

HISTORIC BUILDINGS COUNCIL

An advisory Council to the Department of the Environment

3rd Floor, Calvert House, 23 Castle Place, Belfast, BT1 1FY

Tel: (028) 90254721/ 90254731 Fax: (028) 90254706

secretariat-hillst@doeni.gov.uk

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

Dear Ms Fleming

Reform of the Planning System in Northern Ireland

My Council welcomes the opportunity to comment on the consultation paper and in this reply we shall comment principally on those aspects of policy and underlying assumptions where our experience of working with the Planning Service leads us to conclusions about the proposals. We note the scant reference to built heritage matters in the proposals beyond those affecting Conservation Areas and suchlike.

We have completed some of the Yes/No boxes in our reply pro-forma but many of the issues covered are complex and do not yield to this type of response from a body such as ours. Accordingly, I would refer you to the text of this letter for the main thrust of our reply.

Chapter 1 The Case for Reform

We note in the opening paragraphs of chapter 1 an attempt to explain the purpose of planning. The purpose and philosophy of planning is more complex than the statement suggests. There are inevitably questions of balance between public and private interest and we would suggest that good planning decisions are unlikely to be arrived at by referenda as seems to be implied. Planning decisions often involve fine judgement and have to be arrived at by dealing competently and fairly with situations where agreement is not possible.

The Case for Reform is clearly couched in terms that are intended to be persuasive. Nevertheless we approach the exercise in the hope that the profound changes stemming from RPA can be made to work satisfactorily and that at least some of the improvements sought will be achieved.

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In particular we note in paragraph 1.25 the need to ensure that “the Planning Service and transferring functions are fit for purpose at the point of transfer”. Our view is that the Planning Service has been under-resourced for many years and that while the pace of development and other constraints have increased over these years, the Planning Service has been subject to the severe pressures to reduce costs and staffing levels. They have shared these pressures with other government departments, including consultee services, and the end result is that for many years the Planning Service has not been able to clear a continuing backlog of work, both in updating area plans and in development control. Thus we approach the proposals with a sense of profound disbelief that the reform proposals will in themselves provide the satisfaction sought. We are disappointed to note the absence of any quantitative assessments in the proposals and this reinforces our disbelief.

Chapter 2 Planning Policy

We are unhappy with the proposal to treat Planning Policy Statements (PPS) in the way suggested (Q1 and Q2) and would argue for their retention and full use as material documents while also providing strategic and regional policy for interpretation in area plans. Some PPS rewriting would be called for in the RPA context and we believe that local development plans should be subject to approval by the regional authority.

Chapter 3 Towards a More Effective Development Plan System

On the role of development plans and the quest for more effective plan system we have reservations about the proposals. Supporting the proposal for a plan-led system (yes to Q3) and for the objectives in the proposed system (Para 3.6) we are pessimistic that these objectives can be translated into effective procedures.

The Statement of Community Involvement is an attempt to engage a public whose interest is usually only aroused when proposals directly affecting them as individuals emerge. Experience has shown that what is described as ‘community’ involvement is often confined, undemocratically to a small number of activists with a range of personal agendas and to those with a personal gain or loss in mind. In practice the main public interest in area plans arises from objectors. The proposal to silence objectors in the interest of simplifying adoption procedures (Q11) is manifestly unjust in the planning context.

On the weighting implied by the question on sustainability (Q12) it is one of many objectives and may not be relevant to the representation. The powers of the examiners should be such as to ensure that a proper examination of the issues is achieved. This would include provision for flexibility and for counter representatives. The ‘robustness’ goal is best served if no one is silenced unreasonably.

We note the proposals for a plan programme management scheme and the details which follow about the stages and topics to be included and we offer no comment beyond stating the obvious that the attempt to change the basis for examining plans away from objections to robustness is unrealistic; objections cannot be set aside (Q16).

On Q17 to Q24, the proposals covering the examination, content and other details of the preparation of local plans we offer no comment beyond expressing strong support for regular examination, monitoring and review (Q18) and for Departmental intervention powers (Q22).

