues involved in this step in England and raise clear concerns about the changes in local planning. In contrast, and (possibly) at the other end of the ideological spectrum, Scotland and Wales have both promoted relatively stronger strategic and hierarchical planning frameworks to guide planning decision making at local levels and to encourage greater certainty and consistency in land and property development.

It is important to reflect on the political and ideological drivers to the varied iterations of land use planning arrangements. In England there is a relatively stronger articulation of neo-liberal ideas – casting the state/ government intervention as a problem in the modern market economy. Moves to streamline, minimise or remove state interventions such as conventional land use planning controls reflect this. What such an extreme position misses is the positive role of planning in modern economic decision making – creating stability and certainty for decision making. Moreover, strong planning protects private property rights and investments – yet this is overlooked in the rush to assert the power of the market .In Scotland and Wales, whilst there is a strong assertion of business values there remains a relatively strong vestige of social democracy which views the planning system as a core element of government as a delivery mechanism for policy, expenditure and decision making. This reveals an acknowledgement that land use planning plays a pivotal part in promoting development, protecting community well-being and ensuring sound environmental heritage and values. There are different emphases evident between the different states but there would appear to be a more realistic understanding of the nature and needs of modern economies. This point is important for deliberations in Northern Ireland.

Viewing the land use planning system in these contexts raises important questions for the type of land use planning intended for Northern Ireland. What is the real underlying ideology of governance in Northern Ireland? This is essential to understanding the spirit and purpose of the Planning Bill 2012. It is important that the deliberations around the Planning Bill 2012 include this wider conversation about economic values and metrics – as it determines the drivers of the statutory land use planning system.

Planning reform in Northern Ireland

Planning reform and modernisation in Northern Ireland has lagged behind developments elsewhere in the devolved UK – reflecting the very specific political circumstances prevailing in Northern Ireland. This refers in particular to the nature of central-local relations in planning decision making, the administrative fragmentation with respect to planning (which spans a number of government departments), the specific strategic separation between regional planning and land use planning (and regeneration and land use planning), and the very real disconnect between local government and land use planning. Essentially for some considerable time, local government in Northern Ireland has not been engaged at the front line of planning decision making. This position is further complicated by the extensive range of other reforms and reviews taking place in the same political space.

Nonetheless, and notwithstanding this congested space, the Planning Act (Northern Ireland) 2011 represents a deliberate attempt to provide a more proportionate, measured and effective set of planning regulations in Northern Ireland. The legislation represents an attempt not simply to consolidate the legal provisions for the regulation of land use and development in Northern Ireland but represents a potentially much more transformative initiative. 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.

There is no doubt that 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 coastal erosion, coastal management, food security, and flooding. This is a point that needs to be ventilated widely across Northern Ireland – through the media and government led conversations. It requires a culture change of some magnitude – in effect civic formation. The purpose of this is to create a civil environment in which land use planning is given opportunities to reflect on the public interest and to work to the better quality of life in Northern Ireland.

The Planning Act (Northern Ireland) 2011 set 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.

It must be said, however, that there is a pressing case for action on these fronts. There is certainly a need for a new statutory planning framework; there is a need for a different approach to land use planning by all interests; there is a need for a fundamental culture change and understanding across all of Northern Ireland; there is a case to understand the necessity for planning enabling an effective and efficient society and balanced community; there is a need to recognise the Northern Ireland is not simply a group of 1.8 million private individuals but it is also a collective entity. In these circumstances land use planning is the sine qua non of a civilised, ordered community. Yet there remains a list of mammoth challenges to creating the community environment in which there is generic respect for land use planning and what it seeks to offer Northern Ireland. These points have been made elsewhere.

Moving on - the translation of the modernised land use planning system into action in Northern Ireland, however, is intimately bound up with the imminent Review of Public Administration whereby the proposed 11 new councils in Northern Ireland will replace

the existing 26 bodies and become the appropriate locus as planning authorities. In light of Northern Ireland's political history this will represent a considerable technocratic and democratic advance for governance in Northern Ireland.

The Review of Public Administration will potentially radically transform 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 and exercising its local perspectives on the public interest. The latter will require considerable attention – as land use planning is about the mediation of the use and development of space and place. It involves deliberate conversations in seeking to identify what is best for communities, neighbourhoods and localities. It is a highly contested and politicised process and one that needs to be dealt with appropriately.

Significantly, the step to enabling devolved administrative arrangements (and with a more balanced and holistic suite of local interventionist responsibilities) will bring Northern Ireland into line with the remainder of local government/ governance in the UK – and create new rights and responsibilities for local communities. There are major questions associated with this in terms of the required cultures, capacities and convictions to exercise deliberate action in the local community interest s. reconciling these whilst managing expectations and mediating to agreed positions will be a demanding task.

On top of that challenge, it is importance to acknowledge that land use planning is not the only responsibility being transferred – the agenda includes regeneration (and the different ways in which that is defined and interpreted) and the new (and untested) responsibilities around community planning. That is another big ask for the Review of Public Administration.

The timing of these changes has created an inter-regnum which has precipitated a number of (what may be described as) un-intended uncertainties to the overall process of modernisation. Effectively, the various elements of change across Northern Ireland, its constituent government departments, and the relationship with the different communities of interest, identity and place are completely out of synch. To address this, an interim measure - a Planning Reform Bill 2012 was introduced to the Northern Ireland Assembly on the 14th January 2013.

The primary objective of the 2012 Bill is to speed up the implementation of a number of reforms contained within the 2011 legislation. This is to be broadly welcomed – yet whilst, on the one hand, it is important that a planning framework is in place to expedite Northern Ireland's priorities, on the other hand, the case for a culture change and its acceptance by the community at large in Northern Ireland remains an imperative. The aims of the Bill and its 28 clauses include: to further sustainable development and enhance the environment; enable faster processing of planning applications and secure a faster and fairer planning appeals system; ensure enhanced community involvement; and provide for simpler and tougher enforcement. This articulates the intentions of the parent legislation – and these are to be welcomed – as articulated in evidence to the earlier scrutiny of the legislation.

Economic development and land use planning in Northern Ireland

Controversially, however, there is an additional provision in the 2012 Bill which seeks to strengthen the land use planning system in promoting economic development. Even with the checks and balances of due diligence in introducing this aspect to the land use planning framework in Northern Ireland this is potentially a contested aspect of the reforms being put into place for a number of reasons.

First, there are on-going debates about the role of land use planning in the economy. In part these reflect broad ideological arguments– but there remains disagreement about the purpose of land use planning in a modern economy. One line of reasoning sees it as inhibiting

economic activity and land and property development. Another sees it as a way of securing the optimal allocation of property rights – which drives economic activity. The latter view has broadly prevailed ever since the introduction of comprehensive land use planning in 1947 – it is predicated on the notion of market failure. Ideological changes to neo-liberal market values now point to government failure – the inefficiency and ineffectiveness of land use planning – and argue for the simplification even removal of planning controls.

Second, there are different understandings and interpretations of (macro-) economic development in current policy and political debates. On the one hand, there is the cyclical view that whilst the Northern Ireland economy is in the downturn it will recover and move into a growth trajectory. This viewpoint would suggest that the role of government in general, and specifically for activities such as land use planning, is to remove all obstacles from any grounds for recovery. This might be interpreted as advocating the primacy of economic development over other considerations, such as specific localities, social and community metrics and the environment. This would create schisms across various communities of interest, place and identity in Northern Ireland.

On the other hand, there is an alternative perspective – one that argues that the current recession is very different to any experienced before – evidenced in part by the observation that the present recovery period is the longest ever experienced by the UK – and which suggests that the future may be an economic environment characterised by low growth or even zero growth. Indeed there is a body of opinion that advocates planning and managing communities for deliberate de-growth – in other words managing a world in which resources are deliberately reduced. This viewpoint would suggest there is a case for very strong role for land use planning in ordering the use of land (food, biomass, energy) and its development (social and community agendas), the re-use of existing property, the provision of facilities and infrastructure over space in order to ensure the well-being of communities facing food and energy shortages, breakdowns in critical infrastructure and seeking to find alternatives ways of subsistence.

Third, there is the possibility of the capture of the economic regime by communities of interest – here there needs to be a solid culture of understanding as to the spirit and purpose of land use planning. The future well-being of Northern Ireland has to rest on a collective sense of the public interest. This is no easy ambition – and requires considerable resources of persuasion, negotiation, mediation and debate – which fall to the democratic underpinnings in Northern Ireland. Yet it is essential that any such possible capture be resisted – and here the due diligence for societal priorities offered by the land use planning system is all important.

Finally, there is the potential perception that the inclusion of economic development in the interim legislation pre-empts or over-rides environmental considerations. Here there is need for particular clarity – and there needs to be a full debate about the relationship between economic and environment. The tendency is to a reductionist perspective – to polarise and present the relationship as a trade-off. There is an alternative – the ecosystem approach which represents a paradigm shift in the management of the natural environment and those of its constituent resources that derive from the functioning of component ecosystems. This shift is based on premises which recognise that (1) sustainability of economic systems and quality of human life depend inevitably on healthy ecosystems, (2) humans are an integral rather than a separate part of ecosystems and (3) a sectoral approach to management is generally insufficient to deal with the complex interrelationships and diverse priorities of the real world. This presents a holistic set of ideas, values and assumptions about the natural environment, state-market-civil relations, institutional capacities and the appropriate forms of intervention necessary for enabling a rounded view of the value of the natural environment to society as whole.

The significance of the ecosystem approach rests on it establishing an alternative to more conventional approaches to the management of the natural environment. These tend to be

driven by a set of capitalist market values based on exploitation and development for material production of goods and services. The driving forces have been a focus on economic growth, profit and based on short term perspectives. In general, this has led to the over-exploitation of the natural environment, the exhaustion of its natural resources, and issues associated with pollution, climate change and waste. This conventional market exploitative approach to the management of the natural environment imposes wider social, community and territorial costs on society and, inevitably, longer term economic costs associated with unsustainable development. It results in an effective dysfunctional relationship between prices and values in the natural environment, and leads to dysfunctional state-market-civil relations as conflicts and tensions arise over the misuse of the natural environment, its ecosystem and associated assets. In contrast, then, the ecosystem approach is held to offer an alternative framework for achieving sustainable development and the utilisation of marine resources in ways that ensure that people and economic systems are integral parts of the solution as well as the sources of environmental challenges and vulnerabilities.

Consideration of the potential of the ecosystem approach to the natural environment and its assertion of the need to accommodate wider, more broadly-based and socially-constructed values and potentials in the marine context does not take place in a vacuum. It is important to acknowledge at the outset that any discussion about the nature of intervention involves a complex of state, market and civil interests. Here the context established by the market economy needs to be considered and the extension of market economic thinking and policy. Based on the pursuit of profit, the reliance on the pricing signals and values, and the assertion of private property rights and market economics form the intellectual, political and practical context to any discussions about the natural terrestrial and marine environments. In essence, a market economic context prescribes the social construction of the natural environment – it places specific values and invokes assumptions about its use, exploitation and management.

The rethinking of the fundamental values in society was addressed in the recent deliberations of the Foresight Group in the Government Office for Science (2010) which considered the future of the land resource in the UK. This was intended to produce an evidence base which would help government and other policy makers understand whether existing land use patterns, policies and practice were fit for the future. The project's findings recognise the importance of land as a key asset in society's collective well being. It argues that pervasive effects of changes in land use and its management underline the need to take the broadest possible perspective in developing future policies and strategies on land. The findings point out that under our market based regime, the value of land reflects the private interests involved and regulation and management arrangements nest within this paradigm.

The Foresight Group's report stresses the wider social and community value of land in the UK which reflects the real politik of land's 'multifunctionality'.[1] It argues that a critical pre-requisite is to identify how the various demands on land made by different sectors interact and to evaluate the consequences of those interactions; and the importance of taking a broad and overarching perspective across sectors and different levels of governance. Whilst the report suggests that progress has been made, it asserts that there remains more to do in securing a more coherent and consistent approach to guiding land use and management; that more sustainable and valued outcomes are delivered is a recurrent theme throughout this report. This is a lengthy and layered document. It examines the evidence of pressures and conflicts and provides points to the challenges to be addressed. An example is making the better use of the land across the UK for climate change mitigation and for supporting the transition to a low-carbon economy, as well as managing the impacts of changing climatic conditions. The report is keen to promote an understanding of the appropriate governance of land at different scales. This clearly positions land use planning at centre stage but also

1 Foresight Land Use Futures Project (2010) Final Project Report. The Government Office for Science, London. http://www.foresight.gov.uk/OurWork/ActiveProjects/LandUse/lufoutputs.asp

shows that it is but one element of that governance. The report offers a constructive critique of the existing governance system which it argues:

- involves decisions taken at different spatial scales that do not always reflect the scale at which impacts are felt, or reflect how natural systems operate as with water resource management;
- fails to properly account for the many external benefits and costs associated with land use with consequences for overall social welfare;
- combines market mechanisms and regulation in ways that can conflict, generating severe pressures in some sectors such as housing;
- is in some respects a legacy of historical priorities which may not reflect the value of the land in different uses, influenced by new and future aspirations and priorities;
- has different governance arrangements for urban and rural domains;
- faces growing pressures as population and demands for goods and services from land rise, and as climate change poses greater challenges relating to both adaptation and mitigation.

The report argues that there is a need for an overarching perspective to assert a strategic perspective on land use and development. More effective incentives are required with respect to the delivery of public goods and ecosystem services from land and have to be better aligned with policy objectives. The tensions between different parts and scales of the land use governance system also need to be addressed.

It follows then that discussions around the inclusion of economic development considerations in the interim planning legislation must not fail to respect the preconditions required for an appropriate economic development dimension to planning. Metrics and values are changing and Northern Ireland cannot turn away from these wider pivotal considerations.

Conclusions

By way of conclusion, the interim Bill is an appropriate response to the delay created by the lax progress of local government reform. There is an unquestionable need for an appropriate engagement across Northern Ireland for a culture change with respect to land use planning. This must involve informed conversations about the spirit and purpose of land use planning in a modern Northern Ireland. The politics of resistance to innovation and change in local planning and governance must stop – and Northern Ireland move to a more informed position about the appropriate relations between economic and land use planning.

QPANI

QPA Northern Ireland
Providing Essential Materials

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13th March 2013

Dear Committee Chair

QPA Northern Ireland welcomes the opportunity to comment on the Committee Stage of the Planning Bill.

Introduction

The QPANI is the principal trade association for the quarrying and quarry products industry in Northern Ireland affiliated to the Minerals Products Association (MPA) in the UK. Members of the QPANI produce over 90% of the Northern Ireland's primary aggregates, as well as the major proportion of other construction materials such as asphalt, ready mixed concrete, recycled and secondary aggregates, lime and silica sand. The quarrying industry and its related activities are regulated under the provisions of both European Directives and National Regulations for the protection of the environment and human health. Some of our members operations would be covered by the Environmental Liability Directives for Annex III activities, whilst others would not.

We acknowledge our Industry 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.

Comments on the Bill

It is vital that Northern Ireland has a planning system that is fit for purpose ensuring that indigenous businesses has the ability to grow as well as sending a clear message to prospective foreign direct investors that Northern Ireland is open for business.

We welcome the fact that recent months have seen an improvement in the speed of processing of planning applications. However the Executive and relevant Ministers must ensure that no obstacles are put in the way of the planned local council reform which will see the majority of planning power functions handed to them as well as the Programme for Government target of ensuring 90% of large scale investment planning decisions are made within six months by 2015 and applications with job creation potential and shovel ready infrastructure projects are given additional priority.

In summary we welcome the main points of the Bill;

- Measures to strengthen the planning system in promoting economic development;
- Measures to further sustainable development and enhance the environment;
- Faster processing of planning applications;
- Faster and fairer planning appeals system;
- Enhanced community involvement; and
- Simpler and tougher enforcement.

More specific comments are,

Clauses 1 and 5: "Pre Application community consultation"

While we accept the need for community involvement in the development of most major planning applications as this is best practice, we do have some concern that applicants will now have to give twelve weeks notice of an application before submitting. On balance however we do believe that, given the separate clauses of the Bill that address the promotion of economic development, this is an acceptable clause when viewed in the context of others.

Clause 6 "Determination of planning applications"

Supports the economic advantage (or disadvantage) of an application. This is a positive step. It would be useful if the Department produced guidance on this, especially for their own Officers to follow.

Clause 9 "Aftercare conditions for ecological purposes on grant of mineral planning permission"

Support "(iv) use for ecological purposes" – this was the wording that QPANI & RSPB lobbied Government to include and it is very positive to see it brought forward in this Bill.

Clause 13 "Power to make non-material changes to 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 prior to the determination. This system is operation in England and Wales. This practice is beneficial to the Industry and the Department 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."

Clause 16 "Increase in penalties"

QPANI support this and believe that the increase in penalties should act as a deterrent.

Clause 23 "Duty to respond to consultation"

QPANI fully support this and view it as a crucial element of the Bill but yet it does not specify a time period. We strongly support a response time limit of 21 days, with one opportunity to respond. Any extensions to the timeframe should be agreed with the applicant. At the Planning Reform Meetings that Minster Attwood chaired with business representatives, this was always emphasised as a key to having an effective planning system and the 21 days was constantly given as a reasonable timeframe for all statutory consultees to provide a full response. QPANI members have long held frustrations with the position of the statutory consultees vis-a-vis the perceived holding up of economic development and the introduction of an expected 21-day deadline, unless otherwise agreed with the Department, is an important step forward.

Clause 24 "Fees and Charges"

QPANI support this. This is bringing in the multiple of a fee or charge to retrospective planning applications, and on account of illegal quarries/pits opening/extensions in the past QPANI sought for this to act as a deterrent. We would welcome clear clarification of what the department mean by "multiple".

QPANI have been lobbying for many years for the extension of recognised Permitted Development rights for our sector, similar to those to those PD rights enjoyed by the quarrying industry in the rest of the UK. We would ask that Committee to raise the matter of Permitted Development Rights for the Mineral

Industry as a matter of urgency as we are growing increasingly frustrated by the speed of progress on this matter in our discussions with Planning Service.

Conclusions

QPANI welcome the opportunity to comment on the Bill and trust that you find the above comments both useful and informative.

Gordon Best
Regional Director QPANI

Yours sincerely,

Gordon Best
QPANI Regional Director

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Queen's University Belfast - Planning for Spatial Recognition

Frank Gaffikin / Ken Sterrett

Planning for Spatial Reconciliation – Queen's University Belfast

Following three decades of experience and expertise at different levels of the planning system – involving local regeneration projects; comprehensive development schemes; area and sub-regional plans, and the Regional Strategy – we would identify a set of problems with the existing planning model that impacts negatively on peace-building, including:

1. its tendency in the past to 'airbrush' out the relevance of division and segregation to the planning process;

2. its limited inclination to recognize openly the difference among ethnic, neutral, shared, and cosmopolitan spaces in a conflict-ridden society;

3. its limited capacity to challenge the 'diseconomies of conflict' that often sees the duplication of services and amenities within each sectarian bloc;

4. its concentration on 'land use planning' – a concern about where to zone particular development activity, and focus largely on the physical aspects of infrastructure and development;

5. its limited ability to nest local neighbourhood planning and regeneration strategies within the statutory and strategic planning framework to afford such local effort the appropriate authority;

6. the potential for major sectarian blocs to use planning to carve up 'spheres of influence', and thereby inhibit the evolution of a more integrated and shared society; and

7. the difficulty encountered in achieving inclusive and participatory forms of plan-making that embrace diverse voices that transcend barriers of gender, age, ethnicity, and disability.

With its partnership between Queen's University's Institute of Spatial and Environmental Planning and the Planning Service's Planning Policy Unit, the project Planning for Spatial Reconciliation works in partnership with all stakeholders to help:

(a) develop the institutional capacities to re-think and reorganize planning to make it fit for purpose in building a more inclusive, equitable, sustainable and peaceful society.

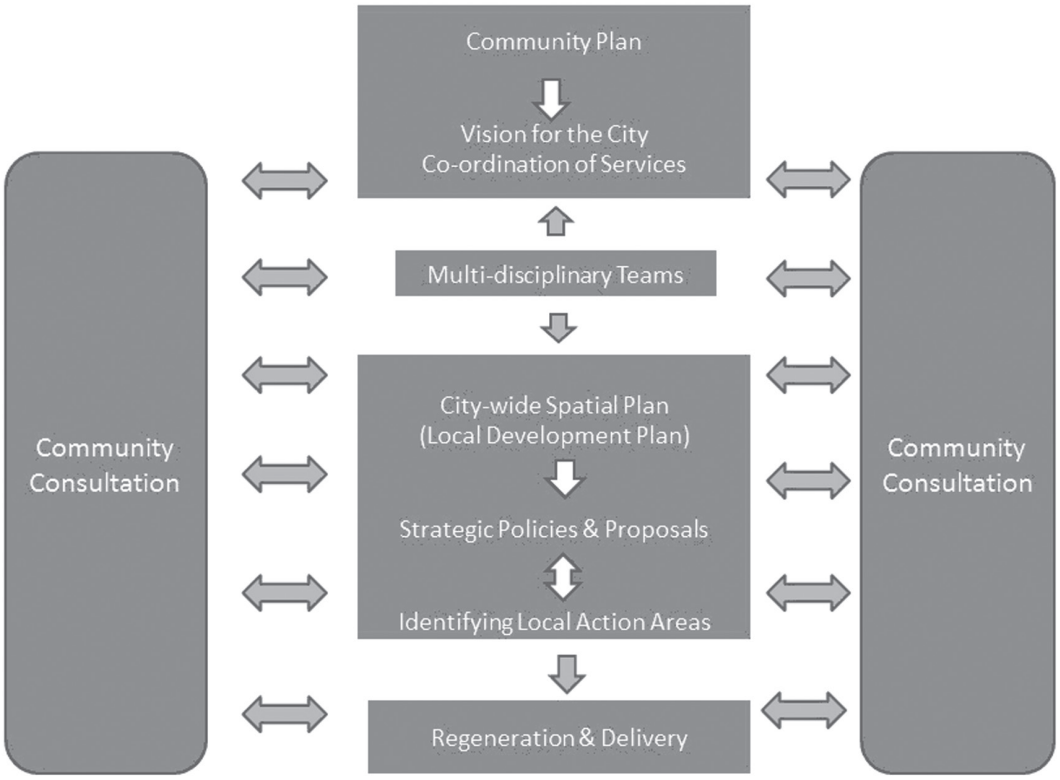
(b) specifically, help to make the building of a shared society a central feature of the new community planning and spatial planning; and

(c) promote the linkage between local neighbourhood planning, particularly in the most isolated and disadvantaged communities, and the broader planning process, since a sustainable peace depends on the connection of such areas into the wider society.

Through the introduction of **community planning** and **spatial planning**, there is the prospect of an innovative approach that gets beyond 'land use planning' to a more comprehensive and holistic model, linking the physical with the social, economic, environmental and cultural aspects of development. Importantly, this new planning approach offers the prospect of seeing more clearly the spatial needs and impact of all other policy sectors, such as health, education, and social services.

The new planning model at local government level offers the potential to take forward a more integrated form of planning. In contrast to the traditional land-use approach which focuses largely on zoning, the new spatial planning model is about creating place. In other words, it starts by asking what sort of place we want to create and then goes on to develop policies and proposals to make that happen. Importantly, this requires a more comprehensive approach that includes those aspects of public policy and practice that have traditionally been developed quite separately. For example, key spatial aspects of education and health are not integrated into mainstream planning at present. More than this, new areas of public policy in Northern Ireland such as 'good relations', are deemed to be beyond the remit of contemporary development planning. The new model of planning offers an opportunity not only to connect spatial planning to community planning and regeneration but also to factor in key aspects of other policy areas into local government place making and service delivery.

By way of illustration for Belfast, the Diagram below, illustrates the structure of a possible process. The top box centres on the City's Community Plan. This new activity provides the Council with an opportunity to set out a long term vision for the city and to put in place arrangements for a more co-ordinated delivery of services. And all of this needs to be shaped by multi-disciplinary teams working with a comprehensive community consultation process. However, for the first time in recent history, this new facility will allow the Council to take responsibility for shaping the future of the city as well as co-ordinating and indeed integrating the delivery of services.



Ideally, the Spatial Plan for the city can and should be developed alongside the Community Plan. In the past, land-use plans for the city such as the Belfast Urban Area Plan and currently the Belfast Metropolitan Area Plan, have focused on setting out policies for retailing, offices and so on as well as identifying and zoning sites for development. The new spatial planning that the legislation facilitates encourages a different approach. Firstly, it requires a strong link to the City's Community Plan, particularly its vision. Secondly and relatedly, it asks what aspects of the Community Plan should be expressed in the Spatial Plan. This is particularly important because the Spatial Plan for the city will have statutory status. However, while both the Community Plan and the Spatial Plan need to set out broad strategic aims for the city, they should also identify areas of the city that require local action plans. Again too, good

practice from elsewhere would suggest that the City's strategic policy aims should relate strongly to local actions. Similarly, a strategic, 'good relations' policy aim to create safe, welcoming and neutral environments would also be captured in local action plans.

We think that the current changes to the planning system that are proposed by the NI Assembly's Planning Bill do not take the considerations described above into account sufficiently. We would be happy to engage with the committee's members on their suggested changes and make use of the opportunities provided to contribute to the decision making process.

Yours sincerely,

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Northern Ireland Assembly Committee for the Environment,
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11th March 2013

Dear Ms. Lo,

Northern Ireland Planning Bill 2013

Thank you very much for the opportunity to respond to the 2013 Northern Ireland Planning Bill. We are a group of planning academics based in the School of Planning, Architecture and Civil Engineering at Queen's University, the leading centre for planning research and education in Northern Ireland and we feel compelled to express our view on a number of provisions currently proposed in the Bill.

We recognize that main purposes of the Bill are to further legislatively prepare the planning system for a transfer of major planning responsibilities to local authorities in 2015 and to continue the trajectory of planning reform. In this context, many of its provisions are sensible and reflect legislative developments in other parts of the UK. However, the Bill also contains four exceptionally weak clauses that need to be removed from the Bill, for reasons explained below. These clauses are:

- **Clause 2: Amendment of the general functions of the Department of the Environment and the Planning Appeals Commission**, to include "promoting economic development" in addition to the existing duties of "furthering sustainable development" and "promoting or improving well-being";
- **Clause 6: Amending the issues to be taken into account (i.e. the "material considerations") when determining planning applications** by ensuring that this should now include the "economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission".
- **Clause 10: Public inquiries: major planning applications** allows the appointment of people other than the Planning Appeals Commission (PAC) to oversee planning inquiries.
- **Clause 20: Fixed Penalties,** allowing the Department of the Environment to issue a fixed penalty notice for the offences of failing to comply with an enforcement action.

The last two clauses are inappropriate because they threaten to further weaken the credibility of the Northern Ireland planning system, which has already been seen to be very low amongst the public[1].

Clause 10 is simply not needed – the independence, and the perception of independence, of those overseeing public inquiries plays a paramount role in maintaining the credibility of the planning system and any direct appointments by the DoE would inevitably cast doubt on this, given that the PAC has been established for precisely this role. Indeed, this clause is not required – a simple solution would be to facilitate the PAC to appoint temporary Commissioners if they did not have the in house capacity to oversee an inquiry at any particular time.

[1] http://www.foe.co.uk/resource/reports/public_and_stakeholder_opi.pdf

Clause 20 also threatens to undermine credibility by limiting the opportunities for enforcement action, already seen as a weak part of the Northern Ireland planning system. While on the one hand Fixed Penalty Notice promises to allow swift action against those who fail to comply with enforcement, the Bill also suggests that they then be immune from any further prosecution once a fine has been paid. The danger with this provision is that it could be used as a shelter from prosecution by those guilty of abusing the planning system. While a Fixed Penalty Notice may be a useful initiative, this should not be accompanied by immunity from prosecution.

However, it is the first two clauses mentioned above (Clauses 2 and 6) which are the most dangerous and inadequately constructed parts of the Bill. These potentially introduce very fundamental changes to the Northern Ireland planning system.

The dominant aim of planning reform in Northern Ireland has been to streamline and speed up the process for making planning decisions. Members of the Northern Ireland Executive also regularly state that they wish to see the planning system to do more to assist economic recovery. Although there appears to be a number of major misconceptions of how the planning system relates to economic growth (which will not be discussed here), if we assume that these clauses have been introduced with the aim of supporting such objectives, it is against these that they should be evaluated. However, these new clauses are actually *counter*productive to such objectives and have the potential to build in a number of very significant problems for the Northern Ireland planning system, including many enhanced, yet unnecessary, opportunities for legal challenge.

There are at least ten reasons why these clauses are unworkable:

1. The Bill **undermines the key principle of planning that it should only consider issues related to the use and development of land**[2]. Clause 6 seeks to expand the issues that planners need to take into account and as consequence, the Northern Ireland planning system will no longer be able to rely on the stability of 40 years of case law that have determined the boundaries of planning considerations. As a result of this, the materiality of certain issues will have to be redefined through a series of legal challenges to establish case law. This is likely to introduce a great deal of instability and delay into the Northern Ireland planning system – we infer that this is not the intent of the Department and its legislators.

2. Clause 6 appears to be **attempting to use the planning system for a purpose for which it is not legally designed to do**. Because planning is strictly about the use and development of land, to try and use it for a purpose that is not strictly related to this – such as reviving the broader regional economy, could be judged as being ultra vires[3] and of course, will provide additional opportunities for challenges in the courts.

3. The Bill also appears to introduce the potentially **dangerous precedent of having to routinely consider personal circumstances when deciding planning decisions**. This also arises from Clause 6 which suggests that economic dis/advantages need to be taken into account. An economic advantage cannot belong to a piece of land and must belong to a real person or organisation as only they can realise the fruits of an advantage (or suffer the consequences of a disadvantage). Indeed any economic dis/advantage will vary according to whom it belongs – something that may be inconsequential to a multi-national could be a critical economic advantage to a small local firm, thus raising the necessity of considering the personal circumstances of the applicant or owner when deciding a planning application. This is again unprecedented and could also prove to be a fertile area for legal challenge.

4. A further consequence of this is it that **it provides opportunities for objections on "non-planning" grounds**. Clause 6 broadens the issues that planners have to take into account when deciding planning applications and this will be open to exploitation from both applicants *and* objectors. In particular Clause 6 notes that the planners should take into account economic *dis*advantage as a result of a planning decision – suggesting that any person who thinks they

[2]For example, Stringer -v- Minister of Housing and Local Government [1971] 1 All ER 65; Westminster City Council -v- Great Portland Estates plc [1985] AC 6610

[3] Lord Denning established a long standing principle that the planning system could not be used for what he described as "ulterior objects" in an ulterior object, Pyx Granite C. Ltd. v. Minister of Housing and. Local Government [1958] 1 Q.B. 554, 572

may be disadvantaged as a result of a decision, for example a developer of a competing scheme, an existing business that may be threatened by a proposed activity (such as retail or manufacturing) and even someone suffering a loss of property value, may find some currently unavailable traction in making a valid objection to a planning application.

5. At present planners have additional flexibility to award planning permission because they can secure safeguards for the public interest through imposing planning conditions on a prospective development - these must be related to the use and development of land. As explained above, Clause 6 suggests that planners should now take economic dis/advantages into account – yet for the reasons explained above, this may well include issues that **cannot be enforced through the planning system.** For example, if it is claimed that a development will result in 100 jobs, this could become a key criteria for awarding planning permission. However, there is no legal mechanism to ensure the claimed benefits actually occur as such issues cannot be secured through planning conditions because they lie beyond the scope of the planning system. The consequence of this is that developers are likely to exaggerate economic development impacts, knowing they cannot be held to account on their claims. This provides a very shaky basis for land use regulation.

6. The Bill **introduces a circular argument that undermines effective regulation.** Any planning approval inevitably results in an 'unearned' increase to the value of a property. If a planner has to consider the economic dis/advantages of refusing or awarding planning permission, this will always result in an argument *for* planning permission as otherwise the increase in property value would be lost. This may even be the case if the development would be judged otherwise unsuitable on normal planning grounds. This could therefore create *a fait accompli* for approving planning applications, thus fundamentally eroding the basis of effective planning regulation and actually challenging the very reasons for having a planning system.

7. This legislation introduces the **ambiguity over the concept of economic development** into the consideration of planning applications. It does not define what it means by economic development and indeed, there is no single definition that is accepted by economists, thus reducing the clarity of the existing planning legislation. Economic development is generally *not* considered to be as simple as promoting growth through job creation, as it implies a longer term perspective which would therefore have to take into account issues such as job displacement, impact on the balance of payments, multiplier effects and the evaluation of alternative development options. It also implies that indirect impacts on economic development need to be considered, such as the potential cost to public services, health impacts or the economic consequences of traditional planning considerations, such as local increases in traffic congestion. This clause will need extensive and detailed guidance to become operable.

8. Following from the above, the Bill will **increase the paperwork** for planning applicants and the bureaucracy of making decisions. Far from streamlining the planning process, in adding economic advantage/disadvantage as a material consideration (Clause 6), it will require planning applicants to provide additional information in order to be able to determine a planning application. This will also require further training and guidance for planners and potentially the employment of specialist economists in the Department of the Environment. It is not clear what sort of economic assessment will be required, although across Government the most commonly accepted is a *Green Book Assessment*[4] and it is difficult to see how anything less than this could provide the complete picture of the economic impact of a development. The Green Book covers issues such as competition impacts, distributional impacts, small firm impacts, additionally, consequences for labour supply and how to adjust for risk and optimism bias. A full economic assessment also requires the evaluation of non-market impacts such as those arising from pollution or any time-savings arising from infrastructure investment or improvements in accessibility. A *Green Book Assessment* is a sophisticated process requiring expert input and potentially original research for every development – this clearly is not in the spirit of other measures taken to speed up the planning system;

9. The Bill introduces a **lack of clarity in the role of the DoE and PAC.** Under the existing 2011 Act these planning authorities have the duty to deliver their planning responsibilities in order to promote sustainable development and well-being. The concept of sustainable development aims to secure a long-term balance between social, environment and economic issues. The fact that economic development becomes *an additional and separate* consideration means that planners

[4] http://www.hm-treasury.gov.uk/data_greenbook_index.htm

will have to, first balance economic considerations as part of their duty to deliver sustainable development, *and then* balance sustainable development with economic development. This appears to be an absurd and overly complex reasoning, providing unnecessary complexity to land use regulation.

10. Finally, the Bill does not appear fix any current problem with the planning system, but introduces many more difficulties. At present, planning approval rates in Northern Ireland are the highest in the UK and there is no robust evidence that planning regulation itself is a barrier to economic development. These clauses appear to **offer a solution to a problem that actually does not exist**, while at the same time introducing many opportunities for snarling the planning system into an extended process of legal challenges and instability. These factors more than anything will deter potential investment.

This discussion not only highlights the many legal and procedural problems that may be encountered should this legislation be enacted, but it also highlights the **fundamental nature of the proposed changes**. It is therefore surprising to see that the Department has not highlighted the significance of such changes – for example it does not propose the normal process of public consultation that would be expected to accompany changes with such far reaching implications. **No Equality Impact Assessment** undertaken on these provisions and perhaps most remarkably given the comments above, **the Bill's "Partial Regulatory Assessment "overlooks the costs of the new provisions**. These could potentially include:

- Training of planning officers in how to evaluate economic development;
- Costs of changing planning application forms to include the required information;
- Costs to developers of including additional information with their planning applications to address the new definition of material considerations, particularly if the economic development criteria is to be based on a Green Book assessment which includes 118 pages of guidance, plus another 14 documents of supplementary guidance[5] amounting to a substantial increase in regulatory guidance to be included in a planning application;
- Potential employment of economists by the Department of the Environment;
- As noted above, because these clauses change some of the fundamental principles underlying the determination of planning applications and introduce a range of ambiguities into planning regulation, it is highly likely that its interpretation will be tested in the courts. This will inevitability lead to a range of costs, including delay to any planning decision subject to challenge and legal costs incurred by the Department.

Clauses 2 and 6 therefore raise a range of deeply significant issues for the Northern Ireland planning system, introducing substantial ambiguities, providing the potential for delay and unintended opportunities for legal challenge and an increase in the bureaucracy associated with planning control. These are clearly not the reasons for why the Planning Bill has been introduced. If we wish to reform the NI planning system into one which is effective, democratic and efficient, these proposals should be reconsidered and more time taken to assess what the planning system really needs. Inappropriate decisions hastily made now will potentially result in years of litigation and pressure on the public purse that every player in the planning and development arena can do without.

Yours sincerely,

Dr. Phil Boland
Prof. Geraint Ellis
Dr. Wesley Flannery
Prof. Frank Gaffikin
Prof. Malachy McEldowney
Dr. Brendan Murtagh
Dr. Ken Sterrett

All queries to Prof. Ellis: Tel 028 90274370, g.ellis@qub.ac.uk

[5] http://www.hm-treasury.gov.uk/data_greenbook_supguidance.htm

Queen's University Belfast

Specific responses to clauses 6 and 17 are set out below, but in summary:

The University, as a major investor in the local economy and one of the largest owners of listed buildings in Northern Ireland, believes that an efficient and effective planning system is critical to the development and economic growth of Northern Ireland. However, the amendments to clauses 6 and 17 introduce a level of additional requirement or ambiguity, which has the potential to cause further delays in the statutory planning process - rather than improve its efficiency and effectiveness as set out in the Explanatory and Financial Memorandum. This, in turn, may impede the delivery of development and the growth of a sustainable local economy.

Clause 6: Determination of Planning Applications

Clause 6 makes the assessment of the economic advantages or disadvantages explicit within the process. While this is not in itself unreasonable, it is not clear why it is necessary. The principle of sustainable development is already at the heart of the planning process and this includes consideration of the social, economic, environmental and physical aspects of any proposal.

While it is appropriate to give economic benefits a high profile, there is concern as to how this will be measured and assessed. Clearly, the University can make the case that higher education, through innovation and knowledge exchange to the wider society, is vitally important for economic development and growth. It generates employment and output, not just in its own sector but in other sectors of the economy through secondary or 'knock-on' multiplier effects, it attracts export earnings and it contributes to the gross domestic product (GDP). Universities UK (UUK) estimates that for every 100 full-time jobs within a university, more than 100 other full-time equivalent jobs are generated through knock-on effects; and that for every £1m of university output, a further £1.38m is generated across the wider economy.

However, the University's overall major development strategy is based on an integrated programme of works, some of which require planning approval. It is not clear what sort of economic assessment will be required under clause 6 when submitting applications for individual projects that sit within the integrated programme. The University's development strategy will be critical in helping to support the Programme for Government and in growing a sustainable local economy.

Clause 17: Conservation Areas

Essentially, this clause represents a change from the current no harm (preserve or enhance) test in Conservation Areas to one of enhancing the character of the area in cases where an opportunity to do so arises. Investment in, and development of, the built environment are essential to the economic health of Northern Ireland. While planning controls within specific areas (including Conservation Areas) are essential, unnecessarily stringent constraints on investment and development creates the risk that the areas will stagnate and the planning policy will have a negative rather than a positive impact.

This is a matter of achieving an appropriate balance between preservation and development and it is considered that current legislation and the associated documentation relating to the specific Conservation Areas (e.g. the updated Design Guide for the Malone Conservation Area published in December 2011) already provide a sufficiently high standard of control to allow Planning Service to make appropriate determinations in individual cases.

The proposed change is clearly an increase in the standard, but how 'enhancement' is assessed is obviously critical. It is highly subjective, and the Bill provides no definition or guidance in relation to this. There is, therefore, a risk that increasing subjectivity in the

process will introduce greater uncertainty, widen the scope for objection, and increase the potential for delay to the process and the prospect of litigation. This could significantly impact on plans for investment in and development of Conservation Areas.

The University's views on this clause are not insular and self-interested, but rather reflect its position as a key, and permanent, stakeholder in the south Belfast area. Queen's is embedded in the city, is home to more than 23,000 students and 3,500 staff and is fast gaining a global reputation, with more than 70 countries represented within the student community. In the era of the knowledge-based economy, the University is playing an increasingly important role in economic development and its research is pivotal in underpinning Northern Ireland's industrial base and in supporting the Programme for Government.

A major element in this success has been the transformation of the campus since 2001, involving a major capital investment programme of over £350m. The challenge for the University is that much of its estate (250 buildings, of which 97 are listed as being of architectural merit) sits within three adjacent Conservation Areas. If Queen's is to continue its pivotal role in the local economy - and the total target capital investment in the estate for the period 2012-22 is a further £335m - it will be necessary to sensitively redevelop areas of the campus including substantial works within Conservation Areas.

The University is proud of its heritage and its historic estate - indeed the quality of our estate, and the built environment and public realm that bounds it, is a major part of the exceptional student experience that Queen's offers.

The University believes that clause 17 unnecessarily introduces a level of ambiguity into the statutory planning process, and this has the potential to cause further delays, rather than improve its efficiency and effectiveness. This, in turn, may hamper delivery of developments and the growth of a sustainable economy.

Our preference is for no change in the current legislation as it pertains to Conservation Areas or, if the clause is to remain, it is critical that the term "enhancing" should be very clearly defined.

Richard Ireson

To whom it may concern

I would like to make the following response to the consultation re the above Bill. In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law. My principal reasons for opposing the Bill are:

1. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

2. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists.

3. The planning system would be overburdened and slowed with appeals by developers, making it effectively unworkable.

4. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people.

5. There would be no way of monitoring compliance with the economic conditions of planning approval.

6. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit.

7. It is inappropriate to introduce such devastating change to the planning system in this manner and a full public consultation should be carried out.

In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

Regards

Richrd Ireson

Richard Rowe

Dear Sir/Madam,

I would like to take this opportunity to add my support to the response provided by Friends Of the Earth regarding the NI Planning Bill 2013 at a time when we should be doing all we can to protect and preserve our environment for the present and future generations this Bill will further widen the opportunities for those looking to seek personal gain at the expense of our environment. I urge the minister to ensure this proposal is not accepted.

Regards

Richard Rowe

Robert Graham

Submission to the Committee for the Environment
The Planning Bill

Dear members of the Committee,

I note that the Bill proposes to include as issues to be taken into account the "economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission".

It is not clear whose economic advantage/disadvantage this is talking about. Often one person's gain is another's loss, for example when a development could significantly depreciate the value of a neighbour's property. Other examples are redundancy of people or resources elsewhere, cost to the taxpayer of subsidies etc. In some instances at the macro level the advantages/disadvantages may tend to cancel out, but at the micro level the effect on different individuals can be devastating (examples available on request).

Thus where economic , or indeed social/amenity, advantages or disadvantages are to be weighed in the planning process, the magnitude of the impact on each and every party involved relative to their individual personal circumstances must be properly taken into account.

It follows also that any economic appraisal of a proposed development needs to consider properly the fundamental economics of the scheme, and also the broad impacts on all parties.

Sadly, commendable though the aims may be, I think the proposal is impractical and opens the door to woolly decision making and to exploitation by the "deep pockets".

Yours sincerely,

Robert Graham
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BT92 5GY

Rosana Trainor

Stoneleigh,
9 Rugby Street,
Belfast
BT7 1PX 12

March , 2013

For the attention of the Committee of the Environment.

I am a long term resident of the Ruby Road and Holyland area and I wish to add my name in support of the objections laid out below by the Belfast Holyland Regeneration Association.

Yours faithfully,

Rosana Trainor

The Belfast Holyland Regeneration Association represents the views of long term residents in the Holyland area of South Belfast. We work in partnership with a range of Agencies, including Belfast City Council, Planners and Universities, to identify suitable measures to help regenerate the area. We are committed, in doing so, to following all relevant statutory planning, consultation and approval processes.

We object to the proposed Planning Bill on the following grounds.

Clause 1 Statement of Community Involvement

We object that the Clause allows Planners to continue to determine policy on community involvement. It therefore fails to resolve the current weaknesses whereby neighbour notification is voluntary and Councils are consulted but do not have statutory authority to represent the public interest.

Elected representatives – not Planners – should be the arbiters of what is in the public interest. Planners have much too narrow a remit to determine what is 'in the overall public interest': their chosen term to repel objectors.

In our experience, Planners have consulted only neighbours nominated by developers on planning applications: and have arbitrarily rejected Council views on planning approvals without explanation, justification or accountability.

Any new regime must not allow Planners to determine their own policy on community involvement or to overrule Council on what is or is not in the public interest. They will only repeat the sins of the past.

In order to secure an appropriate level of community involvement, Clause 1 must:

- Make neighbour notifications of planning proposals a statutory requirement.
- Give Councils statutory authority to determine what is in the public interest
- Require Planners to obtain Council agreement on planning decisions.

Clause 2 General Functions of the Department and Commission

We object that Clause 2 allows Planners / Commissioners to set down policies on economic development (subject to taking account of policies and guidance issued by DoE, DRD and

OFMDFM). We further object to allowing Planners / Commissioners to decide on matters to include as appearing to be relevant.

Planners and Commissioners are not qualified to develop or follow sound economic development policies. They operate within a limited framework of policies. They do not consider external policies - (e.g.) housing, health, education, community sustainability, regeneration, public services, public order or economic development. They do not regard these policies as 'material considerations' in making planning decisions: even though negative impacts can extend far beyond the Planning context.

In our experience, Planners persisted in approving applications to convert family dwellings to houses in multiple occupation in the Holyland and other areas of South Belfast. This was despite strong representations from Communities, Council and PSNI on the consequences. The additional annual cost to the 'public purse', in the Holyland alone, is now £3m (Browne Report, Belfast City Council, 2012). The amount covers extra day to day public services such as cleansing, wardening and policing following material demographic changes to the area. It does not cover costs of mass migration from an inner city area to outlying areas, or the consequent costs of (e.g.) parking and transport strategies to cater for people moving to outlying areas but still working in the city centre. Planners / Commissioners felt they were correct to continue to approve applications in the absence of appropriate planning policies, as the consequential impact on other public services was not recognised as a 'material consideration' under Planning Policy (the 'lemming policy').

That Clause 1 extends the range of policies to be taken into account in planning decisions (to DoE, DRD and OFMDFM), is still, in our view, far too restrictive: and remains a recipe for dysfunctionality. Planning decisions have repercussions across all Departments.

We have no confidence that Planners / Commissioners have the will or skill to embrace the extended range of policies specified in Clause 1: never mind the range of policies impacted by planning decisions.. We believe they will simply avoid addressing issues by excluding challenging matters on the grounds that they do not appear relevant.

In order to ensure Planning decisions comply with wider government policies, including economic development, Clause 2 must:

- Extend the definition of 'material considerations', in PPS1, to cover considerations which are outside the scope of Planning Policy but which are within the scope of wider government policy
- Define economic development and specify the scope of Planners / Commissioners authority and any limitations thereon.
- Introduce a procedure to ensure Planners and Commissioners assess planning applications against a checklist / matrix of government policies and policy owners
- Introduce a statutory requirement to consult with and follow policy owners' advice
- Require proportionate economic appraisals for planning applications, certified (say, by DFP) as being Green-Book compliant
- Introduce a statutory responsibility (say, on OFMDFM) to convene policy-owner forums to address cross-cutting issues.
- Make good design mandatory rather than 'desirable' as expressed in Clause 1.

