

# ANNEX

## CALL FOR EVIDENCE REVIEW OF THE IMPLEMENTATION OF THE PLANNING ACT (NI) 2011.

### RESPONSE FORM

#### YOUR DETAILS

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# YOUR COMMENTS

Please provide us with your comments below. Please be as concise as possible and where appropriate provide evidence to support your comment.

## Local Development Plans

**Q.1.** Do you believe there is a need to retain, amend or repeal any provisions of Part 2 of the Act or associated subordinate legislation with regard to the delivery of Local Development Plans?

### Detail relevant provisions:

- 4 Statement of Community Involvement
- 6 Local Development Plans
- 9 Local Policies Plan
- 10 Independent Examination

### Supporting Comments:

The Local Government Act (NI) 2014 introduced a statutory link between the Community Plan and the LDP. The RTPI conducted a survey of members in Northern Ireland in 2018. The majority of respondents felt that, in theory, the link was beneficial, but that delivery was the issue as the Community Plan is not part of the public inquiry process. This means that Community Plans have no teeth and mostly contain non-planning issues. They can also raise aspirations that the LDP budget and delivery timetable cannot deliver. Do Community Plans need to undertake a form of testing before adoption?

Instead of a Preferred Options Paper (POP), it could be advisable to have an Options Paper in which the Council presents its options and seeks the response of the public as a key part of shaping the LDP before decisions have been taken. This would take the place of a general call for evidence (which is not statutory and which many plans miss out on by not having). As currently written, the POP is a *fait accompli* and the consultation is rendered a 'tick box exercise' because decisions on the main issues have already been taken. In addition, Councils are able to depart from, or ignore, their POP.

The LDP strategies are rather lengthy documents, partly because they are obligated to include operational policy that is presently included in the PPS series. This is not needed until the Local Policies stage and its exclusion would make the strategies much more focused. We recommend that the legislation be revised to remove this part and put it into the Local Policies Plan (LPP). By the same token, it would be helpful to have clarity on the detail required in the Plan Strategy, as most councils are saving detailed strategic policies for LPP stage.

Subordinate legislation currently only identifies one evidence base preparation stage – this should be clarified to prevent evidence being pushed back for LPP or SPG stage. In addition, surveys of the district are required to be up to date but there is no requirement to demonstrate this. Should this be included in legislation?

It would be helpful if the accompanying guidance set out minimum digital requirements for plans. The pandemic has shown how vulnerable the system is to being paper-based. At the same time, there has been widespread upskilling in digital information sourcing and development for the public consultation requirements for major applications and this would be of benefit in the plan preparation side too.

Based on the experience of the Belfast LDP process, the technical supplements and related evidence can become outdated when there is any delay in the plans being processed by the Department before the public examination is called. It is unclear from legislation what role DfI plays within the assessment of soundness when the plan is submitted for the Department's consideration. How can we ensure that there are no delays in the plans being processed so that the evidence base remains relevant?

The process of examining a plan is very different from conducting a planning appeal. It is the stress test for the plan. A separate specialist division of the PAC could be created specifically to deal with LDPs with specially trained Commissioners appointed to examine plans. Currently the soundness test is not defined in legislation.

As a further comment, could there be further or new guidance on additional topics, such as LDP Evidence Base and LDP Soundness?

**Q.2** Do you believe there are any improvements which may be made to the way in which local development plans are implemented?

**Supporting Comments:**

Consideration should be given to introducing a statutory duty to co-operate with neighbouring councils, or a similar mechanism to ensure there is consideration of cross-boundary issues and impacts. Joint Housing Market Areas or Education Authorities could provide a way of considering topics which cover cross-boundaries and allow for consideration of appropriate policies.

## **Planning Control and Additional Planning Control**

**Q.3** Do you believe there is a need to retain, amend or repeal any provisions of Part 3 or Part 4 of the Act or associated subordinate legislation with regard to the Planning and Additional Planning Control?

