



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Local Government (Miscellaneous
Provisions) Bill**

10 September 2009

NORTHERN IRELAND ASSEMBLY

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ENVIRONMENT**

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Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)
Mr Cathal Boylan (Deputy Chairperson)
Mr Roy Beggs
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Ms Olga Murtagh) Craigavon Borough Council
Mr Lewis Porter)

The Chairperson (Mrs D Kelly):

I invite Ms Olga Murtagh, the director of development for Craigavon Borough Council, and Mr Lewis Porter, the principal administrative officer on land and property for Craigavon Borough Council, to make their presentation. You are very welcome.

Mr Dallat:

Madam Chairperson, I know that you are a member of that august body. Why are there no

elected representatives in the delegation?

The Chairperson:

I will put that question to the witnesses. I remind them that they have 10 to 15 minutes to make their presentation. Ms Murtagh, will you explain at the outset whether members of the council were available to attend?

Ms Olga Murtagh (Craigavon Borough Council):

Thank you, Chairperson and Committee members. We welcome the opportunity to give oral evidence today. Due to operational issues, it was deemed appropriate for officers to attend to give evidence on the issue because we had already produced a written submission on behalf of the council.

Mr Lewis Porter (Craigavon Borough Council):

I, too, thank the Committee for the invitation to give evidence following our submission of written comments on the Bill. Members will have noticed from the aforementioned response that Craigavon Borough Council was satisfied with the content of the Bill in all areas except clause 18, which pertains to the acquisition of land otherwise than by agreement. It is considered that that clause could be amended and extended to cover more than Part II of the Waste and Contaminated Land (Northern Ireland) Order 1997. Members will note that Craigavon Borough Council has suggested an amendment that reads:

“A district council may acquire land otherwise than by agreement for the purposes of any of their Statutory Functions (i.e. existing, transferring and/or new).”

At the March 2009 meeting of the regional finance and estates working group, on which I serve, it was reported that for new councils the powers pertaining to land and property would be as they currently exist, together with those powers that are associated with the transferring functions. I drew the working group’s attention to the fact that no cognisance appeared to have been taken of the functions of community planning and well-being, which are new functions and, as such, are not transferring with the existing associated powers.

As a result of that comment, it was subsequently reported that the then Minister of the Environment, Mr Sammy Wilson, had considered the proposed amendment to cater for the new functions of community planning and well-being in relation to land acquisition but that it was his

view that this was not fundamental to enable local government in 2011 and could be addressed at a later date.

No doubt members will be aware that when councils obtained powers to promote economic development under the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992, it was not until the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002 came into force that councils acquired powers to acquire land for economic development. In other words, a period of 10 years had elapsed.

According to the commentary on the clauses of the Bill that are under discussion today, clause 18 gives provision to rectify the position left as a result of the provisions for councils to:

“vest land for any of their purposes in Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997 — a provision that had been inadvertently omitted from that Order.”

A period of 12 years has now elapsed since that original Order. Given the long period taken to amend Orders and/or grant councils the power to acquire land for those functions, councils are understandably concerned at the omission of such powers in respect of the new functions of community planning and well-being.

The power to acquire land otherwise than by agreement does not simply refer to lands acquired from the private sector. No doubt members will also be aware that, from time to time, Government Departments declare land surplus to their requirements. Details are then circulated to other Departments and councils by the central advisory unit of Land and Property Services in order to ascertain whether there is any interest in having the lands transferred to their ownership prior to the properties and lands being placed on the open market.

Should a council express an interest in acquiring the subject land, a case has then to be put to the Department including details as to the legislation under which compulsory purchase powers are available for the purpose for which the land is required. Without inclusion of enabling legislation in respect of community planning and well-being, councils will not be in a position to avail themselves of such a transfer opportunity. If, as was suggested by the then Minister, there is such a backlog in the legislative timetable, it is considered that it would be in the best interests of all concerned to make a relatively minor amendment at this stage, to the effect that a district council:

“may acquire land otherwise than by agreement for the purposes of any of their Statutory Functions (i.e. existing, transferring and/or new).”

That would cover any new function which might arise in the future.

Such an amendment would avoid any confusion as to what functions councils could acquire lands in respect of. It would also avoid any frustration, on the part of councils and third parties, at potential delays in delivering projects falling under community planning and well-being. Councils are being granted those functions without one of the essential tools with which to deliver. It would also assist the new Minister and the Assembly in avoiding any difficulties in that, having had the matter highlighted in advance of the enactment of any legislation, the proposed amendment was not made.