Clause 3 Meaning of Development

We object that Clause 3 does not make a distinction between land / building development and economic development. Nor does it define economic development or the scope of Planners role in promoting economic development.

In order to ensure Planners understand their role in promoting economic development, Clause 3 must:

- Define economic development and its place in the context of land / building development.
- Clarify the distinction between sustainable development and (sustainable) economic development

Clause 4 Publicity, etc., in relation to applications

Clause 5 Pre-application community consultation

We object that Clause 4 and Clause 5 allow developers / speculators (rather than Planners or Council) to undertake and report on community consultation. This would be a dereliction of duty, as developers / speculators have a vested interest in ensuring their application is successful.

In our experience, developers / speculators only list as neighbours people they consider will not object to their application. We are familiar with incidences when objectors have been badgered / bullied into refraining from objecting.

In order to ensure community consultation is properly undertaken, Clauses 4 and 5 must:

- Require community consultation to be undertaken by Planners or Coumcils

Conclusion

Given the extremely short timescale for responses to the Committee and the extremely dense wording of the Bill, we have not examined all sections of the Bill in any great depth. We have, however, had sight of Professor Ellis's analysis for Friends of the Earth and have satisfied ourselves that we largely concur with the views expressed therein.

Further, our analysis (above) of Clauses 1 to 5, leads us to conclude that:

- Clause 1 perpetuates fundamental weaknesses in the current system.
- Clause 2 is beyond the competence of Planners: yet does not go far enough in promoting reform.
- Clause 3 does not define economic development: a fundamental oversight
- Clauses 4 and 5 skew the system in favour of developers / speculators: contrary to the public interest

For these reasons, we believe that the Bill is not fit for purpose in promoting reform or improving regulation.

Belfast Holyland Regeneration Association

Rosemarie Gilchrist

I would urge the Committee to give more detailed consideration to the following points:

1. Concentrating on economic factors in this case appears to be to the detriment of caution - this is a ridiculous risk being undertaken without sufficient thought as to long-term effects.

2. For the sake of our childrean and their children we should not rush into this without more public consultation regarding the protection of our vulnerable environment.

3. Large influential companies make employment promises they then claim later, regretfully, not to be able to meet. Only very heavy penalties if they were unable to meet their promises, would get round this.

4. The Committee should give more thought to sustainable development as defined by the “World Commission on Environment and Development 1987”.

5. Why exactly is thsi being rushed through?

As a voting citizen I would request you to take these points into consideration on behalf of the people you claim to represent.

Sincerely,

Rosemarie Gilchrist. 14.3.2013

Royal Town Planning Institute Northern Ireland

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Planning Bill

Northern Ireland Assembly Environment Committee Call for Evidence

A response by the Royal Town Planning Institute Northern Ireland
March 2013

1.0 Introduction

This document has been prepared by the Royal Town Planning Institute Northern Ireland (RTPI NI) in reply to the Northern Ireland Assembly Environment Committee call for responses to the proposed Planning Bill for Northern Ireland. The submission will be structured to address the specific clauses of the Bill.

The Royal Town Planning Institute (RTPI) has around 23,000 members with over 560 members in Northern Ireland who work in the public, private, voluntary and education sectors and is the leading professional body for spatial planners in the UK and Ireland. RTPI is a charity whose purpose is to develop the art and science of town planning for the benefit of the public. The RTPI develops and shapes policy affecting the built and natural environment, works to raise professional standards and supports members through continuous education, practice advice, training and development.

The aim of RTPI NI is 'to provide a range of services to all RTPI members living, studying and working in NI and to take an active role in the developing planning agenda in Northern Ireland.'

RTPI NI 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 following internal discussions and debates amongst the Branch Executive Committee. In addition RTPI NI held a consultation event to promote to our members an understanding of the Planning Bill, encourage members to make individual responses and to encourage discussion and debate around the contents.

The event was held 26th February in the Planning Appeals Commission and was attended by around 30 delegates. Irene Kennedy, Bill Team Leader, Planning Policy Division, DoE addressed the delegates on the content of the Bill. A panel discussion followed, the panel consisted of Irene Kennedy, Peter Fleming Fleming Mounstephen Planning and Neil Dunlop Belfast City Council.

2.0 General Comments

As stated in previous submissions to the Environment Committee RTPI NI remains 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 development of the planning functions to Councils and has been proactive since this time in working with members and other bodies in preparation of the transition.

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RTPI NI welcomes the opportunity to comment on the proposals within the Bill and commends the Environment Committee for the work it is doing in publicising the Bill to maximise the level of stakeholder participation in the Committee Stage of the Bill. In light of this RTPI NI is disappointed that the Bill lacks the opportunity to engage in a full consultation process considering the introduction of specific clauses.

The RTPI NI acknowledges that many of the clauses will require the publication of supplementary guidance and that these will be published in due course with the opportunity for RTPI NI to participate in the consultation process on these documents. This would include details of what is involved in Pre-application community consultation and reports.

In general there is concern from members that the Bill contains unnecessary complexities and that it should be produced in a more user friendly manor. There is a general concern that elements of the Bill are unclear and will result in lengthy legal challenges.

3.0 Detailed comments

General functions of the Department and the Planning Appeals Commission

RTPI NI has engaged in much discussion and debate around the three objectives set out in the Bill –

(a) Furthering sustainable development;
(b) Promoting or improving well-being; and
(c) Promoting economic development

RTPI NI would urge the Committee to consider why the three objectives are accompanied by three different requirements i.e. 'furthering' v 'promoting or improving' v 'promoting' and deliberate standardising the wording to ensure equality of the objectives.

While the Institute welcomes the increased emphasis on furthering sustainable development and the introduction of improving well-being, it is concerned that too much emphasis will be placed on the promoting economic development, especially since economic growth is captured through the 'triple bottom line' approach to sustainable development, where social and environmental factors are considered along with economic ones. Therefore, careful and further consideration should be given to this clause and the weight that will be awarded to 'promoting' economic development over 'furthering' sustainable development.

RTPI NI recognises the importance of economic development and the critical role that planning plays in this, however there is concern that the introduction of this clause will enable applications that promote economic development to take precedent over the other elements of sustainable development.

Sustainable development is at the heart of the Regional Development Strategy and it is important that the regional framework guides how the elements of economy, society and environment complement each other to achieve this and to ensure that the conflict between the three elements does not impact negatively on the aspirations of sustainability.

Planning Policy Statement (PPS) 1: General Principles provides a basis for the consideration of economic factors, in respect of both 'sustainable development' and 'material considerations'.

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Furthermore PPS 4: Planning and Economic Development, sets out the Department's planning polices for economic development uses and indicates how growth associated with such uses can be accommodated and promoted in development plans. It seeks to facilitate and accommodate economic growth in ways compatible with social and environmental objectives and therefore sustainable development.

It is important that the continuation of regional economic planning policies is contained within the production of any new single planning policy documents.

There is a concern from some members that through the RDS and PPS 4 there is sufficient policy structure in place to ensure that applications and proposals are given relevant consideration in light of promoting economic growth. The inclusion of this clause within the Bill will add a further layer of legislation which is unnecessary and will result in further confusion and challenge. The issue highlights the complexity of planning, and while motivation behind the introduction of this clause is to make the system simpler there is a danger it will do the opposite.

The tension around the inclusion of the clause promoting economic development is further heightened by the concern that some members expressed with regarding to introducing this ahead of RPA. It was felt that the clause will lead to conflict amongst councils who will be competing for development and will enable the approval of a proposal that may otherwise have been rejected.
While RTPI NI is very much in favour and supports the concept of promoting economic development, there is further work needed to ensure that this will not be at the detriment of sustainable development and more information is required as to how this will be controlled, particularly post RPA.

In light of these concerns and the importance of both economic and sustainable development it is proposed that the relevant clauses should be included:–

> 'The core function being furthering sustainable development through the promotion of economic, social and environment objectives'

Uniting the important elements rather than allowing for the opportunity to differentiate between them.

Matters relating to planning appeals

There is concern amongst members that the option for appointed persons other than the Planning Appeals Commissions to conduct inquiries and hearings into major planning applications may result in political influencing and control should be in place to ensure this does not happen. It is questionable as to whether the inclusion of this clause is entirely necessary as the PAC are now well equipped to deal with pressures to their operating system.

If there is a real concern that PAC capacity may become a reality, consideration should be given to reciprocal arrangements between mirror organisations elsewhere in the UK, for the use of their trained Inspectors.

More clarification is required for clause 12 as to what will or will not be considered *as (b) and other material consideration*. While the intention of the clause may be to prevent or reduce changes to a

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proposal pre appeal, the interpretation of what constitutes other material considerations may undermine this.

Conservation Areas

The current legislation, as found in The Planning (NI) Order 1991 in relation to Conservation Areas, states that *'Where any area is for the time being designated as a conservation area, special attention shall be paid to the desirability of* ***preserving or enhancing*** *its character or appearance'*

The clause proposes to introduce a new test that involves

(a) Preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise;

(b) Enhancing the character or appearance of that area in case where an opportunity to so does arise.

Careful consideration must be given to the implication of these changes and how this will impact on the inward investment and development within many of the Conservation Areas within Northern Ireland, in particular within City Centres. This clause causes tension with the concept of promoting economic development, as it is suggesting that a new development that does not enhance the character or appearance of the area will be refused in favour of preserving existing buildings.

There is considerable danger that the interpretation here is development in Conservation Areas is detrimental resulting in derelict buildings and lack of inward investment the consequences of which will be felt in towns and cities all over Northern Ireland. This is further compounded by the subjective assessment of the official assessing what is or is not enhancing the Conservation Area and should therefore be preserved.

It is questionable as to why the Bill is deviating away from the nationally recognised preserve or enhance test that is supported in case law to introduce new legislation that is mildly confusing and open to interpretation and will most certainly be challenged through the courts.

Consultation Responses

RTPI NI would urge the Environment Committee to give consideration to the operational implications of clause 23. Members have expressed concerns as to how faster consultation responses will in reality be achieved. While the motivation behind the clause is honourable consideration needs to be given to the likelihood of consultees sending default responses requesting additional yet unnecessary information to 'buy them more time'. This will result in needless costs and delays for applicants who have to pay for additional and unnecessary surveys and reports.

Final comments

The contents of the Bill reflects the complexities of the planning system in Northern Ireland, the RTPI NI would ask the Committee to consider the necessity for such complex language throughout.

RTPI NI continues to engage with the Department of the Environment and NILGA on capacity building and resourcing on the development of professional training sessions for planners and

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councillors. The Bill contains proposals that will require cultural change and additional funding; if funding in particular is critical.

The RTPI NI is currently working with the Department on the development of a single planning policy summit that is supported by the Minister for the Environment. This summit will provide the opportunity for discussion around the development of s ingle planning policy document for Northern Ireland, addressing concerns and issues from groups and individuals from the public and private sector ahead of the publication of the draft document.

RSPB

Planning Bill, January 2013

A response from RSPB Northern Ireland, 15 March 2013

Executive Summary

The RSPB welcomes the opportunity to comment on the Planning Bill for Northern Ireland. While there are some aspects of the Planning Bill which are to be welcomed (e.g. Clause 5. Pre- application community consultation and Clause 14. Aftercare conditions imposed on revocation or modification of mineral planning permission), the RSPB is concerned that these, along with the primary objective of the Bill to accelerate the implementation of reforms contained within the 2011 Act will be fatally undermined by the additional provisions of **Clause 2. General functions of the Department and the planning appeals commission** and **Clause 6. Determination of planning applications.**

The RSPB recommends that Clause 2. be reworded to include a robust definition of **sustainable development** along with the deletion of the economic development sub-clause. Clause. 6 should be removed in its entirety from the Bill.

Introduction

The RSPB is UK's lead organisation in the BirdLife International network of conservation bodies. The RSPB is Europe's largest voluntary nature conservation organisation with a membership over 1 million, around 13,000 of which 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.

The RSPB's comments on the Planning Bill, as introduced

Our comments are numbered by clause; we do not comment on all clauses.

Clause 2. General functions of the Department and the planning appeals commission

The purpose of planning must be to achieve sustainable development. It is therefore essential that the Planning Bill contains a robust definition of same. The RSPB is of the view that such a definition should be based on the classic Brundtland definition[1] and the five guiding principles of the UK Sustainable Development Strategy (*Securing the Future*, 2005), including the need to live within environmental limits. An understanding of the high level Brundtland definition and these principles must be reflected within the Planning Bill, and in particular, the definition of sustainable development. (See Scottish Planning Policy reference overleaf).

[1] Development which meets the needs of the present without comprising the ability of future generations to meet their own needs

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. Paragraph 8 of the National Planning Policy Framework (NPPF), (March 2012), expresses this balance succinctly *"...to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system'.*

The balancing of these objectives is further recognised in Paragraph 35 of Scottish Planning Policy which states *'the Scottish Government supports the five guiding principles of sustainable development set out in the UK shared framework for sustainable development*[2]*. The five principles are:*

- *living within environmental limits,*
- *ensuring a strong, healthy and just society,*
- *achieving a sustainable economy,*
- *promoting good governance, and*
- *using sound science responsibly.*

...The fundamental principle of sustainable development is that it integrates economic, social and environmental objectives. The aim is to achieve the right development in the right place. The planning system should promote development that supports the move towards a more economically, socially and environmentally sustainable society'.

The inclusion of a robust definition of sustainable development within Clause 2 would negate the need to include a further economic sub-clause.

Clause 2 in its current format serves only to give economic objectives additional weight above other sustainable development considerations (environmental and social), and to facilitate the double assessment of economic objectives, both within the context of sustainable development and again within the separate economic sub-clause. This primacy is contrary to achieving sustainable development.

While Minister Attwood is keen to point out that it does not give economic considerations determinative weight (Hansard, 22 January 2013, Page 45), this is subjective. Clause 2 clearly places economic development head to head with sustainable development, and could therefore be subject to differing interpretation by subsequent, Ministers, Planning Officials and Local Councils.

The scope for interpretation is further compounded by the use of the wording 'furthering', 'promoting' and 'improving' within the clause. Such scope for interpretation and potential ranking could lead to a rise in the number of challenges, where the nuances of each of these verbs are debated at length, thereby potentially slowing down the planning system – contrary to the objectives of planning reform.

The rewording of Clause 2 to include a robust definition of sustainable development, and deletion of the economic sub-clause would not only remove any future potential ambiguity and confusion with regards to weight or ranking, but create a planning system for the purpose of achieving sustainable development.

Clause 4. Publicity, etc., in relation to applications

We request that site notices are included within the suite of publicity methods.

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[2] One Future - Different Path: The UK's Shared Framework for Sustainable Development (2005)

Clause 5. Pre application community consultation

The RSPB supports the introduction of pre-application community consultation, but the reliance on persons specified "*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*").

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.

While we welcome the duty to decline to determine applications where Article 22A (pre-application community consultation) is not complied with, it is however no substitute for third party right of appeal (TPRA), and as such we strongly urge the Department to bring forward a limited third party right of appeal.

Clause 6. Determination of planning applications

At present, where an application is made to the Department for planning permission, the Department, in dealing with the application, shall have regard to the development plan, so far as is material to the application, and to any other material considerations (Article 25 of the Planning Order (NI) 1991, as amended.

There is no particular reference to matters which are considered to be a material consideration, (though they must be planning matters). This allows for each application to be treated on its individual merits, and allows a balancing exercise in the consideration of other factors which are judged to be material. The weight to be attributed to one or more material considerations in the assessment of individual planning applications is a matter for DOE Planning, and is on a case by case basis (planning case law supports this).

The specific naming of economic maters as a consideration, over and above the existing provision of 'any other material considerations' serves only for greater weight to be attached to it in the assessment of development proposals.

By introducing the requirement to consider any economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission, there is a danger that this clause could be used as a tool to use the planning system for a purpose for which it is not legally designed to do (for rejuvenating the wider Northern Ireland economy). A key principle of planning is that it should only relate to the use and development of the land[3], consideration of matters beyond this scope could result in increased legal challenges and a further slowing down of the planning system, contrary to the objectives of planning reform.

Furthermore, Clause 6 provides optimum conditions for developers of competing schemes, to become embroiled in lengthy battles regarding the economic advantages and disadvantages of each of their schemes leading to a slowing down of the planning system and increased legal challenge – all contrary to the objectives of planning reform.

[3] Stringer v Minister of Housing and Local Government (1971)

More worrying however from an RSPB perspective, is the situation where economic advantages will time after time take precedence over the unnamed material consideration of the environment. The balancing of any other material considerations will be lost. Clause 2 and Clause 6 collectively threaten sustainable development.

It could also create conditions where some private interests/personal circumstances, which are not currently material considerations could legitimately submit evidence regarding loss of profit, decrease in value of land, or loss of rental income. It could also result in the routine consideration of personal circumstances, which at present are the exception.

Other concerns relate to the fact that there are presently no economists in DOE. In the absence of such experts, DOE will not be qualified to assess the economic advantage or disadvantage presented. Furthermore, the RSPB would welcome clarity on how the Department actually proposes to legally enforce such economic claims (e.g. job creation, or revenue generation for an area). As far as the RSPB is aware there is no legal mechanism to secure such benefits through planning conditions as they lie outwith the scope of planning.

Clause 6 is not required to assist developers in identifying the economic advantages of their development proposals. Private developers will not bring forward proposals that are not going to generate economic value. It can be assumed that any private development will be expected to generate economic value, Clause 6 is therefore unnecessary and will only serve to confuse what the market is surely better placed to decide.

For all these reasons, the RSPB believes that Clause 6 should be deleted.

Article 7. Power to decline to determine subsequent application

We support these powers as it avoids nugatory use of resources and assists with the streamlining of the planning system.

Article 8. Power to decline to determine overlapping applications

We support these powers as it avoids nugatory use of resources and assists with the streamlining of the planning system.

Clause 9. Aftercare conditions for ecological purposes on grant of mineral planning permission

While the RSPB welcomes this addition, we would nevertheless recommend the inclusion of 'nature conservation' as a use for closed mineral works.

The RSPB and the quarry industry amongst others have shown how important after use 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[4]. In addition, the steps in Article 53(5) of the Planning Order (NI) 1991, as amended, do not include all steps that might be needed for nature conservation after use, we therefore recommend that the wording is changed to "The steps....may consist of *but are not limited to*....."

[4] For example www.after minerals.com

Clause 10. Public inquiries: major planning applications

The RSPB strongly resists the amendment of Article 31 to include 'a person appointed by the Department for that purpose', in the interests of independence, openness, fairness and impartially.

The status of the Planning Appeals Commission (PAC) as an independent appellate body free from influence by the Department or any other body is widely recognised and respected, to open up such a position to any person appointed by the Department could seriously comprise the credibility of the planning system in dealing with public inquires. The further impartiality of a Planning Appeals Commissioner is embedded in Article 110 (3) of the Planning (NI) Order 1991, as amended. There is no such provision for a direct appointment by the DOE.

Notably there is already a recruitment facility within the PAC, including the appointment of panel commissioners.

Clause 11. Time Limits

The RSPB supports these provisions.

Clause 12. Matters which may be raised in an appeal

The RSPB supports these provisions.

Clause 14. Aftercare conditions imposed on revocation or modification of mineral planning permission

The RSPB welcomes this clause, as it has great potential to ensure that mineral sites are restored to the best after use, and we would like to see more sites being returned to nature conservation after use (see Clause 9).

Clause 16. Increase in Penalties

The RSPB supports the increase in penalties reflecting the seriousness of breaching planning controls.

Clause 19. Tree preservation orders: dying trees

The RSPB supports this clause as dying trees which do not pose a public safety risk provide important wildlife habitat and should not be removed.

Clause 20. Fixed penalties

The RSPB is concerned that Clause 20 could be interpreted in such a way that, following the payment of a fine, no further action can be taken against the offender. Further clarity is required in this Clause to communicate that fixed penalties should not be seen as an alternative to remedial action, and that the offender could be liable to further action if the breach in planning control is not rectified. Payment of a fine should not absolve the offender of remedying the breach of planning control.

Clause 21. Power of planning appeals commission to award costs

The RSPB supports the provision of power to the Planning Appeals Commission (PAC) to award costs as it is likely to reduce the likelihood of vexatious or poorly justified appeals. However, its effect is somewhat weakened by the fact that a Third Party Right of Appeal has not yet been introduced.

Clause 22. Grants

The RSPB welcomes the provision of grant assistance to non- profit organisations in providing assistance in relation to certain development proposals.

Clause 23. Duty to respond to consultation

The RSPB supports the duty to respond to consultation.

Clause 24. Fees and Charges

The RSPB supports increased fees for retrospective planning applications.

Concluding remarks

While the RSPB welcomes the opportunity to comment on the Planning Bill (January 2013), it nevertheless is disappointed that the additional provisions (Clauses 2 and 6) have been made outwith the normal round of public consultation. The RSPB understands the pressures of legislative timing, but believes that in light of the importance of these particular amendments, normal public consultation should have been sought.

The RSPB welcomes many elements of the Bill, but believes that the fundamental purpose of planning which should be to achieve sustainable development is seriously prejudiced by Clauses 2 and 6.

The retention of these Clauses will inevitably lead to a further slowing down of our planning system, increased challenge in the high court and PAC, and of greatest concern to the RSPB the potential for greater negative impact on the environment and threat to sustainable development.

In the circumstance, the RSPB is of the opinion that Clause 2 should be reworded to include a robust definition of sustainable development, including the deletion of the economic sub-clause. Clause 6 should be removed from the Bill.

Other recommendations have been made in respect of Clauses 4, 5, 9, 10, and 20 relating to inclusion of site notices, specification of those people who should be consulted, the inclusion of 'nature conservation' as a use for closed mineral workings, the Planning Appeals Commission should remain the sole body/person to conduct public inquiries into major planning applications, and a fixed penalty should not be an alternative to remedying a breach in planning control, respectively.

For further information contact:
Michelle Hill MRTPI
Senior Conservation Officer (Planning)
RSPB Northern Ireland
March 2013

E-mail: michelle.hill@rspb.org.uk
Telephone: 028 9049 1547

Sarah Deazley

Dear Sir,

Planning Bill Number: Bill 17/11-15. To amend the law relating to planning; and for connected purposes.

I apologise for sending this mail through my mothers account.

As a resident of the Holyland area of Belfast BT7 and a member of Belfast Holyland Regeneration Association (BHRA), I wish to object to the Current Planning Bill, which I believe is now at Committee stage.

I would like you to refer fully, to all the comments and objections raised in the attached papers, compiled by our local community representatives and also those by Geraint Ellis, as I fully endorse them also.

I thank you for taking my comments on board and I would like you to acknowledge this communication, for my records.

Yours Sincerely.

Sarah Deazley
10 Penrose St.
Malone Lower,
Belfast.
BT7 1QX.

email sdeazley@hotmail.com

Seahill Residents' Association

Seahill Residents Association
SeaHill
Hollywood
Co Down
BT18 0DU

14/03/13

Ref: Northern Ireland Planning Bill 2013

DOE Committee
Parliament Buildings
Stormont Estate
BT4 3XX

Dear Sir/ Madam,

I am hereby voicing our objection to the proposed N.I. Planning Bill 2013 with particular reference to clauses 2,6,10 and 20 which we find unworkable.

We are agreeing with the paper produced by Prof. Geraint Ellis (Queen's University Belfast) dated 14th Feb 2013.

We would be grateful if our objections are taken into consideration to arrive at workable wording of the Bill

An acknowledgement would be appreciated

Yours faithfully

C R Johnson
Chair Seahill Residents Association

Siobhan Small

From: Siobhan Small

Address : 52 Lady Wallace Gardens, Lisburn

My objections to the Planning Bill with proposals for change are as follows and relate to Clauses 2, 5, 6, 10 and 20.

As a general comment, the Bill proposes double counting of economic development; this means primacy for economic development; this is not the objective of the planning system.

1. Clause 2 should be reworded to include a definition of sustainable development, and the sub-clause regarding economic development should be removed.

I think the following overarching policy on sustainable development be included in Clause 2:

> *It shall be the principal objective of local and neighbourhood plans to ensure sustainable patterns of development which improve the quality of life of all people, while respecting environmental limits and the ability of future generations to enjoy a similar quality of life.*

In order to uphold this objective, all land use policies and decisions must enshrine the principles of:

- **environmental justice**: putting people at the heart of decision making, reducing social inequality by upholding environmental justice in the outcomes of decisions;
- **inter-generational equity**: ensuring current development does not prevent future generations from meeting their own needs;
- **environmental limits**: ensuring that resources are not irrevocably exhausted or the environment irreversibly damaged. This means, for example, supporting climate mitigation, protecting and enhancing biodiversity, reducing harmful emissions, and promoting the sustainable use of natural resources (including those outside Northern Ireland);
- **resource conservation**: ensuring that planning decisions assist in the prudent and sustainable use of finite natural resources (including resources sourced outside Northern Ireland);
- **the precautionary approach**: the precautionary principle holds that where the environmental impacts of certain activities or developments are not known, the proposed development should not be carried out, or extreme caution should be exercised in its undertaking;
- **the polluter pays**: ensuring that that those who produce damaging pollution meet the full environmental, social and economic costs;
- **the proximity principle**; seeking to resolve problems in the present and locally, rather than passing them on to other communities globally or future generations;
- **public participation**; ensuring that there are meaningful opportunities for people to engage in the planning decision-making process.

2. Clause 5 should include the introduction of a Third Party Right of Appeal.

3. Clause 6 should be removed from the Bill because it means any applicant can claim economic advantage by gaining permission, lots of people can object claiming disadvantage if something is given permission.

4. Clause 10 should be amended to allow the Planning Appeals Commission to appoint temporary commissioners as needed.

5. Clause 20 should be clarified to make it clear that Fix Penalty Notices are not in lieu of enforcement action, and that further action will be taken if breaches are not remedied.

Sir Liam McCollum

I have read with surprise and apprehension the proposed bill. I agree entirely with the submission by Friends of the Earth and the paper by Professor Ellis, which in my opinion illustrate the disastrous consequences of the passing of this bill into law. They have not exaggerated the effects of the fundamental changes suggested and I would expect the first piece of litigation to be a challenge to the order itself and should that not succeed a raft of litigation that would paralyse the Planning Service and all development in Northern Ireland.

Please think again and pay full attention to the submissions referred to The Right Honourable Sir Liam McCollum

Six Mile Water Trust

I believe that the sentiments expressed by Maurice & Friends of the Earth completely encapsulate all my thoughts on this subject as we at the Six Mile Water Trust are very aware of the the issues that result from an already inadequate planning system which does not take account of environmental matters with the importance which they deserve, Michael Martin. Vice Chair, Six Mile Water Trust

Sent from my iPhone

Begin forwarded message:

From: "Maurice Parkinson" <maurice@ballyrobertcottagegarden.co.uk>

Date: 12 March 2013 22:57:39 GMT

To: "Michael Martin" <mikesflybox@btinternet.com>

Cc: "Jim Haughey" <jim_haughey@yahoo.co.uk>

Subject: Fw: The Northern Ireland Planning Bill 2013

Hi Michael,

Please see my submission re the Assoc. I suggest you do something similar re the Trust.

Thanks.

Maurice

—– Original Message —–

From: Maurice Parkinson

To: committee.environment@niassembly.gov.uk

Sent: Tuesday, March 12, 2013 10:55 PM

Subject: The Northern Ireland Planning Bill 2013

To the Environment Committee

The Antrim and District Angling Association has considered the content of the Northern Ireland Planning Bill 2013 and has major concerns with its content.

For many years the Association's members have struggled with the results of previous planning decisions and more recently were involved in planning decisions associated with Parkgate Quarry, Ballyclare Bypass etc. We have expressed our concerns on many occasions and the Planning Bill as proposed does not give us the protection in terms of our angling and wildlife interests on the Six Mile River System.

The Association has over 400 members and also provides angling opportunities for many members of the public through day ticket sales. It has therefore a major interest in this Bill.

We feel the response to the Bill prepared by the Friends of the Earth reflects our concerns and we have therefore agreed that this be taken as our response to the Bill.

I have attached the FOE document for you attention.

Regards.

Maurice Parkinson,
Chairman of the Antrim and District Angling Association.

South Belfast Partnership Board

SOUTH BELFAST
PARTNERSHIP BOARD

Assembly Committee for the Environment
Communications Office
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

15 March 2013

Dear Sir/Madam

Re: Planning Bill – Committee Stage Consultation

I write to you in response to the current consultation on the Planning Bill by the Assembly Committee for the Environment. This response has been prepared by the South Belfast Partnership Board in consultation with a number of local community groups, business association and private sector partners in South Belfast. The South Belfast Partnership Board brings together all sectors – community, statutory, political and private – to strengthen and better target the efforts being made by the community, the private sector and the Government to tackle in partnership the economic, social and environmental problems which affect people in the most disadvantaged areas of South Belfast.

In general terms, we welcome the move to reform the planning system as part of Review of Public Administration (RPA), which we understand will see the transfer the majority of planning functions and decision making responsibilities to Councils in 2015. Prior to the full implementation of this, we welcome these current proposals to accelerate the introduction of a number of reforms to the planning system in advance. This, we believe, will help to improve the efficiency and effectiveness of the planning system, modernising and strengthen the planning system, particularly in relation to faster decisions on planning applications and enhanced community involvement.

However, within this context, we have outlined below a number of comments as they specifically relate to a number of the clauses set out in the draft Bill:

- **Clause 1: Statement of Community Involvement:** We welcome the move to bring forward the preparation of a Statement of Community Involvement (SCI) in the development planning process sooner, rather than later. This has been widely and successfully implemented in the English planning system for a number of years now and is most welcome as a means to improve the planning of development plans and

South Belfast Partnership
23 University Street, Belfast BT7 1FY. Tel: 028 90244070; Fax: 028 90245565; 028 90241760
email: enquiries@southbelfast.org; http://www.southbelfast.org
Company Limited by Guarantee Registration No NI36168 Charity Registration No XR30331

specific development proposals. We understand that further regulations will be developed to shape how the new SCI should be developed and we would argue that involving community organisations and the public in the preparation of the SCI should be secured through the regulations (please also see our comments below in relation to pre-application consultation).

- **Clause 2: Sustainable Development:** Whilst we welcome the clarity that decisions with should be made within the objective of furthering sustainable development, we question the necessity of giving further specific objectives, such as "improving well-being", "promoting economic development" and "achieving good design". It is widely accepted that truly sustainable development should consider the relative impacts of development upon the environment, economy and society as a whole, carefully balancing these to secure the best outcome for both current and future generations.

  As currently drafted, we believe these amendments could lead to too greater weight being given to one particular objective, such as economic development, at the expense of social well-being or the environment. If anything, the social aspect of development is often minimised or neglected, instead arguing that creating jobs through economic development is the greater good which justifies negative impacts upon the environment of those people living closest to the proposed development. We would request that these objectives be reviewed to better reflect the equal rating that should be given to all domains as part of a sustainable development approach.

- **Clause 5: Pre-Application Community Consultation:** We welcome the move to strengthen communities' involvement in the development planning process, in advance of planning applications be submitted. If conducted correctly in a pro-active and open way, this should help address any negative impacts of proposals on local communities at an early stage, improving the quality of proposals produced, reducing the risk of significant objections and expediting the decision making process once an application is submitted.

  However, it is essential that this process is not just a tick box exercise for developers, but rather that it is meaningful engagement with openness and transparency in relation to what has been done as a result of consultation. We have experienced this recently as part of the planning for the Windsor Park development, but were concerned that the pre-application consultation completed by the IFA focussed too narrowly on the residents immediately adjacent to the stadium, but neglected to engage in meaningful consultation with the broader south Belfast communities. Given the strategic nature of this major development, we were disappointed that our only opportunity to engage the IFA was via Planning Service in response to the planning application, rather than in shaping the development from an early stage. Although their consultation did lead to a number of positive outcomes for local residents, we believe there were a number of broader issues and impacts beyond the immediate locality that were not adequately addressed, even in the final planning approval.

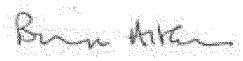
  We believe that legislation and regulations should ensure that the Department take account of the scope of pre-application consultation, rather than whether it was undertaken and a report submitted with the planning application. Local communities should have an opportunity to comment on a developer's consultation

report and request that further consultation is undertaken and amendments, if necessary, made to application before it is processed, etc.

We understand that there may also be issues over the threshold set for whether a development of a scale is large enough to warrant pre-application consultation and would request that the Department be allowed to apply discretion in requiring pre-application consultation. For example, if a major residential development is split into a number of smaller phases for planning purposes, the size threshold could be avoided in each case, but the overarching impact of all phases could be such to warrant broader pre-application public consultation.

We trust that you find these comments useful and look forward to seeing how they help shape the final Bill in due course. Please don't hesitate to contact my colleague Martyn Smithson on 02890 244 070 or martyn.smithson@southbelfast.org if you would like any further information or clarity in relation to any of our comments.

Yours sincerely



Briege Arthurs
Chief Executive
South Belfast Partnership Board

CC: Anna Lo MLA

South Belfast Residents' Group

Response by the South Belfast Residents' Group to Planning Bill 2013.

Background

The Planning Act 2011 introduced new powers for the DOE and the councils, which will become effective from 2015. In the interim period, it has been decided the DOE needs extra powers to aid this process. It is claimed the two bills will improve the planning process, simplify and speed up all aspects of it, and bring about better enforcement.

Major changes intended:

a) Responsibility for the majority of planning transferred to the councils, including enforcement. The DOE retains similar responsibilities for regionally significant applications and probably large scale development, especially those related to economic progress.

b) Responsibility placed on developers to consult with the local community, and to provide evidence the community has been involved in the decision making. It must be made clear whether this consultation will only apply to larger development or be extended to all residential development.

c) More effective measures will be taken to deter such practices as unlawful building, contravention of STOP notices and infringements of conditions attached to planning permission. It is intended to impose much heftier fines and fixed penalties and to curb such practices as repeat and similar applications.

Our comments on the clauses.

Clauses: 1, 9, 11, 12, 19 Agree

Clause: 21 Agree, so long as costs only apply to the develop er who initiate the proceedings.

Clause: 22 Agree on Grants.

Clauses : 14, 15,25, 26, 27, 28 No Comment.

Clause 3 requires further clarification. It mentions "alterations consisting of demolishing part of a building". Could this mean it could bypass the need for planning permission?

Clause 4: It is very important that affected residents/ communities be informed of development in their area, particularly those residents living in close proximity. We recommend the details of all applications be widely advertised in popular press and notice of the application be posted on the site.

Clause 5: Pre-application consultation should be extended to include all residential applications. A reduced form of consultation we can recommend includes the responsibility of developers to personally inform locally affected residents exactly what is intended and a copy of the plans. His report must include the responses of the residents. Residents should receive a copy of the report.

Such a system would make it more difficult and less likely a developer would exceed the planning permission given. Once the developer has informed the residents of the proposed development, he must not be allowed to go beyond the permission given and must be dealt with severely if he does so.

Clause 10: There is no need to introduce any other bodies to share the work of the PAC. Any extra involvement can be handled by the PAC employing on a temporary basis any expert/ extra staff as and when required.

Clause 13: We would be wary of such a practice whereby once planning permission has been given, the extent of the permission or conditions can be changed without seeking the views of the local residents. As with Permitted Development, which we are opposed to, it will inevitably encourage applicants to try to gain permission for something they would have been unable to achieve with an original application

Clauses 17 and 18: The Planning Service has stressed that special attention must be paid to the preservation of the character and appearance of the conservation areas. All planning decisions in the conservation areas must consider how the development will affect the area. The presumption has to be that the only development allowed are ones which enhance the area and must be in keeping with the existing architectural style.. We would recommend that Areas of Townscape Character be included.

Clauses 2 and 6: The Planning Policy Booklets (PPBs) have already clearly stated that good design and sustainable development are a necessary prerequisite. But the inclusion to "provide economic development" is new and is such a major consideration that it should not be hidden away in this manner, linked with "sustainability". The Assembly has always stressed the need to improve economic development and we accept that. We have always stated that the reforms we propose, together with strict adherence to the PPBs in decision making, would not be detrimental to economic progress. The inclusion of "provide economic progress" in this context gives credence to the belief that "economic progress" can be considered as a factor in all applications and as justification to accept any planning application. Used alongside "Presumption in favour of development", both could take precedent in decision making. For example, applications for numerous tiny flat lets crammed together, large house extensions, demolition and rebuild anywhere, could state that it would increase the value of the properties and give employment. This would increase the workload of planners, including costly legal challenges.

The chairperson of the Assembly Committee for the Environment, Anna Lo has publicly supported our position when she said: "Need to balance the need for economic growth and the rights of the individual. While the economy is our top priority, it does not mean we can trample on ordinary residents."

Economic considerations relate to regional significant, large scale developments, including the infrastructure, which create employment. Such developments have no place in residential areas. We therefore suggest that such economic considerations be deleted from Clauses 2 and 6.

Clauses 7, 8, 16, 20 and 24: We are pleased to note these aims and urge the Planning Service/PAC to heed them well and put into practice. We have reminded the Planning Service, our politicians and the ministers of the Environment, for many years, of the need to stop the unfair cyclical process used by determined developers to wear down the Planning Service and win acceptance for very flawed applications. This process starts with an application or perhaps two applications which are rejected. Recourse is then made to the PAC. If rejected, a few minor amendments are made and a similar application is made to the Service and the process is repeated. Put in the mix a bit of building beyond entitlement followed by a retrospective application and the heads of planners must be spinning with exasperation.

There is a great need to deter all types of infringements. The amount of the fines must represent a credible deterrent and not simply an extra expense for the developer. It is vital to deter developers from taking the risk with infringements and therefore the level of the fines must be substantial. We believe the current minister has heeded the points we made at the last meeting in late 2012 when he states: "The bill will take forward proposals in the Act to raise fines to £100,000 where for example a STOP notice has not been complied with", "will introduce fixed penalties", "there are many examples of people who think they have the measure of the planning system and so they build and then seek retrospective approval. To drive discipline into the planning system, if such individuals apply for retrospective approval,

they will pay a multiple fee." We accept all of this is well intended and hope they do not lapse into mere aspirations.

However it is worth quoting the former Minister, Mr. Poots, who also stated clearly and strongly his support for the central role of enforcement in the planning system before the 2011 Bill. "Enforcement is integral to managing development. Need the powers to take action against unauthorised development. Otherwise the credibility and integrity of the planning system is undermined."

Finally previous members of the Environment Committee have expressed their frustration about the various ploys used by developers to gain acceptance for serious flawed applications. We hope this time the Environment Committee and the Planning Service will work together to introduce a system of planning which will in practice operate fairly for all. And more importantly, they must enforce all their planning regulations in practice.

Supporting Communities NI

SUPPORTING COMMUNITIES NI

Our Ref: MW/PB

11th March 2013

Alex McGarel,
Committee Clerk,
Room 245,
Parliament Buildings,
Stormont Estate,
Ballymiscaw,
Belfast.
BT4 3XX

Dear Sir/Madam,

The Planning Bill

I refer to the above and am pleased to offer some comments and observations on the proposed policy proposals presented by the Department contained in the proposed Planning Bill; the comments have been prepared following discussions within the Supporting Communities NI (S.C.N.I.) staff team, the Housing Community Network and also with our partners in community organisations across NI.

S.C.N.I. is an independent charitable organisation which champions community participation by developing groups, supporting active citizenship and building cohesive communities. At the same time and in partnership with the N.I. Housing Executive, S.C.N.I. supports and facilitates the Housing Community Network which was formed in response to the need for housing and related policies to be developed with and on behalf of local communities. S.C.N.I. works with the N.I. Housing Executive, Housing Associations and other organisations in the monitoring and scrutiny of the delivery of housing and related services.

S.C.N.I. welcomes the opportunity to comment on the Planning Bill, many aspects of which are most welcome in attempting to streamline the N.I. planning system. However, some serious issues arise which we suggest may, despite the intention of the Bill, result in slowing down the planning system and potentially impacting negatively on the environment. We stress that it is a *good* planning system that is needed in N.I. and that does not always mean *fast*.

The goal of streamlining the planning system is to be welcomed, however, some assessments of planning applications suggested in the Bill, particularly around economic considerations, will neither simplify nor streamline planning decisions; to this end the Bill as presented contains a number of serious and potentially damaging flaws.

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We believe that there is an opportunity with this Planning Bill and the reorganisation of local government to bring land use planning closer to the communities it is in large part otherwise expected to serve. We are disappointed that the present bill for consultation does not go as far as it should to deliver a responsive and balanced planning system.

S.C.N.I. is particularly interested in the proposal that the Department should prepare and publish a Statement on Community Involvement and we hope that the Department will take the time and the opportunity to engage with S.C.N.I. as we have considerable experience and unique insights on community involvement which would add value to any consideration by the Department.

We would also urge the Department to take the opportunity to update its thinking and approach to sustainable development; S.C.N.I. believes that government in general has failed to reach a full and appropriate understanding of sustainable development either as a principle or as a well-guided and directed process. We would be happy to engage directly with the Department on any of these important matters.

I hope you find these comments helpful and the following observations useful.

Yours faithfully,
for SUPPORTING COMMUNITIES NI

Murray Watt,
Policy and Information

COMMENTS AND OBSERVATIONS ON PERTINENT CLAUSES

Clause 2 (General function of the Department and the planning appeals commission)
The concept of 'promoting wellbeing' needs further clarification – there is an absence of clearly defined criteria for measurement of 'wellbeing' nor any indication as to how it will be determined how it has been achieved.

A clear definition of 'sustainable development' would be preferable to the complications inherent in the additional objective of 'promoting economic development' .

S.C.N.I. believes that the inclusion of the objective of 'promoting economic development' within this clause is unnecessary and unhelpful. We are concerned that the Bill provides a statutory duty to consider the promotion of economic development in the planning process which gives land use planning a function and responsibility it has neither the experience nor the tools to perform; indeed the inclusion of this objective is misguided to the point of folly in that it imposes on the planning systems duties and obligations which are not only alien but will slow down the whole decision making process. While the Minister has stated that this does not give economic considerations determinative weight there is a clear risk that the clause could be interpreted differently by different planners, and subsequent Ministers, as well as creating difficulties which may only find resolution after complex legal actions.

There is a danger in explicitly stating the promotion of economic development as an objective of the planning system because it frames the economy as competing against the environment and against local communities. An understanding of this, along with 'sustainable development' should be reflected in the Bill.

Clarification is required on the difference between 'furthering' and 'promoting'; is there a 'hierarchy', or what is the difference in emphasis?

Clause 4 (Publicity, etc., in relation to applications)
S.C.N.I. suggests that notice of applications should be placed on site, as well as publication and neighbour notification.

Clause 5 (Pre-application community consultation)
Enhanced community involvement in the planning process is vital to the success of land use planning decisions, particularly with the relocation of those decisions to local Councils under R.P.A. The absence of local community involvement in the setting of planning aims and priorities and the lack of effective community consultation in the planning process has left a legacy of contention within the planning system. We believe that the current bill and local government re-organisation presents us with an opportunity to address that legacy and create a more consensual culture within the planning system. S.C.N.I. would encourage the strengthening of pre-application consultation requirements.

We stress, however, that this should not be considered to be *in lieu* of third party right of appeal, which should be in place as a safeguard if community consultation breaks down.

Clause 6 (Determination of planning applications)
A key principle of planning is that it considers issues related to the use and development of land. In introducing the assessment of economic advantages and disadvantages, the planning system could be used for a purpose for which it was not legally designed. Clause 6 seeks to expand the issues that planners need to take into account and as a consequence, we agree with other commentators who believe that the N.I. planning system will no longer be able to rely on the stability of 40 years

of case law that have determined the boundaries of planning considerations - this will have to be redefined, through a series of legal challenges, to establish case law. This will inevitably introduce a great deal of instability and delay into the planning system in NI, potentially making it unworkable.

The inclusion of considerations relating to economic advantages and disadvantages creates significant scope for litigation and escalating challenges between competing developers. It gives objectors considerable weight, where any person who thinks they may be personally economically disadvantaged as a result of a planning decision (for example, one developer losing out to another) may make a valid objection to an application. We believe that adding in such considerations would create the potential for greater contention within the planning system and subsequently this clause could seriously slow down the planning system.

For the reasons stated above, and in the interests of streamlining the planning system, S.C.N.I. believes that this clause should be removed from the Bill.

Clause 10 (Public inquiries: major planning applications)
S.C.N.I. believes that the independence and the perception of independence, of those undertaking public inquiries is crucial to maintaining the credibility of the planning system. Any direct appointments by the D.o.E. may cast doubt on this, given that this is the role for which the P.A.C. was established. The P.A.C. could itself appoint temporary commissioners if in-house capacity was not available for a particular inquiry. Whatever procedure is established must ensure that there is no actual or perceived conflict of interest between the appointed commissioner and the parties involved.

Clause 11 (Appeals: time limits)
S.C.N.I. welcomes this clause as contributing to streamlining the planning system.

Clause 12 (Matters which may be raised in an appeal)
S.C.N.I. welcomes the restriction of new materials raised during appeals as contributing to streamlining the planning system.

Clause 13 (Power to make non-material changes to planning permission)
Guidance is needed as to what constitutes material/non-material change and who determines that distinction. Ostensibly contributes to the streamlining of the planning system, but may have deleterious effects on environment (depending on definitions).

Clause 16 (increase in penalties)
S.C.N.I. welcomes an increase in penalties as reflecting the seriousness of breaching planning conditions.

Clause 17 (Conservation areas)
S.C.N.I. welcomes this clause which actively gives special regard to the preservation and enhancement of conservation areas.

Clause 19 (Tree preservation orders: dying trees)
S.C.N.I. welcomes this clause promoting the preservation of biodiversity.

Clause 22 (Grants)
S.C.N.I. welcomes proposals allowing D.o.E. to grant-aid non-profit organisations for the purposes of furthering an understanding of planning policy.

Clause 24 (Fees and charges)
S.C.N.I. welcomes multiple fees for retrospective planning applications, as a deterrent for breaches in the planning system.

Concluding comments
S.C.N.I. would like to express disappointment that the Planning Bill did not follow the normal process of public consultation that would be expected to accompany changes with such far-reaching implications. We appreciate that there are time constraints with the transfer of planning powers to local Councils looming, however, fast law does not necessarily mean good law.

We again highlight that the objective of 'promoting economic development' in Clause 2 gives a statutory duty to economic considerations - this has never been the case before and is much stronger than, for example, guidance as part of a P.P.S. We feel that this is wholly unnecessary, given a full and proper understanding of the term 'sustainable development'.

