Northern Ireland
Assembly

COMMITTEE FOR THE ENVIRONMENT

OFFICIAL REPORT (Hansard)

Planning Bill: Community Involvement

18 January 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Thomas Buchanan
Mr Willie Clarke
Mr Danny Kinahan
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Suzie Cave	)	Research and Library Services
Dr Geraint Ellis	)	Queen's University Belfast
Ms Lois Jackson	)	
Mr Angus Kerr	)	Department of the Environment
Ms Catherine McKinney	)	
Ms Maggie Smith	)	

The Chairperson (Mr Boylan):

We will receive a briefing from Research and Library Services on the community involvement aspects of the Planning Bill. I welcome Ms Suzie Cave of Research and Library Services and Dr Geraint Ellis of Queen's University Belfast. I will hand over to Geraint for the briefing, and I

will then open up the meeting to members.

Dr Geraint Ellis (Queen's University Belfast):

I will take the Committee quickly through the third Planning Bill research paper, which is on community involvement.

I am sure that members do not need reminding of the importance of community involvement to the planning process. One of the stated planning reform objectives of the Department of the Environment (DOE) is to bring forward a system that allows:

"full and open consultation and actively engages communities".

The success of the Bill clearly depends on those, and they are important for a number of reasons. They clearly help the legitimacy of the planning system, and they help the quality and efficiency of the decisions. They promote social cohesion and so on. Therefore, they are a really vital part of the system. However, key barriers have to be balanced with them, because they impose costs on the stakeholders, applicants and the Department. As you know, some planning issues get overly complex, and articulating that in a simple form can be something of a challenge.

As we said earlier, the Bill essentially consolidates existing legislation and prepares to pass it forward to district councils. That in itself will enhance opportunities for consultation. Decisions will be made by local councillors who understand local communities that much better. That is part of the context.

Specifically, the Bill will introduce four new aspects of community involvement. Clause 4 will extend the duty to produce statements of community involvement. At the minute, that duty is on just the Department, but the Bill will extend that to district councils. However, I will come back to that.

Clause 27 will introduce a requirement for pre-application consultation. We said a little bit about that in this morning's session. Applicants for major development have to initiate all the consultation themselves before they make the application. That, therefore, represents the front-loading of consultation.

Clause 30 will provide for pre-determination hearings at council level. That allows the applicant and any other person to appear and be heard by the committee making the decision.

Clause 224 will introduce a duty to respond to consultation. Anybody covered by the legislation, which is primarily the Department and councils, has a duty to provide a substantive response to any consultation.

Those are the four key innovative or new elements of consultation. However, a number of things that the Department seemed to commit to in its response to the public consultation do not seem to appear in the Bill. It might be worth getting clarification on whether those matters will lead to legislation and on what the Department intends to do.

The first matter, which I think the Committee discussed last week, is about making a statutory link between local development plans — the land use-based plan — and community plans brought by the community planning element, that is, all the other functions of councils. The Department committed itself to creating a statutory link between those plans, but that link does not appear to be in the Bill.

The Department also noted that it wanted to change the first part of the plan-making process. At present, it produces what it calls an "issues paper", which is its idea of the key issues to be included in a plan. It wanted to push that along to something called a "preferred options paper", which cuts down the options for consultation but moves the process on a little bit. That does not appear to be in the Bill.

Public inquiries into development plans have traditionally been held on an objection basis, meaning that any landowner or other interested party has objected to something in the plan. The Department wanted to move to a situation whereby those public inquiries were really testing the soundness and sustainability of the plan in question. That meant that any objections to the plan or any representations had to contribute to the testing of the soundness and sustainability. That largely removes the rights of someone who felt that their property rights were being infringed, meaning that their representation could be sidelined by the Department. That proposal, which was in the consultation and which seemed to be committed to in the Department's response, has not made its way into the Bill.

As we discussed this morning, the Department intended to allow the Planning Appeals Commission (PAC) to award costs. However, that does not seem to be in the Bill. The issue of

third-party planning appeals, which we have also discussed, was raised throughout the consultation, but the Department noted that it does not want to proceed with that at this time.

I do not know whether the Department committed to those elements in its response to the public consultation, but it is probably worth clarifying whether they require provision in legislation, and, if so, it should be asked why they are not in the Planning Bill and if they will be included in something else. Those are absences from the Bill.