The Chairperson:

Thank you for your thorough explanation of the need for the amendment. I would be grateful if you submitted your oral note to ensure accuracy in the Hansard report.

Mr Beggs:

In the current wording of the Bill, one can see the clear community benefit in the acquisition of land. For instance, it might be required to meet European directives on waste facilities, and, without it, there could be problems in meeting those directives. Therefore, there is a clear community benefit. If the power were granted to councils, what requirement would there be on them to demonstrate clearly the community need and the community benefit? Does it need to be tied to community well-being in some way? What balance would be put on the power so that councils were not able to grab any land that they think that they need?

Mr Porter:

That is a good point. The power of well-being is vague, as members will appreciate. We in Craigavon can provide a few firm examples of the need for community planning. Craigavon Borough Council had an opportunity to build a community development hub in Brownlow, which is quite a deprived area — as, I am sure, the Chairperson will agree. We had an opportunity to bring together a new health centre and a new community centre together with provision on a library, etc. That meant bodies other than the council acting together. If the council had not owned the land, we would not have been able to bring those disparate bodies together.

Councils need the power to respond quickly and vest land if an opportunity exists. As I said, the legislation is not to allow councils to go land-grabbing from the private sector; it relates also

to other lands that are being made available from other Departments and on which councils need to respond quickly.

Mr Beggs:

I specifically asked what gave balance to the power. I can see clear community benefit in the instance that you are talking about. It is a good way for planning and looking at the needs of the wider community and at how things could be done better. However, that is because you are applying that process. What is to stop an unreasonable council from using the power to grab land where it would not be able to demonstrate clear community benefit?

Mr Porter:

As members will be aware, and as been referred to, planning is being reformed and local councils are being given powers in relation to the local development plans in the not-too-distant future — 2011. Those plans will set the framework and the pattern. In fact, they will stop unscrupulous councils from grabbing land. That will be part of the local development plan, into which the community plan will be feeding.

Mr Beggs:

Would it not be better if enabling powers were put into this legislation? Subsequently, when those powers are transferred to local government, therefore, they could be implemented. You are saying that if the power were given today, there would be no balancing power.

Mr Porter:

I am not saying that there would not be a balancing power; I am just saying that past experience tells us that it has taken 10 years for the economic development powers to get the power to acquire land, and the waste management powers have taken 12 years to date. The previous Minister said that he wanted to wait until 2011 for the legislation to be put in place. We need to be prepared for the transfer of the functions. You are all public representatives and you know what it is like. There will be media coverage of community planning and other functions being given to councils, and local communities will immediately expect their district councils to deliver. If we have to wait years for the enabling legislation to be passed to allow the development of much-needed functions, we will have egg on our faces.

Mr Weir:

You have made a persuasive case, but I want to keep an open mind. Some concerns immediately occur to me. To pick up on Mr Beggs' salient point, depending on the precise way that local area planning works, if there is a general power to acquire land, I am not sure that the existence of a local development plan is a complete restriction. Presumably, a council may say that the local development plan was agreed but has been overtaken by an event which means that it wants to do x, y and z — things that fall outside the plan. The council may have a very good reason for saying that, because circumstances may have changed. In planning and development issues, we have all seen how the recession has massively changed the landscape for housing and a range of other capital projects. Therefore, I am not sure that the restriction is that tight.

You mentioned your desire to tie in with community planning. However, community planning is really about the council being the leader in the community — getting bodies around the table may not hinge on the council being the enabler, which means that it may not be the body that needs to acquire the land. Presumably, being ready is also an issue; you said that you could have egg on your face if councils are given the function of community planning but do not have the power immediately. However, if the amendment were accepted in the way that you suggest, would that not mean that councils have the power ahead of community planning? Therefore, there would not be a community planning framework or anything of that nature, and councils could just jump in. If the Bill is passed by the end of the year, councils will have the power 18 months ahead of community planning and will be able to pre-empt community planning. How do you answer that?

Mr Porter:

In the interim, every other function that councils have — and hopefully we will have a waste function if the Bill is passed — includes powers to acquire land other than by agreement. To my knowledge, no council has unscrupulously grabbed land under any of those other functions. All I am saying is that there appears to have been an oversight in relation to community planning and well-being in that those powers are not transferring, so there were no existing powers to acquire, hold or manage land for those purposes. That is why we need to have those powers in place.