S.C.N.I. would like to take this opportunity to stress the importance of ensuring that the transfer of planning powers to new Councils and community planning are properly resourced. Capacity building must be a crucial part of this process, and S.C.N.I. wishes to play a significant role in this.

We would also like to raise the importance of third party right of appeal as part of a healthy and robust planning system. The Minister has voiced his desire to bring forward third party right of appeal (Hansard, Planning Bill: Second Stage) and we would fully support this. This is particularly important in a situation in flux, as will be the system over the next few years due to transfer of powers to local authorities.

Finally, in light of the need for streamlining in the N.I. planning system, we support many of the elements of the Planning Bill. However, we strongly believe that Clauses 2 and 6 undermine this overarching goal and will result in over-complication and serious scope for legal challenge, resulting in a slowing rather than speeding of the planning process.

The Fermanagh Fracking Awareness Network

The Fermanagh Fracking Awareness Network (FFAN) would like to make the following response to the consultation with regard to the above Bill.

FFAN is a cross community network of individual Fermanagh residents. It is not affiliated to any political party or other organisation but works with a broad range of groups and individuals who are concerned about the risks of hydraulic fracturing. Our vision is of County Fermanagh as an inclusive, progressive and vibrant county where its people and resources are respected, regenerated and sustainably managed and developed and where communities are healthy and prosperous, a great place to bring up families in a clean and unspoilt environment. We want this vision to be sustainable for the generations that follow.

In FFAN's view, the Bill as currently drafted, with particular reference to Clauses 2 and 6 would:

- create huge uncertainties, increased delays and appeals in the already overloaded planning system.
- be impossible to apply effectively, as purported economic benefits could not be properly assessed, monitored or enforced.
- encounter unworkable contradictions between the duties laid out in Clause 2 of:
    (a) furthering sustainable development;
    (b) promoting or improving well-being; and
    (c) promoting economic development.
- allow inappropriate forms of development, such as shale gas extraction, which would be harmful to human health, the environment and existing and growing economic sectors such as agriculture and tourism.

We would urge the committee to enact a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation. The UK Sustainable Development Strategy identifies five guiding principles as follows:

- Living within environmental limits
- Ensuring a strong, healthy and just society
- Achieving a sustainable economy
- Promoting good governance
- Using sound science responsibly

FFAN strongly supports these principles and recommends that they be set out in Clause 2 of an amended Planning Bill along with suitable detailed policy and procedures to ensure their implementation in practice.

We further advocate the amendment of Clause 5 to include a third party right of appeal and the removal of Clause 6. We are additionally concerned at the implications of Clause 20, which seems to imply that a fixed penalty would be sufficient to remedy planning breaches. The committee will appreciate that in the case of potential damage to human health, environment and livelihoods, financial penalties alone cannot possibly suffice.

Finally, we are concerned at the manner in which this Bill is being dealt with, especially in view of the clear message of previous consultations upon similar measures, such as PPS24, that such priorities would be inappropriate and damaging to Northern Ireland. We would urge the committee to insist upon proper accountable public consultation upon this drastic proposal.

Fermanagh Fracking Awareness Network

March 2013

Thelma Deazley

From:

To:

Subject: Planning Bill 17/11-15 -110313

Date: Mon, 11 Mar 2013 18:43:31 +0000

Dear Sir,

Planning Bill Number: Bill 17/11-15. To amend the law relating to planning; and for connected purposes.

As a resident of the Holyland area of Belfast BT7 and a member of Belfast Holyland Regeneration Association (BHRA), I wish to object to the Current Planning Bill, which I believe is now at Committee stage.

I would like you to refer fully, to all the comments and objections raised in the attached papers, compiled by our local community representatives and also those by Geraint Ellis, as I fully endorse them also.

I thank you for taking my comments on board and I would like you to acknowledge this communication, for my records.

Yours Sincerely.

Thelma Deazley

Tim Fogg

Tim Fogg, Newtate, Enniskillen, County Fermanagh, BT92 1FW.

RE: Planning Bill

Dear Sir

I would like to make the following response to the consultation re the above Bill. In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law. My principal reasons for opposing the Bill are:

1. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals.

2. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists.

3. The planning system would be overburdened and slowed with appeals by developers, making it effectively unworkable.

4. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people.

5. There would be no way of monitoring compliance with the economic conditions of planning approval.

6. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit.

7. It is inappropriate to introduce such devastating change to the planning system in this manner and a full public consultation should be carried out.

In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

Yours sincerely

Tim Fogg

Tom White

Dear Sir / Madam,

It would seem the Dept of the Environment is in the process of creating jobs - for legal profession in profusion with this bill.

The Planning system seems already highly in efficient and this by adding in the clauses on Economic Considerations is going to make the system completely unworkable. Every developer is going to claim economic advantage, and every objector will claim economic disadvantage and the system will be mired in perpetuity. That will be the effect of these changes,

How will jobs created for example be enforceable ? Revenue created ?

Wealth created ? These are all intangibles which are unenforceable.

If I build a house and put in Bay windows instead of ordinary ones as per the plan, I would expect to have to rectify and refit.

If I build a retail unit promising 100 jobs but instead only provide 50, I've also broken planning regulations, but I don't believe I'd be told shut the retail unit down.

Its debatable whether the duty of Economic promotion could be in direct opposition to EIA assessments as the process of an EIA may reduce a claimed economic advantage

The Fixed Penalty system while not a bad idea in itself appears to offer immunity once accepted.. This will be like the Dangerous Driver opting for the careless driver charge.. I believe go ahead with Fixed Penalty but don't give immunity.

We must always ensure that Polluters pay.

I'm unsure whether this bill addresses how planning legislation is enforced, and I believe that to be a major problem in Northern Ireland.

Rather than Economic advantage and considerations, the system should look towards sustainability and clauses re written to emphasise that..

the bill as it stands will make lawyers and journalists happy as cases shunt and weave through the courts but will ultimately damage Northern Ireland's reputation as a place to do business.

Ulster Angling Federation

Ulster Angling Federation
Planning Bill

25/02/2013

Abbreviations used in the text:

UAF Ulster Angling Federation

NGO Non Government Organisation

The Ulster Angling Federation is the representative body for game angling associations in Northern Ireland. We have a membership of some 60 associations with a total individual membership of some 7,000 anglers. The Federation represents anglers in discussions with Public Bodies, Government and other NGO's and has been in existence since 1930. We are represented on a wide range of committees to ensure the concerns of anglers are heard.

Our member Angling Associations are very concerned about the effects of these proposals on rivers, as similar schemes have proved to be detrimental to the river environment generally and to fisheries in particular.

The Pricewaterhouse Coopers Report of July 2007 for DCAL on the social and economic value of angling in NI, states that all forms of angling in NI support some 780 full time equivalent jobs, and are worth some £40m p.a. to the NI economy, mostly from game angling. If this jobs/economic benefit is to maintained and enhanced, the provision of good water quality and satisfactory fish stocks are absolutely vital for our fisheries and tourism. The following comments are made in that light.

Additional Provisions to the Planning Bill

This briefing which in no way supersedes or amends any of our previous submissions to the Bill, has been prepared as a direct response to the additional provisions introduced by the Bill which seek to underpin the role of planning in promoting economic

development, and with particular regard to the following:Clause 6 amends Article 25 of the Planning (NorthernIreland) Order 1991and Section 45 of the Planning Act (Northern Ireland) 2011by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic

advantages or disadvantages likely to result in granting or refusing planning permission.

It is understood that these additional provisions which underpin the role of planning in promoting economic development have been recently identified as desirable additions to the Planning Bill and will be subject to consultation and scrutiny during the Assembly process.

Public consultation in respect of these additional provisions, according to DOE Planning officials has not been possible due to time constraints. It was further stated that the Single Planning Policy Statement would provide more details along with social and environmental considerations.The UAF understands the pressures of legislative timings, however it believes because of the importance of this particular amendment public consultation should have been sought. Indeed it would seem very foolish to proceed with these additional provisions without the benefit of public consultation.

Further Clarity Required

1. The UAF seeks further clarification on the term 'desirable additions' which was used as an apparent justification for the late inclusion of these additional provisions relating to economic development.

2 We would welcome details of the consultation and scrutiny which these additional provisions will be subject to during the Assembly process?

3 The UAF would welcome further clarification on the procedure which facilitates the inclusion of additional provisions within the Bill which have not been subject to the rigor of public scrutiny, and impact assessments.

4 Furthermore, we would question the justification for the singling out of Economic Considerations from the 'any other material considerations' that is currently contained at Article 25 of the Planning Order (NI) 1991, as amended (see below), save only to give such consideration additional weight above unnamed material considerations

Determination of planning applications

25.—(1) Subject to this Part, where an application is made to the Department for

planning permission, the Department, in dealing with the application, shall have regard to the development plan, so far as material to the application, and to any other ***material considerations***

The UAF would welcome further explanation regarding the need for such explicit identification.

5 If the Single Planning Policy Statement is to provide more details of the social and environmental considerations in determining planning applications, as outlined during the recent Environment Committee briefing by DOE Planning, where is the justification for excluding these considerations from Clause 6 of the Bill?

R F Marshall
Development Officer

Ulster Architectural Heritage Society

The Ulster Architectural Heritage Society welcomes the opportunity to submit a response to the Environment Committee respecting the Northern Ireland Planning Bill 2013.

This Bill is being brought forward to legislatively prepare the planning system for a transfer of major planning responsibilities to local councils in 2015. The Society welcomes many of its proposals such as the statement of community involvement; pre-application community consultation; the power to decline to determine overlapping consultations; the increase in fines for environmental crimes; a requirement for a development to enhance rather than merely preserve the character of a conservation area; and the redefinition of demolition in a conservation area to include partial demolition.

Nonetheless certain clauses in the Bill are of grave concern to the Society, and we are convinced that rather than promote the acknowledged aim of current planning reform in Northern Ireland to achieve simpler and speedier planning decisions, the introduction of these clauses would have precisely the opposite effect, and indeed in some cases, for instance clauses 10 and 20, are quite unnecessary.

Dealing firstly with the latter two clauses. Clause 10 would result in a questioning of the legitimacy of any planing decision made by a body appointed directly by the DoE to determine the case; and clause 20, by offering immunity from prosecution once an initial fine has been paid, limits the scope of effective enforcement, an already acknowledged underused and neglected power.

Moving on to those clauses which the Society fears would serve only to impede, and add complexity, uncertainty and cost to the planning system, namely clauses 2 and 6, we offer the following comments:

The Planning Act 2011 contains the objective of furthering sustainable development, which is widely accepted as encompassing the following five pillars:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting good governance
- using sound science responsibly.

Changes to our planning legislation must perforce seek to address this commitment to furthering sustainable development, and the thrust of our efforts should now be to provide effective, proportionate, clearly understood and implementable legislation and guidance to promote and achieve it.

The Society urges the Committee to recognize that the introduction of an additional and separate objective [enshrined in clauses 2 and 6 of the Planning Bill] to **promote** economic development rather than considering the achievement of a sustainable economy as part and parcel of an assessment of sustainable development, serves only to undermine, delay and thwart such an assessment.

By way of illustration, we would point out that an attempt to fulfil this additional role would be hampered by the absence of a clear definition of the following:

- the meaning of economic development;
- agreed criteria upon which a judgement of economic benefit is to be based - the most commonly accepted being those to be addressed by a suitably qualified expert as part of a Green Book Assessment;

- who should benefit – specific individuals or society at large;
- whether it is to be assessed in the long- or short-term;
- staff adequately skilled, trained and resourced to carry out such an assessment;

There will also be added onus and expense on the applicant to produce adequate information and documentation to justify the economic benefits of their proposal, and the inevitable delay and additional expense involved in assessing them.

Furthermore, Clauses 2 and 6 incontrovertibly change the commonly understood and agreed role of planning, enshrined in legislation, to address issues **solely** related to the use and development of land. The introduction of a specific requirement to promote economic development fundamentally alters this recognised role, and attempts thereby to use planning for a purpose for which is neither designed nor authorised under its legislation, opening up a potential area of legal conflict and challenge.

As an organisation specifically concerned with built heritage, UAHS is keenly aware of the added threat posed to this heritage and its potential - recognised in a recent debate in the Northern Ireland Assembly - to deliver long-term sustainable economic gains, by the inclusion in the Planning Bill of an additional, specific, statutory requirement to promote [non-defined] economic development.

We would also like to raise the importance of a third party right of appeal as part of a healthy and robust planning system, and would support measures to achieve its speedy introduction. This crucial check and balance measure would entitle third parties like UAHS to appeal damaging decisions in the same way that developers can appeal refusals, rather than be forced to undertake a

resource-intensive judicial review in the High Court. We firmly believe the introduction of third party right of appeal would result in better quality decisions and environments.

Bearing all this mind, the Society would urge the Environment Committee to revert to the spirit of the 2011 Planning Act, and include economic considerations as partners amongst equals in the factors determining whether a development is sustainable; and to resource and empower Planning Service to introduce legislation and guidance fitted to achieve this aim.

Furthermore, the Society is aware of the considerable amount of work yet to be done, and small staffing resources currently allocated, to ensure the successful completion of the outstanding Planning Policy Statements and Urban Design Guide scheduled to be made available for public consultation within the calendar year; and the amount of work yet to be done to draft the intended Single Planning Policy Statement and its supporting guidance. Additional resources may yet be required to achieve these agreed targets, and we would urge the Committee to ensure that this should take priority. The additional work that will inevitably be generated in association with Clauses 2 and 6 of the Planning Bill will inevitably introduce delays and further expense into the system, and hamper the achievement of existing targets.

UAHS hopes these comments are helpful to the Environment Committee, and would be delighted to be contacted by the Committee for further comment and clarification.

Ulster Architectural Society

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Ulster Architectural Heritage Society - Further comments on Planning Bill

Additional Comments submitted by the Ulster Architectural Heritage Society following the Evidence Event before the Environment Committee in the Long Gallery, Stormont, 18th April 2013.

The Society welcomes the invitation kindly made by the Chairman of the Environment Committee to make a brief additional submission in relation to comments made during this event relating to Clauses 2 and 6, and 17 of the Planning Bill.2013.

With respect **Clauses 2 and 6**, as stated on 18th April, the Society is very concerned that the introduction of a specific requirement to promote economic development poses a significant additional threat to Northern Ireland's rich and highly individual built heritage, which so closely reflects and embodies our unique and special history.

For instance, a developer might argue a strong economic case based on an application to demolish an existing historic building and replace it with a modern purpose-built one, citing the economic benefit accruing from the construction jobs necesssary to build the new structure and the wages of the workforce to be employed in the new premises. The developer may also be able to prove that the cost of repairing and adapting the existing building will be higher due to the current VAT regime and extra cost of finding and employing the skilled craftsmen required to carry out this specialist work.

Any objector wishing to support the retention and adaptation of the existing building might be able to request Planning Service, for instance, to take into account other economic benefits such as:

- minimization of waste;
- conservation of the embodied energy of the existing building and energy required to construct and transport the materials for the new building;
- enhancement of the skills base of the construction industry;
- preservation of the character of the existing streetscape or landscape;
- preservation of the historical and cultural value of the property, which would have played a role in the lives of generations of local people.

Such economic benefits are much harder to fully identify and quantify, particularly for Planning Service (NI) which currently lacks specialist economists skilled in doing so, whereas the benefits claimed by the developer are more familiar and determinable.

With respect to **Clause 17** requiring a development in a Conservation Area to preserve and where possible enhance the character of a Conservation Area. The Society is aware that this Clause is intended to speedily bring into force an identical one contained in the forthcoming Planning Act, and is necessary to redress the effects of the South Lakeland judgement (1992) which found that the character of a Conservation Area could be said to be preserved where it was not actually harmed, a judgement which has been invoked by developers ever since. Two submissions were made on 18th April disapproving of the introduction of Clause 17 on the grounds that it would be very onerous on a developer and that it would discourage investment in Conservation Areas.

Conservation Area designation implies that a locality possess a distinctive character worthy of special status, and the necessity for a new development to preserve or enhance this special character is clearly acknowledged in PPS6 section 7.3. As stated in its original

submission, the UAHS wholeheatedly supports the speedy introduction of Clause 17 of the Planning Bill. In the Society's view absence of harm might mean little more than leaving premises vacant or replacing them with a new building of equivalent size. On the other hand preservation implies maintenance of an existing structure, and enhancement the improvement of its amenities and restoration of its architectural features.

The special nature of Conservation Areas makes them of particular appeal for residents and tourists, who choose to live or spend time in such places precisely because they are not run-of-the-mill but full of character, variety and interest. If the South Lakeland judgment continues to be accepted case law, the special nature of our Conservation Areas will be gradually lost, diluted or undermined, and the economic benefits flowing from them will correspondingly diminish and eventually cease.

No-one can be unaware of the current crisis facing commercial town centres the length and breadth of the United Kingdom, with hundreds of businesses facing closure. The public is turning its back on the traditional high street, seeking to purchase goods either from from out-of-town retail parks or from the internet, small niche sellers, farmers' markets and street markets. Shops in Conservation Areas still in possesion of their traditional gaily painted shop frontages offer another exciting and novel experience, and their owners are clearly aware that to compete they must offer outstanding quality and service. The challenge for a new retailer in a Conservation Area , including a major retailer, is to trade in premises in sympathy with the established character of the Conservation Area, and not in those that merely meet the 'no harm' test. Excellent examples of how this may be achieved are set out in the *Retail Design Manual* published by the Department of Arts, Heritage and the Gaeltacht in 2012, and it is to be hoped will also be included in the Urban Design Guide due to be produced shortly for Northern Ireland.

Ulster Wildlife Trust

PLANNING BILL 2013

SUBMISSION BY ULSTER WILDLIFE TRUST

Ulster Wildlife Trust

INTRODUCTION

The Ulster Wildlife Trust (UWT) is responding on behalf of over 12,000 members from across Northern Ireland. We are the largest locally based nature conservation charity. We manage nature reserves, engage local communities, and work in partnership with a wide range of stakeholders to deliver holistic land and marine management approaches through our Living Landscapes and Living Seas work for the people and wildlife of Northern Ireland. The UWT welcomes the opportunity to comment to the NI Assembly Environment Committee on the Planning Bill.

At the outset, it is important to note that the UWT supports the Executive's top priority to contribute to and encourage economic growth. However, such growth puts pressure upon the environment and natural resources, and the planning system plays an important role in ensuring that this is balanced with protecting and enhancing the quality and character of our countryside and urban areas through effective policies.

This Submission follows the same sequence as the Bill, however, our main focus is upon Clauses 2 and 6, which propose to amend the legislation in respect of economic considerations. Whilst we support economic growth in our society, it is our view that such growth must be sustainable, and that the proposals set out in the Bill may not be the best way to deliver an effective and efficient planning system which will achieve this. The amendments under consideration increase the complexity of implementation at a time when the function of planning is being transferred to local authorities and significantly increases the potential for legal challenge.

CLAUSE 1: STATEMENT OF COMMUNITY INVOLVEMENT

The UWT welcomes this addition. This should ensure that proper attention is paid to community involvement.

CLAUSE 2: GENERAL FUNCTIONS OF THE DEPARTMENT AND THE PLANNING APPEALS COMMISSION

The UWT endorses the EC Council of Ministers' Resolution of 8 June 1993, which states that all legislation should be clear, simple, concise and unambiguous.

This principle should apply to any changes which are proposed in planning legislation in Northern Ireland. The challenges which will face the new local authorities in 2015 will be significant, and in this context, any changes to planning legislation should be kept to the minimum necessary to ensure good governance under the new arrangements. The introduction of new and untested provisions, which could lead to increased uncertainty and potential legal challenges, would not be in the best interests of our community.

The UWT also believes that planning policy can more easily adapt and respond to emerging situations than legislation. In essence, the UWT considers that the Department should focus upon the provision of a set of guiding principles for the planning system (which would be subject to public consultation), rather than seeking to add unnecessary and untested complexities into legislation.

The requirement to 'promote' economic development

The UWT has particular concerns about the introduction of a specific legislative requirement to *'promote economic development'* in planning policy and development plans, for the following reasons:

1) the requirement to promote economic development through planning legislation is largely untested, particularly as the competent authorities in England and Scotland have not seen the need to introduce similar provisions as statutory requirements;

2) the proposed 'three - pronged' objective is cumbersome. It does not read as a single objective, but as three separate objectives, which relate to different considerations and which in some cases may be mutually exclusive. The legislation provides no indication as to how competing aspects of these objectives might be balanced;

3) the word *'promote'* implies that the Department will be statutorily obliged to take positive action to deliver economic development. Confusingly, the wording is different from the requirement to *'further'* sustainable development, and the more flexible clause which allows the Department the option to *'promote or improve'* well being;

4) it is highly questionable whether it is the role of the planning system to *'promote'* economic development. As PPS 1 states (para 3) *'the town and country planning system exists to regulate the development and use of land in the public interest. The public interest requires that all development is carried out in a way that would not cause demonstrable harm to interests of acknowledged importance'*. It is important that the planning system is not conflicted in its objectives, and that it is able to adopt a measured and balanced approach to all of the material factors;

5) the Planning Bill quite rightly obliges the Department to take account of policies and guidance issued by the Department, DRD, OFMDFM, and any other matter which appears to be relevant. By incorporating this requirement, the Department will have to carry out its functions with regard to agreed strategies and guidance such as the Programme for Government; the Regional Development Strategy, Planning Policy Statements, the NI Biodiversity Strategy, Marine Bill which includes a requirement for a planning framework etc, all of which may have relevance to planning. In such a context there is no necessity to require the promotion of economic development in legislation. Conditions that encourage and facilitate sustainable economic development should be created by policy. Unlike legislation, policy can readily be adapted to suit changing economic and environmental conditions. In this respect it is worth noting that it is government policy in England (the National Planning Policy Framework – See appendix 2) that requires the planning authorities to operate a *'presumption in favour of sustainable development',* not legislation.

6) Planning Policy Statement 4 - 'Planning and Economic Development' already stresses the importance of economic development. Notably however, the introduction comments that it *'seeks to promote sustainable economic development through supportive planning policies, zoning land for development etc'*. Helpfully, it also notes that economic development can be facilitated *'in ways consistent with protection of the environment and the principles of sustainable development'.* In the view of UWT, this is a balanced approach which already ensures that economic development will be properly balanced with environmental considerations;

7) the NI Biodiversity Strategy also advocates a balanced approach to development. Its comment that '*sustainable development means social progress for everyone; high and stable levels of economic growth and employment; effective protection of the environment and prudent use of natural resources'* continues to provide an effective long term objective which can guide the Department in the exercise of its planning functions; and

8) Regulation 3(4) of The Conservation (Nature Habitats etc) Regulations (Northern Ireland) 1995 (the Habitats Directive) provides *that 'every competent authority in the exercise of any of its functions shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions'*. The issue is simple. In a context where the statutory requirement is to *'promote'* economic development, but only to *'have regard'* to the Habitats Directive, which will be given greater weight? It is important to ensure that there will be no diminution in the status of the Habitats Directive. Indeed any such diminution could be regarded as contrary to European and domestic law. This could result in infractions fines for the NI Government.

The purpose of the planning system must be to balance competing interests. To state that it must *'promote'* economic development but simply *'have regard'* to other considerations could potentially result in long-term and irreversible environmental damage. The inevitable tension between such phrases is also likely to result in legal challenges in relation to the emphasis which plans and policies should place upon the varying legislative requirements. Such a situation would not be in the interests of our community.

The UWT believes that the answer lies in continuing to place the principles of sustainable development (which are already enshrined in the 2011 Act), at the heart of the planning system.

The UWT suggests that Clause 2 should be reworded as follows:

Clause 2 (1)(a)(1):

" Where the Department or the planning appeals commission exercises any function under Part 2 or this part, the Department or as the case may be the commission, must exercise that function with the objective of furthering sustainable development."

The inclusion of a definition based upon the NI Biodiversity Strategy, which states that ***'sustainable development will embrace social progress, economic growth and employment, effective protection of the environment, and prudent use of resources'*** would ensure that there is clarity and balance in the implementation of such an objective.

International Obligations

The Northern Ireland planning system does not exist in a vacuum. There are a raft of international obligations to which the UK (and therefore NI) government is a signatory. Examples include UNESCO obligations, the Ramsar Convention etc.

The recent judicial review of the Bushmills Dunes development has highlighted the fact that the requirements of UNESCO in respect of the World Heritage Site at the Giant's Causeway are not enshrined in local law or planning policy. The WHS is one of the most important economic assets in NI, and it is important to have the legislative tools to ensure that it retains its international status for the economic and environmental benefit of future generations. For this reason, it is considered that the need to have regard to international conventions should be incorporated into legislation moving forward.

Clause 2(1) (b)(2) should be amended as follows:

"(b) any other matter which appears to the Department, or as the case may be the Commission to be relevant, including international conventions to which the UK/NI Government is obligated".

The desirability of achieving good design

The UWT welcomes the need to include the requirement to *'have regard to the desirability of achieving good design'*. A similar provision is included within the 2008 Planning Act in England. However good design involves much more than just the appearance of buildings or places. Good design should incorporate sustainable building techniques, materials, energy efficiency measures etc to assist adaptation to climate change.

If this provision is to remain in the Bill, the UWT advocates that policy guidance should be prepared as a matter of urgency to set out how sustainable design principles must be incorporated into development proposals.

CLAUSE 3: MEANING OF DEVELOPMENT

The UWT welcomes this, as it will ensure planning control over demolition, which might potentially impact upon protected species such as bats.

CLAUSE 5: PRE-APPLICATION COMMUNITY CONSULTATION

The UWT welcomes enhanced pre-application community consultation requirements. However the UWT believes that clear guidelines for this (especially in relation to the bodies to be consulted) will be essential.

CLAUSE 6: DETERMINATION OF PLANNING APPLICATIONS

The UWT recognises that sustainable economic development should be at the forefront of the Executive's priorities. However it cannot see any reason why our planning legislation needs to be amended to make specific reference to economic advantages or disadvantages as material considerations in planning applications. Economic considerations are already material considerations in the planning process, and have consistently been demonstrated to be so. The recent High Court judgement in the Bushmills Dunes Golf Resort application has confirmed that the Department is entitled to place significant weight on perceived economic benefits.

Again, the statutory authorities in England and Scotland have not seen any need to introduce such a provision into their legislation. Policy in support of sustainable economic development is delivered through their National Planning Frameworks.

The UWT considers that a specific reference to economic advantages and disadvantages should not be inserted into legislation, for the following reasons:

1) economic considerations are already material to the decision making process. Case Law has demonstrated this;
2) this provision could potentially elevate economic considerations to a primary consideration, above all others. The Bill could lead to a system where the party with the greatest resources (in proving/disproving economic advantages to an application) is successful in achieving their desired outcome.
3) it could lead to less weight or attention being given to environmental considerations such as landscape impact, habitat, impacts of climate change etc;
4) the planning authority may be obligated to specifically incorporate economic assessments into their determinations across the full spectrum of development projects; and
5) it could lead to increased pressure on staff resources, increase the need for external consultancy advice, and encourage a situation whereby applicants or objectors feel obliged to submit detailed economic appraisals in support of their case.

Rather than improving the planning system, the UWT believes that such a provision could actually result in an increase in bureaucracy, slower decisions, greater expense, and a rise in legal challenges. In short, there is simply no justification for the inclusion of this provision in legislation.

CLAUSE 9: AFTERCARE CONDITIONS FOR ECOLOGICAL PURPOSES ON GRANT OF MINERAL PLANNING PERMISSION

The UWT welcomes the addition of ecological purposes to the range of acceptable uses following cessation of mineral extraction.

CLAUSE 14: AFTERCARE CONDITIONS IMPOSED ON REVOCATION OR MODIFICATION OF MINERAL PLANNING PERMISSIONS

The UWT welcomes this provision. Although it is likely to be invoked on only rare occasions, it may be a useful tool which could place the aftercare onus on landowners or developers, rather than NGOs or voluntary organisations.

CLAUSE 16: INCREASE IN PENALTIES

The UWT welcomes the proposed increase in fines as a deterrent to breaches of planning control.

CLAUSE 17: CONSERVATION AREAS

UWT has no comment to offer on this provision, other than to note that it does not seem to accord with the principles of clarity, simplicity and lack of ambiguity.

CLAUSE 18: CONTROL OF DEMOLITION IN CONSERVATION AREAS

The UWT welcomes the requirement to obtain consent for partial demolition of buildings in conservation areas.

CLAUSE 19: TREE PRESERVATION ORDERS: DYING TREES

UWT welcomes the introduction of a clause in respect of dying trees as this will provide improved clarity and help to preserve biodiversity.

CLAUSE 20: FIXED PENALTIES

The UWT welcomes this provision. However, it should be made clear that the Department will also have the option of pursuing an offence through the Courts as appropriate.

CLAUSE 22: GRANTS

The UWT welcomes the provision of grants for the purposes of improving understanding and engagement with the planning system.

CONCLUSIONS

The proposed amendments to the Planning Bill have been introduced at a very late stage, and without public consultation. Whilst the UWT welcomes the opportunity to make its views known to the Committee, it must express some reservations that a wider consultation exercise has not been undertaken in relation to such significant amendments. Draft PPS24 was strongly rejected following public consultation. This Bill relies on similar objectives but the decision has been taken that it does not require public consultation.

In essence, the UWT would request that the Committee consider carefully whether the proposed amendments will help to secure the objective of a more effective and efficient planning system in Northern Ireland. We must reiterate our view that the legislation should be as simple and

straightforward as possible, and that the key to the encouragement and delivery of sustainable economic growth in our community lies not in changes to legislation, but in effective government policy.

In addition, the committee will be aware of the marine spatial planning framework which will form part of the out workings of the Marine Bill once enacted. UWT would urge that consideration is given to how these two planning systems develop in tandem and look for consistency between marine and terrestrial planning approaches. The two systems need to integrate effectively to avoid confusion and potential lack of consistency of approach when coastal developments are under consideration (as often these can require permission through both systems). We would also like to see that coastal management is considered within the context of climate change and the predicted impacts and potential need for managed retreat in certain areas.

The UWT looks forward to further discussion on the matters raised with the Committee.

INDEX TO APPENDICES

APPENDIX 1

The European Council of Ministers' Resolution of 8 June 1993 on the quality of drafting of Community legislation states that the general objective of making Community legislation more accessible should be pursued by making systematic use of consolidation and also by implementing certain guidelines.

The criteria against which Council texts should be checked as they are drafted are that—

1. the **wording of the act should be clear, simple, concise and unambiguous**; unnecessary abbreviations, 'Community jargon' and excessively long sentences should be avoided;

2. imprecise references to other texts should be avoided as should too many cross-references which make the text difficult to understand;

3. the various provisions of the acts should be consistent with each other; the same term should be used throughout to express a given concept;

4. the rights and obligations of those to whom the act is to apply should be clearly defined;

5. the act should be laid out according to the standard structure (chapters, sections, articles, paragraphs);

6. the preamble should justify the enacting provisions in simple terms;

7. provisions without legislative character should be avoided (wishes, political statements);

8. inconsistency with existing legislation should be avoided as should pointless repetition of existing provisions. Any amendment, extension or repeal of an act should be clearly set out;

9. an act amending an earlier act should not contain autonomous substantive provisions but only provisions to be directly incorporated into the act to be amended;

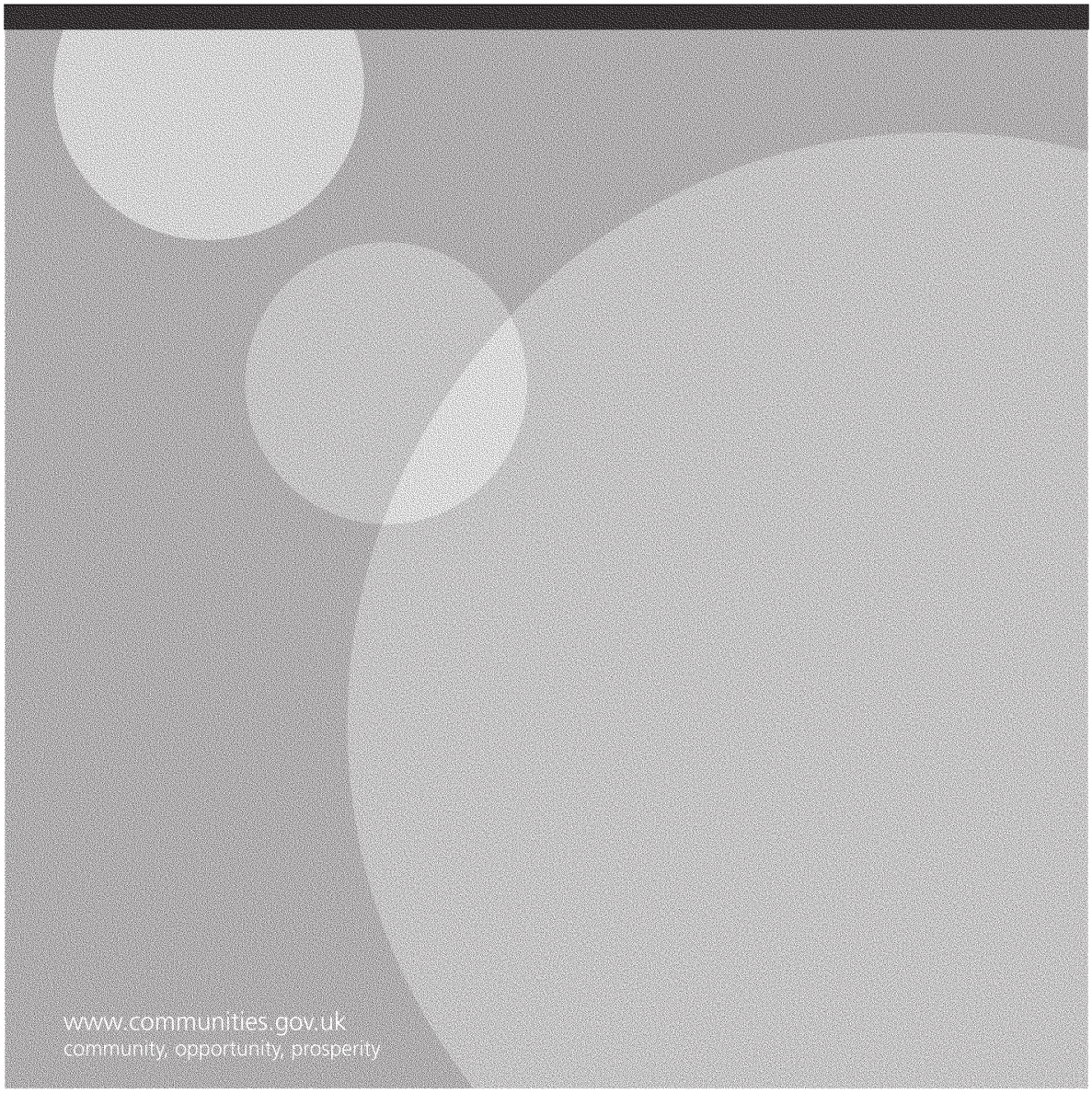
10. the date of entry into force of the act and any transitional provisions which might be necessary should be clearly stated.

The inter-institutional agreement on common guidelines for the quality of drafting of Community legislation builds on these drafting guidelines. It adopts general principles covering both the drafting techniques to be used within Community legislation and the structure of Community acts. Many of the principles coincide with those of the plain language movement. The first three state that—

- **Community legislative acts shall be drafted clearly, simply and precisely,**
- the drafting of Community acts shall be appropriate to the type of act concerned, and
- the drafting of acts shall take account of the persons to whom they are intended to apply, with a view to enabling them to identify their rights and obligations unambiguously, and of the persons responsible for putting the acts into effect.

Communities and Local Government

National Planning Policy Framework



Ministerial foreword

The purpose of planning is to help achieve sustainable development.

Sustainable means ensuring that better lives for ourselves don't mean worse lives for future generations.

Development means growth. We must accommodate the new ways by which we will earn our living in a competitive world. We must house a rising population, which is living longer and wants to make new choices. We must respond to the changes that new technologies offer us. Our lives, and the places in which we live them, can be better, but they will certainly be worse if things stagnate.

Sustainable development is about change for the better, and not only in our built environment.

Our natural environment is essential to our wellbeing, and it can be better looked after than it has been. Habitats that have been degraded can be restored. Species that have been isolated can be reconnected. Green Belt land that has been depleted of diversity can be refilled by nature – and opened to people to experience it, to the benefit of body and soul.

Our historic environment – buildings, landscapes, towns and villages – can better be cherished if their spirit of place thrives, rather than withers.

Our standards of design can be so much higher. We are a nation renowned worldwide for creative excellence, yet, at home, confidence in development itself has been eroded by the too frequent experience of mediocrity.

So sustainable development is about positive growth – making economic, environmental and social progress for this and future generations.

The planning system is about helping to make this happen.

Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision. This framework sets out clearly what could make a proposed plan or development unsustainable.

In order to fulfil its purpose of helping achieve sustainable development, planning must not simply be about scrutiny. Planning must be a creative exercise in finding ways to enhance and improve the places in which we live our lives.

This should be a collective enterprise. Yet, in recent years, planning has tended to exclude, rather than to include, people and communities. In part, this has been a result of targets being imposed, and decisions taken, by bodies remote from them. Dismantling the unaccountable regional apparatus and introducing neighbourhood planning addresses this.

In part, people have been put off from getting involved because planning policy itself has become so elaborate and forbidding – the preserve of specialists, rather than people in communities.

This National Planning Policy Framework changes that. By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning.

Rt Hon Greg Clark MP
Minister for Planning

Upper Mounteagles Avenue Residents' Association

To whom it may concern,

I am writing on behalf of Upper Mounteagles Avenue Residents Association (uMARA) to formally object to the Planning Bill NIA 17/11-15.

uMARA is a community group based in Mount Eagles, Lagmore, established in 2012 to deal with issues in relation to open space management, public transport, roads, sewers, home insulation defects and bad workmanship on the houses.

uMARA fully endorses the objections (attached) submitted by Professor Geraint Ellis on behalf of Friends of the Earth and Belfast Holylands Regeneration Association (BHRA). Both letters of objection are extremely articulate and cover all the main issues/ concerns that uMARA would also like to highlight.

It is the view of uMARA that if the planning bill goes ahead in it's current form this will have detrimental consequences for Mount Eagles. This could result in the destruction of Lagmore Glen, a unique natural habitat that will be designated as an Urban Landscape Wedge (ULW), as economic consideration would take precedence. Residents liveing in Mount Eagles have been blighted by poor planning which has been acknowledged by Planning Appeals Commission (PAC) in their BMAP Lagmore report Lagmore is essentially an urban desert with little or no community infrastructure/services and an over saturation of houses. This planning bill does nothing to address this!

Regards,

Niall Cullen
Upper Mounteagles Avenue Residents Association

Victor Russell

I would like to make the following response to the consultation re the above Bill. In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law, **certainly not without full public consultation**.

1. How could the economic value of a proposed development possibly be assessed accurately by planners who are not economists?

2. There is a contradiction between the primacy of economic factors and the responsibility to encourage and protect sustainable development. **The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment**, already compromised.

3. Developers who reneged on their promises of economic benefit would receive no sanctions.

NI has the most liberal planning system in these islands. It bodes long-term ill for all of us if it gets even more casual and economic-developer led.

Victor Russell

WH Jones

Planning Bill
12/02/13

William Jones

I wish to object to the following weaknesses in the new Planning Bill

1 Clause 2 Sustainable development must mean what it implies and not end up destroying the ecological balance of the environment. The effects on the environment must be given substantial weight in the decision making Process.

2 Clause 6 this will lead to speculative development which will sweep aside environmental issues such as ATC / AVC including the additional infrastructure it would require.

3 Planning as it stands has no mechanisms to impose economic conditions eg job creations numbers, profitability numbers Developers can make claims to support an application, but these claims cannot be monitored or enforced.

4 The constraints placed on the Ombudsman's role by the OFMDFM's committee means we have no robust means of challenging the large developer when things are obviously wrong. This must be the time for 3rd party appeal facilities to be introduced for planning objections.

5 The requirement for a pre-application community consultation is welcome (Clause 5). All such consultations must be adequately resourced if they are to be effective and gain buy-in for communities. Front loading should not be viewed as an alternative to full access to justice. A Third Party Right of Appeal must be introduced for circumstances in which the system fails

All Public interest factors must be given appropriate consideration not just going through the motions Professor Greg Lloyd completed a recent report for Minister Foster on planning reform page 25 covers this point in the conclusions he made.

6 Clause 10 This feature would be unworkable the department in choosing a commissioner would not be in a position to defend its self against a conflict of interest challenge.

7 Clause 20. The Bill suggests that no further action will be taken if a Fixed Penalty Notice is paid. Enforcement notices can be reissued but this is an extra burden on the system contrary to the stated objective of simplifying and speeding up planning. It must be made clear that fines should not be applied in lieu of remedial action. Breaches of planning conditions must be rectified immediately or the planning permission rescinded.

8 The Environmental Committee undertakes a scrutiny of, policy development and consultation role with respect to the Department of the Environment; it should not be used as an alternative to manage consultation on a controversial new provision. This new bill warrants the rigours of a full public consultation.

9 All planning areas Villages and so forth outside the Belfast area must be treated with equal enthusiasm by planning service this is not happening under the present system when an objection has to be referred to Planning Headquarters the interest level falls of sharply

The public have no confidence in the present Planning service. It is now essential that a new Planning Department be created, tried and tested prior to any consideration of major changes. This photograph shows what the present department approved.

Best

Regards
W.H.Jones

Woodland Trust

Woodland Trust Written Submission to the Committee for Environment for the Committee Stage of the Planning Bill 2013

Introduction

The Woodland Trust is very grateful for the opportunity to provide written evidence to this important Committee Stage inquiry which will accelerate the implementation of reforms contained within the Planning Act (Northern Ireland) 2011 . The Trust owns and manages over 50 Sites in Northern Ireland and we have over 8,500 members across the Province and have an important stake in helping secure a planning regime that fully protects our important natural habitats.

Our response builds on evidence we provided back in 2010, during the consultation stage of the 2011 Act, and in our direct engagement with the then Environment Minister, Edwin Poots MLA. We are very pleased to see many of our proposals were enacted in the 2011 Act, particularly with regard to toughening enforcement for environmental offenses, the extension of conservation areas, and the very welcome improvements to tree preservation orders. We have taken the liberty within our written evidence to propose a number of additional improvements which will further enhance the TPO measures, ensuring the word and spirit of legislation is delivered.

1. Comments on schedules within the 2013 Bill

The 2011 Act was an important milestone in the protection of Northern Ireland's precious natural heritage by legislating for a number of very important improvements to our Environmental protection regime. We very much welcome their acceleration through the 2013 Bill.

Simpler and Tougher Enforcement

- We were pleased that our proposal to increase the penalty for planning offences in respect of trees was enacted, thereby increasing the penalty from £30,000 to £100,000, therefore creating a more realistic disincentive which should provide much greater protection to our natural environment.

Other Measures to enhance the environment

- **Clause 19** - We welcome the important amendments made to the 1991 Order so that dying trees are no longer exempt from a Tree Preservation Order. As we noted in our earlier evidence, these often offer the richest habitats for our native species and therefore are a crucial aspect of our natural environment.
- **Clause 17 & 18** – We fully support the requirement to pay special attention to preserving the character or appearance of Conservation Areas. We also welcome measures to enable more effective control over demolition in conservation areas and welcome the requirement in the 2013 act to extend this to partial demolition of buildings.

2. Economic Development

The 2013 Bill includes multiple provisions to underpin the role of planning in promoting economic development, alongside the existing requirements to "further sustainable development" and "promote or improve wellbeing". Whilst we fully understand a renewed focus on Economic Development, we are concerned that these objectives are not always mutually compatible, as there is often a trade-off between pursuing growth at any cost and protecting our natural environment.

It is proposed that article 25 of the 1991 Order and section 45 of the 2011 Act are both revised to include the following statement, "*Without prejudice to the generality of paragraph (1), the reference in that paragraph to material considerations includes a reference to considerations relating to any economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission.*".

Unless this statement is fully qualified, we remain very concerned that this could grant permission to support development that damages, rather than enhances our natural environment. We therefore urge the Committee to consider a clear statement that ensures that economic development is not supported when it impinges upon delivering true sustainable development i.e. supporting development that enhances and protects our natural environment rather than damages it. This is particularly crucial for our important and rare natural habitats, like our ancient woodland (that's land continuously wooded since at least 1600). Northern Ireland's ancient woodland is a precious and finite resource, covering a mere 0.08 per cent of the landscape.

The UK Government's National Planning Policy Framework includes specific mention of the need to protect Ancient Woodland, and we urge the Committee to consider inclusion of a similar statement of intent within the legislation.

> *"planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland".*

In respect to Northern Ireland, we would state that this should cover all woods as listed on the Ancient Woodland Inventory.

3. Additional measures for consideration by the Committee

The welcomed reorganisation of local government in 2015, provides an excellent opportunity to enhance the increased protection afforded to trees in the 2011 Legislation.

We have identified three additional areas which are crucial enablers in ensuring legislative changes will have real impact when implemented in terms of enhancing Northern Ireland's natural environment. Without these the legislation will have little impact and we urge consideration of their inclusion in the 2013 Legislation

- **Tree Protection Officers** – we propose that a Tree Protection officer is appointed within each of the new authorities to oversee implementation of this strengthened tree protection regime. Without this important resource we are unsure how these important legislative changes will be policed and as such deliver intended benefits.
- **Local Tree Registers** – these will form an inventory of all trees covered by a TPO within each Local Authority Area as well as important historic trees. These will provide a crucial evidence base to ensure that the legislation is effectively policed and also ensure transparency of the new protection regime.

Woodland Trust
March 2013

Zelda Kingston

15th March 2013

Dear DoE Environment Committee

Re: NI Planning Bill 2013

I would like to make the following response to the consultation re the above Bill.

In my view the Bill would not benefit the people, economy or environment of Northern Ireland and should not become law.

My reasons for opposing the Bill are:

- Economic development is already one of the important factors taken into account when assessing planning proposals
- The economic value of a proposed development is impossible to forecast accurately. Planners do not have the necessary training as economists.
- The planning system would become overburdened and slowed with appeals by developers, making it effectively unworkable.
- There would be no way of monitoring compliance with the economic conditions of planning approval.
- There is no accountability against developers who renege on their promises of economic benefit.
- There is a contradiction between the priority of economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have devastating consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people.
- To introduce such devastating changes to the planning system in this manner without a full public consultation being carried out is inappropriate.

In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation.