In the paper, we highlighted what we call nine contentious areas that might focus the questions to the Department. The first is a general comment on the Department's claim to want to move the planning system to one that actively engages communities and that is very open. If we look at the Bill, however, we will see that only very minor changes have been made in the consultation provision. Is that actually active engagement? Usually, the opportunities for consultation are still very proactive. That essentially means that communities and other stakeholders respond to something that the Department issues. It can therefore be questioned whether the Bill lives up to the expectations that the Department was raising when it said that it wanted a very open and actively engaged planning system.

The next contentious issue is related to the requirements for statements of community involvement. That requirement is in clause 4 and contains a number of elements. The statement of community involvement is one of the key elements of the consultative provisions, and a number of points need clarification.

The first, which may be the most critical, is that, although there are a lot of provisions in the Bill for reviewing and monitoring all sorts of things, there does not seem to be any requirement or duty to review or monitor the effectiveness of the statement of community involvement. For example, there is no monitoring of the effectiveness of a statement for section 75 groups or other vulnerable groups. Once a statement is set up, it might stay as it is in perpetuity. Therefore, there might be a need for a duty to monitor and review a statement's effectiveness.

Secondly, a statement of community involvement must explicitly refer to the plan-making process and to development management. However, it seems that the requirement for a statement of community involvement does not apply to all the other provisions in the Bill, many of which people will want to be consulted on. Those other provisions include tree preservation orders,

listed buildings, conservation and mineral planning. Therefore, a big part of the Bill does not seem to be picked up by the requirement for a statement of community involvement. Perhaps the provision should just refer to all planning functions.

There is also a question of how the statements of community involvement are aligned to the equality provisions. In the equality impact assessment (EQIA) of the Bill, the Department raised a number of issues about getting effective information and monitoring equality. Statements of community involvement would be a way of securing those.

A pre-consultation procedure will be introduced under clause 27. It is interesting to note that the same procedure has been active in England and Wales for a number of years. As a consequence, the Government have brought forward new proposals, which apply particularly to England, to strengthen the duties on applicants. The procedure makes the applicants carry out all the consultation. The experience in England seems to have been that the wording used there, which is the same as that in the Bill, has not been that effective in pinning down applicants to carry out a thorough consultation. Therefore, through the new Localism Bill, the Government will introduce much more stringent requirements for applicants, such as a duty to respond to the consultation and a much stronger duty to ensure that everybody in an area, or at least the majority of residents who live there, is consulted. It is a way of putting more of an onus on applicants.

There is a new provision for pre-determination hearings. As I mentioned this morning, that allows a council to exclude some interests from a hearing. The provision does not put an onus on a public hearing, so a council can invite who it wants to a pre-determination hearing. In the interests of openness, that provision should be in the Bill.

We mentioned third-party appeals. That was a common issue that was raised in the consultation, and some members have been very interested in it. The Department noted in its response to the consultation that:

"there does not appear to be any immediate compelling reason to proceed in the public interest towards making provision for third party appeals".

As members probably know, the third-party appeal is one of the key elements of the planning system in the Irish Republic. Third-party appeals can come in a number of variations, from those that are very limited to those that are very open. Therefore, it might be worth questioning the

variations that the Department has explored, the evaluations that it has done and the impacts that third-party appeals will have There may be an impact on delays; indeed, the Department has admitted that there might be some impact on speed. However, it may be worth finding out the impact that not having such types of appeal will have on public confidence, community involvement and the quality of the decisions that are made. Third-party appeals can bear some relation to those issues.

The sixth contentious issue is an attempt to get developers to make some broader contribution to community benefits as a result of development. That happens in England and the Republic of Ireland. Therefore, although the Department has existing powers through planning agreements, they are rarely used. In England and Wales, a community infrastructure levy was recently introduced. We found that, in England in Wales and in other jurisdictions, such a levy allows local authorities to gather contributions from developers to pay for elements of the local infrastructure, such as water supplies, transport, schools, health centres and so on. The levy is based on the assumption that, when development goes ahead, there is some cost to the public purse in upgrading the infrastructure to facilitate such a development. It also recognises that, whenever someone gets planning permission, there is a sudden uplift in the value of the land. That uplift is in some ways unearned, because it is just the planning permission that has caused that increase. It is a way of getting a broader contribution from the developer to meet some of the local costs. The Department said that it does not want to take that forward at this time. One could ask whether any assessment has been done on the impact of the community infrastructure levy and whether it would work in Northern Ireland.