### **Detail relevant provisions:**

23 Meaning of “development”

24 Development requiring planning permission

25 Hierarchy of developments

27 Pre-application community consultation

29 Call in of applications etc to Department

33 Simplified planning zones

40 Form and content of applications

67 Power to make non-material changes to planning permission

76 Planning agreements

77 Modification and discharge of planning agreements

## Supporting Comments:

In relation to section 23 and 24, and their subordinate legislation, RTPI Members have requested better clarity for a wider range of uses requiring planning permission, as set out in the Use Classes Order.

Many respondents to the RTPI Member survey of 2018 argued that not enough major applications are being submitted, with several responses noting that agents/ applicants are splitting sites to avoid falling into the 'major' category (section 25). Should site areas only apply to outline applications? Do the thresholds for Design and Access Statements need to be revisited, as well as the thresholds for specific developments, such as in the energy sector, to reflect changes in technologies? Could there be a facilitation of hybrid applications? These could all be considered in any revised legislation covering the submission of planning applications.

In relation to Provision 27, respondents to the RTPI Member survey of 2018 were split 50/50 as to whether the calibre of planning outcomes has increased because of the more detailed public consultation requirements set out in legislation. It was noted that there is a need for community consultation to be more focused and, rather than having a generic threshold, that a similar assessment/ determination process to the EIA process should be implemented. More recently, Councils and applicants are keen for a focus on more flexible forms of engagement to reach a wider range of groups, including the use of in-person events but also digital platforms. Some requirements set out in legislation are seen as too narrow and without flexibility.

Could the pre-application period of 12 weeks be shortened, to make the process more efficient and focused?

In relation to Provision 29, responses to the RTPI Member survey of 2018 were both positive and negative. On the negative side, there were reports of a process that was unclear as to why applications had been called in and reports of being called in for political reasons and not relating to the application itself in planning terms. The purpose of pre-determination hearings was questioned, where an application has already been approved by Committee prior to being called-in. Positive comments were raised when feedback from DfI was quick and responsive, allowing applications to be processed more efficiently. This part of the legislation would benefit from more detail on the requirements for determining whether a project is of regional significance and therefore should be called in, and consideration should be given to whether the ability for automatic call-ins should be removed. Should amended 'Regionally Significant' schemes be allowed to go directly to PAC for determination?

Granting planning permission for designated uses on land identified in LDPs needs to be weighted to encourage developers to propose schemes that accord with LDPs and so embed the plan-led system. The effect of this would be to make proper consideration of the effects of development at the LPP stage more important and turn plan making from a largely academic exercise with limited consequences into a practical exercise with real-world consequences. In other words, planning permission for proposals that are in accordance with an LDP should be more straightforward to obtain, those that are not in accordance should be difficult to obtain.

With regard to provision 40 on the form and content of applications, should there be a requirement for planning statements for some forms of development? In addition, it could be advisable to introduce a requirement for Councils to prepare a validation checklist for various types of applications, putting the onus on the applicant to deliver a good quality application, which should help make the overall process more efficient.

In Section 63, could there be further guidance on what constitutes a lawful start to development?

Minor amendments to planning applications require a new application, full PACC and PAN, which seems rather onerous and has an impact on delivery. Could there be a mechanism introduced in legislation in Northern Ireland to undertake Minor Material Amendments, as is the process in England? More clarity in legislation is also required about what constitutes a 'non-material change' (section 67) so that there is more consistency in Councils' approaches. Could there be further or new guidance on the topic of 'non-material changes'?

Legislation should be clarified that section 76 legal fees are not required – the planning application fee covers planning permission.

Section 77 (or another part of the legislation) should make allowance for the correction of errors in planning conditions. Variation to planning conditions should not result in the need for a Deed of Variation to Section 76. Legislation should provide for this.

**Q.4.** Do you believe there are any improvements which may be made to the way in which planning control is implemented?

**Supporting Comments:**

The pre-application discussion process is not a statutory requirement and is therefore optional. However, it is widely recognised that individuals and groups have important contributions to make at key stages in the planning process and as such councils, or the Department as the case may be, should encourage and welcome pre-application discussions for all types of proposed development. By facilitating effective and meaningful pre-application discussions a council can ensure that opportunities to work collaboratively with applicants and to improve the quality of developments are maximised. However, planners responding to the RTPI Member survey of 2018 noted that there is a lack of engagement from statutory bodies and responses are often non-committal, only going so far as to identify relevant planning policies. Moreover, each Council takes a different approach to pre-application discussions and this may benefit from a more standardised approach, formalised in subordinate legislation.