Yours sincerely

Mrs Zelda Kingston

Appendix 4

List of Witnesses

List of Witnesses

Mr Brian Gorman	Department of the Environment
Ms Irene Kennedy	Department of the Environment
Mr Angus Kerr	Department of the Environment
Mr Simon Kirk	Department of the Environment
Mr Tom Matthews	Department of the Environment
Mr Kevin McKeever	Department of the Environment
Ms Katy Monaghan	Department of the Environment
Ms Lynn Scott	ASDA
Ms Liz Fawcett	Belfast City Airport Watch
Mr Herbie McCracken	Belfast City Airport Watch
Mr Ciaran Quigley	Belfast City Council
Ms Laura McDonald	Belfast Healthy Cities
Ms Joanna Monaghan	Belfast Healthy Cities
Mr Tony McGuinness	Belfast Holyland Regeneration Association
Mr Peter Carr	Belfast Metropolitan Residents' Group
Ms Elaine Devlin	Community Places
Ms Gemma Atwood	Community Relations Council
Mr Nigel Lucas	Construction Employers Federation
Mr Peter Archdale	Council for Nature Conservation and the Countryside
Mr Patrick Casement	Council for Nature Conservation and the Countryside
Ms Christine Cosgrove	Dundonald Green Belt Association
Ms Tanya Jones	Fermanagh Fracking Awareness Network
Mr James Orr	Friends of the Earth
Mr John Moore	Holywood Conservation Group
Mr Richard Buchannan	Institute of Directors
Mr Gerard Daye	Mount Eagles Drive Action Group
Mr James McCabe	Mount Eagles Ratepayers' Association
Ms Diane Ruddock	National Trust
Ms Judith Annett	Northern Ireland Biodiversity Group
Ms Sue Christie	Northern Ireland Environment Link
Ms Catherine Blease	Northern Ireland Housing Executive
Alderman Jim Dillon	Northern Ireland Local Government Association
Ms Karen Smyth	Northern Ireland Local Government Association
Ms Elaine Kinghan	Planning Appeals Commission
Mr Gordon Best	Quarry Products Association Northern Ireland
Professor Geraint Ellis	Queen's University Belfast
Mr Gary Jebb	Queen's University Belfast

Mr David Mountstephen	Royal Town Planning Institute Northern Ireland
Ms Michelle Hill	Royal Society for the Protection of Birds
Ms Anne Casement	Ulster Architectural Heritage Society
Ms Victoria Magreehan	Ulster Wildlife Trust
Professor Greg Lloyd	University of Ulster

Appendix 5

Research Papers

Research and Information Service
Bill Paper

Paper 000/00 14 January 2013 NIAR 013-13

Suzie Cave

Planning Bill 2012

This paper gives an over view of the clauses of the 2012 Planning Bill, and will return to some of the issues that were discussed during the consideration of equivalent provisions within the 2011 Act. It will also give a brief account of the new additions to the 2012 Bill that are not included in the 2011 Act.

Key Points

The aim of the Planning (Northern Ireland) Bill 2012 (the 2012 Bill) is to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act.

It brings forward amendments to The Planning (Northern Ireland) Order 1991(the 1991 Order) which reproduce provisions in the 2011 Act and is intended as an interim measure until it is possible to fully commence the 2011 Act at which point it will be repealed.

The 2012 Bill reproduces key reforms contained within the 2011 Act which will lead to:

- Enhanced community involvement through the production of a statement of community involvement.
- Faster processing of planning applications provided for in Clauses 9 and 22.
- Faster and fairer appeals system which is brought about by Clauses 10, 11 and 20.
- Simpler and tougher enforcement under Clauses 15, 19 and 23.
- Enhancement of the environment by amending the Department's sustainable development duty to include promoting well-being and achieving good design (Clause 2).
- Other measures include giving the Department power to grant aid non-profit organisations, power to decline to determine subsequent or overlapping applications, and the power to repeal provisions within the Bill.

Importantly the 2012 Bill introduces two new measures that are not included in the 2011 Act:

- promotion of good design; and
- promotion of economic development.

Executive Summary

The Department of Environment (the Department) began a major programme to reform the Northern Ireland planning system with the introduction of the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011.

The 2011 Act gives effect to the whole process of local government reform which includes the transfer of the majority of planning functions and decision making responsibilities to district councils. The 2012 Bill reproduces key reforms contained within the 2011 Act which will lead to:

- Enhanced community involvement through the production of a statement of community involvement within one year of commencement of the clause.
- Faster processing of planning applications by streamlining processes to speed up decision making and deliver development; provided for in Clauses 9 and 22.
- Faster and fairer appeals system which is brought about by Clauses 10, 11 and 20; for example, allowing the Planning Appeal Commission to award costs where the unreasonable behaviour of one party has left another out of pocket.
- Simpler and tougher enforcement under Clauses 15, 19 and 23, with an increase in maximum level of fines, the use of fixed penalty notices, and the power to charge multiple fees for development that commenced before the planning application was made.
- Enhancement of the environment by amending the Department's sustainable development duty to include promoting well-being and achieving good design (Clause 2), ensuring the enhancement of the character of an area (Clause 19), and extension in the aftercare conditions in relation to mineral planning permission under Clauses 8 and 13.

Other measures include giving the Department power to grant aid non-profit organisations who promote understanding of planning policy, power to decline to determine subsequent or overlapping applications, and the power to repeal provisions within the Bill.

According to the Department, the policy underpinning the 2012 Bill is the same as the 2011 Act which has already been subject to an equality impact assessment, public consultation in 2009, and Assembly scrutiny in 2010 to 2011; therefore suggesting that there is no need for further consultation.

There has also been the recent introduction of two new measures that are not included in the 2011 Act; these are the promotion of good design, and the promotion of economic development. Due to the time constraint in relation to the last minute addition of these two measures and the proximity to the introduction date of the 2012 Bill to the Assembly, the usual consultation process has not been conducted with regards to these two new elements. The Department proposes to use the scrutiny process of the Assembly, in particular the call for evidence that is conducted by the Environment Committee so as not to delay the process. While the Department considers the new introductions to be welcome additions to the Bill, there has been concern expressed in the past over similar issues. Previous Environment Ministers such as Mr. Sammy Wilson and Mr. Edwin Poots (through PPS 24) attempted to underpin the role of planning in promoting economic development, however their efforts were not met with support from stakeholders and hence were not taken forward. There is a risk that if similar views are expressed this time round, and with the Assembly being the main mechanism for stakeholders to voice their views on these new additions, this could cause some delay in the passing of the Bill through the Assembly.

Accordingly, this paper will give an over view of the clauses of the 2012 Bill, and will return to some of the issues that were discussed during the consideration of equivalent provisions within the 2011 Act. It will also give a brief account of the new additions to the 2012 Bill that are not included in the 2011 Act.

Contents

1 Introduction

The Department of the Environment (the Department) is delivering a major programme to reform the Northern Ireland planning system. This began with the introduction of the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011.

In brief the 2011 Act sets the legislative framework for a reformed planning system in Northern Ireland with the promise of a "speedier, simpler and more streamlined" decision-making process along with more effective enforcement controls. The reform proposes a "development management" rather than a "development control" process, introducing a shift to spatial planning which moves 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.[1]

It also gives effect to the whole process of local government reform which includes the transfer of the majority of planning functions and decision making responsibilities to district councils, with the exception of regionally significant proposals, which will remain with the Department of the Environment. Planning applications will be dealt with by Councils and the "Planning Service" as it was known will be replaced by five "Planning Areas" designed around the proposed 11 council clusters.[2]

As explained by the Department in the explanatory notes, the transfer of planning functions to councils is intended in 2015 in line with the Executive's commitment to reform local government. However, in the interim, the Executive has agreed to the drafting of this Bill to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act. The Department informs that the 2012 Bill will make legislative changes to improve the efficiency and effectiveness of the planning system, agreed by the previous Assembly, available to the Department in advance of the transfer of planning functions to councils. It therefore brings forward amendments to The Planning (Northern Ireland) Order 1991(the 1991 Order) which reproduce provisions in the 2011 Act.

The 2012 Bill also amends the Planning Northern Ireland Order 1991 and the 2011 Act by introducing additional provisions that highlight planning's duties in relation promoting economic development. The Department clarifies **that the 2012 Bill is intended as an interim measure until it is possible to fully commence the 2011 Act at which point it will be repealed. However, the new amendments made to the 2011 Act will only apply post transfer of the planning functions to councils and as a consequence will only come into action after 2015.**[3]

For clarification this paper refers to:

- The Planning (Northern Ireland) Order 1991 as 'the 1991 Order';
- The Planning (Northern Ireland) Act 2001 as 'the 2011 Act'; and
- The Planning (Northern Ireland) Bill 2012 as 'the 2012 Bill'.

1 NIA, Research Paper: Planning Bill (1) Departmental Functions and Local Development Plans http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0611.pdf

2 DOE, *Planning restructured for a new era* (April 2011)http://www.planningni.gov.uk/index/news/news_releases/planning-deagentisation.htm

3 DOE, Planning Bill 2012 Explanatory and Financial Memorandum

2 Overview

The intention of the Bill is to strengthen the planning system by providing faster decisions on planning applications, enhanced community involvement, faster and fairer appeals, tougher and simpler enforcement as well as a strengthened Departmental sustainable development duty.

According to the Department, the policy underpinning the 2012 Bill is the same as the 2011 Act which has already been subject to an equality impact assessment, public consultation in 2009, and Assembly scrutiny in 2010 to 2011; therefore suggesting that there is no need for further consultation.

Accordingly, this paper will give an over view of the clauses of the 2012 Bill, and will return to some of the issues that were discussed during the consideration of equivalent provisions within the 2011 Act.

The Bill reproduces key reforms contained within the 2011 Act

The following table shows the clauses that have been brought forward from the 2011 Act and incorporated into the 2012 Bill:

2012 Bill Clause Number	Clause Title	Corresponding Clause in the 2011 Act
1	Statement of community involvement	4
2	General functions of the Department and the planning appeals commission	1 and 5
3	Meaning of development	23
4	Publicity, etc., in relation to applications	41
5	Pre-application community consultation	27
6	Determination of planning applications	45
7	Power to decline to determine subsequent application	50
8	Power to decline to determine overlapping applications	48
9	Aftercare conditions for ecological purposes on grant of mineral planning permission	53
10	Public inquiries: major planning applications	26
11	Appeals: time limits	58
12	Matters which may be raised in an appeal	59
13	Power to make non-material changes to planning permission	67
14	Aftercare conditions imposed on revocation or modification of mineral planning permission	69
15	Planning agreements: payments to departments	76
16	Increase in penalties	103
17	Conservation Areas	104
18	Control of demolition in conservation areas	105

2012 Bill Clause Number	Clause Title	Corresponding Clause in the 2011 Act
19	Tree preservation orders: dying trees	122
20	Fixed penalties	153 + 154
21	Power of planning appeals commission to award costs	205 + 206
22	Grants	225
23	Duty to respond to consultation	229
24	Fees and charges	223
25	Duration	251
26	Interpretation	250
27	Commencement	254
28	Short Title	255

Enhanced community involvement

Clause 1 of the 2012 Bill puts a requirement on the Department to prepare and publish within one year of commencement, a statement of its policy for involving the community in the delivery of its development plan and planning control functions. This addresses the fact that the 2011 Act did not contain any measure under s.4, stipulating a time frame for the production of a Statement of Community Involvement.[4]

Clause 5 requires Developers to consult the community before submitting major planning applications and demonstrate through the production of a report that they have done so. The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. It is proposed that Regulations will dictate the minimum consultation requirements placed on the applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate. During the consultation of the 2011 Act, under s.27 (Pre-application community consultation), respondents expressed concern over the lack of requirements specified in the clause, especially when compared with other jurisdictions.[5] The main difference would appear to be that the 2012 Bill confers duties on the Department, whereas in the 2011 Act, these duties will be for councils come 2015.

For more information on issues in relation to community involvement in the Planning Act 2011, please refer to the Research paper entitled **Planning Bill (3): Community Involvement**

Faster processing of planning applications

This is to be achieved by streamlining processes to speed up decision making and deliver development. A duty is introduced in Clause 22 for statutory consultees to respond to the consultation within a prescribed timeframe as agreed by the Department.

4 Planning (Northern Ireland) Act 2011 s.4 http://www.legislation.gov.uk/nia/2011/25/section/4/enacted

5 NIA, Research Paper: Planning Bill (3) Community Involvement http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0911.pdf and Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf

Independent Examiners

Clause 10 includes the appointment of persons, other than the Planning Appeals Commission, by the Department to conduct inquiries and hearings into major planning applications only. The Department feels this flexibility is essential where the PAC is unable to hold a hearing or inquiry, or commit to providing an advisory report within the timescale required by the Department. The Department feels without this provision the decision making process for regionally significant development would be unpredictable and uncertain.

The Department itself will be responsible for the appointment of examiners; for which its response to the consultation stated this would be from either the Planning Inspectorate for England and Wales or the Scottish Reporters Office.[6]

However the issue that was raised during the consultation still applies, where respondents questioned whether an independent examiner, appointed by the Department, would be considered truly independent considering the final decision on regionally significant planning applications is taken by the Department.[7]

For an appreciation (and a comparison) of the full set of appeals provisions to be introduced in 2015 under the 2011 Act, see Annex 1 which provides a summary. However, for the purpose of this paper the following section looks at provisions that have been brought forward under the 2012 Bill.

Faster and fairer planning appeals system

Provision to appeal to the PAC remains, though the time limitation period has been reduced to four months from six. Significantly, despite support in the consultation process, there is no provision for third party appeals though it was stated in the consultation response to the 2011 Act that this is to be subject to further scrutiny.

Clause 11 restricts the introduction of new material at appeal stage, so that any matter that was not before the Department when it made its decision cannot be raised. There are occasions when an appeal is made and the proposed scheme is changed during the course of the appeal or new material is introduced. The Department views this as advancing alternatives which should have been submitted as a new or amended application and believes this can leave both the Department and objectors at a disadvantage as they may have limited time to respond.

Clause 10 reduces the time limit for submitting appeals to the PAC from six to four months. While 65% of responses to the consultation were in support of this reduction, those opposed, including the PAC, referenced the experience in England where a reduction from six to three months was implemented and subsequently changed back due to an increase in appeal numbers.[8]

Award of costs

Clause 21 enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.

6 Department response to Consultation http://www.planningni.gov.uk/index/about/government_response_final.pdf

7 NIA, Research paper: Planning Bill (2):Development Management, Planning Control and Enforcement http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/environment/2011/cave0811.pdf and Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf

8 Ibid (p.15)

This is to address the problem where the unreasonable behaviour of one party has left another out of pocket. The awarding of costs also applies to where a hearing has been cancelled.

While these proposals were met with support in the consultation of the 2011 Bill, concerns were expressed in relation to the cost systems in the rest of GB. The systems in England and Scotland are accompanied by extensive separate guidance which provides examples of unreasonable behaviour which can extend to the planning authority as well as to appellants. For instance, 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, or costs may be awarded against them. Similarly, while authorities are not bound to adopt the advice given by their own officers, they are expected to show that they had reasonable grounds for taking a decision contrary to such advice. If they fail to do so costs may be awarded against the authority.

In its response to 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;[9] however, with the bringing forward of the provision into the 2012 Bill, further clarity around the suggestion is needed.

Third party appeals

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 Republic of Ireland, 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.

Despite support from consultation respondents, the Department stated that it does not intend to bring forward any provisions for third party appeals to ensure they 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.

However, given that the majority of respondents to the consultation supported introduction of such proposals, 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. With this in mind there has not been any further development of this suggested in the draft Planning Bill 2012.

Simpler and tougher enforcement

Clause 15 aims to introduce this through raising fines for a series of offences, such as:

- Raising the maximum fine for breaches of planning control or consents from £30,000 to £100,000;
- Raising the fine for damage caused to listed buildings to the statutory maximum (a level 5 fine of £5000);

9 Ibid (p.12)

- For continued failure to prevent damage, or further damage, the fine has increased to one tenth of a level 5 fine[10] for each day it continues

Another approach is the use of fixed penalty notices, in Clause 20, as an alternative to costly and lengthy prosecutions through the Courts. The level of fixed penalty will be prescribed in subsequent Regulations, for which details have yet to be disclosed, however, the Bill offers a reduction in the amount by 25% if paid within 14 days. During the consultation of the 2011 Act, respondents wanted to see a mechanism that would stop continued breach. It was felt that payment of a one off payment may not be enough to stop continued breaches of planning.

Clause 23 gives the Department the power to charge multiple fees for development that commenced before the planning application was made. This mirrors with s.219 of the 2011 Act, which states that the amount will be determined at a later stage and will be included in subordinate legislation, however, the 2012 Bill does not appear to provide any more detail on this. This measure received general support by respondents to the 2011 Act consultation, as it was seen as a deterrent to those who flagrantly disregard regulations and advice, at the same time, concern was expressed in relation to the risk that unwitting offenders could be unreasonably penalised.[11]

Measures to enhance the environment

It was suggested in the responses to the 2011 Act consultation, which provided for a sustainable development duty in relation to the development of land and local development plans (s.5), that this duty should be extended to the entire planning system, particularly development management, as it is in England, Scotland and Wales.[12]

The 2012 Bill aims to address this by strengthening the planning system with an amendment to the Department's sustainable development duty, where Clause 2 requires the Department to carry out its policy and plan making functions with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development, paying particular attention to the desirability of achieving good design.

Under Clause 18 the Department's consent must also be given to the felling of trees covered by a tree preservation order which are dying, this amends s.125 of the 2011 Act making dying trees no longer exempt from a tree preservation order.

Clause 16 strengthens the Department's responsibilities to conservation areas provided for in Article 50 of the 1991 Order by ensuring the enhancement of the character of an area, and where enhancement is not possible, the preservation of the character must be provided for, this is similar to s. 104 of the 2011 Act.

Clause 17 adds additional provision to the control of demolition in conservation areas, by extending it to include the partial demolition of buildings, which is similar to s.105 of the 2011 Act. This addresses 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.[13]

Clauses 8 and 13 extend the aftercare conditions in relation to mineral planning permission. Clause 8 (similar to s.53 of the 2011 Act) adds "use for ecological purposes" to the list

10 A level 5 fine, as stipulated under article 5 of the *Fines and Penalties (Northern Ireland) Order* 1984 (as amended by the *Criminal Justice (Northern Ireland) Order* 1994, article 3) equates to £5000.

11 Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf

12 Ibid

13 Government Response to the Planning Reform Public Consultation July - October 2009 (p.70): http://www.planningni.gov.uk/index/about/government_response_final.pdf

of uses for restored land; while Clause 13 extends provisions within s.53 of the 2011 Act allowing the Department to impose aftercare conditions where a mineral planning permission has been revoked or altered.

Summary of remaining Measures

Clause 21, similar to s.225 of the 2011 Act, gives the Department power to grant aid non-profit organisations whose objectives include furthering an understanding of planning policy; this process will no longer require approval from DFP which was originally a requirement under s.120 of the 1991 Order.

Clause 4 amalgamates provisions provided under sections 41 and 45 of the 2011 Act, which requires a development order to stipulate the publicity requirements for applications, and that applications must not be considered if the requirements are not met. This Clause also allows for a development order to prescribe a certain period before the Department can determine an application. Similar amendments are made to Schedule 1 of the 1991 Order in relation to listed buildings consent.

Clauses 6 and 7 give the Department the power to decline to determine subsequent or overlapping applications. Clause 12 allows the Department to make a change to a planning permission already granted on application, and amend or remove conditions or impose new ones.

Clause 14 allows for any sum payable under a planning agreement to be made to any Northern Ireland department and not just the Department of Environment.

Clause 24 allows the Department to repeal provisions in the Bill; these must be approved by the Assembly. Please note that the explanatory notes refer to this provision as Clause 25, when in fact in the draft Bill it comes under Clause 24.[14]

Clauses 25 to 27 deal with the interpretation, commencement and short title.

14 DOE Planning Bill (Northern Ireland) 2012(p.15) and DOE Planning Bill (Northern Ireland) 2012 EFM (p.12)

3 New Additions to the 2012 Bill

As discussed under "Measures to Enhance the Environment" new additions to the 2012 Bill include the promotion of economic development, paying attention to achieving good design.

The Department has informed that due to the time constraint in relation to the last minute addition of these two measures and the introduction of the 2012 Bill to the Assembly, the usual consultation process conducted by the Department has not been performed with regards to the two new elements. The Department considers these to be welcome additions to the Bill and proposes to use the scrutiny process of the Assembly, in particular the call for evidence that is conducted by the Environment Committee, as an alternative so as not to delay the process.

However, similar actions have been suggested in the past in relation to the promotion of economic development in the planning system:

In 2009, the Environment Minister at the time Mr. Sammy Wilson announced the importance of ensuring that the planning system contributed to the growth of the economy, and made statements to the Assembly regarding the weight that should be given to the economic benefits of development proposals, allowing those proposals that may bring investment to be processed as quickly as possible

> *"The primary purpose of my earlier statement was to instil confidence in decision-makers to make judgements that give greater weight to economic considerations where it is appropriate to do so while continuing to protect and enhance the environment. I wanted to ensure that the planning system would play a full and positive role in encouraging investment"*[15]

In September 2009 when addressing the Assembly on the proposals for the reform of the planning system, the Environment Minister Mr Edwin Poots reiterated Mr Sammy Wilson's statements:

> *"I must stress the importance that should be attached to the economic benefits of a development proposal as a material consideration when a decision is being made on a planning application. My predecessor, Minister Wilson, made a statement on that matter shortly before leaving office."*[16]

In January 2011 Mr. Poots also launched a consultation on Draft PPS 24 which made it clear that full account shall be taken of the economic implications, as well as the social and environmental aspects of a proposal when making planning decisions. He added:

> *"Draft PPS 24 makes it clear that where the economic implications of a proposal are significant then substantial weight should be afforded to them. In such cases, substantial weight can mean determinative weight."*[17]

However, despite efforts, these suggestions were not taken forward. In fact in relation to PPS24, on 17th January 2011, Environment Minister Alex Attwood announced that he would not be introducing new planning policy after listening to the public, business groups and the commercial sector:

> *"The majority of those who responded to the public consultation opposed the policy set out in draft PPS24. Many of those who were in favour considered that the content of the draft did not materially move the issue forward and that the content was imprecise and lacked definition. Many rightly argued that economic considerations are already a factor in*

15 Assembly Report 16th June 2009 http://archive.niassembly.gov.uk/record/reports2008/090616.htm#a2

16 Assembly Report 14th September 2009 http://archive.niassembly.gov.uk/record/reports2009/090914.htm#a10

17 Assembly Report 17th January 2011 http://archive.niassembly.gov.uk/record/reports2010/110117.htm#4

planning decisions and are already dealt with in a balanced way alongside other material considerations, including social and environmental factors"[18]

It is clear that this issue was met with strong opposition back in 2011 and Minister Attwood announced he would not be taking PPS24 forward. With similar wording being presented this time round, similar concerns could be raised again, especially in relation to the idea of showing priority to economic development over the other elements of sustainable development:

"Others who responded to the consultation feared that implementation of draft PPS24 could compromise sustainable development or conservation objectives, undermine existing planning policies, or prioritise short term financial gain over longer term sustainable growth."[19]

Should there be similar opposition as there was in the past, this could potentially cause delay in the passing of the Bill through the Assembly, especially if it is considered the main mechanism for stakeholders to express their views on the new additions. One of the main purposes of the 2012 Bill is to bring forward elements of the 2011 Act and have them in operation before 2015, however the longer it takes for the 2012 Bill to pass through the Assembly the less time it gives the Department to put it into operation before 2015.

18 ibid

19 Executive Press Release "*Attwood not to adopt Planning Policy Statement 24 following consultation"* (6/09/2011) http://www.northernireland.gov.uk/news-doe-060911-attwood-not-to

Annex 1:

Appeals (2011 Planning Act)

Summary of provisions relating to Appeals

Applicants may make an appeal in writing to the Planning Appeals Commissions (PAC) within 4 months (reduced from 6 months in clause 58) for the opportunity to appear before the Commission (as does the district council) for the following:

- If an application to a district council is refused or granted subject to conditions (58) this includes applications for listed building consent (95) and hazardous substances consent (114)
- Against notices requiring an owner/occupier to apply for planning permission for development carried out without permission (44)
- Where the authority fails to give notice of its decision on applications for the modification of planning agreements (77)
- Where an authority fails to make a decision on listed building consent within the time specified (96)
- An appeal against an enforcement notice (142) for which the notice can be quashed, upheld or corrected (143) by the PAC. This also applies to listed building enforcement notices (158)
- A notice issued to an owner allowing the district council or Department to carry out urgent works to a building/listed building and recover the costs (160)
- Enforcement notices issued in relation to the duty to protect and replace trees subject to a TPO
- District council's refusal to give a certificate of lawfulness of existing or proposed use or development, for which the PAC can issue one or dismiss the appeal (172)

PAC

The Act provides provisions for the governance arrangements of the PAC such as the appointment of members to hear appeals; conduct inquiries/independent examinations; hearings and after consultation with the commission and the Department (being OFMdFM as functions were transferred by the Departments (Transfer of Functions) Order (NI) 2001) the appointment of assessors to sit with members appointed to act in an advisory role only.

Independent Examiners

Clause 26 of the 2011 Act gives the Department the option to appoint independent examiners, other than the PAC, for inquiries and hearings for regionally significant applications (Article 31 applications).

The Department feels this flexibility is essential where the PAC is unable to hold a hearing or inquiry, or commit to providing an advisory report within the timescale required by the Department. The Department feels without this provision the decision making process for regionally significant development would be unpredictable and uncertain.

The Department itself will be responsible for the appointment of examiners; for which its response to the consultation stated this would be from either the Planning Inspectorate for England and Wales or the Scottish Reporters Office.[20]

The consultation responses raised issues with this provision questioning the independence of an examiner that is appointed by the Department itself.

Awarding of Costs

Clause 205 enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court.

This is to address the problem where the unreasonable behaviour of one party has left another out of pocket. The awarding of costs also applies to where a hearing has been cancelled.

20 Department response to Consultation http://www.planningni.gov.uk/index/about/government_response_final.pdf

Northern Ireland Assembly

Appendix 6

Other Papers submitted to the Committee

Scrutiny of Delegated Powers

Advice to the Committee for the Environment from the Examiner of Statutory Rules on the Planning Bill

1. I have considered this Bill, in conjunction with the Delegated Powers Memorandum submitted by the Department of the Environment, in relation to powers to make subordinate legislation.

2. I am satisfied that the powers to make subordinate legislation in clauses 4, 5, 11, 13, 20 and 23 reproduce certain provisions in the Planning (Northern Ireland) Order 1991 so as to correspond to powers to make subordinate legislation in the Planning Act (Northern Ireland) 2011: the major purpose of this Bill is to reproduce within the structure of the 1991 Order many features of the 2011 in advance of that Act's being brought into operation with the transfer of many planning functions from the Department to the district councils following the reorganisation of local government. Linked to that is the power in clause 25 to repeal (by Order subject to draft affirmative procedure – see paragraph 3) these and the other provisions of the Bill reproducing provisions of the 2011 Act.

3. I draw attention to clause 25, which contains the power to repeal any of clauses 1, 2(1) 3 to 5, 6(1), 7 to 18, 19(1) and (2) and 20 to 24 by Order subject to draft affirmative procedure. This seems to be an appropriate power and, because it is subject to draft affirmative procedure, it will clearly signal in the Assembly the move from the regime under the 1991 Order to that under the 2011 Act; and it seems to be a useful feature, given the main purpose and structure of this Bill.

4. **There are no other matters to which I would draw the attention of the Committee for the Environment in this regard.**

Gordon Nabney
Examiner of Statutory Rules

12 March 2013

Planning Bill Clause by Clause - Clauses 1 and 2

Planning Bill
Clause by Clause Summary of Responses – Clauses 1 - 2

Abbreviations:

ABC	Antrim Borough Council
ABCNM	Armagh, Banbridge, Craigavon, Newry and Mourne Councils
AN	Arena Network
AR	Anja Rosler
ASDA	ASDA
AT	Alan Tedford (member of the Public)
BBC	Ballymena Borough Council
BCAW	Belfast City Airport Watch
BCC	Belfast City Council
BD	Bill Donnelly (Member of the Public)
BHRA	Belfast Holyland Regeneration Association (endorsed via email by Rosana Trainor, Henry, Sarah and Thelma Deazley)
BHC	Belfast Healthy Cities
BMRG	Belfast Metropolitan Residents Group
CAC	Corralea Activity Centre
CBC	Castlereagh Borough Council
CBI	Confederation of British Industries
CCC	The Cavehill Conservation Campaign
CD	Dr Carroll O'Dolan (member of the Public)
CEF	Construction Employers Federation
CH	Connal Hughes
CIEH	Chartered Institute of Environmental Health
CMCC	Ciaran McClean (Member of the Public)
CNCC	Council for Nature Conservation and the Countryside
CP	Community Places
CRC	Community Relations Council
DB	David Bolton (member of the Public)
DBK	Dawn Bourke (Member of the Public)
DGBA	Dundonald Green Belt Association
DG	Committee based on discussions with Daniel Greenberg QC
DMW	Development Media Workshop
DN	David Noble (member of the Public)
DP	Donaldson Planning

DS	David Scott (member of the Public)
D&STBC	Dungannon and South Tyrone Borough Council
FDC	Fermanagh District Council
FJ	Fiona Jones (member of the Public)
FOE	Friends of the Earth (endorsed via email by Antrim & District Angling Association, Kenneth Dougherty/Public, Jim Martin/Public, Jim Gregg/Public, The Right Honourable Sir Liam McCollum/Public, Michael Martin, Vice Chair, Six Mile Water Trust, Adrian Guy and Dr Miriam de Burca/Public, Richard Rowe/Public)
FFAN	Fermanagh Fracking Awareness Network
FT	Fermanagh Trust
GC	Geraldine Cameron (member of the Public)
GD	Gerard Daye (Member of the Public)
GE	Geraint Ellis (endorsed by Belfast Civic Trust & Belfast City Airport Watch)
GHEG	Greenisland Heritage & Environmental Group
HCG	Holywood Conservation Group
HMCD	Heather McDermott (Member of the Public)
IOD	Institute of Directors
JA	John Anderson (member of the Public)
JC	J Cosgrove (Member of the Public)
JM	John Martin`
JMCG	Joe McGlade (Member of the Public)
LC	Lecale Conservation
LINI	Landscape Institute Northern Ireland (also endorse NIEL)
LS	Laurence Speight (member of the Public)
LVG	Lagan Valley Residents' Association
MG	Mairead Gilheany (member of the Public)
MGL	Professor MG Lloyd
MK	Mr Mark Kearney (Member of the Public)
MERA	Mounteagles Rate payers Association
MMC	Majella McCarron (member of the Public)
MMCE	Michael McEvoy
MS	Marian Silcock (member of the Public)
MT	Martina Tedford (member of the Public)
NIBG	Northern Ireland Biodiversity Group
NIEL	Northern Ireland Environment Link (endorsed by Belfast Civic Trust)
NIHE	Northern Ireland Housing Executive
NILGA	Northern Ireland Local Government Association
NIRC	Northern Ireland Retail Consortium
NIRIG	Northern Ireland Renewables Industry Group

NT	National Trust
PAC	Planning Appeals Commission
PP	Patricia Pedersen (member of the Public)
PT	Paul Thompson (member of the Public)
QUB (GS)	Queen's University Belfast General Submission
QUB(SOP)	Queens University Belfast School of Planning, Architecture & Civil Engineering
QUB (SR)	Queen's University Belfast Planning for Spatial Reconciliation
RG	Rosemarie Gilchrist (member of the Public)
RI	Richard Ireson (member of the Public)
RSPB	Royal Society for the Protection of Birds (Northern Ireland)
RTPI	Royal Town Planning Institute Northern Ireland
SBPG	South Belfast Partnership Group
SBRG	South Belfast Residents Group
SCNI	Supporting Communities in NI
SRA	Seahill Residents Association
SS	Siobhan Small (member of the Public)
TF	Tim Fogg (member of the Public)
TJ	Tanya Jones (member of the Public)
TW	Tom White (member of the Public)
UAF	Ulster Angling Federation
UAHS	Ulster Architectural Heritage Society
UMARA	Upper Mounteagles Avenue Residents Association
UWT	Ulster Wildlife Trust
VR	Victor Russell (member of the Public)
WHJ	William H Jones (member of the Public)
WT	Woodland Trust
ZK	Zelda Kingston (member of the Public)

CLAUSE No	CLAUSE (from Bill)	EXPLANATIONS (From Explanatory and Financial Memorandum)	VIEW FROM SUBMISSIONS	OPTIONS	DEPARTMENT'S COMMENTS
GENERAL COMMENTS					
		BACKGROUND AND POLICY OBJECTIVES The Department of the Environment (DOE) is delivering a major programme to reform the Northern Ireland planning system. Key elements of the programme are already in place including the Planning (Northern Ireland) Act 2011 (the 2011 Act) which received Royal Assent on 4 May 2011. The 2011 Act sets the legislative framework for a reformed planning system. It also gives effect to the local government reforms which will transfer the majority of planning functions and decision making responsibilities to district councils. The Department intends to transfer planning functions to councils in 2015 in line with the Executive's commitment to reform local government. In the interim, the Executive has agreed to the drafting of a Bill to accelerate the introduction of a number of reforms to the planning system contained within the 2011 Act. The Bill will make legislative	1. Disappointed that the present bill for consultation does not go as far as it should to deliver a responsive and balanced planning system and the lack of proper consultation also a concern given the new elements the Bill intends to introduce, particularly on economic development. In addition it is extraordinary that the Bill's Equality Impact Assessment overlooks the new provisions in the Bill, suggesting that they were a hasty afterthought. We believe that this is not a sensible or transparent way in which to introduce important legislation. **(CNCC) (SCNI) NIEL) (GMCA) (CIEH) (RG)(DS)(LC)(FFAN)(NIL GA)(RSPB) LINI) (JMCG) (ABCNM)(ABC) (JM)**		1. The intention of the Bill is to speed up reforms and modernise the planning system before the majority of planning powers transfer to local government in 2015. Bringing forward some of the reforms, agreed by the previous Assembly, in the Planning Act (Northern Ireland) 2011 now, means that the benefits can be realised sooner. While the Bill does include some additional provisions over the 2011 Act, the Assembly

		changes to improve the efficiency and effectiveness of the planning system agreed by the previous Assembly available to the Department in advance of the transfer of planning functions to councils. It therefore brings forward amendments to The Planning (Northern Ireland) Order 1991 which reproduce provisions in the 2011 Act. The Bill also introduces additional provisions to underpin the role of planning in promoting economic development through amendments to both the Planning (Northern Ireland) Order 1991 and the 2011 Act. The Bill is intended as an interim measure most of which will remain in place only until it is possible to fully commence the 2011 Act at which point it will be repealed. However, where the Bill amends the 2011 Act those provisions will apply to the planning system post transfer of planning functions to councils. In keeping with the 2011 Act, the Bill will modernise and strengthen the planning system by providing faster decisions on planning applications, enhanced community involvement, faster and fairer appeals, tougher and simpler enforcement as well as a strengthened Departmental sustainable development duty.	**(DMW)(RI)(CD)(VR) (FOE)(QUB –SOP) (MGL) (RTPI) (WHJ)** 2. It is therefore surprising to see that the Department has not highlighted the significance of such changes – for example it does not		legislative process ensures that all stakeholders will have the opportunity to comment on / influence the Bill. The Bill will be subject to full scrutiny during the Assembly process. The published EQIA Screening makes clear that the additional provisions in the Bill, following considerations, were found not to have any significant implications for equality of opportunity. 2. As good practice dictates a Partial RIA was required and undertaken for the Planning Bill as

			propose the normal process of public consultation that would be expected to accompany changes with such far reaching implications. No Equality Impact Assessment undertaken on these provisions and perhaps most remarkably given the comments above, the Bill's "Partial Regulatory Assessment "overlooks the costs of the new provisions. These could potentially include: • Training of planning officers in how to evaluate economic development; • Costs of changing planning application forms to included the required information; • Costs to developers of including additional information with their planning applications to address the new definition of material considerations, particularly if the economic development criteria is to be based on a Green Book assessment which includes		part of the process of policy development and implementation. The Department in preparing the Partial RIA would be required to make an assessment of the likely benefits or costs on small business, charities, social economic enterprises or the voluntary sector associated with clause 2. As the RIA is an iterative process the Partial RIA can and should be developed to further consider the likely impacts of the provisions in the Planning Bill, including clause 2, as they are developed through the Assembly process. Further assessments should be prepared for the

			118 pages of guidance, plus another 14 documents of supplementary guidance amounting to a substantial increase in regulatory guidance to be included in a planning application ; • Potential employment of economists by the Department of the Environment; • As noted above, because these clauses change some of the fundamental principles underlying the determination of planning applications and introduce a range of ambiguities into planning regulation, it is highly likely that its interpretation will be tested in the courts. This will inevitability lead to a range of costs, including delay to any planning decision subject to challenge and legal costs incurred by the Department. **(GE)(SRA) (CBC) (NILGA)**		associated subordinate legislation and planning policies when the Planning Bill is enacted. [See also detailed commentary on clauses 2 & 6]

			3. The changes to the current Planning Bill provide an opportunity to improve those areas of the planning system which may be considered as deficient. One such area is statutory consultees. Currently only planning and roads issues may be conditioned in planning approvals. Other agencies' comments may become informatives, including comments from Northern Ireland Water (NIW) or Environmental Health, which cannot therefore be enforced by the planning authority, currently DOE Planning. This needs to change in order to prevent situations, for example, where residential developments are inhabited without having functioning sewerage infrastructure. **(CBC)**		3. The Department will only impose conditions that, in its opinion, are necessary, relevant to planning, relevant to the development being permitted, precise, enforceable and reasonable in all other respects. One key test of whether a particular condition is necessary is if planning permission would have been refused if the condition were not imposed. Otherwise, such a condition would need special and precise justification.

			4. Our support for the Bill is therefore two-fold: support for the acceleration of reform such as the duty in Clause 22 for statutory consultees to respond within a new statutory period, expected to be 21 days and; support for accelerating reforms that were due to be brought in 2015 so that, from our point of view, councils, planners and the business community are already familiar with and have confidence in the new system in advance of the transfer itself.		4. Noted.
			5. We would also like to take this opportunity to state our view of the critical importance that must be attached to the new council cluster groups working in voluntary, and soon statutory, transition		5. Noted. A Departmental Reform Programme Board monitors progress on all key tasks associated with local government reform

			committees to develop and enhance their capacity to deal with the new powers, specifically in relation to planning, that will be at their disposal. Regardless of the issues that remain around the financing of local government reform, each new council should, by way of its cluster, seek to come to terms with its new powers and responsibilities long before the new councils take up their role fully in 2015. **(CBI)**		including the reform of the planning system and the transfer of the majority of planning functions to councils. Capacity building is a key element of the reform programme.
			6. We recommend that the Environment Committee recommend to the Department that it provide details within the next three months of its work on preparing for consultation on Third Party Right of Appeal and a target date for issuing a consultation paper. **(CP) (UAHS) (FOE) (WHJ) (D&STBC)(NIEL)**		6. It is not the Department's intention to introduce a Third Party Right of Appeal at this time. This will be kept under review in light of the impact of the range of reforms to the planning system.

			7. The Current Bill as we understand it, the primary objective of the Bill is to accelerate the implementation of the reforms contained within the 2011 Planning Act. We also understand that the primary motivation for this is to ensure that the provisions, relating to: faster processing of planning applications; simpler and tougher enforcement of planning offences; enhancement of the environmental aspects of planning; fairer and faster consideration of planning appeals; and enhanced community involvement in the planning process, are fully embedded in the planning regime before the transfer of responsibility for planning matters to district councils. We welcome this, having argued in the past against the 'big bang' approach whereby major reform and transfer of function would be		7. The intention of the Bill is to speed up reforms and modernise the planning system before the majority of planning powers transfer to local government in 2015. Bringing forward some of the reforms, agreed by the previous Assembly, in the 2011 Planning Act now means that the benefits can be realised sooner.

			introduced at the same time. **(IOD) (NIRC) (NIBG) (BBC) (MGL)**		
			8. I wish to express my grave concerns with regard to the proposals contained in the above Bill. It is essential that a totally competent Planning Department be created, tried and tested prior to any consideration of major changes.**(PT)**		8. As above.
			9. We believe that the Bill creates more ambiguities than the current position and fails to solve any of the criticisms of present situation and should therefore be dropped. **(HCG) (LS)**		9. As above.

1	**Statement of community involvement [j3A]** **1.** In Article 3A of the 1991 Order (statement of community involvement) after paragraph (2) add— "(3) The Department must prepare and publish a statement of community involvement within the period of one year from the day on which this paragraph comes into operation.".	This clause introduces the requirement for the Department to produce a statement of its policy for involving the community in its development plan and planning control functions within one year of the clause coming into operation.	1. What is the sanction if the Department doesn't comply with the duty in Clause 1? **(DG)** 2. Agree with Clause**(LVG)(UWT)** 3. Hope that the Department will take the time to and the opportunity to engage with S.C.N.I as we have considerable experience and unique insights on community involvement which would add value to any consideration by the Department. **(SCNI)** 4. We object that the Clause allows the Planners to continue to determine policy on community		1. While there is no sanction in legislation, the Department will be scrutinised by and accountable to the Committee in terms of its compliance. 2. Noted. 3. & 4. Noted. The Statement of Community Involvement (SCI) is a statement of how the Department intends to engage the public in its planning functions. This will be developed with the engagement of stakeholders.

			involvement.		
			5. In order to secure an appropriate level of community involvement, Clause 1 must make neighbourhood notifications a statutory requirement; give councils statutory authority to determine what is in the public interest, and require Planners to obtain council agreement on planning decisions.**(BHRA) (MERA)(UMARA)**		5. For details of publicity arrangements for planning application consultation etc see clause 4. Currently the Department must consult and take into consideration council views on applications. Post transfer councils will make the decision on most planning applications.
			6. As this is a process that the Councils will have to carry on after the transfer of planning functions, it is incumbent upon the DOE to make sure that the process is fit for purpose. Arguably it is the Council which is better informed regarding the local community whereas the DOE is removed from this local		6. The councils will be responsible for the preparation of their own SCI after the transfer of planning powers under Section 4 of the 2011 Act and for deciding the majority of planning applications.

			context. Further clarity on this issue is required. 7. A question arises as to whether all Councils will be able to achieve the one year deadline when Planning is transferred to Councils in 2015, until governance arrangements are agreed, development plans are updated etc. Moreover, it is not clear what 'community involvement' actually means or what resources will be required to ensure it is carried out in a satisfactory manner. Clearly, there will be resource implications which will be dependent on the level of involvement required. **(CBC) (ABCNM) (BCC)** 8. We do have some concern that applicants will now have to give twelve weeks' notice of an application before submitting. There is also an argument to suggest that, by having an extended period and subsequent community consultation,		7. The one year deadline does not apply to councils. The Department will issue guidance on the preparation of the SCI. It is anticipated councils will be able to build on existing initiatives to involve communities. 8. This issue is related to clause 5. Please refer to the Department's comments on this Clause.

			developers should further endeavour to submit sound applications which require minimal alteration. **(CBI) (QPANI)**		
			9. We recommend that the Committee recommend to the Department that it ensure meaningful and adequately resourced community engagement in the preparation of a draft SCI and a pro-active community and public consultation thereafter. **(CP)**		9. Noted.
			10. Planners should not arbitrarily reject Council views on planning approvals.		10. The Department fully considers all council views on applications.
			11. They should not determine policy on Community Involvement. **(JC)**		11. As above (comment 4.).
			12. The provision of a timescale for the Department to prepare and publish a statement of		12. Noted.

			community involvement is to be welcomed. **(AN)** 13. Definition of well-being with measurable criteria. Guidance needed on pre-application community consultation, and details needed on what is considered adequate consultation. **(NIHE)** 14. Clause 1 perpetuates fundamental weaknesses in the current system. CCC objects that Clause I (Statement of Community Involvement) allows planners to continue policy on community involvement. Elected representatives should be the arbiters of what is in the public interest. **(CCC) (HCG)** 15. Asda welcomes the steps being taken to provide clear policy pertaining to the involvement of interested persons in the		13. Well-being is considered under Clause 2 - please see Department's comments below. Pre-application community consultation is addressed in clause 5. 14. See comment 4 above. Councils will be required to prepare SCIs after planning powers transfer. 15. Noted. The Department intends to prepare, and publish for

			exercise of the Department's Development Plan and Development Management Processes. Clarification is sought as to when this provision will come into effect and if the content of the Statement of Community Involvement will be subject to public consultation prior to its implementation. **(ASDA)**		consultation its SCI within 1 year from Royal Assent.
			16. Considerable care will be needed in the defining of Community Involvement and particularly relating to the concept of Community Planning. Clearly, it is sound sense to encourage genuine Community involvement in the Planning Process, but it would be a serious mistake to elevate the concept to a status equal to, or above that, of professional Planning Staff and their operation of established policy. **(JA)**		16. This is a post transfer issue which will be dealt with as part of the wider reform programme.
			17. We welcome the timed intention to publish this statement and stress the importance of the		17. See comment 4. Community is taken in its widest

			Department preparing this statement not in an ivory tower, but in partnership with *bona fide* community groups in order to produce a document that communities can genuinely 'buy into'. Community involvement in the planning process is key to improving quality of life for communities and reducing inequality. **(BMRG) BPG)(FT) (BBC)**		sense and will include the public, businesses, voluntary groups and any person who has an interest in the Departmental planning functions.
			18. NILGA would question the evidence for the viability of the proposed one year delivery timeframe, especially in lieu of the 'in situ' planning deficit within the local government sector. At a practical level, the Department's SCI may not be published until late 2014 if the Bill is commenced in December 2013, leaving Councils only six months prior to the proposed transfer of planning functions. This is not sufficient, and consideration of this is urgently required – a Clause 1 (b) could be		18. This clause relates to the Department's SCI and will only apply until the transfer of planning functions. The one year requirement relates solely to the Department's SCI and has no connection to any future council SCI.

			introduced to accommodate a working arrangement between the Department and the 11 council clusters in respect of SCIs in advance of the transfer as a solution. 19. Furthermore, these regulations are likely to stipulate that community groups and the public should be involved in the preparation of this statement. Again, the details as to how this will happen are scant. As this is a process that councils will have to carry on after the transfer of functions (ToF), it is incumbent upon DoE to ensure that the process is efficient, fit for purpose and fully resourced. 20. Arguably it is the Council that is better informed regarding the local community whereas the DoE is removed from this local context. Further clarity on this issue is required, particularly with regard to future governance arrangements, the adoption of		19. These comments appear to relate to the preparation of SCI by councils which will be carried out under Section 4 of the 2011 Act and will be developed further as part of the Reform Programme. 20. The Department intends to engage with councils on the regulations for the preparation of council SCIs. This will be subject to public consultation.

			updated development plans/policies and the attendant resource issues that will play a major part in determining the effectiveness of the local government sector in delivering the new planning system. **(NILGA)(ABC)**		

2	**General functions of the Department and the planning appeals commission [j10A]** **2.**—(1) In Article 10A of the 1991 Order (sustainable development)— (a)for paragraph (1) substitute— "(1) Where the Department or the planning appeals commission exercises any function under Part	Clause 2 amends Article 10A of the Planning (Northern Ireland) Order 1991. A statutory duty is imposed on the Department and the Planning Appeals Commission in exercising any function under Part 2 or Part 3 to do so with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. In addition where the Department or as the case may be the Planning Appeals Commission exercise any function under Part 2 or Part 3 of the Planning (Northern Ireland) 1991 they must have regard to the desirability of achieving good design. Corresponding amendments are made to Section 1 and Section 5 of the Planning Act (Northern Ireland) 2011.	1. The Planning Bill should be amended to include the generally accepted definition of Sustainable Development from the Brundtland Commission		1. The Department accepts the general definition provided by Brundtland but recognises that other publications, such as the Sustainable Development Strategy for NI, may take this further than that limited definition. The Department is not aware of a legally accepted definition of sustainable development as the concept is too broad to closely define. The Department considers it is more appropriate to view

	2 or this Part, the Department or, as the case may be, the commission must exercise that function with the objective of— (a)furthering sustainable development; (b)promoting or improving well-being; and (c)promoting economic development. (1A) For the purposes of paragraph (1) the Department or, as the case may be, the commission must (in particular) have regard to the desirability of achieving good design."; (b)for paragraph (2) substitute—		2. This is an overriding principle of governing with concern for the future and ensuring adequate resources for people to use in the present. 3. This clause as it stands will dramatically reduce any chance of sustainable development and leave nothing sacred if someone can state that there will be greater economic development with their planning application.**(CH)**		sustainable development through policy (Para 11, PPS1) and intends to elaborate upon this in the proposed Single Strategic Planning Policy Statement (SPPS). 2 - Accepted. 3 - Clause 2 and its three subsections, themes and principles should be read together as an integrated approach rather than selective with a hierarchy therein. This comment is more akin to the comments on clause 6. Please see Department's comments on that clause.