Community involvement is a popular area for legislative activity. In the rest of the UK and in the Republic of Ireland, a number of provisions have been introduced recently that are absent from the Bill. It might be worth asking whether this is an opportunity to look at those as well. The first thing that I want to highlight is a relatively radical idea that has recently been introduced into the Localism Bill. That is the provision for neighbourhood development plans and neighbourhood development orders. It is a very localised plan that is being put on a statutory footing. There can be local referenda for local neighbourhood plans, and, when those are informed, local residents might be able to get automatic permission for development if the majority of local residents want it. It is a very grass-roots approach to planning. That is in the Localism Bill, which is proceeding through the House of Commons.

In Scotland there are things called good neighbour agreements. The idea behind those is that, if a major development causes local residents some concern, the provision of good neighbour agreements allows local community groups to come to an arrangement with developers to limit operating hours or to take other measures to give confidence to local residents. In Scotland there is also a provision to allow the public availability of information once a planning application has been dealt with. That is an openness and transparency issue. We noted in other sessions that the provisions that result from a lot of those issues are very basic, and that raises questions over whether further guidance is needed. For this to be successful, that needs to be flushed out.

Almost all the comments on the equality impact assessment relate to the procedure of community involvement. The EQIA notes that there is poor evidence for evaluating equality impacts where monitoring and so on are concerned. The Bill might therefore be an opportunity to make some provision for regular and effective monitoring in the future.

Those are the key issues.

The Chairperson:

Thank you very much. You talked about third-party appeals, and we will come to that in a minute. Indeed, a lot of respondees talked about them.

I want to talk about a key element of the Bill. As you know, the research paper that we received in the previous presentation talked about the notion of spatial planning. The key element of that is not only land use, but place. One of its key factors is community engagement. You mentioned proper, active engagement. Will you expand on how the various jurisdictions try to include the entire community? Perhaps you can give us a definition of "community"?

Dr Ellis:

The definition of community that is given at the beginning of the paper is taken from the English guidelines for community involvement. In the overview of themes element of the research paper, there is a definition of what community involvement in planning could mean. Essentially, there is no definition of it; it is an open process. It refers to the ability of everybody, perhaps excluding Government and statutory providers, to engage. It is about the involvement of business, the voluntary sector and local people of all sorts. It is not useful to provide a very narrow definition of "community" because you start excluding people. If we have an open process, the people who

are interested and might be affected by development can then engage.

The Chairperson:

I will come on to that. That is front-loading the process by getting everyone involved. That is why there is some recognition that, if we have a front-loaded process, we may not necessarily need third-party appeals. We have seen how that has worked in other jurisdictions. Sometimes it has been positive, but, at other times, they have got it wrong. Do you feel that there needs to be some kind of appeals mechanism to ensure that people get the proper result?

Dr Ellis:

Front-loading refers to two key elements. The first is having full involvement in the local plan and having a plan-led system. That means that when a decision is made on a development application, it is made on a plan on which there has been full consultation. However, as we heard this morning, the Department has not commenced the plan-led system. Therefore, that little element of front-loading is not quite there.

The second part of front-loading is the idea of the pre-application consultation, which I just talked about. That refers only to major development. As far as I can see, those are the two key elements, but the Department may have other ideas about front-loading. We are not quite there with the plan-led system, which is why it is so important to have the commencement of the plan-led element.

The Chairperson:

You said that there are models of appeals that may suit the Bill. That is certainly something that we could look at.

Dr Ellis:

It has been suggested that pre-application consultation may be advantageous in ironing out a lot of the issues before they occur. However, it has been argued that third-party appeals will mean that the developers will fully take into account the consultation, because, if they do not, there may be an appeal afterwards. The pre-application engagement could strengthen the local community. Therefore, front-loading could be strengthened while third-party appeals are retained.

The Chairperson:

You also mentioned the community infrastructure levy. On one occasion, we talked about developer contributions, but —

Dr Ellis:

It is essentially the same thing.

The Chairperson:

It would certainly be welcomed, and it would encourage participation.

Dr Ellis:

Development would certainly be more acceptable if local communities felt that it would lead to new open space or enhanced infrastructure. Clearly, it can help. People welcome development if they do not think that they are subsidising it or if they think that they will get something out of it.