The responses to the RTPI Member survey of 2018 show that the role of the Planning Committee varies considerably between Councils when it comes to the determination of planning applications. The general majority view is that the quality of decision making has not improved since 2015, with calls for further training for Councillors who continue to make decisions along the party line or after being contacted by constituents - decisions that are not in line with planning policies or principles.

Planning was meant to be cost neutral to Councils at the point of transfer, but the funding seems to have been insufficient to establish effective services. It is also clear that many of the statutory consultees are not resourced sufficiently to provide timely, specialised responses to consultations, which is beyond the control of Councils, but which has significant implications for the speed of processing applications, despite Councils having no control over the speed of responses. The effective input by statutory consultees into the process needs to be enhanced to ensure a positive planning outcome. This is also an issue for policy writing – for example, a need to rely on evidence produced by a range of external bodies – such as a Transport Plan from DfI, Infrastructure Investment (NI Water) or Housing Market Analysis (NIHE), etc. – some of which are provided to Councils in a timely manner, whilst others are not. Therefore the issue of acknowledging the value of planning and ensuring the sufficient resourcing of departments would be a clear improvement to be made.

The inherent system and structure of central and local government in Northern Ireland adds significant complexity to the planning process in an NI context. Whilst planning powers were transferred to local government in 2015, many key responsibilities such as transport, housing, historic environment or housing remain within central government and their agencies. There is therefore a lack of expertise within Councils to address many of the issues raised in relation to these areas, so advice from these external agencies is relied upon. The bureaucracy and delay in getting this advice is unhelpful in both policy writing and dealing with planning applications in Councils, which slows down all processes. Delivery of these services in a more cohesive way needs to be considered. This could include mechanisms which would allow Councils to move applications forward in the absence of statutory responses, or performance reporting / fines for those which do not engage (which would be the worst case scenario), or looking at informal ways to collaborate more (co-location of planners etc.).



## **Enforcement**

**Q.5** Do you believe there is a need to retain, amend or repeal any provisions of Part 5 of the Act or associated subordinate legislation with regard to the Enforcement?

**Detail relevant provisions:**

**Supporting Comments:**

Enforcement is one of the three key components of the planning system, along with development management and local development plans (forward planning). Therefore legislation and regulations to enable enforcement action to be effectively carried out is essential.

**Q.6.** Do you believe there are any improvements which may be made to the way in which planning enforcement is implemented?

**Supporting Comments:**

Respondents to the RTPI Member Survey of 2018 noted that Planning Enforcement departments are often severely under-resourced, leading to a lack of adequate rigour and investigation, or the inability to investigate all the cases that they need to. Without a strong enforcement service, the whole of the planning service is undermined.

## COVID-19 Recovery

**Q.7** Do you believe there are any changes to planning procedures in general which could safeguard the system against potential future adverse impacts associated with emergency situations, such as that currently being experienced as a result of COVID-19 pandemic?

### Detail relevant procedures:

Northern Ireland would benefit from an enhanced digital approach to the whole planning service, including digital availability of content.

The COVID-19 pandemic has demonstrated the importance of planning for both physical and mental health, with access to green and blue infrastructure and active travel options emerging as key considerations during the pandemic. An understanding of the importance of planning in economic and social resilience should lead to better resourcing of planning departments to aid an equitable recovery.