	"(2) For the purposes of paragraph (1), the Department or, as the case may be, the commission must take account of— (a)policies and guidance issued by— (i)the Department; (ii)the Department for Regional Development; (iii)the Office of the First Minister and deputy First Minister; (b)any other matter which appears to the Department or, as the case may be, to the commission to be relevant.". (2) In section 1 of the 2011 Act (general functions of Department with		4. Welcome the provision to give consideration to the promotion of economic development when considering planning applications. **(CEF)** 5. What is the risk of excluding the phrase 'as the case may be' on each of the 4 occasions it is used in Clause 2?**(DG)** 6. What are the sanctions if the Department or the Commission don't comply with the 4 duties in Clause 2? **(DG)**		4 - Noted. 5 - This is a matter of drafting style rather than substance. The wording follows the usual style in Northern Ireland. If the Committee wish the Department will raise further with OLC. 6 -These are the objectives for the Department in exercising it statutory functions. While there are no sanctions in legislation, the Department will be scrutinised by and accountable to the Committee in terms of its compliance.

	respect to development of land)— (a)for subsection (2)(b) substitute— "(b)exercise its functions under subsection (1) with the objective of— (i) furthering sustainable development; (ii)promoting or improving well-being; and (iii)promoting economic development."; (b)after subsection (2) insert— "(2A) For the purposes of subsection (2)(b) the Department must (in particular) have regard to the desirability of		7. Could the Department explain why it has chosen '*which appears to'* as the level of certainty in 2(1)(b)? **(DG)** 8. Could 2(1)(b) and 2(2)(a) be redrafted to reduce the paragraph subdivisions? **(DG)** 9. Concern that 'economic development' will become the over-riding precedent and ultimately be given greater weight in planning decisions. Planning decisions should be about planning (i.e. use of land, environment, ecology, built heritage etc.) Clear risk that the clause could be interpreted differently by different planners, and subsequent Ministers, as well as creating difficulties		7 - This reflects that "any other matters" is a matter of judgement for the Department or the PAC. 8 - These amendments reflect amendments made or suggested by the Committee / Members and the Department was keen to replicate them in the same format. This can be revisited if the Committee wish. 9 - Clause 2 and its three subsections, themes and principles should be read together as an integrated approach rather than selective with a hierarchy therein. On Clauses 2 and 6 the Department believes that without compromising the wider purposes and

	achieving good design.”. (3) In section 5 of the 2011 Act (sustainable development)- (a)in subsection (1), for “objective of furthering sustainable development.” substitute “objective of— (a)furthering sustainable development; (b)promoting or improving well-being; and (c)promoting economic development.”; (b)in subsection (2), after “must” insert “(in particular) have regard to the desirability of achieving good		which may only find resolution after complex legal actions. Clause does not define what it means by economic development and indeed, there is no single definition that is accepted by economists. These two clauses (2 and 6) therefore raise a range of deeply significant issues for the Northern Ireland planning system, introducing substantial ambiguities, providing the potential for delay and unintended opportunities for legal challenge and an increase in the bureaucracy associated with planning control. These are clearly not the reasons for why the Planning Bill has been introduced. If we wish to reform the NI planning system into one which is effective, democratic and efficient, these proposals really need to be dropped. Sustainable development should be defined and reference to economic development removed. **(GMCA) (GE)(SRA) (HMCD)(MMCE)(LVG) (SCNI)(BHRA)(GE)(SRA) (MERA)(UMARA)(MK)(GD)(**		principles of the planning system, it is timely, appropriate and legally correct to affirm through the Assembly and the Planning Bill that economic considerations are material when it comes to preparing planning policy and determining planning applications. The proposed provisions are in no way a direction that gives determinative weight, or for that matter more weight, to such considerations. Economic considerations are already material, and will continue to be a material factor alongside all other relevant matters in the decision making process. The Department would also add that by definition other material considerations are

	design and".		**MS)(CMCC)(DGBA)(JC) (SBRG)(AR)(RG)(RI)(DS)(CD)(TJ)(PP)(VR)(TF)(CAC)(DB) (ZK)(AN)(RI)(FOE)(QUBSOP) (BD)(FJ) (CCC) (JA) (HCG) (DP)** 10. Not sure of what is meant by 'well-being' or how it can be promoted. (**LVG)(SCNI)**		neither subverted, nor diminished in importance as a consequence of these provisions, which, in time, will require further policy / guidance to ensure a balanced, proportionate approach is followed. The Department does not intend this to lead to further bureaucracy or complexity, or impact on the overall character and integrity of our planning system. The inclusion of the economic development proposal does not absolve the Department of its sustainable development duty.. 10 - The Department intends to elaborate on how the matter of

			(BHC)		"well-being" relates to the planning system in the proposed SPPS which will be subject to Assembly scrutiny.
			11. Does Planning Service employ an economist to give advice on 'economic development'? If not, how can they come to a realistic decision? **(LVG)**		11 – It is not common practice for the Department to use economists in making planning decisions. However, there are currently eleven economists in the DOE. Planning, like other parts of the Department, can access the advice and support of these staff. The Department also has access to economic advice from the pool of economists employed across the wider NICS.
			12. Clarification is required on the difference between 'furthering' and 'promoting'; is there a 'hierarchy', or what is the difference in emphasis?**(SCNI)**		12 - The wording in section 1(2)(b) of the 2011 Act "exercise its functions under subsection (1) with the

				objective of furthering sustainable development and promoting or improving well-being" was an amendment tabled by the Committee during consideration of the 2011 Act. The Department considers that there is no fundamental difference between furthering and promoting and if the Committee wish will consider, subject to Executive Committee views and legal advice, using one of the words to ensure consistency. 13 - Material considerations are set out in PPS1 and established in case law. Under current law material means relevant. If such considerations are in a
			13. In order to ensure planning decisions comply with wider government policies, including economic development, Clause 2 must: 1. extend the definition of 'material considerations', in	

			PPS 1, to cover considerations which are outside the scope of Planning Policy but which are within the scope of wider government policy; 2. Define economic development and specify the scope of Planners/Commissioners authority and any limitations thereon. 3. Introduce a procedure to ensure Planners/Commissioners assess planning applications against a checklist/matrix of government policies and policy owners. 4. Introduce a statutory requirement to consult with and follow owners' advice. 5. Require Proportionate economic appraisals for planning applications, as being Green-Book compliant. 6. Introduce a statutory responsibility to convene policy-owner forums to address cross-cutting issues. 7. Make good design		particular case material the decision maker must have regard to the consideration. (Tesco Stores v Secretary of State [1995] Keith LJ) The proposed SPPS and guidance will set out details on economic considerations and planning and a balanced, proportionate approach which works in the public interest. Cross cutting issues are considered during policy development and at Executive level. Due the subjectivity of good design the Department considers that it as a desirable requirement in any development but may not always be achievable. The Department's policy on good design is set out

			mandatory rather than desirable. **(BHRA) (MERA)(UMARA)**		in PPS1. Good design should be the aim of all those involved in the development process and will be encouraged everywhere.
			14. Sustainable development should be defined and reference to economic development removed. **(DB)**		14 - See comments above on sustainable development at comment 1.
			15. The Bill should be reworded to make it clear how economic benefits will be measured or to provide a list of criteria for local government to ensure regional consistency.		15 - This can be addressed through policy and guidance.
			16. Of some concern is the fact that, following the consultation process in support of draft Planning Policy Statement 24 'Economic Considerations' in January 2011, the Minister determined not to adopt the		16 - This approach is not the same as PPS24. PPS 24 had proposed that full account should be taken of the economic implications

			policy. This clause suggests a change in that stance. This needs to be clarified.		of a planning application. However the Minister, in suppressing draft PPS 24 highlighted that full account of economic implications is already included in planning decisions, was not disputed by many respondents to the consultation and that PPS24 did not add much to this argument. The Bill establishes in statute that a key objective for planning is, along with furthering sustainable development and promoting or improving well-being to promote economic development. It also acknowledges that economic considerations are material considerations to be taken account of when making planning decisions. Unlike draft PPS24 it does not

					attempt to give guidance on the weight that should be attached to them. Economic considerations must be dealt with in a balanced way alongside other material considerations including social and environmental factors to ensure sustainable economic growth.
			17. More clarity is also required on how the DOE intends to measure 'good design' as it may be viewed as a subjective opinion. The principles of good design need to be clearly stated in centrally prepared guidance to be implemented by decision makers consistently. **(CBC)**		17 - Building on tradition – A Sustainable Design Guide for the NI Countryside already aims to improve the quality of design in the country side and to help to ensure that new buildings fit into the landscape. The Department is also bringing forward a new urban design manual to assist in strengthening city and town centres. The Department intends to elaborate on good design principles

					in the SPPS.
			18. We welcome the inclusion in the Bill of the measures to promote economic development. That is of course not to say that developers should not have due regard to good design and environmental impacts, but it is to say that a balance that comes out in favour of development is needed. **(CBI)**		18 - Noted.
			19. Developers can and will make wholly unrealistic claims regarding the economic benefits a development will bring to an area or community. These claims are rarely verifiable and in any case the circumstances can change overnight, often resulting in the developer disappearing. On the other hand, undertakings regarding the measures that will be taken to protect a community or environment are easily forgotten or worked around once a development gets under		19 - The Department would not agree with this assumption. At present developers would often submit economic evidence with major applications and other applications with potential job creation and planners have experience dealing with these. Economic considerations must be dealt with in a balanced way alongside other

			way, and the impact is there forever unless someone, usually with public money, undertakes to put matters right. **(JMCG)**		material considerations including social and environmental factors to ensure sustainable economic growth in the public interest. In relation to protection measures, the Department takes enforcement seriously which is again evidenced through proposed Clauses 16 and 20 of the Bill.
			20. We recommend that Clause 2 be amended to read: "Where the Department or the Planning Appeals Commission exercises any function under Part 2 or this Part, the Department or, as the case may be, the Commission must exercise that function with the objective of furthering sustainable development which secures: • protection and enhancement of the environment;		20. See response to Issue 1 above.

			promotion of economic development; promotion of social development; and promotion or improving well-being; and which balances current needs with those that may arise in the future." **(CP)** 21. The Council would commend that any such material considerations should be given equal weighting as the other stated objectives in regards to ' furthering sustainable development' and 'improving well-being' **(BCC)** 22. Belfast Healthy Cities supports the objectives '*furthering sustainable developmen*t' and '*promoting economic development'*. Again, we would ask for clarification of the definition of '*sustainable development'* and '*economic development*'. A full and clear definition of '*sustainable development'* may cancel out the need for an objective on '*economic development*.'		21 - See response to Issue 1 above. 22 - See response to Issue 1 & 9 above.

			23. In terms of promoting economic development, it is important to highlight that this should be more than job creation. **(BHC) (AN)**		23 - Noted and Agreed.
			24. UWT suggests that Clause 2 should be reworded as follows: Clause 2 (1)(a)(1): "Where the Department or the planning appeals commission exercises any function under Part 2 or this part, the Department or as the case may be the commission must exercise that function with the objective of furthering sustainable development."		24 - This would also remove well-being which was a Committee amendment during Consideration Stage of the 2011 Act.
			25. The inclusion of a definition based upon the NI Biodiversity Strategy, which states that 'sustainable development will embrace social progress, economic growth and employment, effective protection of the environment, and prudent use of resources		25 - See response to Issue 1 above.

			would ensure that there is clarity and balance in the implementation of such an objective.		
			26. It is considered that the need to have regard to international conventions should be incorporated into legislation moving forward.		26 - Dept is already bound by relevant international conventions.
			27. Clause 2(1) (b)(2) should be amended as follows: "(b) any other matter which appears to the Department, or as the case may be the Commission to be relevant, including international conventions to which the UK/NI Government is obligated".		27 – Noted. See response to Issue 1above.
			28. Good design should incorporate sustainable building techniques, materials, energy efficiency measures etc. to assist adaptation to climate change.		28 – Noted. See response to Issue 17 above.
			29. If this provision is to remain in the Bill, the UWT advocates that policy guidance should be		29 – Noted. See response to Issue 1 above.

			prepared as a matter of urgency to set out how sustainable design principles must be incorporated into development proposals. **(UWT)** 30. Clause 2 should be reworded to include a definition of sustainable development, and the sub-clause economic development should be removed. 31. FOE recommends the following overarching policy on sustainable development to be included in Clause 2 – "It shall be the principal objective of local and neighbourhood plans to ensure sustainable patterns of development which improve the quality of life of all people, while respecting environmental limits and the ability of future generations to enjoy a similar quality of life". In order to uphold this objective, all land use polices and decisions must enshrine the principles of: environmental justice, inter-		30 – Noted. See response to Issue 1 above. 31 & 32. See response to Issue 1 above. This approach is more suited to subordinate legislation, policy and guidance. Under the provisions of the 2011 Act councils will be required in preparing their local development plans to do so with the objective of furthering sustainable development. Additionally, many of these issues are already addressed in existing

			generational equity; environmental limits; resource conservation; the precautionary approach; the polluter pays; the proximity principle and public participation. 32. FOE recommends the following policy be included – • "Plans and planning decision making should apply the sequential test to ensure the most sustainable use of land". • Re-use of previously developed land & buildings (brownfield sites) within urban areas; • Other previously developed land well connected to public transport links; • New locations within urban areas subject to the need to protect and conserve areas of recognised environmental and amenity interests; • On other sites and locations which reduce the need to travel, and are sustainably located. **(FOE)(DN)(MT)(AT)(SS)(MMC)(MG)(MC)**		documents including Planning Policies Statements, PPS1:General Principles, PPS2:Planning and Nature Conservation, PPS7:Quality Residential Environments, PPS9: The Enforcement of Planning Control, PPS12: Housing in Settlements, PPS21: Sustainable Development in the Countryside.

			33. Any attempt to fulfil this additional role would be hampered by the absence of a clear definition of the following: • the meaning of economic development; • agreed criteria upon which a judgement of economic benefit is to be based - the most commonly accepted being those to be addressed by a suitably qualified expert as part of a *Green Book Assessment*; • who should benefit – specific individuals or society at large; • whether it is to be assessed in the long- or short-term; • staff adequately skilled, trained and resourced to carry out such an assessment; 34. The Society would urge the Environment Committee to revert to the spirit of the 2011 Planning Act, and include		33 - See responses to Issues s 1,9,11,13, 31and 32. The Department is not advocating the use of Green Book Assessment to assist it in determining the economic advantage / disadvantage (as the case may be) of any particular proposal. Further policy and guidance will be published by the Department which will set out details on economic considerations and a balanced, proportionate approach which works in the public interest. 34. See response to Issues 1 and 9 above.

			economic considerations as partners amongst equals in the factors determining whether a development is sustainable; and to resource and empower Planning Service to introduce legislation and guidance fitted to achieve this aim. **(UAHS)**		
			35. Even with the checks and balances of due diligence in introducing this aspect to the land use planning framework in Northern Ireland this is potentially a contested aspect of the reforms being put into place for a number of reasons. • There remains disagreement about the purpose of land use planning in a modern economy. • There are different understandings and interpretations of (macro-) economic development in current policy and political debates. • There is the possibility of the capture of the economic regime		35 - Noted. This can be addressed through policy and guidance.

			by communities of interest – here there needs to be a solid culture of understanding as to the spirit and purpose of land use planning. • There is the potential perception that the inclusion of economic development in the interim legislation pre-empts or over-rides environmental considerations. Here there is need for particular clarity – and there needs to be a full debate about the relationship between economic and environment. 36. The politics of resistance to innovation and change in local planning and governance must stop – and Northern Ireland move to a more informed position about the appropriate relations between economic and land use planning. **(MGL)** 37. Concentrating on economic factors in this case appears to be to the detriment of caution - this is a ridiculous risk being undertaken without sufficient		36 - Noted. 37 - The Bill does not concentrate on economic factors. Sustainable development is still key

			thought as to long-term effects.**(RG)**		to an effective planning system and material considerations must be taken into account in determining applications.
			38. Clause 2. Para 2 (1) (a) (1) (c)The Planning system should concentrate on land use decisions, promoting good design and allocating appropriate locations for *sustainable* development, not short term 'economic development promises' which can burn themselves out quickly and often leave indelible scars on landscape and townscape for generations to come. **(GHEG)**		38 - The Dept is committed to furthering sustainable development and Good Design as set out in PPS 1
			39. RTPI would urge the Committee to consider why the three objectives are accompanied by three different requirements i.e. 'furthering' v 'promoting or improving' v 'promoting' and deliberate standardising the wording to ensure equality of the objectives.		39 - See comment 12.

			40. Careful and further consideration should be given to this clause and the weight that will be awarded to 'promoting' economic development over 'furthering' sustainable development. Sustainable development is at the heart of the Regional Development Strategy and it is important that the regional framework guides how the elements of economy, society and environment complement each other to achieve this and to ensure that the conflict between the three elements does not impact negatively on the aspirations of sustainability.		40 - See comments 9 and 12.
			41. There is a concern from some members that through the RDS and PPS 4 there is sufficient policy structure in place to ensure that applications and proposals are given relevant consideration in light of promoting economic growth. The inclusion of this clause within the Bill will add a further		41 - See comment 9. PPS4 'Planning and Economic Development' sets out the Department's planning policies for economic development uses and indicates how growth associated with such uses can be

			layer of legislation which is unnecessary and will result in further confusion and challenge. It was felt that the clause will lead to conflict amongst councils who will be competing for development and will enable the approval of a proposal that may otherwise have been rejected. While RTPI is very much in favour and supports the concept of promoting economic development, there is further work needed to ensure that this will not be at the detriment of sustainable development and more information is required as to how this will be controlled, particularly post RPA. In light of these concerns and the importance of both economic and sustainable development it is proposed that the relevant clauses should be included:– • 'The core function being furthering sustainable development through the promotion of economic,		accommodated and promoted in development plans. It seeks to facilitate and accommodate economic growth in ways compatible with social and environmental objectives and sustainable development. For the purposes of PPS4, economic development uses comprise industrial, business and storage and distribution uses, as currently defined in Part B 'Industrial and Business Uses' of the Planning (Use Classes) Order (Northern Ireland) 2004

			social and environment objectives' • Uniting the important elements rather than allowing for the opportunity to differentiate between them. **(RTPI)** 42. Currently absent from the Bill is an explicit aim and objective linked to peace building. For that reason, CRC seeks an additional provision in the Bill under clause 2 (1) to place an additional duty on the Department and the planning appeals commission to promote shared spaces. The Bill should be revised to contain: *(d) promoting shared, safe and welcoming spaces.* The above amendment should be replicated in Clause 2 (2) (a), and Clause 2 (3) (a), after 'promoting economic development'. CRC seeks a further amendment under clause 2 (1A) "to enhance the current duty on the department, or		42 – This is best dealt with through Sustainable Development. The Department is committed to proactively promoting shared, safer and welcoming places through the planning system on a number of fronts: As project partners in the QUB Peace III Project 'Planning for Spatial Reconciliation': Working with key stakeholders likely to be impacted by the transition process leading up to the transfer of planning powers to the new

			the commission in regards 'to the desirability of achieving good design'". The Bill should be revised as follows: (1A) For the purposes of paragraph (1) the Department or, as the case may be, the commission must (in particular) have regard to the desirability of achieving good design, ADD: 'w*hich also promote shared use'*. This addition should be replicated in Clause 2 (2) (b) and Clause 2 (3) (b). **(CRC)**		councils –; Contributing to dialogue on the development and introduction of a new style of Spatial Planning legislated for in the Planning (NI) Act 2011, and; Channelling into work by PPD on the preparation of a single strategic planning policy statement In addition, the Department is bringing forward a new urban design manual to assist in strengthening city and town centres.
			43. We recommend amending the Planning Bill to remove provision for the promotion of good design and sustainable development, while ensuring they remain strongly promoted within relevant planning policy guidance.		43 – Sustainable Development and 'good design' are important to the planning system and supported by the previous Assembly in 2011 Planning Act.

			44. We recommend that the promotion and review of the economic benefits of a development should remain within the Planning Bill given the net effect it can have on NI as a whole. (**ASDA**)		44 Noted.
			45. We recommend that the Planning Bill is amended to limit the period for submitting representations to a reasonable time period at the beginning of the planning application process.		45- This does not relate to Clause 2. However, the 1991 Order allows for a minimum period for representations. However case law has determined that all representations received up to the time that the Dept is making its final determination should be considered. This approach fits the Departmental policy that the public must be given ample opportunity to participate.

			46. We recommend that Planning Bill is amended to provide for a fixed timescale for determining a planning application, as this would provide certainty for developers.**(ASDA)**		46 -. This does relate to Clause 2 however, the Department has set its targets in its business plan. Any applicant has the right to make a non-determination appeal under Article 33 of the 1991 Order (within eight weeks) if a decision is not made within a specified timeframe.
			47. WT would urge the Committee to consider a clear statement that ensures that economic development is not supported when it impinges upon delivering true sustainable development i.e. supporting development that enhances and protects our natural environment rather than damages it.		47 - See comments 1 and 9.
			48. The UK Government's National Planning Policy Framework includes specific mention of the need to protect Ancient Woodland, and we urge the Committee to consider inclusion		48 – Noted. This is a matter for policy rather than legislation.

			of a similar statement of intent within the legislation.		
			49. "planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland".		49 - These issues would be key material considerations in the determination of planning applications. PPS2: Planning and Nature Conservation **sets** out the Department's land-use planning policies for the conservation of our natural heritage.
			50. In respect to Northern Ireland, we would state that this should cover all woods as listed on the Ancient Woodland Inventory. **(WT)**		50- Noted this is a matter for policy
			51. Lecale Conservation believes that the answer lies in continuing to place the principles of sustainable development (which are already enshrined in the 2011 Act), at the heart of the		51 - Noted see comment 1.

			planning system.**(LC)** 52. The objectives of sustainable development and improving well-being represent what is best in the NI system. They are our system's intellectual capital. They have served NI better and represent a much more valuable asset than the clause proposed, which sends the industry the wrong message, and will encourage what is worst and most dangerous in it. The Department must rethink this. 53. All the proposed amendments should be dropped, bar the introduction of an emphasis on good design, which is not however appropriate to this clause, and should be introduced in less aspirational form elsewhere. The wording of the 2011 Act and the 1991 Order should remain unchanged. **(BMRG) (CIEH)** 54. Clause 2 - Sustainable development must mean what it implies and not end up		52 - See comments at 1 & 9. 53 - See comments at 1 & 9. 54 – See comments at 1 & 9.

			destroying the ecological balance of the environment. The effects on the environment must be given substantial weight in the decision making Process. The Planning Bill should therefore be reworded to provide clarity.**(FT) (WHJ) (SBPG) (LS)** 55. LINI consider that some of the terminology in this Bill requires clearer definition, includes the following**:** Sustainable Development' - Whilst Article 10A of the 1991 Order makes reference to Sustainable Development within a Development Plan context; LINI maintain that the planning legislation requires a universally accepted definition and meaning for this term. Formation of this definition should be a priority, and incorporated through this Bill into the legislation to avoid doubt post transfer of planning function. 'Sustainable Development' should from the foundation of decision making in our planning system, and clarity of this term would negate any need to include specific clauses		55 - See comment 1.

			which single out particular issues that currently form part of the decision making process, for example, inclusion of a clause for the 'promotion of economic development'. 56. The economy is already an integral part of 'Sustainable Development', and so repeating it explicitly essentially increases its weight in any assessment of considerations (the need for this addition in this Bill suggests ambiguity about the term 'Sustainable Development'). 57. Economic Development - In order to reach conclusions on economic benefits as a material consideration (which this clause will create), authorities will rely on assessments submitted by developers agents. These submissions will inevitably be convincing (and bias) in favour of the development they are proposing / promoting. However it is unlikely that the authorities		56 - See comments 1 & 9. 57 - See comment 19.

			will be furnished with balanced counter economic arguments or data when reaching decision on economic matters.		
			58. Clause 2 sets out to 'Furthering' Sustainable development whilst 'Promoting' Economic development – it is considered that some clarification to the variation in emphasise of these terms is required.		58 See comment 12.
			59. 'Well-Being' - The concept of promoting well-being' is welcome and again clearly well intentioned, however this needs further clarification – what are the criteria for 'well-being' and who decides how or whether these are met? **(LINI)**		59 Noted. The SPPS will elaborate on this for Planning.
			60. NIRIG supports the establishment of a statutory duty towards sustainable development, promoting or improving well-being, and promoting economic development. NIRIG feels that		60 Noted.

			this is consistent with PPS18, and appreciates that, in practice; all current planning decisions balance these competing considerations anyway. **(NIRIG)** 61. The comments in respect of this Clause are that 'good design' needs to be clarified. Is the estimation of good design dependant on the environment or other factors? 'Good design in terms of the building itself or the local setting?' Also in the current economic climate would this provide a constraint on 'good design?' 62. It is not clear what 'promoting economic development' means? It is also not clear as to where economic advantage would take precedent over the environment? All of this would seem to depend on what tests are going to be applied by the Department and what weighting given to the considerations raised. Policy guidance would be useful and		61 Further details will be set out in SPPS and guidance. See also comment 17. 62 See comments 9 &12. This will also be addressed in the SPPS and guidance. As regards design evaluation; professional planners have the skills required to carry out such

			yet it is understood that the Department is minded to rationalise policies and that would surely lead to less consistency to the application of Planning in the future. It is not clear how consistency will be achieved after the handover to Councils in the absence of policies. There is also an issue as to whether all these aspects identified in the Bill are considered to be equal? If, for instance, economic development is singled out how will it be assessed and by whom? Will it take precedent over the other matters? There is also the presumption that in order to evaluate design there would be a design ability required by those carrying out the assessment. Have any stipulations been made regarding the qualifications and experience of those who would be making these judgements. Concerns have also been expressed as to whether economic development emphasis would take precedent over issues such as conservation and heritage or benefits to		assessments and can draw on architectural expertise if necessary. See also response to Issue 17.

			society. The concept of 'promoting well-being' needs further clarification – what are the criteria for 'well-being' and who decides how or whether these are met?		
			63. A clear definition of 'sustainable development' should negate the need to include a further objective of 'promoting economic development' **(ABCNM) (NIEL) (LINI)**		63 See comment 1.
			64. We welcome amendments designed to enhance the environment and strengthen the planning system including an amendment to the general functions of the Department and the Planning Appeals Commission to exercise certain roles with the objective of furthering sustainable development. **(BBC)**		64 Noted.
			65. How is the promotion of economic development' defined (for whom, and on what timescale)? Who determines		65 See comments, 1, 9 & 13. This will be set out in more detail in policy and guidance.

			what it is? Who assesses it? In light of these questions, the clause seems to increase scope for (and even invite) litigation, leaving the system open to legal challenges by any who are refused development permission or those who object to specific applications. A true economic valuation of natural capital / ecosystem services within NI would support economic development as well as promoting an educated and responsible attitude toward the environment. An understanding of this, along with 'sustainable development' should be reflected in the Bill. 66. If economic factors are to be given particular emphasis, and thus potentially more weight, the precautionary principle (PPS1, paragraph 13) is likely to be ignored. Failure to comply with the precautionary principle as set out in PPS 1 could lead to legal challenges.		66 See comments 1, 9 &13 and also comments on clause 6.

			67. Clarification is required on the difference between 'furthering' and 'promoting'; is there a 'hierarchy', or what is the difference in emphasis?		67 See comments 1, 9 and 12. This will be addressed in SPPS and guidance.
			68. 'Good design' needs further clarification – what are the criteria and who decides? Does 'good' refer to aesthetics, function or both? While we are aware of multiple design guides in NI, there needs to be clarity on which carries the most weight.		68 See comment 17.
			69. NIEL suggests the following wording for clause 2(a): "(1) Where the Department or the Planning Appeals Commission exercises any function under Part 2 of this Part, the Department or, as the case may be, the Commission, must exercise that function with the objective of furthering sustainable development, which secures: • Protection and enhancement of		69 See comment 1.

			the environment; • Economic prosperity; and • A strong, healthy, just and equal Society". **(NIEL)**		
			70. The UK Sustainable Development Strategy identifies 5 guiding principles – Living within environmental limits; ensuring a strong, healthy society; achieving a sustainable economy; promoting good governance and using sound science responsibly. FFAN supports these principles and recommends that they are set out in Clause 2 along with suitable detailed policy and procedures to ensure their implementation in practice.**(FFAN) (RSPB)**		70 See comment 1.
			71. A policy approach through the modification of PPS1 may be a more appropriate mechanism through which to introduce the desire to promote economic development – rather than primary legislation.		71 See comment 9.

			72. The Bill should be re-worded to make it clear how economic benefits will be measured, or to provide a list of criteria with local government to ensure regional consistency.		72 See comment 9.
			73. Of some concern is the fact that, following the consultation process in support of draft Planning Policy Statement 24 'Economic Considerations' in January 2011, the Minister determined not to adopt the policy. This clause suggests a change in that stance, and this needs to be clarified. **(NILGA)(ABC)**		73 See comment 16.
			74. An understanding of the high level Brundtland definition and these principles must be reflected within the Planning Bill, and in particular, the definition of sustainable development.		74 See comment 1.

			75. Paragraph 8 of the National Planning Policy Framework (NPPF), (March 2012), expresses this balance succinctly. The balancing of these objectives is further recognised in Paragraph 35 of Scottish Planning Policy.		75 Noted. See comment 1.
			76. The inclusion of a robust definition of sustainable development within Clause 2 would negate the need to include a further economic sub-clause.		76 See comment 1.
			77. Clause 2 clearly places economic development head to head with sustainable development, and could therefore be subject to differing interpretation by subsequent, Ministers, Planning Officials and Local Councils.		77 See comment 9.
			78. The scope for interpretation is further compounded by the use of the wording 'furthering', 'promoting' and 'improving' within the clause. Such scope for		78 See comment 12.

			interpretation and potential ranking could lead to a rise in the number of challenges, where the nuances of each of these verbs are debated at length, thereby potentially slowing down the planning system – contrary to the objectives of planning reform.		
			79. The rewording of Clause 2 to include a robust definition of sustainable development, and deletion of the economic sub-clause would not only remove any future potential ambiguity and confusion with regards to weight or ranking, but create a planning system for the purpose of achieving sustainable development. **(RSPB) (CNCC)**		79 See comment 1.
			80. CNCC believe that the changes proposed in Clause 2 (&6) set a very different framework for the consideration of planning consents for major developments that would require an EIA. At the very least we consider that there should be a screening		80 See comments 1 & 9. Clauses 2 and 6 do not change the Department's policy on the requirements to consider all material considerations in

			process to assess any likely effects, as was carried out with the Regional Development Strategy, and that such a process should take place before any change is introduced.**(CNCC)**		determining planning applications. The statutory requirements in relation to EIA developments must be adhered to.
			81. This Bill makes the requirement to consider economic matters an unnecessarily cumbersome one which introduces an element of time-consuming and inappropriate duplication, as the requirement to consider economic matters in a balanced way is already built into the Planning Act 2011 through the duty to ensure that sustainable development is furthered (in Clauses 2 and 5 of the Act). We would oppose these proposed changes.		81 See comment 9.
			82. Clause 2 also widens the requirement to take account of policy pronouncements from the Office of the First Minister and deputy First Minister beyond those on the issue of sustainable development. This would need		82 Noted.

			to be handled very carefully; if OFMDFM was to issue a pronouncement favouring economic development considerations in planning issues, this could exacerbate the problem referred to above. **(BCAW).** 83. Clause 2 amends the general functions of both the DoE and the Planning Appeals Commission by adding the objective of **'promoting economic development'** alongside the objectives of 'furthering sustainable development and promoting or improving well-being'. 84. We are strongly opposed to the inclusion of this additional clause. It would be much more appropriate to include in this Bill a clear definition of sustainable development. If the Bill provided a clear definition of sustainable development – which includes economic development alongside social		83 Noted. 84 1. See comment at

			and environmental concerns – there would be no need for a further, separate duty in relation to economic development. We therefore recommend that the clause should be dropped. 85. An alternative approach would be to expand the wording in the clause to include a fuller and balanced statement of sustainable development, e.g.: • The Department or Planning Appeals Commission '…must exercise that function with the objective of furthering sustainable development which secures: • protection and enhancement of the environment; • economic prosperity; • a strong, healthy, just and equal society.' 86. There are other good reasons to drop this clause: It elevates the promotion of economic development to a <u>statutory</u> duty for all aspects of planning which would require the Department to		85 1. See comment at 86 9. See comment at

			promote economic development as a specific objective of the planning system. We believe this is inappropriate and goes beyond the purpose of planning which is clearly set out in PPS1 General Principles. • Any focus on economic development should be dealt with in planning policy which is more readily reviewed, rather than in legislation. 87. Adding an explicit economic clause will increase the weight applied to economic development at plan making and development control stages. While we note that the Minister asserts this is not the intention (Planning Bill Second Stage debate, 22 January 2013), the wording creates this expectation and is clearly open to this interpretation in the future. 88. As currently drafted, decision makers will be faced with having to balance and weigh up promoting economic		87 See comment at 9. 88 See comment at 9.

		development, promoting well-being and furthering sustainable development (which properly includes the first two, along with environmental concerns). Does this mean that economic considerations should be factored in twice? The complexity and lack of clarity introduced is likely to lead to more appeals and legal challenges. **(NT)**			

Planning Bill Clause by Clause - Clauses 6 and 10 and 20 and 23 Departments Response

Planning Bill
Clause by Clause Summary of Responses – Clauses 3 - 28
Clauses 6, 10, 20, 23

Abbreviations:

ABC	Antrim Borough Council
ABCNM	Armagh, Banbridge, Craigavon, Newry and Mourne Councils
AN	Arena Network
AR	Anja Rosler
ASDA	Asda
AT	Alan Tedford
BBC	Ballymena Borough Council
BCAW	Belfast City Airport Watch
BCC	Belfast City Council
BCT	Belfast Civic Trust
BD	Bill Donnelly
BHC	Belfast Healthy Cities
BHRA	Belfast Holyland Regeneration Association (endorsed via email by Rosana Trainor, Henry, Sarah and Thelma Deazley)
BMRG	Belfast Metropolitan Residents' Group
BNF$ - Belfast Not For $hale	
CAC	Corralea Activity Centre
CBC	Castlereagh Borough Council
CBI	CBI Northern Ireland
CCC	Cavehill Conservation Campaign
CEF	Construction Employers Federation
CH	Connal Hughes
CIEH	Chartered Institute of Environmental Health
CMCC	Ciaran McClean (Member of the Public)
CNCC	Council for Nature Conservation and Countryside
CP	Community Places
DB	David Bolton
DBK	Dawn Bourke (Member of the Public)
DCOD	Dr Carroll O'Dolan
DG	Committee based on discussions with Daniel Greenberg QC
DGBA	Dundonald Green Belt Association

DMW	Development Media Workshop
DN	David Noble
DP	Donaldson Planning
DS	David Scott DSTBC Dungannon and South Tyrone Borough Council
FFAN	Fermanagh Fracking Awareness Network
FJ	Fiona Jones
FOE	Friends of the Earth (endorsed via email by Antrim & District Angling Association, Kenneth Dougherty/Public, Jim Martin/Public, Jim Gregg/Public, The Right Honourable Sir Liam McCollum/Public, Michael Martin, Vice Chair, Six Mile Water Trust, Adrian Guy, Dr Miriam de Burca/Public, Richard Rowe/ Public, John Martin/Public, Heather McDermott/Public)
FT	Fermanagh Trust
GC	Geraldine Cameron
GD	Gerard Daye (Member of the Public)
GE	Geraint Ellis (QUB) (endorsed by Seahill Residents' Association)
GHEG	Greenisland Heritage and Environment Group
GL	Professor Greg Lloyd.
GMCA	Geralyn McCarron
HCG	Holywood Conservation Group
IOD	Institute of Directors
JMcG	Joe McGlade
JA	John Anderson
JC	J Cosgrove (Member of the Public)
LC	Lecale Conservation
LINI	Landscape Institute Northern Ireland
LS	Laurence Speight
LVG	Lagan Valley Residents' Association
MC	Mark Crean
MERA	Mounteagles Ratepayers Association
MG	Mairead Gilheaney
MK	Mr Mark Kearney (Member of the Public)
MMcC	Majella McCarron
MS	Marian Silcock
MT	Martina Tedford
NIBG	Northern Ireland Biodiversity Group
NIEL	Northern Ireland Environment Link
NIHE	Northern Ireland Housing Executive
NILGA	Northern Ireland Local Government Association (endorsed by Omagh District Council)
NIRIG	Northern Ireland Renewables Industry Group
NMDC	Newry and Mourne District Council

NT	National Trust
PAC	Planning Appeals Commission
PP	Patricia Pederson
QPANI	Quarry Products Association Northern Ireland
QUB	Queen's University Belfast
QUBPACE	Queen's University Belfast: School of Planning, Architecture and Civil Engineering
QUBPSR	Queen's University Belfast: Planning for Spatial Reconciliation
RG	Robert Graham
RI	Richard Ireson
RMG	Rosemarie Gilchrist
RSPB	RSPB Northern Ireland
RTPI	Royal Town Planning Institute Northern Ireland SCNI–Supporting Communities in NI
SBPB	South Belfast Partnership Board
SBRG	South Belfast Residents Group
SCNI	Supporting Communities NI
SS	Siobhan Small
TF	Tim Fogg
TW	Tom White
UAF	Ulster Angling Federation
UAHS	Ulster Architectural Heritage Society
UMARA	Upper Mounteagles Avenue Residents Association
UWT	Ulster Wildlife Trust
VR	Victor Russell
WHJ	WH Jones
WT	Woodland Trust
ZK	Zelda Kingston

CLAUSE NO	CLAUSE (FROM BILL)	EXPLANATIONS (From Explanatory and Financial Memorandum)	VIEW FROM SUBMISSIONS	OPTIONS	DEPARTMENT'S COMMENTS
6	**Determination of planning applications [j25]** **6.**—(1) In Article 25 of the 1991 Order (determination of planning applications), after paragraph (1) insert— "(1A) Without prejudice to the generality of paragraph (1), the reference in that paragraph to material considerations includes a reference to considerations relating to any economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission.". (2) In section 45 of the 2011 Act (determination	Clause 6 amends Article 25 of the Planning (Northern Ireland) Order 1991 and Section 45 of the Planning Act (Northern Ireland) 2011 by including provision that material considerations in the determination of planning applications includes a reference to considerations relating to any economic advantages or disadvantages likely to result in granting or refusing planning permission.	1. I would appreciate a detailed explanation as to how the individuals who entered this clause ever conceived it would work in practice. 2. Planners, applicants and objectors will have to employ an army of economists to make sense of all the claims and counterclaims. 3. By what measure is economic growth to be measured?		1. See response to Issue 9 – Clause 2. . 2. See response to Issues 9 & 11 – Clause 2. 3. Economic development is viewed by the Department as a policy intervention endeavour with aims of economic and social well-being of people, while economic growth is more a phenomenon of market productivity and measured by GDP. Clause 6 does not make reference to 'economic growth' however Clause 2 sets an objective for the Department of, inter alia, promoting 'economic development', thereby contributing

	of planning applications), after subsection (1) insert— "(1A) Without prejudice to the generality of subsection (1), the reference in that subsection to material considerations includes a reference to considerations relating to any economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission.".		4. Natural disasters such as flooding or mudslide increase GDP but will certainly not be welcomed by the population at large. Should planning facilitate such disasters in the interests of a narrow definition of economic growth? 5. If jobs are a main determinant of economic development then by what are they measured? Are 12 part time jobs in one		towards growth in the economy. Further guidance will be provided in the SPPS with respect to economic development. 4. No, this is not the purpose or intention of the planning system. The intention of the Bill is to speed up reforms and modernise the planning system before the majority of planning powers transfer to local government in 2015. 5. Potential (sustainable / long-term) job creation of is but one measure in considering the economic advantages of any proposed development. Moreover, the planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. The basic question is whether the proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest. The economic advantages /

			application better than the 6 full time jobs promised by another? How will the planning service enforce these applicant's claims of future jobs? **(CH)** 6. The Department should not proceed with the additional provisions without public consultation. How is the Department justifying the inclusion of additional provisions that have not been subject to public scrutiny and impact assessments? **(UAF) (ABCNM) (AT)(ABC)**		disadvantages of any particular proposal will therefore be relevant to the wider community as a whole i.e. in the public interest. Further policy and guidance will be published by the Department which may direct as to the scale of development to which such considerations will require greater scrutiny. The proposed SPPS will set out details on economic considerations based upon a balanced and proportionate approach which works in the public interest. 6. While the Bill does include some additional provisions over the 2011 Act, the Assembly legislative process ensures that all stakeholders will have the opportunity to comment on and influence the Bill. 7. The Minister, after discussions with the Executive Committee agreed these additions be included to the Bill.

			7. Who identified provisions for economic development as 'desirable additions'? **(UAF)** 8. Will singling out economic considerations from the 'any other material considerations' give such considerations additional weight above unnamed material considerations? If not, why is it specified and why are social and environmental considerations not specified? Concerns that the perceived economic aspect would take precedent. **(LVG)** **(UAF)** 9. This is consistent with Clause 2 and is welcome **(CEF)** 10. What is the risk of excluding the phrase 'as the case may be' on each of the 2 occasions it is used in Clause 6? **(DG)**		8. See response to Issue 9 – Clause 2. 9. Noted. 10. This is a matter of drafting style and follows the usual style in Northern Ireland. If the Committee wish the Department will raise further with Legislative Counsel. 11. See response to Issue 5 above.

			11. Unclear how economic advantages/disadvantages could be assessed, especially since an application could have economic advantages to the applicant but disadvantages to the immediate neighbourhood (large supermarket versus local shops). **(LVG)** 12. The inclusion of consideration relating to economic advantages/disadvantages creates significant scope for litigation and escalating challenges between competing developers. This clause should be removed from the Bill. **(SCNI)(MK) (DB) (GD) (CONF) (DN)** 13. This will also require further training and guidance for planners and potentially the employment of specialist economists in the Department of the Environment. 14. It is not clear what sort of economic assessment will be required, although the across		12. See response to Issue 5 above and Issue 9 Clause 2. Personal financial circumstances are not a material consideration in the planning decision making process. 13. Guidance and training will be provided by the Dept. The Department also employs economists. 14. The Department is not advocating the use of Green Book Assessment to assist it in determining the economic advantage / disadvantage (as the case may be) of any particular proposal. See also Comment 5 above. Further policy and guidance will be published by the Department which will set out details on economic considerations and a balanced, proportionate approach which works in the public interest.

			Government the most commonly accepted is a Green Book Assessment and it is difficult to see how anything less than this could provide the complete picture of the economic impact of a development. **(GE) (BCAW) (BCT) (JC)** 15. Clause 6 appears to be attempting to use the planning system for a purpose for which it is not legally designed to do. Because planning is strictly about the use and development of land, to try and use it for a purpose that is not strictly related to this – such as reviving the broader regional economy, could be judged as being ultra vires and of course, open to challenge in the courts.		15. The Department's guiding principle in determining planning applications is that development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In such cases the Department has power to refuse planning permission. See also Comment 9, Clause 2. Within this context, this provision is not attempting to 'revive the broader regional economy', but neither should the planning system operate in isolation in a manner which acts as an impediment to development and economic progress.. Planning has an important role in facilitating sustainable development and economic development. Good planning, quick decisions, balanced by a favourable planning environment are key to economic growth and new jobs. . 16. See Comment 5 above.