The Chairperson:

The matter of equality and section 75 is a major issue for us and a lot of the respondees. It is about being inclusive. Do you have any comments to make on that, or do you think that the Bill stands up?

Dr Ellis:

As the Department states in the EQIA, it is very difficult to know that, because there is very poor monitoring information. That can be answered only by ensuring that there is future monitoring and review. When the relevant information is collected, a more objective stance can be taken on whether those groups are being disadvantaged.

The Chairperson:

How do you propose to place that mechanism in the Bill? Will it be done in guidelines?

Dr Ellis:

In the statement about community involvement, there could be a requirement to collect information on section 75 groups and to have a specific section of the community involvement that would reach out to those groups.

The Chairperson:

Thank you very much.

Do members have any questions about community involvement? This is an important subject.

Mr B Wilson:

If a developer wanted to knock down a couple of Victorian houses and put up apartment blocks or that sort of thing, what pre-consultation would they be required to do?

Dr Ellis:

If it is a major development — the difference between local and major was discussed this morning — they will have to undertake a pre-application consultation. The requirements at the minute are quite loose. The Localism Bill proposes that there be an onus on the developer to take reasonable steps to include the majority of people in the area, and it puts a duty on them to take into account the responses. That may mean not going ahead with the scheme.

The duty in the Planning Bill is much weaker, in that it asks the developer to carry out only consultation. The Department may specify some strong guidelines, but there is an argument that the duty should be in the legislation from the start, because that is what happened in England. The developers have tended to go through the procedure without taking it into account and have proceeded anyway. In some ways, that is a waste of everyone's time, and it is not the purpose of the duty.

Mr B Wilson:

Would knocking down two big houses and putting up a few apartment blocks be considered to be a minor or a major development? Who would deal with that type of development?

Dr Ellis:

I did not see the definition that the Department circulated this morning, but I would not have thought that two apartment blocks would be considered to be a major development. I would have thought that it would be considered to be a minor development. In that case, I think that it would be dealt with as it is now.

Mr B Wilson:

Does that mean that no consultation would be involved?

Dr Ellis:

There would be no additional consultation. There would be the statutory six weeks during which people could object to the development, but there would be no difference between now and then.

Mr B Wilson:

Does that mean that there would no obligation on the developer to consult the local community on those sorts of schemes?

Dr Ellis:

No, I do not think so. In England, that has been opened up so that a pre-application consultation can be asked for not only for major developments, but for any application. The Bill isolates that to major developments, but in England, the position moved away from that, meaning that any application could be asked to go through that process.

Mr B Wilson:

Who decides who to consult, and how do they decide?

Dr Ellis:

If it is a major development, the applicant must contact the Department 12 weeks before they make the application, and they must agree the nature of the consultation with the Department. That is all that the Bill says on that. It is up to the Department to agree the nature of the consultation with the applicant.

Mr B Wilson:

Would the applicant be expected to consult, for example, the Helen's Bay residents association?

Dr Ellis:

That would be up to the Department. It seems a reasonable thing to ask for, and the Department —

Mr Weir:

It depends on whether the development is for Helen's Bay.

Dr Ellis:

The Department does that already, and it is in the guidelines.

The Chairperson:

Members are being very local. You do not have to answer that question.

Dr Ellis:

That is in the guidelines that are to come.

Mr B Wilson:

Are you saying that it will be in the guidelines?

Dr Ellis:

Yes; it will be in the guidelines that are to come. However, they have not been specified.

Mr B Wilson:

I am worried about whether the guidelines, when we actually see them, will be specific.

Dr Ellis:

I do not know.

Ms Cave:

That question will have to be asked of the Department.

The Chairperson:

That is a question for the Department. You are correct to raise that point, because it is important to have it included and to get it answered now. We will have a chance to ask it of the Department. Please try not to mention Helen's Bay or South Down. Here comes Mr Clarke, one of the South Down MLAs.

Mr W Clarke:

On Brian's point, surely weight must be given in a planning application to any clear willingness or understanding on the community's part, including the council and developers at the early stage, to preserve a row of houses that may not be listed.

Dr Ellis:

It goes back to the idea of the system being plan led. If the community had been consulted on the plan and the plan designated the area as a conservation area, it would be unlikely that, in a plan-led system, the community would go against the plan.