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Chapter 4 Creating a Streamlined Management Development System

In Chapter 4 we encounter the aim of strengthening control over partial demolitions of unlisted buildings in Conservation Areas, Areas of Townscape Character and Areas of Village Character and of placing greater emphasis on the enhancement of these areas. We strongly support these aims.

On the categorising of applications (Q25 & Q26) we think that, while it is sensible that straightforward applications be dealt with in less depth than complex ones, it is important that the officer designating an application to the category of importance be qualified to recognise that something that would normally be Permitted Development need not be so in a Conservation Area, and even that a proposal to demolish or greatly alter an unlisted building might flag up the need to consider it for listing. There may also be implications beyond say an apparently simple application for change of use, in that certain uses might require increased transport access, sightlines etc. This would imply that at the early stages all planning applications should be treated equally seriously, but that it may be possible to process simple ones very quickly after the initial consideration.

As to the other aims we offer the following comments.

1. We have reservations about community involvement as stated above in respect of area plans.
2. We strongly support the post RPA determination of Regionally Significant Applications by the Department.
3. Performance Agreements should be voluntary (Q32), there will be a need for a fee to cover the costs involved and the agreements should be entered into without prejudice.
4. As to the other aims it must be remembered that the goal is a good planning decision not necessarily a quick one or a popular one and therein lies the fundamental problem.
5. As a council we hold varying views on some of the questions, but on community consultation, we do not believe that an application should be declined because of some perceived weakness in a pre-application community consultation (Q36). Accordingly we do not agree that pre application consultation on Regionally Significant Applications should be statutory; the applicant will follow the course that is in his or her best interest. Statutory requirement could give undue weight to the pre application stage and lead to pressure for a bad planning decision.
6. The proposals contained in Questions 38 – 42 are supported save for our advocacy of non-statutory pre-application consultation.

On Major Developments (Q43 – Q46) we again hold the reservations expressed above and would again advocate that the processes be voluntary and enabling and that the “development management” proposals not be unduly prescriptive. Reliance can be placed on the applicants acting in their best interests to secure expeditious outcomes.

On Local Developments delegation is supported. The potential for political interference and corruption is likely to increase under RPA and the most careful scrutiny will be called for. How this is to be achieved is not clear and it seems unlikely that subsequent audits will provide the necessary prevention.

On Q50 we consider the proposal to be unsound. A statutory consultee’s response has to be a properly considered response and the time required cannot be easily specified or enforced. Targets should be set by service level agreements between the parties covering interim responses, estimated response times etc.

Turning to Enhanced Development Management in CAs, ATCs and AVCs the protection afforded hitherto has been disappointing and things are now made worse by the Shimizu case. We support the Q52 proposal to amend the legislation, which needs stiffening, perhaps by introducing a statutory requirement for conservation area consent in addition to planning permission. It is important to remember that an unlisted building may be very significant in a conservation area. Our major desire here is to see greater protection with legislation transferring the role of the Planning Service in determining applications for demolition in the designated areas to the Environment and Heritage Agency, adequately resourced, so that a tighter control may be maintained. We also welcome the requirement (Q53) that new developments should enhance and not merely “not harm” conservation areas. English case law has not been helpful and has hitherto made planners reluctant to turn down objectionable proposals.

We offer no view on changes to the duration of planning permission beyond pointing out that there may not be a public benefit in speedy execution of a scheme; there is always an opportunity cost when a choice is made and a development proceeds.

On ‘non material’ changes we do not like the term and should prefer to see ‘minor or inconsequential’ instead. Minor amendments and correction of errors should be allowed (Q55-Q57) but it should be remembered that drawings may be ambiguous or unspecific. Where any aspect of a proposal is considered important (such as a finished roof level) it should be the subject of a condition on the planning decision.

Chapter 5 Appeals and Third Party Appeals

We offer no view on the reduction of time limit for appeals beyond pointing out that a reduction invites more frequent notification of notice of appeal and so may be counter-productive.

On Q59 we agree that the PAC should be given such powers though we think the PAC in exercising them should consider the appellants preference and (Q59) in the interest of a good decision we would not exclude new material.