			16. The Bill also appears to introduce the dangerous precedent of having to routinely consider personal circumstances when deciding planning decisions. 17. A further consequence of this is it that it provides opportunities for objections on "non-planning" grounds. Clause 6 broadens the issues that planners have to take into account when deciding planning applications and this will be open to exploitation from both applicants and objectors. 18. If it is claimed that a development will result in 100 jobs, this could become a key criteria for awarding planning permission. However, there is no legal		17. Case Law has ruled that Economic considerations are already a material planning considerations. See Comment 5 above and Comment 9, Clause 2. 18. See 5 above. The Department will only impose conditions that, in its opinion, are necessary, relevant to planning, relevant to the development being permitted, precise, enforceable and reasonable in all other respects.

			mechanism to ensure the claimed benefits actually occur as such. Clause 6 should be removed from the Bill. **(GE)(BCAW)(BCT)(DGBA)(BHC)(FOE) (MG) (MMcC) (MC) (MT) (SS) MS)(NIEL) (BCT)(RG)(SBRG) (AN)(BMRG)(DP)(JA)(LINI)(LC)(WHJ)(BNF$)(BD)(FJ)(GC)(JMcG) (LS)(QUBPACE)**		19. See Comment 9 – Clause 2. Further policy and guidance will be published by the Department which will set out details on economic considerations and a balanced, proportionate approach which works in the public interest.
			19. The key issue is how much weight, relative to other factors, is to be given to economic considerations. More guidance is needed from the DOE on how this will be assessed. **(CBC)(BCC)**		20. Noted. See comment 9 on Clause 2.
			20. We recommend that this clause is removed and that guidance on the assessment of economic considerations be addressed through the planning policy development process and following public		21. Noted.

			consultation. **(CP)** 21. Ballymena Council would endorse this. **(BBC)** 22. What level of economic data will be required? Will a very detailed economic assessment along the lines of an Environmental Impact Assessment be demanded, or will it merely be some very crude figures that are difficult to assess? Who will assess the figures put forward? 23. How will economic data be judged against environmental and social data? What time scales will be considered? 24. The terms used in Clause 6,		22. See comment 14 above. 23. See comment 14 above. Planners have to weigh all material factors (including environmental and social) policies, laws, evidence and precedents and come to the balanced judgment call based on that evidence. Each application must be considered on its own merits. Further policy / guidance will be published. 24. See comment 80 on Clause .

			including 'promoting', 'sustainable development', 'well-being', economic advantages' and 'economic disadvantages' are not clearly defined, and as such are open to a wide range of different interpretations. At the very least we consider that there should be a screening process to assess any likely effects, as was carried out with the Regional Development Strategy, and that such a process should take place before any change is introduced. Costs 25. Remarkably the Partial Regulatory Assessment which accompanies the Bill fails to consider these potential costs. We would recommend that a complete PRA is completed before this Bill progresses any further if these clauses are to be included in the legislation. **(CNCC)(VR)**		25. As good practice dictates a Partial RIA was required and undertaken for the Planning Bill as part of the process of policy development and implementation. The Department in preparing the Partial RIA would be required to make an assessment of the likely benefits or costs on small business, charities, social economic enterprises or the voluntary sector associated with clause 2. As the RIA is an iterative process the Partial RIA can and should be developed to further consider the likely impacts of the provisions in the Planning Bill, including clause 2, as they are developed through the Assembly process. Further assessments should be prepared for the associated subordinate legislation and planning policies necessitated by the implementation of the policies when the Planning Bill is enacted. 26. See response to Issues 5 & 23 above.

				27. There is no requirement for the Dept or developers to engage outside consultants.
		26. How could Planners adjudicate on the economic balance between the advantages and disadvantages of a particular application? **(GEHG)**		28. Noted. Personal financial benefits are not a material consideration. See comment 5 above.
		27. The use of outside consultants to assess the application is unlikely to be of any benefit as we have never heard of a case where such consultants have failed to agree with an applicant. **(HCG)**		29. Noted. However, Case Law provides for what are material considerations.
		28. The wording, "considerations relating to any economic advantages or disadvantages likely to result" if not removed entirely (which would be our preference as we consider that the matter is covered within		

			Clause 2) should be amended to read "considerations relating to any public or private economic effects likely to result" 29. Providing proper guidance on considering the value of public goods, biodiversity and ecosystem services within planning decisions will be of critical importance as we move into this next phase of planning legislation and planning practice and the devolution of planning to local government. **(NIBG)** 30. NILGA would query whether the Planning Bill is the appropriate vehicle to strengthen economic development considerations whilst recognising and supporting the need to sustainably develop local economies. The key issue is how much weight, relative to other factors, is to be given to economic considerations. **(NILGA)** 31. NIRIG welcomes the emphasis on economic		30. See comment 23 above. 31. Noted. 32. Noted. Guidance will be published.

			benefits as consistent with PPS18 and the genuine benefit from investment in renewable energy infrastructure. **(NIRIG)** 32. Supports the economic advantage (or disadvantage) of an application. This is a positive step. It would be useful if the Department produced guidance on this, especially for their own Officers to follow. **(QPANI)** 33. It is not clear what sort of economic assessment will be required under clause 6 when submitting applications for individual projects that sit within the integrated programme. The University's development strategy will be critical in helping to support the Programme for Government and in growing a sustainable local economy. **(QUB)** 34. Clause 6 provides optimum conditions for developers of competing schemes, to become embroiled in lengthy battles regarding the economic advantages and		33. See response to Issues 5, 14 & 23 above. . 34. See response to Issue 5 above. This determination applies to individual applications in the public interest and not to the comparison between different applications from different developers. 35. See comment 9 on Clause 2.

			disadvantages of each of their schemes leading to a slowing down of the planning system and increased legal challenge – all contrary to the objectives of planning reform. 35. More worrying however from an RSPB perspective, is the situation where economic advantages will time after time take precedence over the unnamed material consideration of the environment. The balancing of any other material considerations will be lost. Clause 2 and Clause 6 collectively threaten sustainable development. 36. Other concerns relate to the fact that there are presently no economists in DOE. In the absence of such experts, DOE will not be qualified to assess the economic advantage or disadvantage presented. 37. Furthermore, the RSPB would welcome clarity on how the Department actually proposes		36. See response to Issue 9 and 11 on Clause 2. 37. See response to Issues 18 & 23 above.

			to legally enforce such economic claims (e.g. job creation, or revenue generation for an area). As far as the RSPB is aware there is no legal mechanism to secure such benefits through planning conditions as they lie outwith the scope of planning. For all these reasons, the RSPB believes that Clause 6 should be deleted. **(RSPB)**		38. See response to Issue 1 – Clause 2.
			38. We would urge the committee to enact a policy of sustainable development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". **(FFAN)**		39. See response to Issue 9 - clause 2.
			39. It's debatable whether the duty of Economic promotion could be in direct opposition to EIA assessments as the process of an EIA may reduce a claimed economic		40. See response to Issue 9 - clause 2. In addition, the intention of the bill is to speed up reforms and modernise the planning system before the majority of planning powers transfer to local government in 2015. Bringing forward

			advantage **(TW)** 40. The Society urges the Committee to recognize that the introduction of an additional and separate objective [enshrined in clauses 2 and 6 of the Planning Bill] to promote economic development rather than considering the achievement of a sustainable economy as part and parcel of an assessment of sustainable development, serves only to undermine, delay and thwart such an assessment. By way of illustration, we would point out that an attempt to fulfil this additional role would be hampered by the absence of a clear definition of the following: • the meaning of economic development; • agreed criteria upon which a judgement of economic benefit is to be based - the most commonly accepted being those to be addressed by a suitably qualified		some of the reforms, agreed by the previous Assembly, in the 2011 Planning Act now means that the benefits can be realised sooner.

			expert as part of a Green Book Assessment; • who should benefit – specific individuals or society at large; • whether it is to be assessed in the long- or short-term; • staff adequately skilled, trained and resourced to carry out such an assessment; The introduction of a specific requirement to promote economic development fundamentally alters this recognised role, and attempts thereby to use planning for a purpose for which is neither designed nor authorised under its legislation, opening up a potential area of legal conflict and challenge. 41. Furthermore, the Society is aware of the considerable amount of work yet to be done, and small staffing resources currently allocated, to ensure the successful completion of the outstanding Planning Policy Statements		41. See response to Issue 40 above. The Dept considers current resources are adequate. However, this will be kept under review.

			and Urban Design Guide scheduled to be made available for public consultation within the calendar year; and the amount of work yet to be done to draft the intended Single Planning Policy Statement and its supporting guidance. Additional resources may yet be required to achieve these agreed targets, and we would urge the Committee to ensure that this should take priority. The additional work that will inevitably be generated in association with Clauses 2 and 6 of the Planning Bill will inevitably introduce delays and further expense into the system, and hamper the achievement of existing targets. **(UAHS)** 42. The UWT considers that a specific reference to economic advantages and disadvantages should not be inserted into legislation, for the following reasons: • economic considerations are already material to the decision making process. Case Law has demonstrated this;		42. See response to Issue 9 on Clause 2.

			• this provision could potentially elevate economic considerations to a primary consideration, above all others. The Bill could lead to a system where the party with the greatest resources (in proving/disproving economic advantages to an application) is successful in achieving their desired outcome. • it could lead to less weight or attention being given to environmental considerations such as landscape impact, habitat, impacts of climate change etc; • the planning authority may be obligated to specifically incorporate economic assessments into their determinations across the full spectrum of development projects; and • it could lead to increased pressure on staff resources, increase the need for external consultancy advice, and encourage a situation		43. See also response to Issue 9 – Clause 2.

			whereby applicants or objectors feel obliged to submit detailed economic appraisals in support of their case. 43. In short, there is simply no justification for the inclusion of this provision in legislation. **(UWT)** 44. It is proposed that article 25 of the 1991 Order and section 45 of the 2011 Act are both revised to include the following statement, "Without prejudice to the generality of paragraph (1), the reference in that paragraph to material considerations includes a reference to considerations relating to any economic advantages or disadvantages likely to result from the granting of or, as the case may be, the refusal of planning permission.". 45. Unless this statement is fully qualified, we remain very concerned that this could grant permission to support development that damages,		44. See response to Issue 5 and on issue 9 on Clause 2. 45. See responses to Issues 5 & 23 above.

			rather than enhances our natural environment. We therefore urge the Committee to consider a clear statement that ensures that economic development is not supported when it impinges upon delivering true sustainable development i.e. supporting development that enhances and protects our natural environment rather than damages it. 46. In respect to Northern Ireland, we would state that this should cover all woods as listed on the Ancient Woodland Inventory. **(WT)** 47. In place of the economic development test, which accords equal status to beneficial and to destructive, dangerous and inequitable development, I would urge the committee to support a policy of sustainable		46. This is a general issue. The Department's policy in relation to the protection of trees is set out in PPS2: Planning and Nature Conservation. The Department will seek to protect trees, groups of trees, and woodland areas of particular importance because of their nature conservation value or their contribution to the amenity of a particular locality 47. See response to Issue 1 on Clause 2.

			development as defined by the World Commission on Environment and Development 1987; "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Such a policy would include the principles of resource conservation, environmental and inter-generational justice, the precautionary principle, the polluter pays principle and meaningful public consultation. **(ZK)** 48. It is not necessary as economic development is already one of the important factors taken into account when assessing planning proposals. 49. The economic value of a proposed development would be impossible to assess accurately, especially by planners who are not trained as economists. 50. There is a contradiction between the primacy of		48. See responses to Issue 9 on Clause 2, and to Issue 23 above. 49. See response to Issue 1 on Clause 2 and comment 5 above. 50. See response to issues 1 and 3 on clause 2.

			economic factors and the responsibility to encourage and protect sustainable development. The favouring of the former over the latter would have disastrous consequences for Northern Ireland's vulnerable natural environment and the health and prosperity of our people. There would be no way of monitoring compliance with the economic conditions of planning approval. 51. No effective sanctions would be enforced against developers who reneged on their promises of economic benefit. **(AR) (CAC) (DB) (DS) (DMW) (DCOD) (TF) (RI) (PP)** 52. There is nothing in the draft Bill to suggest that this consideration will eclipse all		51. See response to Issue 9 on Clause 2 and issue 18 above. 52. Noted. The Department remains committed to the furthering sustainable development as set out in clause 2.

			others. This point was stressed by Minister Attwood in the Assembly on 22 January.We believe, therefore, that it is axiomatic that this provision should be included in the Bill. The key question, however, is how the proposed assessment will be made, who will make it and what form it will take. In this regard, the Minister has stated that, beyond the law, there will be a requirement to have further policy if not guidance. It is therefore crucial that careful thought is applied to the design of this policy and guidance and we in the IoD would be very happy to contribute to this process. **(IOD)** 53. The NIHE would like to see considerations on the environment and society given equal weight with economic considerations and these should be contained in the planning policy. 54. The NIHE considers the word 'promote' in relation to economic development is not suitable. The NIHE believes that the promotion of		53. See response to Issue 3 and 9 on Clause 2. 54. Noted. See response to issue 9 on Clause 2.

		economic development would be better seated in a community planning framework which can support and integrate economic development programmes and regeneration, tailored to local circumstances and with community involvement. If this clause remains within legislation there will need to be detailed guidance on how the promotion of economic development will be assessed. **(NIHE)**		55. See response to Issue 9 – Clause 2.	
		55. Concern that the introduction of this clause will enable applications that promote economic development to take precedent over the other elements of sustainable development. PPS 4: Planning and Economic Development, sets out the Department's planning polices for economic development uses and indicates how growth associated with such uses can be accommodated and promoted in development plans.		56. Noted. See also response to Issue 9 – Clause 2.	
		56. There is a concern from some			

			members that through the RDS and PPS 4 there is sufficient policy structure in place to ensure that applications and proposals are given relevant consideration in light of promoting economic growth. The tension around the inclusion of the clause promoting economic development is further heightened by the concern that some members expressed with regarding to introducing this ahead of RPA. It was felt that the clause will lead to conflict amongst councils who will be competing for development and will enable the approval of a proposal that may otherwise have been rejected. 57. In light of these concerns and the importance of both economic and sustainable development it is proposed that the relevant clauses should be included:– • 'The core function being furthering sustainable development through the promotion of economic, social and environment objectives'		57. Noted. See responses to Issue 1 Clause 2 & Issue 9 Clause 2. 58. Noted. Will be covered in guidance and policy.

			(RTPI) 58. First, there are on-going debates about the role of land use planning in the economy. In part these reflect broad ideological arguments– but there remains disagreement about the purpose of land use planning in a modern economy. **(GL)** 59. Second, there are different understandings and interpretations of (macro-) economic development in current policy and political debates. **(GL)** 60. Third, there is the possibility of the capture of the economic regime by communities of interest – here there needs to be a solid culture of understanding as to the spirit and purpose of land use planning. **(GL)** 61. Finally, there is the potential perception that the inclusion of economic development in the interim legislation pre-empts or over-rides		59. Noted. Will be covered in guidance and policy. 60. Noted. Will be covered in guidance and policy. 61. Noted. See response to Issue 9 – Clause 2.

			environmental considerations. Here there is need for particular clarity – and there needs to be a full debate about the relationship between economic and environment. **(GL)** 62. There is an alternative – the ecosystem approach which represents a paradigm shift in the management of the natural environment and those of its constituent resources that derive from the functioning of component ecosystems. **(GL)** 63. The significance of the ecosystem approach rests on it establishing an alternative to more conventional approaches to the management of the natural environment. These tend to be driven by a set of capitalist market values based on exploitation and development for material production of goods and services. The driving forces have been a focus on economic growth, profit and based on short term perspectives. In contrast, then, the ecosystem approach is		62. Noted. Will be covered in guidance and policy. 63. Noted. Will be covered in guidance and policy.

			held to offer an alternative framework for achieving sustainable development and the utilisation of marine resources in ways that ensure that people and economic systems are integral parts of the solution as well as the sources of environmental challenges and vulnerabilities. **(GL)** 64. We are strongly opposed to this clause which poses many challenges: • It puts an unwarranted additional focus on economic factors; • The range of factors to be assessed (economic advantage and disadvantage against both approval and refusal of an application) is complex, yet it is unclear what level of assessment would be required. This could range from detailed economic appraisal to unsubstantiated assertions about jobs		64. Noted. See responses to Issue 1and 9 on Clause 2. Guidance will be published by the Department.

			and investment; • Currently there is limited expertise available in economic assessment and financial appraisal to assess such factors; a great deal of additional resources and expertise would need to be added into the planning system, particularly after the RPA. This will require additional staff at local council and departmental level. • There is no framework or assessment criteria and therefore the clause will be open to vastly different interpretations. • The clause shifts the focus of the planning system from its core purpose of the orderly and appropriate development of land in the public interest, and expects the planning system to deliver something it is not		

				designed to do; • While economic development brings public benefits, the issues of economic advantage or disadvantage are often focussed on private interest and the potential for this clause to prompt more objections and counter objections, appeals and legal challenges is very high; • The clause focuses only on economic advantage/disadvantage and does not provide any requirement to also weigh social and environmental factors in the balance; • Economic advantage/disadvantage is usually measured in the short term, while environmental and social factors need to be assessed over much longer time frames. Thus decisions

			weighted towards current economic advantage may fail to take into account longer term environmental costs or benefits. • In the event that this clause is applied and economic advantage is given determinative weights, there is no mechanism within the planning system to ensure the purported benefits are delivered. For example, there is no means of redress if the promised jobs are not delivered or sustained in the long term. For all of these reasons, we recommend that this clause should be dropped. **(National Trust)**		

10	**Public inquiries: major planning applications [j31]** **10.** In Article 31 of the 1991 Order (special procedure for major planning applications)— (a) in paragraph (2) for the words from "to be held" to the end of that paragraph, substitute "to be held by— (a)the planning appeals commission; or (b)a person appointed by the Department for the purpose."; (b)in paragraph (3) for "commission" substitute "commission or a person appointed by the Department for the purpose"; (c)in paragraph (4) for "commission" substitute "commission or the person appointed by the Department for the purpose of the inquiry or	This clause amends Article 31 of the Planning (Northern Ireland) Order 1991 to allow the Department to appoint a person other than the Planning Appeals Commission to hold a public local inquiry [or hearing] to consider representations made in respect of any application to which Article 31 has been applied.	1. What is the risk of excluding the phrase 'as the case may be' in 10(c) (DG) 2. Object ((MK, GD, UWT, GE, BCAW, BCT, JC, BMRG, DP, FT, HCG, JA, MS, PAC, RSPB, NT, SBRG, UAHS, WHJ, QUBPACE) 3. May be useful when the PAC is under resource pressure but the type of individual appointed to undertake such inquiries must have an appropriate background and knowledge of planning matters (CEF, BBC) 4. What are the criteria to appoint another person to hold a public enquiry? (LVG, SCNI) 5. If appointed by the DOE will that person be truly independent? (LVG, SCNI, GE, BCAW, BCT, CBC, CP, BCC, DGBA, AN, FOE, BBC, BMRG, CIEH, DP, CNCC, JA, NIEL, PAC, UAHS,		1. This a matter of drafting style. The wording follows the usual style in N Ireland. If the Committee wish the Department will raise further with OLC. 2. Noted. See also Comment 2 – Clause 20. 3, 4, 5 & 6. In appointing examiners other than the PAC the Department will have regard to the application of proper process and rigorous standards in order not to compromise principles of transparency and independence. The Department will only appoint other person(s) in the unlikely event that the PAC is unable to conduct a hearing or inquiry within a reasonable timeframe. The Department will ensure the impartiality of the person appointed and consequently there should be no reason to question their integrity. It is envisaged that the approach to be adopted for inquiries by independent examiners appointed by the Department will follow that by the PAC for consistency.

	hearing, as the case may be".		WHJ, CH) 6. How will consistency be achieved and potential bias avoided? (CBC, ABCNM, CIEH, CNCC) 7. PAC should be able to appoint temporary commissioners as needed (LVG, SCNI, DB, GE, BCAW, BCT, SBRG, AN, FOE, AT, BMRG, DN, FT, MG, MMcC, MC, MT, SS, NIEL, RSPB, SBRG, QUBPACE) 8. OFMDFM should be able to appoint temporary commissioners as needed (CBC, CP, BCC, ABC, NILGA) 9. Whatever procedure is established must ensure that there is no actual or perceived conflict of interest between the appointed commissioner and the parties involved (SCNI, NIEL, BCT, CH 10. Unwise to have two departments responsible for appointing people to hear appeals or conduct inquiries (CP).		7 & 8. The Commission already has the power to appoint persons to help the PAC in the performance of its functions. 9. See response to Issue 3 above. The Department will ensure that any person appointed is impartial and has no conflict of interest. 10. The Department will appoint the PAC or independent examiners to inquiries. As previously stated this power would only be used in the exceptional event that the PAC does not have the resources to conduct

					the hearing/inquiry within a reasonable time.
			11. DOE appointees might be influenced subconsciously by the thought that if they were to provide a report critical of the Department, they might not be appointed again (PAC)		11. See response to Issue 3 above.
			12. There would inevitably be differences in the way inquiries and hearings would be conducted by the Commission and by Departmental appointees and in the degree of scrutiny to which the Department's case and that of other parties would be subjected. This would be confusing for participants and could be considered unfair.(PAC)		12. It is envisaged that the approach to be adopted for inquiries by independent examiners appointed by the Department will follow that by the PAC for consistency.
			13. Article 111(2)(b) of the 1991 Order makes provision for the Chief Commissioner to appoint an assessor to sit with members of the Commission. A new provision could extend this power to allow for the appointment of persons to conduct inquiries or		13. Noted see comments 10,11,12. The appointment of examiners and assessors is a matter for OFMdFM. It would however appear that OFMdFM has the power to appoint temporary inspectors under the provisions of Article 110((5). To expand existing powers as suggested would remove from the Department, the flexibility to appoint independent

			hearings (unaccompanied) for a temporary period or for a specific task. Such arrangements would preserve the principle of independent adjudication so vital to public confidence in the planning system, and would ensure consistency of approach. (PAC)		examiners.
20	**Fixed penalties [j153]** **20.**—(1) After Article 76B of the 1991 Order insert— **"Fixed penalty notice where enforcement notice not complied with** 76C.—(1) Where on any occasion an authorised officer has reason to believe that a person has committed an offence under Article 72, the officer may give that person a notice offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the Department. (2) Where a person is	This clause inserts 2 articles into the Planning (Northern Ireland) Order 1991. Articles 76C and 76D enable an authorised officer to issue a fixed penalty notice for the offences of failing 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 level of fixed penalty will be prescribed by Regulations and is reduced by 25% if paid within 14 days.	1. Will the Department provide examples of what it may consider necessary or expedient incidental, supplementary, transitional or saving provisions under Clause 20? **(DG)** 2.Object to the inclusion of this Clause **(MK, GD, CEHG)** 3. If offenders have not complied with an enforcement notice, and thus an offence has been		1. Such provisions are included in primary legislation to provide a degree of flexibility in subordinate legislation to deal with unanticipated circumstances. At this stage the Department is not aware of any situation where such provisions are necessary in relation to Clause 20. 2. Noted. This Clause simply accelerates the introduction of one of a number of reforms to the planning system contained within the 2011 Act. 3. The use of fixed penalty notices will be discretionary and will follow an assessment of the merits and circumstances of individual cases. Fixed penalty notices will provide planning staff with an additional enforcement tool where a person has failed to comply with an enforcement notice or a breach of condition notice. A fixed penalty notice is a notice offering a person the opportunity of discharging any liability for prosecution in respect of a breach of an enforcement notice or breach of condition notice, by paying the Department a penalty of an amount specified in the notice within

	given a notice under this Article in respect of an offence— (a)no proceedings may be instituted for that offence before the expiration of the period of 28 days following the date of the notice; and (b)the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period. (3) A notice under this Article must specify— (a) the step specified, under paragraph (3) of Article 68A, in the enforcement notice which has not been taken; or (b) the activity so specified which has not ceased. (4) A notice under this Article must also state— (a)the period during which, by virtue of		committed, it does not seem appropriate for them to be exempt from going to court or to be able to pay a reduced fine. **(LVG, TW)** 4. Concern that no further action will be taken if a fixed penalty is paid. Essential that breaches of planning permission are rectified – paying a fine must not provide immunity from prosecution.**(GMC, DB, GE, BCT, DGBA, GMCA, FOE, BMRG, CIEH, HCG, JA, NEIL, RSPB. TW, UAHS, WHJ, QUBPACE)** 5. The proposal to provide for discounted fines has been found in the experience of officers in Local Government to pose problems administratively and attract additional cost which cannot be recovered. It would be much simpler and more efficient to set a fine that is paid for in full by a particular date (**CBC, ABCNM**).		28 days. It does not remove the requirement to remedy the breach of planning control. Should that breach continue the Department will be able to take further action. There is no formal process for withdrawing a fixed penalty notice, but the Department would have discretion not to initiate prosecution proceedings where the notice was unpaid, if it was felt the terms of the original enforcement notice or breach of condition notice had subsequently been met. 4. See response to Issue 3 above. 5. Comments from the officers in Local Government are noted. A reduction of 25% provides an incentive for a fixed penalty to be paid promptly.

	paragraph (2), proceedings will not be taken for the offence; (b)the amount of the fixed penalty; and (c)the person to whom and the address at which the fixed penalty may be paid. (5) The Department must not serve more than one notice under this Article in relation to a particular step or activity. (6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in paragraph (4)(c) at the address so mentioned. (7) Where a letter is sent in accordance with paragraph (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary		6.It is not clear if these powers are available to the alternative mechanisms for dealing with appeals referenced in Clause 10.**(CBC, ABCNM)** 7. Where will the money raised in these fines go to? **(CBC, ABCNM)** 8. Where a planning condition has not been complied with, will this give the offender the option of paying a fine rather than complying with the condition? **(CP, JC, RSPB, FFAN, TW, WHJ)**. 9. Any condition that is attached to a planning application should be both necessary and enforceable and it is difficult to imagine in what circumstances it would be appropriate to allow a breach of condition to continue without taking enforcement action. If this clause is to remain in the Bill guidance should be		6. See response to Issue 3 above. 7. The receipts from fixed penalty notices will go to the Consolidated Fund Extra Receipts account. 8. See response to Issue 3 above. 9. The use of fixed penalties will be considered in the context of the wider enforcement strategy and guidance will be produced explaining the circumstances in which they can be used. See also response to Issue 3 above.

	course of post. (8) The form of a notice under this Article shall be such as the Department may prescribe. (9) The fixed penalty payable to the Department under this Article is such amount as may be prescribed. (10) But if payment is made within the first 14 days of the period mentioned in paragraph (2) the amount payable is reduced by 25%. (11) In any proceedings a certificate which— (a)purports to be signed by an authorised officer, and (b)states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated. (12) Article 2A(2) (service using electronic communications) shall not		produced which strictly limits the circumstances in which it can be used. **(CP, JA, RSPB)** 10. Is there a risk that this clause will undermine credibility by limiting the opportunities for enforcement action? **(DGBA, JC, HCG, SBRG, UAHS, QUBPACE)** 11. The introduction of an administrative penalty will help speed up and increase the efficiency of the planning regime. **(AN)** 12.Fixed Penalty Notices are a useful deterrent, but they are not a remedy to breaches of planning conditions **(FOE, UWT, QUBPACE)**		10. Far from limiting opportunities to take enforcement action the introduction of fixed penalties will provide planning staff with an additional, discretionary enforcement tool where a person has failed to comply with an enforcement notice or a breach of condition notice. 11. Noted. Fixed penalty notices are intended to strengthen planning enforcement control; be a deterrent; and provide a flexible and cost-effective alternative to court action. 12. Agreed, fixed penalty notices are intended to be a deterrent. Payment of the penalty does not remove the obligation to remedy the breach of planning control which gave rise to the enforcement notice or breach of condition notice in the first place. Should that breach continue the Department will be able to take further enforcement action. 13. See response to Issue 3 above.

	apply to service of a notice under this Article. (13) In this Article, "authorised officer" means an officer of the Department who is authorised in writing by the Department for the purpose of giving notices under this Article. **Fixed penalty notice where breach of condition notice not complied with** 76D.—(1)Where on any occasion an authorised officer has reason to believe that a person has committed an offence under paragraph (9) of Article 76A, the officer may give that person a notice offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the Department. (2) Where a person is given a notice under this Article in respect of an		13. Should be clarified to make it clear that Fix Penalty Notices are not in lieu of enforcement action, and that further action will be taken if breaches are not remedied **(FOE, AT, CIEH, CH, DN, CEHG, MG, MMcC, MC, MT, SS, NEIL, BCT, RSPB, FFAN, UWT, WHJ)** 14. No objection in principle but would welcome an early conversation on fees, including fixed penalties. **(ABC, NILGA)** 15. Support. **(BBC, SBRG, UWT)** 16. A date should be given by which a fine must be paid in full, as opposed to providing for		14. No objection in principle noted. The issue of fees will be considered in wider discussions in advance of transfer of planning powers to councils. The issue of the level of fines for fixed penalty notices will be contained in forthcoming subordinate legislation which will be subject to public consultation and Assembly scrutiny. 15. Support noted. 16. A fixed penalty notice is a notice offering a person the opportunity of discharging any liability for prosecution in respect of a breach of an enforcement notice or breach of condition notice, by paying the Department a penalty of an amount specified in the notice within 28 days. The Department can offer discount of 25% if payment is received within 14 days of the fixed penalty notice issue date. 17. The principle of taking enforcement action commensurate with the level of breach of planning control still applies. See also response to Issue 14 above.

	offence— (a)no proceedings may be instituted for that offence before the expiration of the period of 28 days following the date of the notice; and (b)the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period. (3) A notice under this Article must— (a)specify the step specified under paragraph (5) of Article 76A in the breach of condition notice which has not been taken; or (b)the activity so specified which has not ceased. (4) A notice under this Article must also state— (a)the period during which, by virtue of paragraph (2),		discounted fines. **(CIEH)** 17. Penalties should be commensurate with the value of the site/proposed development. **(DSTBC)** 18.Fixed penalties should form part of a range of escalating enforcement options available to Planning Enforcement **(GEHG, UWT)**		18. Introduction of fixed penalty notices will provide planning staff with an additional, discretionary enforcement tool where a person has failed to comply with an enforcement notice or a breach of condition notice. They will provide enforcement staff with a further tool in their enforcement toolkit. 19. Only one fixed penalty notice may be issued in relation to a particular step or activity. There could, however, be several fixed penalty notices issued each relating to a different step or activity within the enforcement notice or breach of condition notice.

	proceedings will not be taken for the offence; (b)the amount of the fixed penalty; and (c)the person to whom and the address at which the fixed penalty may be paid. (5) The Department must not serve more than one notice under this Article in relation to a particular step or activity. (6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in paragraph (4)(c) at the address so mentioned. (7) Where a letter is sent in accordance with paragraph (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary		19. Clarification is needed within this clause as to how many times fixed penalties may be given for a specific offense if the breach is not rectified. **(NEIL, WHJ)**		

	course of post. (8) The form of a notice under this Article shall be such as the Department may prescribe. (9) The fixed penalty payable to the Department under this Article shall be such amount as may be prescribed. (10) But if payment is made within the first 14 days of the period mentioned in paragraph (2) the amount payable is reduced by 25%. (11) In any proceedings a certificate which— (a)purports to be signed on behalf of an authorised officer, and (b)states that payment of a fixed penalty was or was nor received by a date specified in the certificate, is evidence of the facts stated. (12) Article 2A(2) (service using electronic communications) shall not				

	apply to service of a notice under this Article. (13) In this Article "authorised officer" means an officer of the Department who is authorised in writing by the Department for the purposes of giving notices under this Article.". (2) In Article 129 of the 1991 Order (regulations and orders)— (a)in paragraph (2) at the beginning insert "Except as provided by paragraph (3),"; (b)after paragraph (2) add— "(3) Regulations under Articles 76C(9) and 76D(9) shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly. (4) Regulations and orders made by the Department under this Order may contain such				

	incidental, supplementary, transitional and saving provisions as appear to the Department to be necessary or expedient.”.				
23	**Duty to respond to consultation [j126A]** **23.** After Article 126 of the 1991 Order insert— **“Duty to respond to consultation** 126A.—(1) This Article applies to a prescribed requirement to consult any person or body (“the consultee”) which exercises functions for the purposes of any statutory provision. (2) A prescribed requirement to consult is a requirement— (a) with which the Department must comply before granting any permission or consent under or by virtue of	Clause 23 inserts Article 126A which requires those persons or bodies which the Department is required to consult before determining certain applications for planning permission or consent to respond to consultation requests within a prescribed period or such other period as is agreed in writing between the consultee and the Department. The section also gives the Department power to require reports on the performance of consultees in meeting their response deadlines.	1. What is the sanction if the Department doesn’t comply with the duty imposed on it in Clause 23? **(DG, ASDA)** 2. Welcome **(CEF, LVG, CBC, CBI, BBC, CIEH, NIRIG, QPANI, RSPB)** 3. Recommend that the time period in which to respond should be no more than 21 days **(CEF, CBI, ABCNM, NIRIG, QPANI)** 28 days **(ASDA)** 4. Consultees must be required to give a substantive response within the prescribed time scale and the Department should be able to intervene and take		1. The Department is placed under a prescribed requirement to consult specified bodies or persons before granting any permission in response to applications for planning permission. Failure to consult could call into question the validity of any such determinations. 2. Noted. 3. Details of the process that statutory consultees will follow will be prescribed in subordinate legislation. This will be subject to public consultation and Assembly scrutiny. 4. See response to comment 3. Consultees may be required to report on their performance.

	this Order; and (b) which is prescribed for the purposes of this paragraph. (3) The consultee must give a substantive response to any consultation mentioned in paragraph (2) before the end of— (a)the period prescribed for the purposes of this paragraph, or (b)such other period as is agreed in writing between the consultee and the Department. (4) The Department may also prescribe— (a)the procedure to be followed for the purposes of this Article; (b)the information to be provided to the consultee for the purposes of the consultation; (c)the requirements of		enforcement action if this does not happen **(CEF)** 5. Who will have the authority to enforce this in different Government Departments? **(CBC, NILGA)** 6. The ability to response promptly will require adequate resourcing and the problem will be compounded if the quality of the plans is not up to standard and that makes it more difficult to properly assess the proposals and extends the time to complete the response. **(ABCNM, CIEH)** 7. What are the specific implications for Environmental Health in Local Government? **(ABCNM)**		5. The proposed changes will be overseen by the Department as the unitary planning authority who will work with statutory consultees on the implementation of the new processes. Where another Department may be identified as a statutory consultee it will be responsible for meeting its statutory duty. 6. The reformed "front loaded" planning system is designed to encourage applicants to provide high quality applications from the outset. Applicants will thus have a role to play in making the system work. Issues regarding resourcing will be a matter for the consultation bodies concerned - discussions ongoing. 7. Departmental officials have met with the Chief Environmental Health Officers Group to provide information on proposed changes. The Department also advised that there would be further opportunity to comment during the public consultation on any subordinate legislation.

	a substantive response. (5) Anything prescribed for the purposes of paragraphs (1) to (4) shall be prescribed by development order. (6) A development order may— (a)require consultees to give the Department a report as to their compliance with paragraph (3); (b)specify the form and content of the report; (c)specify the times at which the report is to be made.".		8. Councils would want to be closely involved in the formulation of the Development Order outlined in this clause **(BCC, ABC)** 9. Where no adequate responses are received by the agreed dates could there be a provision for this to be considered as a non-objection (at the risk of the consultee)? **(BCC, ABC, ASDA, NILGA, NIRIG)** 10. Deadlines should be enforced with suitable penalties **(ASDA)** 11. The 'get out' clause, which allows for certain consultees to amend the prescribed period for providing a response will add uncertainty to the process and could be used to stymie development. It should be removed and replaced with a policy that, in extreme cases		8. The proposed legislation will be subject to the public consultation and Assembly scrutiny. 9. The details of the new process will be specified in subordinate legislation which will be subject to the public consultation and Assembly scrutiny. 10. There are no proposed penalties for a failure to respond, however, statutory consultees may be required to report on their performance in meeting the duty to respond. Such reporting should help identify how the process is operating in practice. 11. It is not proposed that a consultee will be able to unilaterally amend the prescribed timeframe. An alternative period will only be established by agreement with the Department. Where a consultee encounters difficulty in making a response this cannot be resolved through legislation.

			where a response cannot be provided within 28 days, still ensures a response is given within the statutory period for consideration **(ASDA)**		
			12. How will these timeframes be enforced once decision making is transferred to individual councils? **(ASDA)**.		12. Management of the process will be an issue for the councils and their planning staff in determining relevant applications. Similar reporting arrangements will apply.
			13. Due regard should be given to ensuring the decision making process is robust against legal challenge should a decision be taken without the input of late consultees. **(ASDA)**		13. There is no guarantee that decisions will not be legally challenged. Such decisions will be taken on a case specific basis and it will be a matter for the planning authority whether or not to determine an application in the absence of a response from a consultee.
			14. Needs to be a recognition of the size, complexity and volume of detailed Environmental Impact Assessments that accompany many larger planning applications, and which require careful and detailed scrutiny by consultees such as NIEA. We believe that it will be unreasonable to demand a very		14. More complex or larger scale applications e.g. those requiring an Environmental Impact Assessment, will need proper consideration and timeframes for responses will need to be appropriate to accommodate such circumstances. The Bill provides for an alternative timeframe to be agreed between the consultee and the Dept.

			quick response to more complex applications, and doing so will put consultees in an impossible position. Recommend that response times are set to reflect the scale of the proposed development rather than the adoption of a 'one size fits all' policy. **(CNCC, NEIL, BCT)**		
			15. Lack of expertise in the planning system has led to greater dependence on NIEA expertise. There should be in-house expertise in both the Planning Service and in local authority planning units in ecology, biodiversity and the ecosystem approach. **(NIBG)**		15. These issues will be considered in wider discussions on resources, capacity and technical expertise prior to transfer of powers.
			16. There is a difficulty with NIEA as a statutory consultee as part of the DoE and propose that an alternative statutory consultee is charged with commenting on the nature conservation, biodiversity, ecosystem , habitats and species aspects of planning applications as a support to a strong-in-house capacity. **(NIBG)**		16. Legally, NIEA cannot be a statutory consultee to the Department. Longer-term, post-transfer of planning powers, the Department (including NIEA) may be a statutory consultee to councils as planning authorities.

			17. Local councils will want to be closely involved in the formulation of the Development Order as outlined in this clause which will set-out consultation response procedures. The ability to enforce compliance with consultation requests, or progress determinations in the absence of responses from other Government Departments, will be critical. **(NILGA)**		17. The details of the new process will be specified in subordinate legislation which will be subject to the public consultation and Assembly scrutiny. The Dept is already closely engaging with the local government sector in relation to planning reform and transfer.
			18. Wind farm applications should be considered to be regionally significant applications and should remain centrally within DOE **(NIRIG)**		18. The future proposed hierarchy of development will be the subject of other, separate subordinate legislation flowing from the Planning Act (NI) 2011.
			19. Consideration needs to be given to the likelihood of consultees sending default responses requesting additional yet unnecessary information to		19. Statutory consultees will be required to make a "substantive response" to inform the determination of an application, the nature of which will be specified in subordinate legislation. It is not envisaged that a holding response will be considered as a substantive response.

	‘buy them more time’. **(RTPI)**				

Planning Bill Clause by Clause - Remaining clauses

Planning Bill
Clause by Clause Summary of Responses – Clauses 3 - 28

Abbreviations:

ABC	Antrim Borough Council
ABCNM	Armagh, Banbridge, Craigavon, Newry and Mourne Councils
AN	Arena Network
AR	Anja Rosler
ASDA	Asda
AT	Alan Tedford
BBC	Ballymena Borough Council
BCAW	Belfast City Airport Watch
BCC	Belfast City Council
BCT	Belfast Civic Trust
BD	Bill Donnelly
BHC	Belfast Healthy Cities
BHRA	Belfast Holyland Regeneration Association (endorsed via email by Rosana Trainor, Henry, Sarah and Thelma Deazley)
BMRG	Belfast Metropolitan Residents' Group
BNF$	Belfast Not For $hale
CAC	Corralea Activity Centre
CBC	Castlereagh Borough Council
CBI	CBI Northern Ireland
CCC	Cavehill Conservation Campaign
CEF	Construction Employers Federation
CH	Connal Hughes
CIEH	Chartered Institute of Environmental Health
CMCC	Ciaran McClean (Member of the Public)
CNCC	Council for Nature Conservation and Countryside
CP	Community Places
DB	David Bolton
DBK	Dawn Bourke (Member of the Public)
DCOD	Dr Carroll O'Dolan
DG	Committee based on discussions with Daniel Greenberg QC
DGBA	Dundonald Green Belt Association
DMW	Development Media Workshop
DN	David Noble

DP	Donaldson Planning
DS	David Scott DSTBC–Dungannon and South Tyrone Borough Council
FFAN	Fermanagh Fracking Awareness Network
FJ	Fiona Jones
FOE	Friends of the Earth (endorsed via email by Antrim & District Angling Association, Kenneth Dougherty/Public, Jim Martin/Public, Jim Gregg/Public, The Right Honourable Sir Liam McCollum/Public, Michael Martin, Vice Chair, Six Mile Water Trust, Adrian Guy, Dr Miriam de Burca/Public, Richard Rowe/ Public, John Martin/Public, Heather McDermott/Public)
FT	Fermanagh Trust
GC	Geraldine Cameron
GD	Gerard Daye (Member of the Public)
GE	Geraint Ellis (QUB) (endorsed by Seahill Residents' Association)
GHEG	Greenisland Heritage and Environment Group
GL	Professor Greg Lloyd.
GMCA	Geralyn McCarron
HCG	Holywood Conservation Group
IOD	Institute of Directors
JMcG	Joe McGlade
JA	John Anderson
JC	J Cosgrove (Member of the Public)
LC	Lecale Conservation
LINI	Landscape Institute Northern Ireland
LS	Laurence Speight
LVG	Lagan Valley Residents' Association
MC	Mark Crean
MERA	Mounteagles Ratepayers Association
MG	Mairead Gilheaney
MK	Mr Mark Kearney (Member of the Public)
MMcC	Majella McCarron
MS	Marian Silcock
MT	Martina Tedford
NIBG	Northern Ireland Biodiversity Group
NIEL	Northern Ireland Environment Link
NIHE	Northern Ireland Housing Executive
NILGA	Northern Ireland Local Government Association (endorsed by Omagh District Council)
NIRIG	Northern Ireland Renewables Industry Group
NMDC	Newry and Mourne District Council
NT	National Trust
PAC	Planning Appeals Commission

PP	Patricia Pederson
QPANI	Quarry Products Association Northern Ireland
QUB	Queen's University Belfast
QUBPACE	Queen's University Belfast: School of Planning, Architecture and Civil Engineering
QUBPSR	Queen's University Belfast: Planning for Spatial Reconciliation
RG	Robert Graham
RI	Richard Ireson
RMG	Rosemarie Gilchrist
RSPB	RSPB Northern Ireland
RTPI	Royal Town Planning Institute Northern Ireland SCNI – Supporting Communities in NI
SBPB	South Belfast Partnership Board
SBRG	South Belfast Residents Group
SCNI	Supporting Communities NI
SS	Siobhan Small
TF	Tim Fogg
TW	Tom White
UAF	Ulster Angling Federation
UAHS	Ulster Architectural Heritage Society
UMARA	Upper Mounteagles Avenue Residents Association
UWT	Ulster Wildlife Trust
VR	Victor Russell
WHJ	WH Jones
WT	Woodland Trust
ZK	Zelda Kingston

CLAUSE NO	CLAUSE (FROM BILL)	EXPLANATIONS (From Explanatory and Financial Memorandum)	VIEW FROM SUBMISSIONS	OPTIONS	DEPARTMENT'S COMMENTS
3	**Meaning of development [j11]** **3.** In paragraph (2) of Article 11 of the 1991 Order (meaning of "development"), after sub-paragraph (f) add— "(g) a structural alteration of any description of building specified in a direction given by the Department for the purpose of this section, where the alteration consists of demolishing part of the building.".	This clause amends Article 11 of the Planning (Northern Ireland) Order 1991 by expanding the operations or uses of land that for the purposes of the Order are not to be taken to involve development. This now includes structural alterations of buildings specified in a direction where the alteration consists of demolishing part of the building.	1 - Welcome **(ABC, CBC, BCC, BBC, NILGA, UWT)** 2 - Object - does not make a distinction between land/building development and economic development; must define economic development and its place in the context of land/building development, and clarify the distinction between sustainable development and (sustainable) economic development. **(BHRA, MERA, UMARA, CCC, HCG)**		1 - Noted. 2 - Currently Article 11 of the Planning (Northern Ireland) Order 1991 (the 1991 Order) Order defines the types of development (primarily buildings and uses of land) which require planning permission under Article 12. This is unrelated to economic or sustainable development which are separate issues.

			3 - Will the Department provide a separate direction exempting demolition in certain areas as was proposed in the Department's recent consultation: *Demolition and Development* **(BCC)**		3 - Demolition control through the development management regime is achieved by specifying in a Direction made under Article 11(2)(f) of the 1991 Order, those buildings whose demolition will or will not come within the meaning of development. Subject to legal advice, the Department intends to further revise its Departmental Direction on Demolition so that the provisions relating to partial demolition of buildings in new Article 11(2)(g) are included. The Direction was previously revised on 19th September 2012, following public consultation, to ensure that the demolition of a building which engages the Environmental Impact Assessment Directive was subject to the full planning application process. This requirement will not change. Clause 3 is a technical amendment which complements the

					requirement in clause 18 of the Bill so that anyone who wishes to demolish part of a building in a conservation area must obtain the consent of the Department.
			4 - What implications this will have for the Development Management process? **(BCC)**		4 - Minimal. Applicants and agents will need to be familiar with the requirement for permission or consent to partially demolish a building though this will normally be an integral part of a redevelopment application. Further information is set out in the Department's response to clause 18 below.
			5 - Will "alterations consisting of demolishing part of a building" bypass the need for planning permission? **(SBRG)**		5 - No. However, to ensure that the planning system is not overburdened with unnecessary planning applications for the demolition of relatively insignificant buildings and at the same time maintain planning

					controls over demolition of buildings in areas of townscape and village character (ATCs) the Department introduced permitted development rights for the demolition of buildings at the same time as it revised its Departmental Direction on Demolition and Development. The demolition of buildings in ATCs or where demolition engages EIA will continue to require planning permission on foot of an application. This will apply to partial or complete demolition of buildings. The separate requirement for express consent for the demolition of listed buildings, unlisted buildings in conservation areas and archaeological monuments will also remain.
4	**Publicity, etc., in relation to applications [j21]** **4.**—(1) For	This clause substitutes Article 21 of the Planning (Northern Ireland) Order 1991 and makes provision for a development order to set out the detailed publicity requirements for applications	1. Could the Department explain why it has chosen '*have been satisfied*' as the level of certainty in 4(1)? **(DG)**		1. This wording has been chosen to reflect that it is a matter for the Department to be

	Article 21 of the 1991 Order (publication of notices of applications) substitute— **"Notice, etc., of applications for planning permission** 21.—(1) A development order may make provision requiring notice to be given of any application for planning permission and provide for publicising such applications and for the form, content and service of such notices. (2) A development order may require an applicant for planning permission to provide evidence that any requirements of the order have been satisfied.	for planning permission. The Department must not consider an application if the publicity requirements are not satisfied. Article 25 as amended also makes provision that a development order may prescribe that the Department must not determine an application before the end of a certain period and must take any representations into account in that determination. Similar amendments are made at Schedule 1 for applications for listed buildings consent.	2. What are the sanctions if the Department doesn't comply with the duties imposed on it in Clause 4? **(DG)** 3. Provision in this clause is to be welcomed and supports the concept of pre-application consultation. **(CBC, ABC)** 4. Concept of pre-application consultation is welcome **(ABCNM, BCC, BBC, BCAW, NMDC, NILGA)** 5. Welcome the power to refuse to consider an application if advertising requirements are not met **(CP)**		satisfied that advertising requirements have been met. Similar wording is provided under Section 41 of the 2011 Act. 2. Failure to adequately publicise a planning application may result in censure from the Ombudsman and may attract compensation liability and judicial review. 3. Noted. See comments on clause 5 4. Noted. See comments on clause 5 5. Noted. See comments on clause 5

	(3) An application for planning permission must not be entertained by the Department unless any requirements imposed by virtue of this Article have been satisfied.". (2) In Article 25 of the 1991 Order (determination of planning applications), for paragraph (2) substitute— "(2) A development order may provide that the Department must not determine an application for planning permission before the end of such period as may be prescribed by the development order. (2A) In determining any application for planning permission		6. Details of all applications should be widely advertised in popular press **(SBRG, HCG)**, should be mandatory for Department to notify everyone within the affected area of a proposed development **(BCAW)** and site notices should be a requirement **(RSPB, LVG, SCNI, SBRG, NIEL, BCT)** 7. Regulations should establish strict conditions that ensure that local people are fully informed about development proposals in their area. **(CP, FT)** 8. Could 'streamlined' approvals be decided before time for consultation? **(LVG)**		6. The mechanisms for publicising planning applications will be set out in subordinate legislation which will be subject to public consultation and Assembly scrutiny. 7. See comment 6. 8. Streamlined applications, like all applications, are advertised in the local press, neighbours are notified and the Council is consulted. The Department allows 2 weeks from advertisement and neighbour notification before a decision can be issued to allow comment. This period runs concurrently with a 3 week period for Council consultation during

		the Department 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.". (3) In Schedule 1 to the 1991 Order (listed building consent)— (a)in paragraph 1, for sub-paragraphs (2) and (3) substitute— "(2) Provision may be made by regulations with respect to— (a) requirements as to publicity in relation to applications for listed building consent; (b) the time within which				which, if the Council request, the application can be removed from the streamlining process. Only at this stage will the most straightforward and non contentious applications be issued as approvals and the earliest timeframe is around 3 weeks from the submission of the application. If a consultee view on particular issues related to the proposed development is required, reasonable time will be provided to allow the consultee to respond. On occasion a decision may issue without a consultee comment when after extending the time period to make comment and advising that if no response is received within that time it will be taken that the consultee has no comment to make on the proposal no response is received.

	such applications are to be dealt with by the Department; (c) requirements as to consultation in relation to such applications; (d) prohibiting the determination of such applications during such period as is prescribed; (e) requirements on the Department to take account of responses from persons consulted and to notify the persons responding of the decision of the Department on the application.		9. Developers/speculators have a vested interest in ensuring their application is successful. Community consultation should be the responsibility of planners or councils. **(BHRA, MERA, UMARA, CCC)** 10. Request early engagement in the formulation of any Development Order and associated subordinate legislation. **(BCC)** 11. Applicants should be banned from issuing public notices of planning applications during the months of July and December **(BMRG)** 12. Will the Department take all comments into consideration no matter how small the organisation making the comment? **(HCG)** 13. Consideration should be given to adding a new paragraph to Clause 4 to delete the requirement to advertise appeals from the 1991 Order and the		9. Noted. See comments on clause 5. Pre-application community consultation is in addition to publicity arrangements. 10. All subordinate legislation will be subject to public consultation and Assembly scrutiny. 11. See comments on clause 5. The Department would suggest this is an unreasonable approach. 12. All representations and objections are considered by the Department when determining applications. 13. The PAC has written to the Department separately on this issue.