Mr W Clarke:

You mentioned the Localism Bill in England. How does the neighbourhood element of that work?

Dr Ellis:

It is an idea, but it has not happened yet, because the Bill is not on the legislative books.

Mr W Clarke:

What if people in a neighbourhood were to say that they wanted to preserve certain types of houses in their neighbourhood?

Dr Ellis:

It looks as though they can do that. There is provision in the new English Bill for local referenda. That means that if more than 50% of the people in a designated area were to vote in that way they could bring forward plans. There is a lot to be seen on how that will work. It is an idea that is being brought forward, and there are a lot of questions about it.

Mr W Clarke:

Obviously, people have bought properties looking to speculate, and there may be compensation aspects to the Bill. However, I am not sure. Do you have any views on that?

Dr Ellis:

There is currently no compensation for planning policies.

Mr W Clarke:

If a swathe of legislation were introduced to change how we do planning, and that is what the Bill is about, and if the recession meant that people did not develop, would there be moves towards including elements on compensation?

Dr Ellis:

I would find a change in policy very unlikely, but you would have to ask the Department. I am sure that you would need legal advice.

Mr W Clarke:

That is dead on.

Following on from Brian's point, will the likes of established community groups be part of the consultation process in the initial stages?

Dr Ellis:

I would have thought so. However, a district council would, for example, have to prepare a statement of community involvement. At that level, they would state who they would involve for what sort of policies. You would have thought it reasonable that, if there were a load of established community groups in a town, a statement of community involvement would specify that they should be involved. However, the Bill does not get down to that level; it just provides for the statement of community involvement.

Mr W Clarke:

Would that include sporting and youth groups?

Dr Ellis:

It is reasonable to suggest that such groups would be included. There are guidelines to be issued, and that is where some of that detail will appear.

Mr Weir:

I presume that community consultation will also depend on the scale of the planning application. To take Brian's example of something that would have a major impact on, say, Helen's Bay, it is reasonable to look at the groups that are affected, whereas a one-house development up a cul-de-sac may affect a handful of neighbours, who would have to be notified. Presumably, the level of consultation and community involvement will, to some extent, depend on the level of the application, even setting aside the division between a major application and what would be considered to be more local.

Dr Ellis:

The Department would deal with major applications, and it would have its own statement of community involvement.

Mr Weir:

I presume that it is likely that the council will take a graduated response, depending on whatever falls to it.

Dr Ellis:

That would be up to the council to decide, because there are no guidelines. All that the Bill provides for is that the council must have a statement of community involvement; it does not say whether it separates different developments.

The Chairperson:

You mentioned neighbourhood development plans and neighbourhood development. That happens elsewhere.

Dr Ellis:

It has not been introduced in England, but it is in the Localism Bill.

The Chairperson:

I think that you are right to say that the definition of community should be as open as possible.

Mr Buchanan:

How is the community infrastructure levy worked in other jurisdictions? I think that it is important that some community benefit as a result of a big developer coming into an area. I am thinking especially of those who are developing wind farms, for example. It is a question of getting that community development. I know that in that situation there is a mechanism whereby developers pay into a fund. However, that is not really related solely to the community that is affected by the wind farm. I worked with a couple of developers in my area to secure much greater community benefit. Do you have any examples of how that works in other areas, and do you have any suggestions about how the mechanism that is used to harness it in other areas could be reflected in the Bill?

Dr Ellis:

It has been on the books in England, but I do not think that it has commenced. Therefore, there is very little experience of how it is working. That might be an area for more research, if needs be. There is legislative provision for such a mechanism, but I do not think that it has been introduced as yet.

Mr Buchanan:

I would like to see some direct community benefit resulting from a huge development in a particular area being introduced into the Planning Bill. Given their effect on the landscape and so forth, wind farms are a typical example of where there should be a greater community benefit.

Dr Ellis:

A lot of wind farm developers provide community benefits. However, that is voluntary at the minute.

Mr Buchanan:

Yes, but it is very sparse.

The Chairperson:

Thank you very much.

We are going to move on to our final presentation, which is a departmental briefing on community involvement in the Planning Bill.

Ms Maggie Smith (Department of the Environment):

Angus Kerr is going to talk about community involvement, and he will cover the subject in three stages. The first stage is about the statement of community involvement. That is covered in clauses 2 and 4. Secondly, he will talk about the consultation as part of the development plan process. That is covered in clauses 10 and 22(2)(e). Thirdly, he will talk about consultation in development management. Four clauses are involved: clauses 27, 28, 30 and 50. Angus will name the clauses as he goes through his paper.