One of the good things about the local development plan in the future — I know that we are not talking about that at this point — is that it will be subject to review on a more regular basis, which will enable the type of thing that you are talking about to be handled more readily. In the

meantime, we have Peace III and EU funding, and there is a requirement on councils to deliver those to the best of their abilities. That is why we need to have those powers in place ready for when the funding is received, so that when an opportunity arises it is developed in the best way for the community.

Mr Weir:

You are moving from a situation in which the proposed legislation has a specific change for a specific purpose, and I think that everyone will acknowledge that the reason for that specific purpose is to give a green light and move as fast as we can on waste management. From a technical point of view, does moving from a situation of simply repealing one piece of legislation to the inclusion of a general provision that covers everything potentially alter many pieces of legislation?

Secondly, the legislation has been put out to consultation on the basis of a specific power to deal with waste management. If the move from a specific to a general power were to enact something on which no real discussion had taken place, is there an argument that the consultation might be rendered null and void? Is there a danger that the amendment is too wide-ranging?

Mr Porter:

I am not sure that it is. It is good practice to encapsulate as much as possible in one piece of legislation, rather than having to re-enact it every time there is a new function. If we can receive an assurance that the legislation will be moved up the pecking order and consulted on quickly in time for 2011, there is no difficulty. That is in the hands of the Assembly and the Minister. We regard the Bill as an opportunity to highlight the need for that type of legislation. If it can be amended now, so much the better.

Mr Kinahan:

Yours is an extremely good idea, but we must consider how to balance that at the other side. My feeling is that it should not be included in this Bill. We should find out how to get things done quickly and perhaps add on that provision when we come to the consideration of local planning and development. I worry that, if the amendment were to be introduced now, a mass of people, including landowners, would get together to stop this Bill from going ahead. I know that it is in the Assembly's hands to push it through, but we would find ourselves facing a huge battle.

Mr Porter:

Unless I picked it up wrongly in discussions that took place before we were due to give evidence, I understand that there may even be a delay to the Bill as it stands, to allow for provisions relating to swine flu.

The Chairperson:

It is only a two-week delay.

Mr Porter:

It is not to include that in the legislation?

Mr Beggs:

No.

The Chairperson:

The delay relates to Committee business.

Mr Porter:

My apologies, then. Mr Kinahan, will you rephrase your point?

Mr Kinahan:

To rephrase, it is the wrong time to include that enabling power in this Bill. It should be introduced during another phase when we are working out how to address the community development side. That would give us time to think it through and put in place the correct checks and balances to ensure that councils do not have too much power. At the same time, the whole process will be speeded up so that it works.

Mr Porter:

I made it clear that we were not talking only about private land. We are, in fact, more concerned about the potential declaration of surplus land from within the Departments. Community planning and well-being has no sponsoring Department to act on councils' behalf in that regard. Even Departments' hands are tied at the moment. If a Department wanted a particular piece of surplus land to be developed for community planning, it could not, under current legislation, do so. That is our worry for the interim.

An assurance that the enabling powers would come into being in 2011 with the rest of the legislation would be most welcome. However, the information that has been fed back from the Minister, through the finance and estates working group, is that that may not happen. Instead, the legislative procedure will have to take the normal course and begin after 2011, and that is our concern.

Mr Kinahan:

Shall we find out what the Department has to say?

The Chairperson:

Yes. I was going to suggest that we write to the Department to ask why it turned that down the first time. We could also seek advice from the Bill Office.

Mr Beggs:

If I picked up what you said correctly, Mr Porter, councils cannot bid for some of the surplus public land.

Mr Porter:

At this stage, we cannot bid, because, in order to present a paper, an urgent need must be demonstrated and appropriate legislation must exist under which we could vest. The idea behind the central clearing house is that it circulates to Departments and councils, because they have vesting powers. There would be no point putting something on the open market if we, in turn, vested it.

Mr Beggs:

We should pursue the Department with respect to that specific issue, because some well-located land may end up going outside the public sector when, in the long term, it might be put to some worthwhile use.

The Chairperson:

The officials from Craigavon Borough Council also made the point that there is a limited window of opportunity for funding under Peace III, and some good projects could come to fruition if those powers were to be exercised.

If members agree with that approach and there are no further questions, I thank Ms Murtagh and Mr Porter for their presentation. If you have additional information, the Committee will be happy to receive it as soon as possible. Thank you both; you are welcome to stay or to return to Craigavon.