On the linking of retrospective planning applications and enforcement notice appeals we support the proposals in Q61 and Q62 and express no view on the time limit suggested in Q63. As to the award of costs the proposal seems sensible.

Local Member Review Bodies

The establishment of local member review bodies raises the question of internal bias and we do not think that joint authority would correct this given the local government political environment. The question of internal bias is very important and will require careful oversight during the period following RPA. Accordingly we would not support the proposal in Q65.

Third Party Appeals

We are supporters of third party appeals (Q67, Q68 and Q69). In our letter of 8 September 2005 responding to the RPA proposals we stated our view that returning planning powers to local government brought the process too close to political interference and in that case we said the checks and balances must include the facility for third party appeals.

We do not resile from that view as we are fearful of Councillors’ abilities to make decisions on planning applications in strict terms of planning policies and not on the basis of personal, popular or party-political considerations. The reference to restoring local democracy is unsound here. Planning decisions must be taken in accordance with democratic controlled procedures, but they are not to be treated as referenda.

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We suggest that third party appeals are a very important potential element in the future good performance of the planning system. We believe that they should at least be kept under review for early introduction with timing dependent on the performance of district councils as planning authorities. Third party appeals should then be the subject of a separate consultation paper.

Chapter 6 Enforcement and Criminalisation

We agree that planning enforcement has an unsatisfactory record and there have been attempts at national level to improve this. Several factors are at work here, one of which is the need to have full regard for the balance between public and private interest, another factor is the pressure on the limited resources of a badly overstretched Planning Service. Neither of these two factors is adequately addressed in the proposals.

On Q70 we support the punitive element in the charging of a premium fee for a retrospective application. A doubling would seem to be appropriate. Regard must be had for the cases where the need for an application is not clear and case law in GB is that applications are not to be sought merely to secure a fee.

On Q71 it is not clear why the requirements of building control regulations cannot be used to inform the planning authorities with notification only required where building regulations do not apply, e.g. in change of use. While planning permission is not required for most internal alterations, a process of notification between building control and planning should be relatively simple to implement once local authorities have control over both areas, and would enable planners to pick up many cases that are not currently notified, particularly alterations to listed buildings and buildings in CAs, where the applicant may choose to ignore planning or may innocently be unaware that planning permission is required. The case for fixed penalty notices is not made and we do not support these (Q72).

Equally the case for it being made an immediate criminal offence to commence any development without planning permission is not made. The arguments against are powerful (Para 6.15). Accordingly we reject the proposition in Q73. We do, however, believe there should be the stiffest penalties for demolition or defacing a listed building, including a custodial sentence as the norm where such action can be shown to be wilful.

Chapter 7 Developer Contributions

These are not questions (Q74-Q79) for my Council, but the proposals do raise complex economic questions which cannot have the short answers sought.

Many types of development impose no additional burden on the public purse and are often of public benefit, sometimes great benefit, in themselves. We cannot agree that the arguments given support the imposition of any more general levy which, unlike Article 40 agreements, would merely be a tax on development.

Chapter 8 Enabling Reform

As stated above, the Planning Service has long been starved of the necessary resources and, though staffed by competent and dedicated officers, has been allowed to decline as pressures have increased for the reduction of civil service numbers. The creation of government agencies has done little to alleviate this and little has been done to prevent the early retirement of experienced officers or to counter the attractions of the private sector. Addressing these historic deficiencies would go some way to answering Q80.

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Delays in the planning process have, we believe, long been attributable not to a faulty process, but to inadequate human resources being available for the task. The resources have been dwindling as development pressures and other constraints have increased so that plans and applications spend too much time in a queue awaiting attention.

We are disappointed that the consultation document does not address these resource questions in any detail. Clearly the setting and proper use of a more appropriate fee regime is called for. Thus we answer Q81 in the affirmative as to the central government setting fees and we would let the review occur though with the expectation that the outcome would not support transferring fee setting to councils.

On Q82 we are very positive in our support for the broadest central government planning audit/inspection function.

Yours sincerely



Frank Robinson
CHAIRMAN

Attachment