Mr Angus Kerr (Department of the Environment):

A key objective of planning reform is to ensure that the planning system allows for a full and open consultation and actively engages communities throughout the planning process. That is part of the change in the culture of the planning system that is being introduced through the Bill, whereby citizens will have a more effective input into planning decisions that will affect them.

I will first talk about statements of community involvement, through which the Department and councils will show when and how they will involve the community in the planning process. I will then discuss how the community can become involved in the local development plan process and development management.

The Department regards community in its widest sense, and that includes everyone with an interest in the area. As well as people who live in the area, it can also include those who work or invest there or who visit it. It is envisaged that the whole community will have the opportunity to engage in the planning process.

The Department and councils, as public authorities, will continue to be expected to meet their obligations under sections 75 and 76 of the Northern Ireland Act 1998, as well as their obligations under the Human Rights Act 1998 and anti-discrimination legislation. It is in that context that the statement of community involvement will be developed.

The Committee is aware that planning powers will transfer to councils only after appropriate governance arrangements and an ethical standards regime for councillors have been put in place. The ethical standards regime will have a mandatory code of conduct that will include a section on planning. As members are aware, the Minister launched consultation on those issues on 30 November 2010 with a view to bringing forward legislation in the next Assembly.

I mentioned earlier that the Planning Bill contains powers for the Department to intervene if necessary in a council's delivery of planning functions. Those powers are included as safeguards in the unlikely event that a district council is unable to fulfill its responsibilities under the legislation.

The first provisions of the Bill that relate to community engagement are clauses 2 and 4, which will require the Department and each council to prepare a statement of community

involvement. Clause 2 will require the Department to prepare a statement of community involvement that will set out the Department's policy for involving the community in the exercise of the remaining development management functions that are under Part 3. The Department's statement of community involvement will set out methods by which the public can express their views at the various stages of processing the regionally significant applications, which will be the ones that the Department will process.

Under clause 4, district councils will be required to prepare a statement of community involvement. That is defined in the Bill as a statement of the council's policy for involving interested parties in matters relating to the development in its district. Clause 4 will also require the district council and the Department to attempt to agree the terms of the council's statement, and it will provide a power of direction for the Department where agreement is not possible.

The fundamental purpose of the statement of community involvement is to set out the council's procedures for involving the community in both the preparation and the revision of its local development plans, as well as the processing of planning applications. That will ensure that community groups, the voluntary and business sectors and the wider public are aware of what community involvement will take place and of how and when they can become involved.

The statement of community involvement will allow councils to demonstrate clearly their commitment to community involvement, and it will help to promote equality of opportunity and community relations through increased awareness of community participation and involvement.

Where the local development plan process is concerned, councils must have a statement of community involvement in place before any consultation on that local development plan can begin. The statement will be a fundamental tool in enabling district councils to deliver more inclusive and effective community consultation for their plans. It will set out arrangements for community involvement throughout the plan process, going from the early stages of plan preparation through to adopting the plan. It will indicate the proposed methods of involvement that are relevant to the community, the stage of plan preparation at which that involvement will take place and the scope of community involvement. The statement will also set out the methods by which the public can express their views at the various stages of processing a planning application.

The Department will prepare guidance to assist councils in the preparation of a statement of community involvement. That will address such matters as its purpose, content and preparation process, and it will include information on best practice. Councils will be encouraged to involve the community and key stakeholders in the preparation of the statement of community involvement. That said, however, councils will have the flexibility to take their own approach to community consultation to reflect local circumstances.

I will now outline the methods by which the community can become involved in the local development plan process. As we discussed last Thursday, the local development plan will comprise a plan strategy, which will set out the strategic objectives and policies, as well as the much more detailed local policies plan, which will include maps showing what development is acceptable and where.

The public and stakeholders will have the opportunity to become involved in the local development plan preparation process at a number of stages: at preferred options stage; at publication of the draft plan strategy stage; at publication of the local policies plan stage; and during the independent examination. The Committee should note that much of the detailed requirements for consultation in the local development plan process will be in subordinate legislation.