	(3) Sub-paragraphs (1) and (2)(b) shall apply to applications to the Department for any approval of the Department required by a condition imposed on a grant of listed building consent as they apply to applications for listed building consent."; (b)omit paragraphs 2 and 4.		2011 Act to ensure consistency with Clause 12. **(PAC)**		The Department is giving consideration to this proposal which will also require legal advice.
5	**Pre-application community consultation [j27]** **5.** —(1) After Article 22 of the 1991 Order insert— **"Pre-application community consultation** 22A.—(1) Before submitting an application for	Clause 5 inserts three articles into the Planning (Northern Ireland) Order 1991 to introduce pre-application community consultation. Article 22A places an obligation on developers to consult the community in advance of submitting an application if the development falls within a class prescribed for the purposes of this Article. The prospective applicant must give 12 weeks' notice that an application is to be submitted and provide details of the application including a description of the development and address of the site. Regulations will prescribe the minimum consultation requirements placed on the	1. Could the Department explain why it has chosen 'being of the opinion' as the level of certainty in 5(2)? **(DG)** 2. What are the sanctions if the Department doesn't comply with the duties imposed on it in Clause 5? **(DG)**		1. The drafting reflects that this is a matter of judgement for the Department. It further reflects similar wording under section 50 of the 2011 Act. 2. If the Department fails to comply with its statutory duties, it could face investigation by the Ombudsman or challenges through the

	planning permission for a development of a class prescribed for the purposes of this Article, the prospective applicant must comply with the following provisions of this Article. (2) The prospective applicant must give notice (to be known as a "proposal of application notice") to the Department 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	applicant. Additional requirements may be placed on a particular development if the Department considers it appropriate. Clause 5 also inserts Article 22B which requires the applicant to produce a report indicating what has been done to comply with the pre-application community consultation requirements. The report must be submitted with the application. The form of the pre-application consultation report may be set out in Regulations. In addition Clause 5 inserts Article 25AB. If the pre-application community consultation requirements have not been complied with the Department must decline to determine the application. The Department can request additional information in order to decide whether to decline the application. Clause 5 also places a requirement upon the Department to include notices of Pre-application community consultations and consultation reports in the planning register prepared in accordance with Article 124 of the Planning (Northern Ireland) Order 1991.	3. Does not define the class of application to which this requirement applies **(BCC, BMRG, SBPB)** 4. Pre-application should apply to major planning applications only **(CEF)** 5. Pre-application consultation should be extended to include all applications **(SBRG, BMRG, HCG)**		Judicial Review process. 3. Proposed Article 22A(1) enables the Department to prescribe through subordinate legislation classes of development applications which will be subject to pre-application community consultation. The classes of development will be subject to public consultation and Assembly scrutiny. 4. Noted. The Department's proposal is to apply this provision to major applications which will be set out in forthcoming subordinate legislation. See also comments to Issue 3 above. 5. It is the Department's intention that this provision shall only be applied to proposals for major applications which

	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.		6. The public should be consulted on which types of planning application will require pre-application consultation, the details of the content of the report and how engagement with communities should be conducted **(FT, SBPB)** 7. How is "community" to be defined? **(CBC, ABCNM, BCC, NMDC)**		will be defined in forthcoming subordinate legislation. It is the Department's opinion that applying this provision to all applications would slow the planning process down unnecessarily and would be counterproductive. 6. The Department intends to consult on subordinate legislation proposals which will set out what categories of development which will require pre-application community consultation as well as what evidence will be required by the applicant. The forthcoming subordinate legislation will be issued for public consultation and Assembly scrutiny. 7. Community is taken in its widest sense and will include the public, businesses, voluntary groups and any person who has an interest in the area.

	(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 Department may, provided that it does so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that it requires (either or both)—		8. Welcomes community involvement in the planning process **(BHC, FOE, ASDA, BBC, CIEH, CNCC, NIEL, NIRIG, RSPB, SBPB, WHJ, UWT)** 9. Pre-application consultation is welcomed but must be carried out within the context of an up-to-date area plan **(CBC, ABCNM, ABC, NMDC, NILGA)** 10. Must be adequately resourced **(FOE, WHJ)** and the capacity of all participants increased **(UWT)**		8. Noted. 9. Noted. An up to date area plan is not essential to the pre-application community consultation process. 10. Noted. Applicants will be required to factor pre-application community consultation into the development process. The Department intends to issue guidance which, in conjunction with experience from pilots, will increase capacity. A scoping exercise is also currently underway to identify capacity building and training needs for councillors and all

	(a) that the proposal of application notice be given to persons additional to those specified under paragraph (5) (specifying in the notification who those persons are); (b) that consultation additional to any required by virtue of paragraph (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 paragraph (6) the Department is to		11. Requirements and desires of the community should only be considered in the context of planning policy and not a 'wish list' that can be used as a means to delay development or impose additional cost burdens on development **(CEF)** 12. How will community concerns be taken on board and will there be opportunity to object if the community feel their concerns have been ignored? **(LVG)**		affected staff prior to the transfer of planning functions in 2015. This exercise will inform a full capacity building and training action plan for roll out later this year. 11 & 12. Noted. The Department intends to publish subordinate legislation proposals which will set out what categories of development require pre-application community consultation as well as the process and expectations of applicants and interested parties. The forthcoming subordinate legislation will be subject to public consultation and Assembly scrutiny. Experience suggests pre-applications consultation in conjunction with pre-application discussions can resolve issues and shorten processing times to the benefit of all parties. The provisions do not prevent

	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. **Pre-application community consultation report** 22B.—(1) A person who, before submitting an application for planning permission for a development, is required to comply with Article 22A 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-		13. What is to prevent the applicant treating the exercise as a formality and then proceed with the development? **(LVG, BMRG, FT, SBPB, WHJ)** 14. Would the Department consider an impartial observer to monitor the community and developer views? **(SCNI)**		representations /objections from being made and fully considered during the formal application process. 13. The requirements which will be set out in subordinate legislation will require an applicant to demonstrate that they have complied with the requirements involved in pre-application community consultation through the submission of a Pre-application community consultation report. The outcomes of this process will be carried through the formal planning application process and will be considered in the determination. 14. The Department is of the opinion that planners are skilled in considering community and developers views. Also, Clause 1 introduces the

	application community consultation report is to be in such form as may be prescribed.”. (2) After Article 25AA of the 1991 Order insert— “**Duty to decline to determine application where Article 22A not complied with** 25AB.—(1) The Department must decline to determine an application for the development of any land if, in the opinion of the Department— (a)compliance with Article 22A was required as respects the development, and (b)there has not been such compliance.		15. Third party rights of appeal should still be put in place as a safeguard **(SCNI, GMC, DB, CBC, ABCNM, GMCA, FOE, AT, CIEH, DN, DSTBC, MG, MMcC, MC, MT, SS, NMDC, NIEL, BCT, RSPB, FFAN, WHJ, UWT, CH)**		requirement for the Department to produce a statement of its policy for the involving the community within one year of the clause coming into operation. Further policy and guidance will be published including regulations on the form which pre-application consultation reports should take. 15. This provision will enhance opportunities for third parties to engage in the planning process. It is not the Department’s intention to introduce a Third Party Right of Appeal at this time. This will be kept under review in light of the range of reforms to the planning system. Third Party appeals could undermine the aim of pre-application community consultation which itself aims to front-load the system to encourage and facilitate greater community involvement in the

	(2) Before deciding whether, under paragraph (1), an application must be declined, the Department may request the applicant to provide such additional information as it may specify within such time as may be prescribed. (3) Where, under paragraph (1), the Department declines to determine an application, the Department must advise the applicant of the reason for its being of the opinion mentioned in that paragraph.". (3) In Article 124 of the 1991 Order (planning register), in paragraph (1) after sub-paragraph (b) insert— "(bb) notices under Article		16. Thresholds to determine which applications will require pre-application consultation and which ones will not need to be set out in regulation as soon as possible **(CBC, CP, ABC, FT, NILGA, SBPB);** they must be consistent, fair and transparent **(CP, ASDA)** and must avoid loopholes such as large developments being split into smaller phases **(CBC, NILGA, SBPB)** 17. This clause might result in delays **(CBI. AN, ASDA)** but prepared to accept it because of the inclusion of 'promotion of development' in the Bill **(CBI, QPANI)**		planning process. 16. The Department intends to publish subordinate legislation proposals which will set out what categories of development require pre-application community consultation. The forthcoming subordinate legislation will be subject to public consultation and Assembly scrutiny. Loophole point is noted. 17. Noted. It is the Department's opinion and experience that the proposed clause may assist in speeding up the processing of the subsequent planning application as possible contentious issues will have been assessed during the pre-application period.

	22A(2); (bc) pre-application community consultation reports under Article 22B;".		18. Must have safeguards to ensure that any group representing a community is genuinely representative of that community, with a mechanism whereby interests are declared to avoid single-issue groups dominating discussions and giving false impressions of community feelings **(CNCC, NIEL)** 19. Could the 12 week consultation time be reduced to 28 days? **(AN)**; 8 weeks? **(ASDA)**		18. Further subordinate legislation will set out how and what should be included as part of the consultation process. The pre-application community consultation stage is an opportunity for the applicant and community to engage and discuss issues affecting the proposed development. An individual objector will not have a formal mechanism to stall this process during this stage, however they can make representation to the formal application once it is submitted to the Department as part of the statutory planning process. 19. The 12 week period is the timescale that the Department requires an applicant to give notice of their intention to submit an application i.e. "proposal of application

			20. Will guidance be produced? **(BCC, ABC, NILGA, NIRIG, UWT)** 21. Guidance should be issued that requires a pre-application consultation report to include: • the extent of community support and objection • a list of objections and how these have been addressed **(FT)**		notice". The categories of development to which this is to apply will be set out in subordinate legislation. Applicants should factor this in to the programme for their proposed scheme. It is during this period that an applicant must carry out meaningful community consultation which may, at the applicant's discretion, go beyond the minimum requirements in legislation. It is this process that will ultimately form the basis of the consultation report which accompanies the subsequent planning application. This provision reflects legislation and experience in other jurisdictions. 20 & 21. The Department intends to publish subordinate legislation proposals which will set out which categories of development require pre-application community

			• any written submissions from the community **(SBRG, FT)** • evidence of how the application has changed as a result of the consultation process (**FT)** It should be made publicly available at no charge and a short period of time provided for the community to comment on the report prior to the Department accepting or rejecting it. **(CP, UWT)** 22. Guidance should be consulted on **(NIRIG)** 23. The Department should identify and maintain a list of approved consultants to undertake this work and require applicants to use one of these consultants. **(CP)**		consultation and accompanying guidance. The forthcoming subordinate legislation will be subject to public consultation and Assembly scrutiny. The pre-application community consultation report will be publicly available with the formal application. 22. Guidance will be consulted upon where appropriate. 23. The use (or not) of consultants in undertaking pre-application community consultation will be at the discretion of the applicant / developer. The Department does not consider it necessary or appropriate to establish a select list of consultants for such activity.

			24. The applicant should be responsible for the community consultation **(BCC)**		24. Clause 5 of the Planning Bill stipulates that the applicant is responsible for carrying out the pre-consultation duty.
			25. The Department should be responsible for community consultation **(BMRG)**		25. The Department is of the opinion that as the applicant is bringing forward the proposal, they should be responsible for engaging with the community prior to submitting their application. The Department will also consider all representations/objections made during the application process.
			26. Will councils be involved in the formulation of regulations to prescribe the persons to be involved in pre-application consultation? **(BCC, ABC, NILGA)**		26. The Department intends to consult publicly on the details to be set out in the subordinate legislation. Councils will continue to be actively involved in all relevant matters as part of the on-going Reform Programme.

			27. 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 proposal at an early stage **(BCC)**.		27. Section 26 of the Planning Act (Northern Ireland) 2011 enables the Department to assess and determine Regionally Significant planning applications. These are considered a "top slice" of major applications and therefore will be subject to the requirements of pre-application community consultation.
			28. Once the developer has informed the residents of the proposed development, they must not be allowed to go beyond the permission given and must be dealt with severely if he does so **(SBRG)**		28. The proposed provision requires the applicant to carry out a pre-application consultation. During this stage the applicant has not formally submitted a planning application and therefore no determination shall be made during this period. The details contained with a subsequent planning application may vary however these will be open to public inspection as well as scrutiny and representations can be

					made during this process. Once permission is granted any subsequent breach may be subject to enforcement action.
			29. Recommend the Scottish model for pre-application community consultation, including a requirement for one event along with an advert in the local press and engagement with local community groups. The English definition is currently too wide ranging and can be open to differing interpretation. **(ASDA)**		29. Noted. The Department's proposals have been informed by the Scottish model. See also Comment 28 above.
			30. Recommend the approach taken by the Town and Country Planning Association in Britain in its guide Biodiversity by Design, which sets out important principles relating to green infrastructure, landscape character and local distinctiveness. **(CNCC)**		30. Noted. This issue does not appear to be relevant to Clause 5, and is more appropriate to policy consideration.
			31. Want more detail on the persons that may be specified to be given notice in the regulations **(RSPB)**		31. The Department intends to publish subordinate legislation proposals which will set out what categories of development require pre-application community consultation. The

					forthcoming subordinate legislation will be issued for public consultation as well as being scrutinised by the Environment Committee.
7	**Power to decline to determine subsequent application [j25A]** **7.**—(1) In Article 25A of the 1991 Order (power to decline to determine subsequent application for planning permission)— (a) in paragraph (4)(b) after "refusal" add "or, if there has been such an appeal, it has been withdrawn"; (b) after paragraph (4) insert— "(4A) The Department may also decline to determine a relevant	This clause extends the Department's power to decline subsequent applications for planning permission or listed building consent under Article 25A and paragraph 4A of Schedule 1 of the Planning (Northern Ireland) Order 1991. This now includes the power to decline applications where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years.	1. This clause should not prevent subsequent applications from being determined if they are clearly distinguishable proposals from those previously submitted **(CEF)** 2. Could the Department explain why it has chosen 'thinks' as the level of certainty in 7(1)(b)? **(DG)** 3. Welcome **(CBC, CP, ABCNM, BCC, AN, SBRG, ABC, BBC, CIEH,**		1. Under Article 25A(8) of the 1991 Order an application is similar to another application if the Department thinks that the development and the land to which the application relates are the same or substantially the same. Clearly distinguishable proposals are unlikely to be considered "the same or substantially the same" 2. The drafting reflects that this is a matter of judgement for the Department. It is similar to wording under section 46 of the 2011 Act. 3. Noted

	application if— (a)the condition in paragraph (4B) is satisfied; and (b)the Department thinks there has been no significant change in the relevant considerations since the relevant event. (4B) The condition is that— (a) in the period of 2 years ending with the date on which the application mentioned in paragraph (4A) is received the planning appeals commission has refused a similar application, (b) the similar		**NIEL, BCT, NILGA, RSPB)** 4. Will a subsequent application for a site which immediately follows an approval given for that site (whether or not it has been to the PAC) be refused? If not, it could be a means of upgrading an application by stealth to something which, if it had been submitted originally, would have been unlikely to succeed. **(LVG).** 5. The Bill may be better served by strengthening the proposed terminology e.g. with 'shall' instead of 'may' where appropriate. **(ABC, NILGA)** 6. Appears to duplicate legislation already in place since the introduction of the Planning Reform Order (NI) 2006 Article 9 which amended the 1991 Order **(JA)**		4. Article 25A applies to similar applications that have been refused or dismissed on appeal rather than approvals. 5. The use of "may" allows for flexibility and discretion for an exceptional case were the planning authority wish to accept a subsequent application. 6. Article 9 of the Planning Reform Order (NI) 2006 amended the 1991 Order by substituting Article 25A and amending Schedule 1. Clause 7 is amending Article 25A of, and Schedule 1 to the 1991 Order to extend the Department's power to decline subsequent

	application was an application deemed to have been made by Article 71(5)."; (c) in paragraph (7)(a) for "paragraphs (2) and (4)" substitute "paragraphs (2), (4) and (4B)". (2) In paragraph 4A of Schedule 1 to the 1991 Order (power to decline to determine subsequent application for listed building consent), in sub-paragraph (4)(b) after "refusal" insert "or, if there has been such an appeal, it has been withdrawn".		7. The provision to decline applications that have gone to appeal but have subsequently been withdrawn could stifle the ability to develop sites and could result in significant financial losses being accrued as the extent of revisions that may be required to address a previous reason for refusal may not necessarily be substantially different from the		applications for planning permission under these provisions, where the Department has refused more than one similar application and there has been an appeal to the Planning Appeals Commission which has been withdrawn. It also includes the power to decline to determine a planning application where the Commission has refused a similar "deemed application" arising from an appeal against an Enforcement Notice within the last two years. 7. In the scenario outlined it would be expected that the changes would be significant which would allow the submission of another application. In any event, the power to decline is discretionary and the planning authority in that particular case may

			previous submission. It runs contrary to the measures being put into effect to promote economic development **(ASDA)** 8. Would like the term 'similar application' clarified **(NIRIG)**		decide to accept the application. 8. Clarification is provided at Article 25A(8) of the 1991 Order. See comment 1 above.
8	**Power to decline to determine overlapping applications [j25AA]** **8.**—(1) In Article 25AA of the 1991 Order (power to decline to determine overlapping applications)— (a)for paragraph (1) substitute— "(1) The Department may decline to determine an application for planning permission for the development of any land which is—	This clause extends the Department's power to decline to determine overlapping applications for planning permission or listed building consent under Article 25AA and paragraph 4B of Schedule 1 of the Planning (Northern Ireland) Order 1991 to include the power to decline to determine similar applications made on the same day. It also includes the power to decline a planning application where the same development is subject to a "deemed application" determination by the Planning Appeals Commission arising from an appeal against an Enforcement Notice under and the Commission has not issued its decision.	1. Welcome **(CBC, CP, ABCNM, AN, ABC, BBC, CIEH, NIEL, BCT, NILGA, RSPB, SBRG)** 2. The word 'may' could be strengthened to the word 'shall' to avoid inconsistency in approach **(CBC, ABCNM, NILGA)** 3. A developer should be free to pursue various development options on a specific site at the same time in order to realise the best possible development opportunity within the same timeframe. This could stifle development and result in significant financial losses being accrued and		1. Noted 2. The use of "may" allows for flexibility and discretion for an exceptional case were the planning authority wish to accept a subsequent application. 3. Different development options are unlikely to be considered similar applications.

	(a) made on the same day as a similar application; or (b) made at a time when any of the conditions in paragraphs (2) to (4) applies in relation to a similar application."; (b)after paragraph (4) insert— "(4A) The Department may also decline to determine an application for planning permission for the development of any land which is made at a time when the condition in paragraph (4B) applies in relation to a similar application. (4B) The condition is that— (a) a similar application is		runs contrary to the provision in the Bill to promote economic development. **(ASDA)** 4. Appears to duplicate legislation already in place since the introduction of the Planning Reform Order (NI) 2006 Article 9 which amended the 1991 Order **(JA)**		4. Article 9 of the Planning Reform Order (NI) 2006 amended the 1991 Order by inserting Article 25AA and amending Schedule 1. Clause 7 is amending Article 25AA of, and Schedule 1 to the 1991 Order to extend the Departments power to determine overlapping applications for planning permission under these provisions, where the same development is subject to a "deemed application" determination by the Planning Appeals Commission arising from an appeal against an Enforcement Notice under and the Commission has not issued its decision.

	under consideration by the planning appeals commission, (b) the similar application is an application deemed to have been made by Article 71(5), and (c) the planning appeals commission has not issued its decision."; (c) after paragraph (6) add— "(7) If the Department exercises its power under paragraph (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the				

	similar application.”. (2) In Schedule 1 to the 1991 Order, in paragraph 4B (power to decline to determine overlapping application for listed building consent)— (a) for sub-paragraph (1) substitute— “(1) The Department may decline to determine an application for a relevant consent which is— (a) made on the same day as a similar application; or (b) made at a time when any of the conditions in sub-paragraphs (2) to (4) applies in relation to a similar application.”;				

	(b)after sub-paragraph (4) insert— "(4A) If the Department exercises its power under sub-paragraph (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the similar application.".				
9	**Aftercare conditions for ecological purposes on grant of mineral planning permission [j27A]** **9.** In Article 27A of the 1991 Order (power to impose aftercare conditions on grant of mineral planning permission), in	Clause 9 amends Article 27A of the Planning (Northern Ireland) Order 1991 by extending the list of land uses to be considered when the land is being restored to a required standard to include "use for ecological purposes".	1. Welcome **(CBC, BCC, BHC, AN, ABC, BBC, CNCC, LINI, NIEL, BCT, QPANI, RSPB, UWT,)** 2. Would recommend the inclusion of 'nature conservation' as a use for closed mineral works **(RSPB)**.		1. Noted. 2. 'Use for ecological purposes' was introduced to subsection 53(1)(b)(iv) of the Planning Act (Northern Ireland) 2011 at further consideration stage by a member, as it was viewed that the amendment considered

	paragraph (1), at the end of sub-paragraph (iii) add "; or (iv)use for ecological purposes.".		3. The steps in Article 53(5) of the Planning Order (NI) 1991, as amended, do not include all steps that might be needed for nature conservation after use. Recommend that the wording is changed to "The steps....may consist of but are not limited to....." **(RSPB)**		would include looking at wildlife habitats, grasslands, heath land, woodlands and wetlands and by using those conditions to simulate what occurs in the natural environment. The Department therefore is of the opinion that the proposed wording adequately incorporates how 'Nature Conservation' is defined as previously lobbied by RSPB during the 2011 Planning Act. 3. The Department is of the opinion that the inclusion of "or otherwise" provides wide discretion in what is itself a discretionary provision.
11	**Appeals: time limits [j32]** **11.**—(1) In Article 32 of the 1991 Order	Clause 11 reduces the appeal periods for making an appeal to the Planning Appeals Commission under Articles 32 (planning decisions), 57 (hazardous substances consent) and 83E (certificates of lawful use or development) of the	1. Most developers will know within 4 months whether or not they wish to appeal **(CEF)** 2. Welcome **(LVG, SCNI, CBC, CBI, CP, ABCNM, BCC, ABC, BMRG,**		1. Agreed 2. Noted

	(appeals) for paragraph (3) substitute— "(3) Any notice under this Article must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be specified by development order.". (2) In Article 57 of the 1991 Order (appeals in relation to hazardous substances consents) for paragraph (3) substitute— "(3) Any notice under this Article must be served on the planning appeals commission within 4 months from the date of the notification of the	Planning (Northern Ireland) Order 1991 from six to four months or such other period as may be specified by development order.	**NIEL, BCT, NILGA, RSPB)** 3. Reservations [unspecified] about the reduced time period for appeals **(BBC)** 4. Concern that if more policies are removed there will be scope for more inconsistency giving rise to an		3. The Department wishes to ensure that all appeals are made to the PAC in a prompt manner. The 4 month period is the initial upper limit within which appeals must be lodged and the Department believes this is a reasonable period of time for applicants to decide if they wish to appeal. The Department will have the option to alter the limit via subordinate legislation where, for example, there is evidence of a significant increase in appeals to the planning appeals commission as a result of the reduction from 6 to 4 months or other circumstances where the Department deems it necessary to alter the time limit. 4. Noted. It is the Department's intention to

	decision to which it relates or such other period as may be prescribed.". (3) In Article 83E of the 1991 Order (appeals against refusal or failure to give decision on application) in paragraph (1) for "planning appeals commission." substitute— "planning appeals commission— (i)in the case described in sub-paragraph (a), within the period of 4 months from the date on which the application is refused or is refused in part or such other period as may be prescribed; (ii)in the case described in sub-		increased number of appeals and this in itself would require funding sources to administer **(ABCNM)** 5. Time limits should be matched by additional limits whereby applicants must submit all relevant material and additional information within a defined and reasonable time. Failure to comply should consistently result in a refusal by default. **(JA)**		issue a single planning policy statement later this year for public consultation. These views can be replicated into a consultation response to the proposed policy which will be scrutinised by the Environment Committee. 5. Currently at the outset, the Department requires the following information for an application to be considered valid: • Correct Fee • Correct forms completed fully • Site clearly identified • Accurate description provided • Appropriate/ relevant drawings to be provided • Ownership clarified • Signature on forms If this information is not provided, normally there

	paragraph (b), within the period of 4 months from the end of the period referred to in that sub-paragraph or such other period as may be prescribed.". (4) In paragraph 7 of Schedule 1 to the 1991 Order (appeals in relation to listed building consent, etc.) for sub-paragraph (2) substitute— "(2) Any notice under this paragraph must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be prescribed.".				will be one opportunity to provide it. If it is not provided then the application is considered invalid, and is returned to the applicant along with the fee. When an application is valid then the Department endeavours to be reasonable in terms of requesting additional information and the deadlines that it sets. For example some reports and surveys may require to be undertaken at certain times of the year e.g. . bat surveys, and others such as contamination reports may require continual monitoring over a period of time. Therefore it is not realistic to put a standard period for receipt of additional information and to refuse at the end of that period if the information is not received. Also unless a detailed Pre Application Discussion has taken place on the application

				the applicant may not be aware of all the additional information that may be required to be submitted as part of the application. Case officers will provide timeframes under the Good Practice Guide and actively manage cases. Ultimately the Department has the power to refuse applications if there is insufficient information to determine it. However this is only likely to be used when the Department has exhausted all options to obtain the required information. Once an application has been made valid or when a refusal is issued the applicant is not entitled to a fee refund. There is a right of appeal to both applications deemed invalid by the Department and those where permission has been refused.

12	**Matters which may be raised in an appeal [j32A]** **12.** After Article 32 of the 1991 Order (appeals) insert— **"Matters which may be raised in an appeal under Article 32** 32A.—(1) In an appeal under Article 32, a party to the proceedings is not to raise any matter which was not before the Department at the time the decision appealed against was made unless that party can demonstrate to the satisfaction of the planning appeals commission— (a)that the matter could not have been raised before that time,	Clause 12 inserts "Article 32A" in the Planning (Northern Ireland) Order 1991 so that any party to the proceedings of an appeal under Article 32 will not be able to raise any matter that was not in front of the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the Planning Appeals Commission, that the matter could not have been raised before that time or that its not being raised was due to exceptional circumstances.	1. Welcome **(LVG, CNI, CBC, ABCNM, ABC, ASDA, BBC, NIEL, BCT, NILGA, RSPB)** 2. There may be practical difficulties in obtaining full information before an appeal is scheduled for hearing which could end up delaying an application until all information is available **(CEF)** 3. Disagree that parties should not be allowed to introduce new material at appeal**. (CBI)**		1. Noted 2. The matters should only be those which were before the Department when it made its decision. Therefore there should be no difficulties supplying this before the appeal. 3. The previous Environment Committee requested this provision to prevent any new material being presented after an appeal has been lodged unless it could not have been presented at the time or there were exceptional circumstances for it not being presented. The proposed appeal process is legitimate. It is not unreasonable to provide that if information could have been raised before, it cannot be raised later at appeal. Guidance to PAC can state that there may

	or (b)that its not being raised before that time was a consequence of exceptional circumstances. (2) Nothing in paragraph (1) affects any requirement or entitlement to have regard to— (a) the provision of the development plan, or (b) any other material consideration.”.		4. All relevant considerations need to be considered at appeal stage if a robust decision is to be taken **(NIRIG)** 5. The Commission carefully scrutinises all revisions to proposals and not infrequently declines to admit revisions for consideration. Where revisions are found to be compliant with case law, the Commission ensures that the Department and any third parties have sufficient time to examine the new proposals **(PAC)** 6. Clause as currently worded is contradictory. On the one hand it seeks to restrict the matters which may be raised at an appeal but on the other maintains the requirement to have regard to material considerations. Where new matters are raised that are		be information that, in exceptional circumstances, might be revisited. 4. All relevant matters that were available when the decision was made will be considered. The legislation also provides circumstances were a new matter may be raised. 5. Noted. 6. Guidance will set out advice on what matters may and may not be raised. Material considerations in planning determinations are set out in PPS 1 and

			material they could not be ruled out. The Commission foresees significant difficulty in interpreting and applying these provisions, especially in the current litigious climate. **(PAC)** 7. More clarification is required as to what will or will not be considered as "any other material consideration". While the intention of the clause may be to prevent or reduce changes to a proposal pre-appeal, this may be undermined by the interpretation of what constitutes other material considerations **(RTPI)** 8. Is this clause compatible with both Article 32(4) of the Planning (Northern Ireland) Order 1991 and Article 6 of the European Convention on Human Rights? **(Mr Allister MLA)**		by case law. 7. See response to comment 6. 8. The Planning Bill is compatible with the European Convention on Human Rights (Department – answer to Committee Query 11 March)
13	**Power to make non-material changes to planning permission [j67]** **13.** After Article 37 of the 1991	This clause inserts provision at Article 37A of the Planning (Northern Ireland) Order 1991 to allow the Department to may make a change to a planning permission already granted on application. The change must not have any material effect on the permission, and it includes the power to amend or remove conditions or	1. Is this giving a legislative basis to what is already happening in practice? **(CEF)**		1. Yes. The Department currently relies on case law (Lever Finance Ltd v Westminster City Council 1970) to enable it to make non-material changes to planning

	Order insert— **"Power to make non-material changes to planning permission** 37A.—(1) The Department may make a change to any planning permission granted if it is satisfied that the change is not material. (2) In deciding whether a change is material, the Department must have regard to the effect of the change, together with any previous changes made under this Article, on the planning permission as originally granted. (3) The power conferred by paragraph (1) includes power—	impose new ones. Consultation and publicity arrangements may be set out in Regulations.	2. Could the Department explain why it has chosen 'it is satisfied' as the level of certainty in Clause13? **(DG)** 3. What are the sanctions if the Department doesn't comply with the duties imposed on it in Clause 13? **(DG)** 4. Any changes should be advertised (or those who be affected by the change should be notified) before permission		permission. The Department is seeking legislative provision for making non-material changes to in line with planning law in GB. 2. The drafting reflects it is a matter of judgement for the Department. Clause 13 is informed by the wording in section 96A of the Town and Country Planning Act 1990 to provide that the Department must be satisfied that the change is non-material. 3. While there are no sanctions in legislation, the Department will be scrutinised by and accountable to the Committee and Assembly in terms of its compliance. 4. As an application under new Article 37A

	(a)to impose new conditions; (b)to remove or alter existing conditions. (4) The power conferred by paragraph (1) may be exercised only on an application made by or on behalf of a person with an estate in the land to which the planning permission relates. (5) An application under paragraph (4) must be made in the form and manner specified by a development order. (6) Paragraph (7) applies in relation to an application under paragraph (4) made by or on behalf of a person with an estate in some, but not all, of the land to which the		for changes are given. This could be a way for an applicant to get permission for something which would not have been passed in the original application. **(LVG)** 5. Wary of a practice where once planning permission has been given, the extent of the permission or conditions can be changed without seeking the views of the local residents. **(SBRG)** 6. It will encourage applicants to try to gain permission for something they would have been unable to achieve with an original application. **(SBRG)**		will not be an application for planning permission, the existing provisions relating to statutory consultation and publicity will not apply. Given that the requirements for consultation and publicity will have already been applied and undertaken to the original planning application and the fact that the amendment is only non-material in nature it is not expected that consultation or publicity will be necessary in the majority of cases. 5 and 6. This power only allows the Department the power to make changes that do not have a material effect on the planning permission. It is not intended for changes to be made to a permission that would not have been permitted on the original application. Also it does not allow for amendments to

	planning permission relates. (7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an estate. (8) The Department must comply with such requirements as may be specified by development order as to consultation and publicity in relation to the exercise of the power conferred by paragraph (1).".		7. Guidance is needed as to what constitutes material/non-material change and who defines that distinction. **(SCNI, NIEL, BCT)** 8. Is it only possible to make a non-		conditions that are material to the permission and it does not allow for development to be carried out without complying with the development conditions attached to the permission.. Any developer who does wish to make such changes or vary conditions must apply under Article 28 of the 1991 Order: Permission to develop land without conditions previously attached and that application would be advertised and representations invited. 7. Guidance will be produced by the Department on the various aspects of the non-material change provisions to supplement the primary and subordinate legislation and to give advice to all users of the new process. 8. Only a person who has an estate in the land

			material change to planning permission if the applicant is an owner of the lands and what are the implications for those developing by way of a Development Brief in which legal interest may only transfer upon completion? **(ABCNM)**		which the non-material amendment relates, or someone else acting on their behalf can apply. This could include someone with a valid contract for the purchase of the land.
			9. There should be some constraint imposed on the department where it wishes to impose new nonmaterial conditions and it is conceivable that some conditions if applied could be impractical if a cut-off date is not established from the outset in the Legislation. This would assist developers in providing clarity and setting a parameter around what the Department can and cannot do under certain circumstances. **(ABCNM)**		9. Non-material changes to planning permission can only be imposed on an application made by or on behalf of a person with an interest in the land to which the planning permission relates. They are not initiated by the Department. Any conditions would have to follow the normal tests.
			10. It is not clear if the request comes from the Department or the developers in respect of who initiates the application for the non-material change to planning permission. **(ABCNM)**		10. The Department may make a change to any planning permission granted if it is satisfied that the change is not material. This can only be exercised on an application made by or on behalf of a person with an interest in the land to

			11. Clause welcome **(ABC, BBC, ASDA)** 12. There should be an onus on the Department to write to all parties who have made representation regarding the application, inviting their comment. **(BMRG)** 13. Clarification is required regarding what is a material/non material change **(CIEH)** 14. The Department and Council should initiate the practice of informing developers/agents of the 'draft' planning conditions which are to be imposed on the planning permission prior to the determination **(QPANI)**		which the planning permission relates. The Department does not initiate the application. 11. Noted. 12. See comment 5 above. 13. Guidance will be produced by the Department on the various aspects of the non-material change provisions to supplement the primary and subordinate legislation and to give advice to all users of the new process. 14. Noted – Any decisions in relation to this query would be unlikely to be non-material in nature.

14	**Aftercare conditions imposed on revocation or modification of mineral planning permission [j69]** **14.** After Article 38 of the 1991 Order insert— **"Aftercare conditions imposed on revocation or modification of mineral planning permission** 38A.—(1) An order under Article 38 may in relation to planning permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials, include such aftercare condition	This clause inserts a provision at Article 38A of the Planning (Northern Ireland) Order 1991 which permits the Department to impose aftercare conditions where a mineral planning permission has been modified or revoked by an order served under Article 38, provided a restoration condition is included or in place on the land.	1. Could the Department explain why it has chosen 'thinks' as the level of certainty in Clause 14? **(DG)** 2. Welcome **(ABCNM, ABC, BBC, RSPB, UWT)**		1. The drafting reflects it is a matter of judgement for the Department. 2. Noted.

	as the Department thinks fit if— (a) it also includes a restoration condition; or (b)a restoration condition has previously been imposed in relation to the land by virtue of any provision of this Order. (2) Paragraphs (3) to (12) of Article 27A shall apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under Article 27A.”.				
15	**Planning agreements: payments to departments [j40]** **15.** In Article 40 of the 1991 Order	This clause amends Article 40 of the Planning (Northern Ireland) Order 1991 to enable any sum payable under a planning agreement to be made to any Northern Ireland department and not solely the Department of the Environment.	1. Welcome **(CBC, AN, ABC, BBC)** 2. Payments should also be made available to councils **(CBC, BCC,**		1. Noted. 2. The proposed amendment to the 1991 Order will only impact upon the existing NI

	(planning agreements), in paragraph (1) at the end of sub-paragraph (c) omit "or" and, after sub-paragraph (d), add— "or (e) requiring a sum or sums to be paid to a Northern Ireland department on a specified date or dates or periodically.".		**ABC, NILGA)** 3. The English model of the Community Infrastructure Levy should be considered **(CBC, ABC, NILGA)** 4. There should also be scope for the Environmental Statement fee received by the Department (£10,000) to be redistributed to the consultees for the extra work required **(BCC, ABC, NILGA)**		Departments in relation to where sums are payable to. Section 76(15) of the Planning Act (Northern Ireland) 2011 does, however, enable payments to be made to the relevant council where a planning application has been made to it by an applicant. These powers will take effect on commencement of section 76 of the 2011 Planning Act. 3. Noted. The Department does not intend to introduce a similar Infrastructure Levy at this time. 4. The Department does not propose to redistribute the EIA fee at this time.

			5. The payments should be bound by the following tests: • relevant to planning • necessary to make the development acceptable in planning terms • directly relate to the proposed development • fair and reasonable in scale and kind • reasonable in all other aspects **(ASDA)**		5. PPS1: General Principles sets out the principles against which the Department would consider the use of planning agreements.
			6. Due consideration must be given to the process which governs these payments. The system would work in a more efficient and timely manner if these contributions were organised and decided upon by one single NI Executive Department and recorded in one document. Whilst separate Departments would still make requests for financial support, there needs to be consistency in the level and application of these contributions **(ASDA.**		6. Noted. The current approach to planning agreements in NI is set out in PPS1.
			7. We would also like to see greater understanding amongst Departments of the purpose of these contributions and their collective benefit **(ASDA)**		7. Contributions are sought relevant to an individual proposal where they are necessary to overcome a particular barrier to the grant of planning permission. See comment 5 above.

			8. We recommend that Guidance is introduced to ensure all Departments understand the role of Article 40 Agreements and when they can be utilized **(ASDA)**		8. The underpinning principles governing the use of planning agreements are set out in PPS 1 (General Principles).
16	**Increase in penalties [j49]** **16.**—(1) In Article 49 of the 1991 Order (acts causing or likely to result in damage to listed buildings)— (a)in paragraph (1), for the words from "and liable" to the end of that paragraph substitute— "and liable— (i)on summary conviction to a fine not exceeding the statutory maximum; or (ii)on conviction	Clause 16 increases penalties in relation to 7 articles in the Planning (Northern Ireland) Order 1991. For offences under Article 49 (acts causing or likely to result in damage to listed buildings) the maximum level of fine, on summary conviction, has been raised to the statutory maximum. Also the fine payable on summary conviction when a person fails to prevent damage or further damage resulting from the offence is raised from one tenth of a level 3 fine to one tenth of a level 5 fine on the standard scale for each day on which the failure continues. Offences may also be convicted on indictment. This clause also increases the maximum level of fine, on summary conviction, for a range of offences relating to breaches of planning control or consents from £30,000 to £100,000. This applies to offences under Articles 61 (hazardous substances); 67G (temporary stop notices); 72 (enforcement notices) and 73 (stop notices) of the Planning (Northern Ireland) Order 1991 Order. The fine on summary conviction for an offence under Article 67 D (non-compliance with planning contravention notice) is raised	1. Welcome increase in penalties **(SCNI, CP, AN, BBC, CNCC, NIEL, BCT, QPANI, RSPB, SBRG, UWT)** 2. The penalty that is applied should be commensurate with the scale of the breach of the legislation **(CEF)** 3. Fines should be proportionate to the scale of the development and the potential value to the applicant without an upper ceiling **(LVG)** 4. Mandatory minimum level of fines should be clearly defined and not left to the discretion of the magistrate/court. **(LVG)**		1. Noted. 2. Agree. The level of fine is a matter for the courts. 3. Noted. See response to comment 2 above. 4. The Department does not have any legislative power in directing the minimum level of fines that a court imposes on an offender. The Justice Department does however have the legislative basis to set

	on indictment, to a fine."; (b) in paragraph (3), for "level 3" substitute "level 5". (2) In Article 61 of the 1991 Order (offences in relation to hazardous substances control), in paragraph (4)(a) for "£30,000" substitute "£100,000". (3) In Article 67D of the 1991 Order (penalties for non-compliance with planning contravention notice), in paragraph (4) for "level 3" substitute "level 5". (4) In Article 67G of the 1991 Order (temporary stop notices: offences), in paragraph (6)(a) for "£30,000" substitute	from level 3 to level 5 on the standard scale while the fine for an offence on summary conviction under Article 76 (enforcement notice to have effect against subsequent development) increases from level 5 on the standard scale to £7500. The increased fines do not apply to any offence committed before this clause comes into operation.	5. As Planning Service does not have the facility to monitor developments once permission has been granted, how will planners/councils actually know that the terms of the planning approval have been complied with? **(LVG)** 6. No objection but would welcome an early engagement in any conversation on fees. **(ABC, NILGA)**		various levels of fines which may be imposed. In considering the level of fines to impose on an offender a magistrate may have regard to the context in which an offence has occurred. 5. Local Planning Offices Enforcement teams respond and investigate reports of developments which have been carried out not in compliance with approved plans that are reported by the public and other departments / agencies. Additionally planning officers may site inspect ongoing developments for other planning purposes. Post transfer there will also be opportunities to link with council building control functions and inspections. 6. The issue of fees etc. will be considered in wider discussions, in advance of the transfer of planning powers to

	"£100,000". (5) In Article 72 of the 1991 Order (offence where enforcement notice not complied with), in paragraph (8)(a) for "£30,000" substitute "£100,000". (6) In Article 73 of the 1991 Order (stop notices), in paragraph (7C)(a) for "£30,000" substitute "£100,000". (7) In Article 76 of the 1991 Order (enforcement notice to have effect against subsequent development) in paragraph (5) for "level 5 on the standard scale" substitute "£7,500". (8) The amendments set out in this section do not have effect in relation to any		7. Penalties need to be imposed with widespread publicity. **(HCG)** 8. introduce fixed penalties", "there are many examples of people who think		councils. 7. The Department regularly reports the outcome of prosecutions on its website. 8. Noted.

	offence committed before the coming into operation of this section.				
17	**Conservation areas [j50]** **17.** In Article 50 of the 1991 Order (conservation areas), for paragraph (5) substitute— "(5) Where any area is for the time being designated as a conservation area, special regard must be had in the exercise, with respect to any buildings or other land in that area, of any powers under this Order, to the desirability of— (a)preserving the character or appearance of that area in cases where an opportunity for	Clause 17 amends Article 50 of the Planning (Northern Ireland) Order 1991 to include provision that the Department must pay special attention to (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.	1. Welcome **(SCNI, CP, ABC, BBC, HCG, NIEL, BCT, WT)** 2.What are the implications of using the word 'an' instead of 'any' (line 23) **(DG)** 3. What is the risk of omitting the word 'special'? (line 24) **(DG)**		1. Noted 2. This reflects existing wording in Article 50 of the Planning (Northern Ireland) Order 1991 and section 104 of the Planning Act (Northern Ireland) 2011. Implications would appear minimal. This may be a matter of drafting style. The Department will discuss with Legislative counsel. 3. Again this reflects existing wording in Article 50 of the Planning (Northern Ireland) Order 1991 and section 104 of the Planning Act (Northern Ireland) 2011 and places added emphasis on the duty

	enhancing its character or appearance does not arise; (b)enhancing the character or appearance of that area in cases where an opportunity to do so does arise.".		4. What are the implications of omitting the term 'with respect to any buildings or other land in that area' ?**(DG)** 5. Areas of Townscape character must also be included. **(LVG, SBRG)** 6. Concerned that 'established residential areas' will no longer be considered of value especially if there is to be a revision of all PPS documents into a single document. **(LVG)**		reflecting the Conservation Area status. Omitting "special" could weaken the provision. 4. This could widen the impact beyond buildings or land. 5. Policies ATC1 and 2 of PPS 6 : Planning, Archaeology and the Built Heritage (Addendum – August 2005) set out the Department's policy in relation to ATCs. These are reflective of the conservation area proposals. 6. The Department remains committed to safeguarding the quality of residential areas and is committed to its existing policies on PPS7 – Quality residential Environments Policy will not be diluted

			7. When dealing with planning applications in conservation areas the Department should consider including these application in a streamlined process to allow applicants who wish to comply with the notice to obtain the necessary planning permissions quickly. **(ABCNM, ABC)** 8. All planning decisions in the conservation areas must consider how the development will affect the area. The presumption has to be that the only development allowed are ones which enhance the area and must be in keeping with the existing architectural style **(SBRG)** 9.Thought should be given to including applications in such areas within the parameters of the streamlined consultation process to enable applicants to respond more quickly to the regulations of, and ensure compliance with, Dangerous Structures Notices. **(NILGA)** 10. Clause should not be included. It is		7. The Department will expedite applications where the building is dangerous. Applications for conservation area consent are included in the extended streamlining list. 8. It may not always be possible to enhance the area. In those cases the presumption must be to preserve. 9.See comment 7 above6. 10 to 17. Inclusive: The proposed amendments in clause 17 are not bringing

			a poorly worded and ill-conceived provision. The concept of requiring 'enhancement' of anything through planning proposals is a difficult one, especially as the planning system is founded upon the principle that development should be approved unless harm will be caused. The existing 'no harm' test in conservation areas is well established in UK law. If this provision is included then investors are likely to strenuously avoid conservation areas, with the result that they will stagnate, with a consequent increase in dereliction and decay. There is also a strong likelihood that any development proposals which do come forward could become mired in legal challenges in relation to whether or not an opportunity exists to 'enhance' the area. **(DP, RTPI)** 11. The shift from the 'no harm' approach to 'must enhance' creates the risk that the areas will stagnate and the planning policy will have a negative rather than a positive impact. **(QUB)** 12. Where in law is 'enhancement' defined? **(QUB)**		forward any new policy. They do however reflect the Department's established long standing policy on development in conservation areas as set out in PPS 6 "Planning, Archaeology and the Built Heritage" and in particular policies BH12 and BH14. The Department's presumption that development should preserve or enhance a conservation area was affected by the outcome of the High Court case of South Lakeland District Council v Secretary of State for the Environment and Carlisle Diocesan Parsonages Board [1992] 2 WLR 204, which held that local planning authorities could not insist that developments are beneficial to conservation areas, merely that they do not harm them. The Department does not wish to stifle

			13. How will 'enhancement' be assessed? **(QUB, DP)** 14. Will guidance on 'enhancement' be provided? **(QUB)** 15. Introduces a level of ambiguity into the statutory planning process, and this has the potential to cause further delays, rather than improve its efficiency and effectiveness **(QUB, UWT)**. 16.Careful consideration must be given to the implication of these changes and how this will impact on the inward investment and development within many of the Conservation Areas within Northern Ireland, in particular within City Centres. **(RTPI)** 17.Causes tension with the concept of promoting economic development, as it is suggesting that a new development that does not enhance the character or appearance of the area will be refused in favour of preserving existing buildings. **(RTPI)**		development in conservation areas. The emphasis will be on the careful control and positive management of change, to enable the area to remain alive and prosperous, but at the same time to ensure that any new development accords with the area's special architectural or historic interest, and where the opportunity arises to seek to enhance its character / appearance. Designation as a conservation area puts an onus on prospective developers to produce a very high standard of design, which respects or enhances the particular qualities of the area in question. 'Enhancement' is not defined in law. In these circumstances its normal everyday meaning will apply.