### Supporting Comments:

The RTPI conducted a survey of members in Northern Ireland in 2018. Whilst this pre-dated COVID, a number of respondents detailed what they would like to see available online to improve the planning service. This included:

- Direct line numbers and identification of planning officers in Councils dealing with applications
- Archived information
- Guidance on community engagement and consultation
- Access to JR review information and decisions
- Interactive map overlaying land uses, planning history, constraints, PAC/High Court decisions, LDP matters
- Extant policies and Area Plans
- Datasets and evidence that can inform policy and decision making
- Planning Appeals information
- An interactive Permitted Development guide
- Improved application forms and online submissions
- Easy links to Councils
- Better labelling of documents

RTPI members have reported that in the early days of COVID, the need for a streamlined, fully electronic planning application submission process was evidenced, including the submission of planning application payments. Some Councils have been able to work on this, and there may well have been advances in the last six months that address the early problems. A standardised approach to uploading maps and plans for applicants, plus supporting information, would be a good way forward. Similarly, the system should in future allow better communication between the statutory consultees. This would allow better sharing of information and the ability to keep on top of statutory time limits for responses. Some consultees have struggled with this, partly from resource issues, but also from a lack of suitable technology at a home working level. RTPI members are hopeful that post-COVID, there will be a chance to review the current system and upgrade it to allow better connectivity and data sharing in normal times.

The PAC also reported the need to work on a paper based system and how digitisation would help make the system more resilient.

The Department needs to have a suite of temporary amendments to the legislation, including extending time periods for planning permissions and making appeals, which can be enacted and ready to be brought into operation quickly by order.

Like any good public service, the planning system requires resources and capacity to deliver outcomes efficiently, effectively, and equitably. Financial support to increase the number of public sector planners employed, funding for specialist knowledge and investing in efficiency-saving digital technologies can help support the shift from a largely reactive, regulatory planning system, to a proactive and strategic planning system.

Funding available for non-revenue generating plan-making activities, could be greatly expanded in size and scope to incentivise quality outcomes, joint working, community participation, the digitisation of part of the planning process, and climate ambitions. Actions to invest in local planning services, including the ring fencing of planning fee income and investigate models full cost recovery should be investigated.

The vast majority of respondents to the RTPi Member Survey of 2018, and interviews with planners since, show that the Council Planning Services need additional resources in all areas. Generally speaking, the whole system is under-resourced, both within Councils' Development Management and Policy teams, but also in relation to statutory consultees whose advice is relied upon. Many Councils have been forced to choose between DM and policy, and usually policy is seen as less critical so is not prioritised. The value of planning needs to be acknowledged; if we are to plan for resilience and a green recovery, then planning is instrumental to this process.

## Other Parts of the 2011 Planning Act

**Q.8** Do you believe there is a need to retain, amend or repeal any provisions of other parts of the 2011 Planning Act, or associated subordinate legislation?

### Detail relevant provisions:

Part 4 Listed Buildings and Conservation Areas

Part 9 Planning Appeals Commission

Part 10 Assessment of Council's Performance or Decision Making

Part 12 Correction of Errors

### Supporting Comments:

Conservation Areas (Part 4) should be subject to a process of regular review to ensure they remain relevant. Many were designated for reasons that have long since ceased to be relevant and therefore the Councils should be tasked with re-appraising them, including identifying those buildings that make a material contribution to the character and appearance of an area. This must include the actions that constitute enhancement, particularly given that the legislation now requires enhancement to be proposed where possible. Many Conservation Areas date from the 1980s and 1990s and their enhancement strategies are similarly outdated. The case for changing the legislation to require continuous review is clear in order to promote town and city centre investment whilst protecting assets.

In relation to the Planning Appeals Commission (Part 9), several respondents to the RTPI Member Survey 2018 noted that the process was slow, decisions were not consistent, and more weight should be given to the views of Council planning authorities on subjective issues such as design. There was a call for more experienced Commissioners to be appointed. In addition, more should be done online, such as the submission of case documents. This is linked to Question 7 above and how the digitization of planning services will make the system more resilient to potential disruption in future.

In Part 10 (Assessment of Council's Performance or Decision Making), RTPI Members noted the need for greater control and enforcement of statutory timeframes for consultees and for planning application determination. In addition, LDP preparation performance monitoring may be advisable.

Regarding Part 12, this has not been enacted yet (provisions are prospective) and represents a clear gap, considering that any letters advising of a mistake are not acceptable in contract terms and a section 54 to change the condition wording (to what it should have been) are complex and time consuming. Part 12 would also benefit from more detail on the determination of whether or not a project is of regional significance.