18	**Control of demolition in conservation areas [j51]** **18.** In Article 51 of the 1991 Order (control of demolition in conservation areas), after paragraph (6) add— "(7) For the purposes of this Article, any reference to demolition, in relation to a building to which this Article applies, includes a reference to any structural alteration of that building where the alteration consists of demolishing part of the building.".	Clause 18 amends Article 51 of the Planning (Northern Ireland) Order 1991 by adding additional provision that any structural alteration to a building in a conservation area, where the alteration consists of demolishing part of the building, shall be taken to be demolition for the purposes of Article 51.	1. Welcome **(LVG, CBC, ABC, BBC, NILGA, UWT, WT)** 2. Where demolition is approved in conservation areas it is considered the timescale for the rebuilding should be included to ensure the preservation of the overall amenity of the area, and be rigorously enforced. **(CBC, ABCNM, ABC, NILGA)** 3. All planning decisions in the conservation areas must consider how the development will affect the area. The presumption has to be that the only development allowed are ones which enhance the area and must be in keeping with the existing architectural style. Recommend that Areas of Townscape Character be included. **(SBRG)**		1. Noted 2. Where demolition is approved in a conservation area, under BH14 of PPS6 "Planning, Archaeology and the Built Heritage" it will normally be conditional to prior agreement for the redevelopment of the site. Where consent is granted for demolition of building, conditions will normally be imposed prohibiting the demolition of the building until planning permission for redevelopment has been granted and contracts have been signed for the approved redevelopment of the site. All approvals granted are given a time period to commence development. 3. See comments 5 and 10 to 17 on clause 17 above.

19	**Tree preservation orders: dying trees [j65]** **19.**—(1) In Article 65 of the 1991 Order (tree preservation orders), in paragraph (3), omit the words "dying or". (2) In Article 65B of the 1991 Order (replacement of trees), in paragraph (1)(b), omit the words "dying or". (3) In section 125 of the 2011 Act (replacement of trees), in subsection (1)(b), omit the words "dying or".	Clause 19 amends Articles 65 and 65B of the Planning (Northern Ireland) Order 1991 and Section 125 of the Planning Act (Northern Ireland) 2011 by removing the reference to dying trees. Dying trees are no longer exempt from the provisions of a tree preservation order.	1. Welcome **(NIEL, SCNI, LINI, RSPB, MRG, BBC, LVG, BCT, UWT, WT)** 2. How will planners know that a dying tree with a TPO has been felled? **(LVG)** 3. It is noted that trees that are dying are now going to be included in tree preservation orders. This then raises an issue of where some trees have diseases, such as the recent ash die back situation. The application of this clause would mean that those trees could not be felled. This would be contrary to policies in other Departments that would be seeking to preserve the integrity of the healthy trees in the locality. It would appear		1. Noted 2. Local Planning Offices have dedicated tree officers who maintain and update a detailed schedule of TPO's. In addition to this, tree officers in liaison with the Local Planning Offices Enforcement teams respond and investigate unauthorised felling of protected trees which are reported by the public and other departments / agencies. 3. The legislation will require the Department's consent to fell dying trees – each application will be considered on its own merits and circumstances. The Department acknowledges that there may be situations where trees that are dying may pose a serious health and

			that this scenario has not been taken into account and there are practicalities in the application of such legislation that would require further consideration. It may be helpful to have clarification and possibly some exemptions listed that would cover the situation already mentioned. **(CBC, ABCNM, ABC, NILGA)**		safety risk. In these situations the Department takes a pragmatic approach.
21	**Power of planning appeals commission to award costs [j205]** **21.** After Article 111 of the 1991 Order insert— **"Power of planning appeals commission to award costs** 111A.—(1) The appeals commission may make an order as to the costs of the parties to an appeal under any of the provisions of this Order mentioned in paragraph (2) and as to the parties by whom the costs are	Clause 21 inserts Article 111A into the Planning (Northern Ireland) Order 1991. This power enables the Planning Appeals Commission to make an order requiring the costs of a party to an appeal to be paid. When the Commission makes an order, parties will normally come to an agreement amongst themselves, but in the event agreement cannot be reached between the parties, disputes can be referred to the Taxing Master of the High Court. Article 111B applies the provisions relating to award of costs, to circumstances where a hearing has been cancelled.	1. Welcome clause as it should help reduce the likelihood of vexatious of frivolous delaying tactics. **(CEF, LVG, SBRG, AN, ABC, ASDA, PAC, RSPB)** 2. Strongly object as it creates further obstacles for small voluntary groups to raise objections to major projects by large developers **(HCG)** 3. Costs should only apply to the developer who initiates the proceedings. **(SBRG)**		1. Noted 2 and 3. This clause does not put obstacles in the way of objectors participating in an appeal. It is intended to ensure that all parties involved in an appeal act reasonably. The PAC may expect that:- • all those involved in the appeal process behave in an acceptable way, whether in terms of timeliness or in quality of case. • appeals are not

	to be paid. (2) The provisions are— (a)Articles 32, 33, 57, 69, 78, 82A, 83E and, in Schedule 1, paragraphs 7 and 8; (b)in Schedule 1, paragraphs 7 and 8 (as applied by Article 51(6)); (c)in Schedule 1A, paragraph 6(11) and (12) and paragraph 11(1); (d)in Schedule 1B, paragraph 9. (3) An order made under this Article shall have effect as if it had been made by the High Court. (4) Without prejudice to the generality of paragraph (3), the		4. Enabling powers should be included to introduce a standard formula for awarding costs to allow developers to better predict costs and ensure appellants are fully aware of the penalties for failed appeals. **(ASDA)**		entered into lightly or as a first resort, without prior consideration to making a revised application which meets reasonable planning authority objections. • The Department (and the councils after the transfer of planning powers) properly exercise their development management responsibilities, and rely only on reasons for refusal which stand up to scrutiny and do not add to development costs through avoidable delay or refusal without good reason. 4. The power to award costs applies were one or more parties behaved unreasonably. A party may be ordered to meet the costs of another party, wholly or in part, where it has behaved

	Master (Taxing Office) shall have the same powers and duties in relation to an order made under this Article as the Master has in relation to an order made by the High Court. (5) Proceedings before the appeals commission shall, for the purposes of the Litigants in Person (Costs and Expenses) Act 1975, be regarded as proceedings to which section 1(1) of that Act applies. **Orders as to costs: supplementary** 111B.—(1) This Article applies where— (a) for the purpose of any proceedings under this Order—		5. Requires clarification and guidance in order to ascertain a benchmark or threshold of cost. **(BBC)**		unreasonably. 5. Award of costs should be the exception and case specific. They will only apply were the unreasonable behaviour of one party has left another out of pocket.

	(i)the appeals commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether that person wishes, to appear before and be heard by it; and (ii)arrangements are made for a hearing to be held; (b)the hearing does not take place; and (c)if it had taken place, the appeals commission would have had power to make an order under				

	Article 111A requiring any party to pay any costs of any other party. (2) Where this Article applies the power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.".				
22	**Grants [j120]** **22.** In Article 120 of the 1991 Order (grants to bodies providing assistance in relation to development proposals)— (a) in paragraph (1), for sub-paragraph (a) substitute— "(a) furthering an	Clause 22 amends Article 120 of the Planning (Northern Ireland) Order 1991 to extend the Department's power to grant aid non profit organisations whose objectives include furthering an understanding of planning policy. The Department of Finance and Personnel's approval to such grants is no longer required.	1. Welcomes this clause **(SCNI, LVG, CBC, CP, ABCNM, BBC, CNCC, NEIL, BCT, NILGA, RSPB, UWT)** 2. Criteria and clarification should be provided on who can avail of this support.**(CBC, ABCNM)** 3. Will Councils be required to continue such funding arrangements? **(CBC, ABCNM, ABC, NILGA)**		1. Noted 2. Grant funding may be available (to not for profit bodies) from the Department on application – subject to budget allocation. 3. No. Grants will continue to be provided by the Department under

	understanding of planning policy proposals and of the planning and other technical aspects of other proposals made by anybody or person for the development, redevelopment or improvement of land;"; (b)in paragraph (2), omit the words ", with the approval of the Department of Finance and Personnel,".		4. What level of funding will be required? **(CBC, ABCNM)**		Section 225 of the Planning Act (Northern Ireland) 2011. 4. See comment 3 above. The level of funding will be subject to the terms and conditions as set by the Department.
24	**Fees and charges [j223]** **24.** In Article 127 of the 1991 Order (fees and charges)— (a)after paragraph (1) insert—	Clause 24 amends Article 127 of the 1991 Order to enable the Department to charge multiple fees for retrospective planning applications.	1. Welcome **(SCNI, CBC, CP, BCC, AN, ABC, BBC, NEIL, BCT, NILGA, QPANI, RSPB, SBRG)** 2. Retrospective planning applications should not be an option at all.**(LVG)** 3. The fee should be proportionate to the level of the development and the		1. Noted 2. Retrospective applications are an established part of the planning system and

	"(1A) Without prejudice to the generality of paragraph (1), regulations made under that paragraph may provide for the payment of a charge or fee in respect of a function mentioned in paragraph (1B)(a) to be a multiple of the charge or fee payable in respect of a function mentioned in paragraph (1B)(b). (1B) 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		level of uncertainty surrounding the form of development and associated provision for permitted development. **(BCC)** 4. Would welcome clear clarification of what the department means by "multiple". **(QPANI)**		provide an opportunity to regularise unauthorised development. 3. & 4 The Department will through subordinate legislation set out what the levels of fees shall be for these types of applications. The forthcoming subordinate legislation will be issued for public consultation and Assembly scrutiny.

	an application for planning permission other than an application referred to in sub-paragraph (a). (1C) Without prejudice to the generality of paragraph (1), regulations made under that paragraph may provide for the payment of a charge or fee in respect of a function mentioned in paragraph (1D)(a) to be a multiple of the charge or fee payable in respect of a function mentioned in paragraph (1D)(b). (1D) 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 sub-paragraph (a). (1E) Article 36(1) shall apply in determining for the purposes of this Article when development shall be taken to be begun."; (b) after paragraph (2) insert— "(2A) Without prejudice to the generality of paragraph (2),				

	regulations made under that paragraph may provide for the payment of a charge or fee in respect of an application mentioned in sub-paragraph (a) of that paragraph to be a multiple of the charge or fee to be paid under regulations made under paragraph (1) in relation to the determination by the Department of an application for planning permission for development not begun before the application was made.".				
25	**Duration [j41]** **25.**—(1) The Department may by order repeal any of sections 1, 2(1), 3 to 5, 6(1), 7 to 18, 19(1) and (2) and 20 to 24.	This clause allows the Department to make subordinate legislation to repeal provisions in the Bill and to include 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.	1. Will the Department provide examples of what it may include as incidental, consequential or transitional provisions or savings in under Clause 20? **(DG)**		1. This clause provides a useful flexibility to put in place arrangements to deal with any unforeseen circumstances which arise in association with the provisions come into operation. The subordinate legislation

	(2) An order under subsection (1)— (a) may include incidental, consequential or transitional provisions or savings, (b) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.		2. No objection to the clause. **(ABC)** 3. Endorse the clause **(BBC)**		will be subject to Assembly scrutiny. 2. Noted. 3. Noted.
26	**Interpretation [j2]** **26.** In this Act— "the Department" means the Department of the Environment; "the 1991 Order" means the Planning (Northern Ireland) Order 1991; "the 2011 Act"	This clause contains interpretation provisions and defines a number of terms used throughout the Bill.	1. No objection to the clause. **(ABC)**		1. Noted

	means the Planning Act (Northern Ireland) 2011.				
27	**Commencement [j4]** **27.**—(1) This Act, apart from this section and sections 1, 15, 16, 22, 26 and 28, comes into operation on such day or days as the Department may by order appoint. (2) An order under subsection (1) may contain such incidental, consequential or transitional provisions or savings as the Department thinks appropriate.	This clause concerns the commencement of the Bill and enables the Department to make commencement orders. Clauses 1, 15, 16, 22, 26, 27 and 28 shall come into operation on Royal Assent.	1. Can commencement be linked to an actual date and/or sunrise clause to ensure prompt commencement? **(DG)** 2. Will the Department provide examples of what it may consider appropriate incidental, consequential or transitional provisions or savings under this clause? **(DG)** 3. Could the Department explain why it has chosen this level of certainty for this sub-section? **(DG)**		1 & 2. Where possible commencement is on Royal Assent, however, some provisions will require a range of subordinate legislation and/or guidance to be drafted, scrutinised and be in place to accompany commencement of those provisions. A sunrise clause is not appropriate or useful here. The Department is keen to ensure the provisions are commenced as soon as possible to enable key reforms to be put in place and tested before powers transfer to councils in 2015. 3. This clause provides a useful flexibility to put in place arrangements to deal with any unforeseen circumstances which arise in association with the provisions come into operation. The

			4. Provision should be included for strategic elements of the planning system to be carried out by Local Councils prior to full transfer of functions, e.g. area planning functions prior to 2015. **(BCC)** 5. No objection to the clause. **(ABC)**		subordinate legislation will be subject to Assembly scrutiny. The issues raised are matters of judgement for the Department. 4. The Department does not intend to transfer powers until the necessary council structures, including ethical standards regime, governance arrangements etc are in place. The Minister has agreed that officials engage with transition committees in taking forward preliminary development plan work in preparation for the transfer of planning functions. 5. Noted
28	**Short title [j1]** **28.** This Act may be cited as the Planning Act (Northern Ireland) 2012.	This clause provides a short title for the Bill.	No objection to the clause. **(ABC)**		Noted

Other Comments			**1 - Resourcing the transfer of planning powers** The transfer of planning powers to new councils and community planning must be properly resourced. Capacity building must be a crucial part of this process **(SCNI, NEIL, BCT)**		1 - Agreed - this is a priority task of the Department's Reform programme. High level foundation work in the form of awareness raising seminars/conferences has already taken place and will continue to do so up to the point of transfer. In addition, scoping exercise currently underway to identify capacity building and training needs for councillors and all affected staff. Scoping exercise will inform a full capacity building and training action plan for roll out later this year.
			2 - Power to reject partial applications We would like to see the Department given the power, indeed being obliged to reject applications for which all the required material is not submitted, even after the Department has requested the additional, missing information. If the applicant does not submit all sought or relevant materials within two months		2. Currently at the outset, the Department requires the following information for an application to be considered valid: • Correct Fee • Correct forms completed fully

			of tendering his /her initial application, the application should be automatically rejected and the fee retained. This class of rejections should not be eligible for referral to the PAC. **(BMRG)**		• Site clearly identified • Accurate description provided • Appropriate/ relevant drawings to be provided • Ownership clarified • Signature on forms If this information is not provided, normally there will be one opportunity to provide it. If it is not provided then the application is considered invalid, and is returned to the applicant along with the fee. When an application is valid then the Department endeavours to be reasonable in terms of requesting additional information and the deadlines that it sets. For example some reports and surveys may require to be undertaken at certain times of the year

				e.g. .bat surveys, and others such as contamination reports may require continual monitoring over a period of time. Therefore it is not realistic to put a standard period for receipt of additional information and to refuse at the end of that period if the information is not received. Also unless a detailed Pre Application Discussion has taken place on the application the applicant may not be aware of all the additional information that may be required to be submitted as part of the application. Case officers will provide timeframes under the Good Practice Guide and actively manage cases. Ultimately the Department has the power to refuse applications if there is insufficient information to determine it. However this is only likely to be used when the Department has exhausted all options to

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					obtain the required information. Once an application has been made valid or when a refusal is issued the applicant is not entitled to a fee refund. There is a right of appeal to both applications deemed invalid by the Department and those where permission has been refused.
			3 - Community Planning The Planning Bill must reflect the concept of Community Planning. The development of neighbourhood plans in England is a positive development. This is based on the principal of communities having the right to influence planning decisions, with communities having the ability to advise where they want new developments such as commercial developments to be built. Following this process, neighbourhood plans are submitted for independent examination and then submitted to a local referendum. These carry weight in final planning decisions. Let's ensure the Planning Bill puts communities first. **(FT)**		3 - The Department intends to provide a statutory link between community plans and local development plans through the forthcoming Local Government Reorganisation Bill. In addition the Department and councils will be required to prepare Statements of Community Involvement setting out their policies for involving the community in planning functions, including preparing local development plans.

			4 - Coherence between terrestrial and marine planning This legislation could and should take the opportunity to place on a statutory basis the arrangements for coherence between terrestrial development plans and the marine planning process. **(NIBG)**		4 – The Bill does not bring forward development plan arrangements, however under Part 2 of the Planning Act (Northern Ireland) 2011 councils will be required to prepare local development plans for their areas. Under the powers of Sections 8 and 9 of the 2011 Act the Department may prescribe matters that the councils must have regard to in preparing their plans.
			5 - Terrestrial and marine planning administration should be as seamless and consistent as possible. However, clauses 2 and 6 in the Planning Bill are at odds with the sections of the proposed Marine Bill. This will lead to confusion and difficulty when considering coastal developments that involve approval from both planning systems. **(NIEL, BCT)**		5- The Dept does not consider that Clauses 2 and 6 are at odds with the Marine Bill. Under clause 6 of the Marine Bill a public authority must take any authorisation or enforcement decision in accordance with the marine plan (unless

					relevant considerations indicate otherwise) and must have regard to the marine plan when taking other types of decision. The term "relevant considerations" can include economic considerations as well as social or environmental.
—			**6 - Lack of consultation on new policies** NIEL would like to register its discontent that the Planning Bill did not follow the normal process of public consultation that would be expected to accompany changes with such far-reaching implications. We appreciate that there are time constraints with the transfer of planning powers to local councils looming - however, fast law does not necessarily mean good law.		6. See comment at clause 1.
—			**7 - Amending the grounds of appeal against a submission notice**		7. Subject to the views of the Committee, the

—			The Commission recommends that a new clause is inserted in the Bill to amend the grounds of appeal against a submission notice in the 1991 Order and the 2011 Act to the following:- (a) that the matters alleged in the notice have not occurred; (b) that at the time when the notice was issued those matters did not constitute development; (c) that the development alleged in the notice was not carried out without planning permission, if such permission was required in accordance with this Part, or without any approval of the Department/council, if such approval was required under a development order; (d) that the period of five years referred to in Article 23(2)/section 43(2) had elapsed at the date when the notice was issued; (e) that at the time when a copy of the notice was served on him, the appellant was neither the owner nor the occupier of the land to which the notice relates. **(PAC)**		Department intends to engage with Departmental Solicitors and Legislative counsel to consider this as a potential amendment.
—			**8 - Extension of permitted development rights to the mineral industry** QPANI have been lobbying for many years for the extension of recognised Permitted Development rights for our		8. - The Department continues to explore options for providing permitted development rights for development ancillary to a mine but is conscious of the potential

			sector, similar to those to those PD rights enjoyed by the quarrying industry in the rest of the UK. We would ask the Committee to raise the matter of Permitted Development Rights for the Mineral Industry as a matter of urgency as we are growing increasingly frustrated by the speed of progress on this matter in our discussions with Planning Service. **(QPANI)**		for adverse amenity impact on sensitive receptors, including dwellinghouses in the vicinity of mines, that could be affected by dust, noise etc. Careful consideration therefore needs to be given on what protecting limitations and conditions might be applied to future permitted development rights. The Department intends to bring forward proposals for new permitted development rights for this and other sectors during the forthcoming year."
			9. Extension of tree protection The welcomed reorganisation of local government in 2015 provides an excellent opportunity to enhance the increased protection afforded to trees in the 2011 Legislation. We have identified additional areas which are crucial enablers in ensuring legislative changes will have real impact when implemented in terms of enhancing Northern Ireland's natural		9. Each Local Area Planning Office currently has a designated tree officer who is responsible for overseeing the associated duties in relation to trees which are protected by Tree Preservation Order (TPO) status. Each Local Area Planning Office updates and maintains a public

			environment. Without these the legislation will have little impact and we urge consideration of their inclusion in the 2013 Legislation. We propose that a Tree Protection officer is appointed within each of the new authorities to oversee implementation of this strengthened tree protection regime. Without this important resource we are unsure how these important legislative changes will be policed and as such deliver intended benefits. Local Tree Registers could form an inventory of all trees covered by a TPO within each Local Authority Area as well as important historic trees. These will provide a crucial evidence base to ensure that the legislation is effectively policed and also ensure transparency of the new protection regime. **(WT)** **10. Flaws for peace building in the existing planning model** Following three decades of experience and expertise at different levels of the planning system – involving local regeneration projects; comprehensive development schemes; area and sub-regional plans, and the Regional Strategy – we would identify a set of problems with the existing planning model that impacts negatively on peace-building, including:		register of protected tree sites within their relevant council area. These registers include full details of each of the trees that are protected within a TPO site. Details of future arrangements are being considered as part of the wider planning reform and transfer project. 10. The Department is committed to proactively promoting shared, safer and welcoming places through the planning system on a number of fronts. As project partners in the QUB Peace III Project 'Planning for Spatial Reconciliation' the Department's Planning Policy Division and

			1. its tendency in the past to 'airbrush' out the relevance of division and segregation to the planning process; 2. its limited inclination to recognize openly the difference among ethnic, neutral, shared, and cosmopolitan spaces in a conflict-ridden society; 3. its limited capacity to challenge the 'diseconomies of conflict' that often sees the duplication of services and amenities within each sectarian bloc; 4. its concentration on 'land use planning' – a concern about where to zone particular development activity, and focus largely on the physical aspects of infrastructure and development; 5. its limited ability to nest local neighbourhood planning and regeneration strategies within the statutory and strategic planning framework to afford such local effort the appropriate authority; 6. the potential for major sectarian blocs to use planning to carve up 'spheres of influence', and thereby inhibit the evolution of a more integrated and shared society; and 7.the difficulty encountered in achieving inclusive and participatory forms of plan-making that embrace diverse voices that transcend barriers of gender, age, ethnicity, and disability. **(QUBPSR)**		Local Government Division are working closely with Queen's research staff to explore and exploit opportunities for connecting this research with the process of planning and local government reform as follows: Working with key stakeholders likely to be impacted by the transition process leading up to the transfer of planning powers to the new councils – this is particularly relevant to pilot projects being taken forward by LPD; Contributing to dialogue on the development and introduction of a new style of Spatial Planning legislated for in the Planning (NI)

					Act 2011; Channelling into work by PPD on the preparation of a single strategic planning policy statement and; In addition the Department will soon be consulting on new urban design and stewardship guidance. This guidance will aim to maximise the wider economic, cultural and community benefits of urban stewardship and design and promote inclusivity while maintaining, enhancing and celebrating the diversity and differences of each urban environment. The guidance will recognise the challenges and issues associated with shared and contested space, and also identify the 'qualities' of what makes good place, spaces, streets and urban areas. The guidance will

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demonstrate how well maintained, managed and designed urban infrastructure is a vital resource in social, economic and cultural terms and how it can be a main component of our public realm and a core element of our identity.	

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Department response re 2nd Stage Planning Bill queries

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Your reference: CQ/26/13
Our reference:

Date: 11 February 2013

Dear Alex,

Planning Bill

The Committee has requested a response to the legal questions and other issues raised during the Second Stage of the Planning Bill on 22 January 2013.

The attached table sets out the Department's response to those questions raised by members which were not answered during the Second Stage debate.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]

Lord Morrow: Clarification on Clause 3 and the demolition of any part of a building.

It is the Department's policy to protect unlisted buildings in conservation areas and under Article 51 of the Planning (Northern Ireland) Order 1991 it is an offence to demolish an unlisted building in a conservation area without the prior consent of the Department. The Department had understood that Article 51 also applied to the partial demolition of unlisted buildings in conservation areas. Local planning authorities in Britain followed a similar interpretation.

However, as a result of a legal challenge the House of Lords[1] ruled that the partial demolition of a building in a conservation area was an alteration and not demolition and did not therefore require conservation area consent.

Clause 3 should be read in conjunction with Clause 18 which expands the requirement for conservation area consent under Article 51 to include the structural alteration of an unlisted building where the structural alteration includes the partial demolition of the building.

The effect of these amendments is to close the loophole and thereby ensure that in future any person who wishes to demolish part of an unlisted building in a conservation area or area of townscape or village character must first receive the prior consent or permission of the Department.

Lord Morrow: How do planning application processing times compare to England, Scotland and Wales?

It is difficult to make direct like for like comparisons with the GB planning jurisdictions as the various planning systems are structured and organised differently. In Northern Ireland there is a centralised planning system, whereas in GB jurisdictions there is a two tier system with a range of planning authorities deciding planning applications. In addition, the categories of application types and target times for processing vary and statistical information is collected in numerous formats.

DOE Planning has seen improvements in performance for the second successive quarter compared with the same period last year. The Minister recognises, however, that there is a need for continuous and further improvement in processing times and one of the key purposes of the Planning Bill is to bring forward a range of proposals to speed up decision making.

Mr Kinahan: Where is the subordinate legislation for the Planning Act (Northern Ireland) 2011?

The substantial subordinate legislation necessary to exercise the powers contained in the Planning Act (NI) 2011 comprises a range of statutory rules which will be commenced to a timeframe that allows the new district councils to operate effectively as local planning authorities from the date of transfer of the majority of planning powers to local government.

The list below sets out the subordinate legislation necessary to achieve this. This list may be subject to amendment in line with changes in policy or work priorities or where opportunities emerge to combine provisions within a smaller number of pieces of legislation.

The timing of any proposals for subordinate legislation becoming law is subject to the proper Assembly process but will be managed within a formal project structure as an element of the wider reorganisation of local government and the transfer of other powers to the new district councils.

Summary of subordinate legislation to exercise powers in Planning Act (NI) 2011

- The Planning (Miscellaneous Amendments) Regulations (NI)
- The Planning (Environmental Impact Assessment) Regulations (NI)
- The Planning (Fees) Regulations (NI)

1 Shimizu (UK) Ltd v Westminster City Council 1997

- The Planning (General Development Procedures) Order (NI)
- The Planning (Development Management) Regulations (NI)
- The Planning (General Permitted Development) Order (NI)
- The Planning (General Regulations) (NI)
- The Planning (Development Plan) Regulations (NI)
- The Planning (Control of Advertisements) Regulations (NI)
- The Planning (Statement of Community Involvement) Regulations (NI)
- The Planning (Conservation Areas) (Demolition) Regulations (NI)
- Statutory Rule for Transitional arrangements
- The Planning (Use Classes) Order (NI)
- The Planning (Fixed Penalties) Regulations
- The Planning (Management of Waste by Extractive Industries) Regulations (NI)
- The Planning (Enforcement) Regulations (NI)

Mr Allister: Clarification of Clause 4 – development order.

Article 2 of the Planning (Northern Ireland) Order 1991 states that a "development order" has the meaning assigned to it by Article 13 of the 1991 Order. The development order to be made in respect of Clause 4 (which substitutes a new Article 21 of the 1991 Order) would be made under Article 13(2)(b) which sets out the procedures for granting planning permission and by which an application is made. The development order under the proposed Article 21 may set out the publicity procedures to be followed in processing an application. In practice, any revised publicity arrangements are likely to be included as amendments to the Planning (General Development) Order (Northern Ireland) 1993, as amended.

The purpose of the proposed Article 21 (in keeping with section 41 of the Planning Act (Northern Ireland) 2011) is to allow the detailed publicity requirements for planning applications, including possible arrangements for newspaper advertisement, to be set out in subordinate as opposed to primary legislation. This will allow the Department greater flexibility in adapting publicity arrangements in line with the sometimes rapid changes in methods of communication and media technology to publicise applications for planning permission. The Department intends to maintain efficient and effective publicity arrangements and will consult on any changes to the current advertising arrangements before Clause 4 is commenced and any statutory rule is scrutinised by the Environment Committee and laid before the Assembly.

Mr Agnew: Where are the safeguards in Clause 10 that are contained in the Planning Act (Northern Ireland) 2011? Will Clause 10 remain in place post transfer? Will Clause 10 apply to applications already in the system?

Currently the Department is required to appoint the Planning Appeals Commission to conduct public inquiries and hearings in relation to Article 31 planning applications. Clause 10 will provide the additional option of appointing experienced examiners with appropriate planning or environmental qualifications to conduct future inquiries or hearings. Article 31 planning applications will often have significant economic implications. This measure will help prevent unnecessary delays in the processing of these applications. The Commission will be the first port of call, but the option of appointing independent examiners will be there if the Commission is unable to conduct the inquiry / hearing within a reasonable time frame.

This provision is similar to section 26 of the Planning Act (Northern Ireland) 2011 which will apply after planning powers transfer to councils. As the Minister indicated in the Second Stage debate, in the event of a pressure point with the Commission the proposal will be to

appoint an independent examiner, but this will be subject to the proper process and rigorous standards in order not to compromise the principles of transparency and independence. It is envisaged this option will apply to public inquiries held or hearings requested after the commencement of the provision.

Mr Agnew: Is it still the Minister's intention to implement the plan led system?

The Minister is still committed to the implementation of a plan led system. The Planning Act (Northern Ireland) 2011 will empower councils to make local development plans for their own areas and it is anticipated the plan led system will commence after powers transfer. Section 45 of the 2011 Act will require that in determining any application the council must have regard to the local development plan so far as it is material to the application. Section 6 of the Act states that where, in making any determination under this Act, regard is to be had to the local development plan, and the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Department reply re Planning Bill new material at appeals

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Your reference:
Our reference: CQ/65/13

Date: 11 March 2013

Dear Alex,

Planning Bill

The Committee noted that the Department had not answered the query from Jim Allister MLA on the human rights implications for introducing a restriction that no new information could be presented at planning appeals.

During the Second Stage debate, Mr Allister asked if Clause 12 was compatible with both Article 32(4) of the Planning (Northern Ireland) Order 1991 and Article 6 of the European Convention on Human Rights.

In response, the Minister replied that as regards introducing new material, he considers the proposed appeal process is legitimate and that it is not unreasonable to provide that if information could have been raised before, it cannot be raised later at appeal. Clause 12 provides circumstances where new information may be raised. The Minister is satisfied these are good principles which inform the process, nonetheless he advised that guidance to the Planning Appeals Commission can state that there may be information that, in exceptional circumstances, might be revisited.

I can confirm that the Department has made an assessment of whether the Planning Bill is compatible with the European Convention on Human Rights and considers that it is not incompatible in that regard.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO[by e-mail]

Departmental response on issues outstanding from stakeholder event 18 April

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Our reference: CQ/91/2013

Mr Paul Gill
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Date: 15 May 2013

Dear Paul

Planning Bill

The Committee has requested a response to any additional issues raised at its stakeholder event on 18th April which have not previously been addressed in the Department's written response to the clause by clause summary of responses table; and that officials provide the rationale for the inclusion in the Bill of the objective of promoting economic development (Clause 2) and the inclusion of economic considerations (Clause 6).

Following a review of the Hansard transcript of the stakeholder event on 18 April 2013 in conjunction with the oral response provided on the day, and within the context of the Department's previous written response provided in the clause by clause summary table, the Department is content that the vast majority of Planning Bill related issues have been addressed. However, a couple of issues were raised that have not been covered and they are dealt with below.

In response to the Institute of Director's request that a commitment is given to consult widely on proposals before clauses 2 & 6 come into effect, the Department can confirm that it intends to consult widely on related policy within the single Strategic Planning Policy Statement (SPPS) by the end of the year, which will be before the Bill receives royal ascent and these clauses are commenced.

In addition, during the stakeholder event reference was made to the Scottish Government's Land-Use Strategy. The Minister pays close attention to planning issues in Scotland and has asked for a briefing on the strategy and will consider the merits or otherwise of a similar approach in the North of Ireland.

With regard to the rationale for clauses 2 and 6, the Department is content that without compromising the wider purposes and principles of the planning system, it is timely, appropriate and legally correct to affirm and clarify through the Planning Bill the accepted position that economic considerations are material when it comes to preparing planning policy and determining planning applications and that it is without prejudice to other relevant matters. The Department considers that these clauses reflect the Programme for Government and the direction provided by the Executive with regard to the economy.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO
[by e-mail]

Departmental response on issues relating to Clauses 2, 10 & 16

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Our reference: CQ/95/2013

Ms Sheila Mawhinney
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Date: 15 May 2013

Dear Sheila

The Committee has requested that the Department respond to issues which have arisen during its informal clause-by-clause scrutiny of the Planning Bill on 2nd May 2013, specifically in relation to Clauses 2, 10 and 16 as set out below:

Clause 2

The Departmental officials agreed to provide a written response to the following suggested amendment from Community Places to Clause 2 of the Bill:

> ***"Where the Department or the Planning Appeals Commission exercises any function under Part 2 or this Part, the Department or, as the case may be, the Commission must exercise that function with the objective of furthering sustainable development which secures:***
>
> - ***protection and enhancement of the environment;***
> - ***promotion of economic development;***
> - ***promotion of social development; and***
> - ***promotion or improving well-being;***
>
> ***and which balances current needs with those that may arise in the future."***

The response should also address the implications (if any) of accepting the principle behind this proposed amendment – i.e. that a specific reference to the environmental and social objectives of sustainable development should be included alongside the reference to the objective of promotion of economic development. The response should also address whether the acceptance of this amendment would require any consequential amendments.

Departmental Response

Clause 2 carries forward a formula from the Planning (Northern Ireland) Act 2011 and treats the concepts of furthering sustainable development, promoting or improving well-being and promoting economic development as a threefold objective when the Department or

the Planning Appeals Commission (PAC) exercise functions under Part 2 (formulating and coordinating policy) and Part 3 (development plan preparation) of the Planning (Northern Ireland) Order 1991 (the 1991 Order). The 3 subsections should be read together as in integrated approach rather than selective with a hierarchy therein.

The suggested amendment to Clause 2 puts 4 elements (protection and enhancement of the environment; promotion of economic development; promotion of social development; and promotion or improving well-being) under the one umbrella of furthering sustainable development. It impliedly attempts to define sustainable development which has not been defined in planning or, so far as the Department is aware, other Northern Ireland legislation.

Sustainable development is a concept whose meaning has evolved and is likely to continue to evolve over time. The Department is of the view that whilst well intentioned, this amendment may have the unintended consequence of limiting or reducing the scope of the concept it wishes to promote. The Department considers that it is more appropriate, in line with other jurisdictions, to provide a fuller explanation of what sustainable development means in the planning context through policy and guidance. This approach allows greater flexibility to respond as the concept evolves. The Department would intend to do so and elaborate further in the forthcoming single Strategic Planning Policy Statement.

Clause 10

The Departmental officials agreed to provide a response to the Committee's enquiry whether provision could be made for a person or body other that DOE (e.g. OFMdFM) to have the power to appoint a person other than the Planning Appeals Commission (PAC) to hold a public inquiry.

The Committee also requested a response to queries on the circumstances when the power to appoint would be used. What criteria would the Department use in order to determine when and in which cases this power would be exercised? How would the Department factor in the time it would take to appoint a person, and the time it would take for that person to hold an inquiry, when assessing whether it would be appropriate to exercise this power? Would the Department only use this power prior to the PAC having begun an inquiry? How and when would the PAC be informed that it was not to carry out an inquiry? Further detail of how the policy underpinning clause 10 would work is required.

Departmental Response

The policy to provide an option to appoint independent examiners other than the PAC to conduct public inquiries or hearings under Article 31 of the 1991 Order was developed during the peak of the property boom when there was an unprecedented rise in both the number of planning applications and appeals to the Commission. This naturally led to resourcing issues for both the Department and the PAC. The Department would argue that OFMdFM already has the power under Article 110 of the 1991 Order to appoint commissioners to the PAC and also to appoint persons to assist the Commission in performing its functions. In the event that the PAC experiences an increase in its casework OFMdFM could appoint additional commissioners or persons thereby addressing any resource implications that might arise and as a consequence curtail any need for independent examiners to be appointed by the Department.

In the event of the Department deciding a public inquiry should be held, the Department will first approach the PAC to ask it to conduct the inquiry. If, and only if, the PAC is not in the position to conduct the inquiry within a reasonable timeframe will the Department consider appointing a person other than the PAC to conduct the inquiry. This provision is not in any way intended to bypass the PAC, or to permit the Department to arbitrarily appoint independent examiners without first consulting the Commission. The option of appointing independent examiners does, however, allow DOE to proactively respond to potential future workload pressures to ensure decisions on major applications are processed as expeditiously as possible.

In assessing timeframes the Department will consider what is reasonable based upon a consideration of the facts of each case, including the nature / scale / location of the proposed development. A proposal which could lead to significant environmental benefits, economic benefits and job creation may in the view of the Department merit a quicker inquiry than perhaps a proposed development that does not have significant environmental or economic benefits but involves a significant departure from the development plan.

The Department has studied how the Department for Regional Development appoint examiners to carry out public inquiries for proposed roads schemes and these established principles will be used to assist in the development of a protocol for the appointment of independent examiners. DRD has a retained list of suitable persons who are qualified to conduct the public inquiry and this list is used as needed.

Clause 16

The Departmental officials agreed to provide a response to the Committee's enquiry whether there could be a minimum fine, and whether provision could be made to ensure that any fine was proportionate to the value of the development.

Departmental Response

Clause 16 has the effect of increasing the maximum level of fines for a range of offences under the 1991 Order in line with the 2011 Act.

At Committee Stage of the 2011 Act, the then Environment Committee expressed strong views that the level of fines relating to a range of planning offences should be significantly increased. It was argued that the existing fines did not reflect the potential financial gain which could be achieved through intentional breaches of planning control.

Subsequently, the 2011 Act increased the level of maximum fine available on summary conviction from £30,000 to £100,000 for a range of offences. This increase of more than three-fold provides the highest levels of financial penalty for planning offences across the UK administrations and the Republic of Ireland. It is worth noting that the 1991 Order also provides the option for unlimited fines for a number of offences where a person is convicted on indictment as well as an option for imposing custodial sentences for certain offences on summary conviction or conviction on indictment, for example an offence under Article 44 (Control of works for demolition, alteration or extension of listed buildings).

The Minister has maintained a consistent focus on the levels of fines imposed by the courts and highlighted the need for fines to act as an effective deterrent. The level of fine to be imposed in particular cases is a matter for the courts, however, the increase in the maximum levels of fines to be made available under the proposed changes provides additional latitude for the courts to exercise their discretion in sentencing. In addition, the Judicial Studies Board for Northern Ireland (JSBNI) recently published sentencing guidelines in relation to a wide range of offences, including certain planning offences. These include guidance where an offence has been committed on a commercial basis and where financial gain might accrue as a consequence of the offence. An example of the JSBNI guidance is provided as an attachment in relation to "Breach of a Tree Preservation Notice" (Annex A).

The introduction of a set minimum level of fine, aside from those established by the standard scale, would limit the discretion of the courts in determining the level of fine to be imposed after considering the individual circumstances of a case. Compulsory minimum sentences make no allowance for the possibility, which always exists, of an exceptional case, so they can lead to unintended and unwelcome consequences.

The Department believes that it would be prudent to assess the impact of the proposed increases in maximum fines, coupled with the new sentencing guidelines on planning offences, before considering the need for further strengthening of the law in this case.

Such proposals would require detailed discussions with the Department of Justice and the judiciary.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO
[by e-mail]
cc Mr Paul Gill

Annex A

BREACH OF A TREE PRESERVATION NOTICE

Planning (NI) Order 1991

66. - (1) If any person, in contravention of a tree preservation order, cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, he shall be guilty of an offence …

…

(2) If any person contravenes a tree preservation order otherwise than as mentioned in paragraph (1), he shall be guilty of an offence …

Maximum Sentence:

Planning (NI) Order 1991 Art.66
(1) Offence under Article 66(1)
Indictment: 2 years imprisonment and/or Unlimited Fine
Summary: 6 months imprisonment and/or £30,000 Fine (for offences committed before 4 May 2011)
6 months imprisonment and/or £100,000 Fine (for offences committed on or after 4 May 2011)

(2) Offence under Article 66(2)
Summary: Level 4 Fine (£2,500) (for offences committed on or after 12 November 2003)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

Nature of Offence		Starting Point	Sentencing Range
Act falling within Article 66(1)	Offence committed on non-commercial basis	£5,000 Fine	Fine to Community Order
	Offence committed on commercial basis	£25,000 Fine	Fine to 3 months Custody
Act falling within Article 66(2)		Fine	Fine

Examples of Possible Aggravating Factors of Offence	Examples of Possible Mitigating Factor of Offence
1. Offence committed for financial gain (whether profit or cost-saving) 2. Nature of offence has necessitated tree being cut down 3. Offence was committed on commercial basis (where offence is an act falling within Article 66(2))	1. Offender had honest belief that tree was not subject to relevant prohibition.

Relevant Cases:

NI Cases:
N/A

English Cases
R v Palmer [1989) 11 Cr App R(S) 407

Notes:
1. In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1), the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – Article 66(1A) of the 1991 Order

Proposed Departmental amendments

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Sheila Mawhinney
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Date:29 May 2013

Dear Sheila

At the 23 May Committee meeting, the Committee agreed to consider 2 possible amendments before commencing its formal clause by clause consideration of the Planning Bill.

Amendment 1

The first potential amendment is to provide for clauses 2 and 6 to be commenced on Royal Assent. The Committee asked for the Department to provide a response on this potential amendment setting out the Department's view on the potential amendment, including a full explanation of the likely implications of it and confirmation of whether the Department would support it. If the Department supports the amendment in principle the wording of a suitable amendment should be included for the Committee's consideration.

This amendment will mean that from the date of the Bill's Royal Assent, policy making by the Department under Part 2 or Part 3 of the Planning (Northern Ireland) Order 1991 must be carried out with the objective of furthering sustainable development, promoting or improving well-being and promoting economic development. In doing so, particular attention must be paid to the desirability of achieving good design. In clause 6 affirmation that the reference to material considerations in the determination of planning applications includes a reference to any economic advantages or disadvantages likely to result from the grant or refusal of planning permission will also apply from the date of Royal Assent.

Subject to Executive Committee agreement, the Minister agrees to support this amendment and take it forward as a Departmental amendment to the Planning Bill at Consideration Stage. The Department will work expeditiously to bring forward the associated policy and guidance. The Department would suggest that Clause 27 (1) is amended to include reference to section 2(1) and 6(1).

Amendment 2

The second potential amendment is to provide for the Department to review and publish a report on the implementation of Clauses 2 and 6 within 3 years of Royal Assent of the Bill. The amendments should provide for regulations to set out the terms of the review. The

Committee asked for the Department to provide a response on this potential amendment setting out the Department's view on the potential amendment, including a full explanation of the likely implications of it and confirmation of whether the Department would support it. If the Department supports the amendment in principle the wording of a suitable amendment should be included for the Committee's consideration.

Although Section 228 of the 2011 Act requires the Department to review and issue a report on the implementation of the Act within three years of the commencement of Part 3 of the Act and at least once in every 5 years after that, the Minister, subject to Executive agreement is also content to support the amendment and to bring forward this separate reporting on the implementation of clauses 2(1) and 6(1) as a Departmental amendment to the Planning Bill at Consideration Stage.

The Department is currently seeking advice from Legislative Counsel on how this amendment should be precisely framed as clauses 2(1) and 6(1) of the Bill amend provisions of the 1991 Order which should be repealed before the review is due to take place. The Minister has therefore given his assurance that the Department will work closely with the Office of the Legislative Counsel and the Committee to draft and agree a suitable form of words for this proposed amendment which will ensure that a requirement is placed on the Department to report within 3 years of Royal Assent of the Bill.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO
[by e-mail]
cc Paul Gill

Amendment 1

Clause 27, Page 16, Line 31

After '1' insert '2(1), 6(1),'

Amendment 2

Clause 2, Page 2, Line 5

At end insert -

'(3) The Department must, not later than 3 years after the coming into operation of section 2(1) of the Planning Act (Northern Ireland) 2013, review and publish a report on the implementation of this Article.

(4) The Department must make regulations setting out the terms of the review."'

Amendment 3

Clause 6, Page 5, Line 25

At end insert -

'(1A) in Article 25 of the 1991 Order after paragraph (3) add -

"(4) The Department must, not later than 3 years after the coming into operation of section 6(1) of the Planning Act (Northern Ireland) Act 2013, review and publish a report on the implementation of this Article.

(5) The Department must make regulations setting out the terms of the review."'

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