The first opportunity for public consultation in the plan preparation process is at preferred options stages. The preferred options paper will replace the current issues paper and will inform interested parties and individuals of the matters that may have a direct effect on the plan area. The paper will contain a series of options for dealing with the key issues in the plan area, and it will set out the implications of those options, as well as the district council's preferred options and a justification for its preferred options. It is envisaged that the preferred options paper will help interested parties to become involved in a more meaningful way at that earlier stage of the plan preparation process and will provide them with an opportunity to put forward their views and influence the final local development plan.

The Department considers that front-loading the plan preparation process with community and stakeholder involvement will have two main benefits. First, more meaningful engagement should help to gain a consensus earlier in the process with the community about the plan. Secondly, it should help to reduce the volume of representations at the next stage of consultation when the

draft development plan documents are published. Requirements regarding the preparation of the preferred options paper and public consultation will be set out in subordinate legislation.

After the preferred options stage, the public and stakeholders will be further consulted when the draft plan strategy and the draft local policies plan are published. After the publication of the draft plan strategy and the local policies plan, there will be a consultation period to allow for receipt of representations. Requirements regarding publicity and availability of documents will be set out in subordinate legislation.

After the close of the consultation period for both draft development plan documents, councils will consider all representations before submitting the plan document for independent examination. Under clause 10, when the development plan document is being independently examined, those who made representations during the consultation period will be given the opportunity to appear before and be heard by the examiner if they so request.

I will now outline the methods by which the community can become involved in the development management process. Applicants bringing forward proposals for major or regionally significant development are required to engage with the community before they submit their applications.

Pre-application community consultation, as set out in clause 27, will provide an opportunity for communities to get involved before the application is submitted. The early involvement of communities can bring about significant benefits for applicants, communities and planning authorities. It allows developers to resolve issues that are raised by the community and to include mitigating measures as necessary. That will improve the quality of the application and, ultimately, the development.

Community involvement is a crucial feature of the new development management system. Consequently, pre-application community consultation will be a mandatory requirement for all major and regionally significant proposals. The minimum period of consultation is 12 weeks. Certain requirements will be necessary, such as the information that is to be contained in the proposal of application notice. In addition, to ensure the consistency of approach across all council areas, subordinate legislation will contain minimum requirements, such as the holding of at least one public meeting, and it will outline advertising arrangements.

Clause 28 will introduce a requirement on applicants to prepare a pre-application consultation report. That report will need to demonstrate how the developer approached pre-application consultation and what they have done to amend their proposals in the light of that consultation. If the district council or Department do not feel that the applicant has carried out adequate consultation, they can request additional information. In addition, a new power is being introduced in clause 50, whereby it will be possible for the Department or a council to decline to determine those applications where the applicant has not complied with the necessary pre-application consultation. That is to ensure that, rather than its being a case of just following a set of procedures, the community has been consulted in a meaningful way and its views are properly taken into account about what the developer proposes.

Clause 30 will give councils the power to hold pre-determination hearings. Those will aim to make the planning system more inclusive by allowing the views of applicants and those who have made representations to be heard before a planning decision is taken. Subordinate legislation will set out the instances where a pre-determination hearing will be mandatory. Those are likely to include applications for major developments that have been subject to a direction for call-in but have been returned to the council for it to determine. The district council will have discretion over how those hearings will operate in their area. They may, of course, wish to consider other types of development application for which they could hold pre-determination hearings.

That completes the presentation, which was aimed at familiarising members with the key aspects of the Planning Bill that deal with community involvement. I welcome any questions that members may have on those issues.

The Chairperson:

Thanks very much. We will start with the statement of community involvement. I listened to Dr Geraint Ellis's comments about what happens in other jurisdictions. Perhaps we can learn from best practice elsewhere. Are there proposals in the Bill to monitor or review the statement of community involvement, or are there options or guidelines about that?

Mr Kerr:

There are no proposals in the Bill to do that, but we could look at some of the more detailed requirements through subordinate legislation.

The Chairperson:

As regards the requirement in the statement of community involvement — we will call it the SCI — to engage with all sectors, especially section 75 groups, what mechanism is in place to ensure that that will happen? Is there such a mechanism?

Mr Kerr:

Detailed guidance will indicate that. Obviously, the Department and councils will be obliged to comply with section 75 and section 76 and so on.

The Chairperson:

OK. Does the SCI relate to all the planning functions in the Bill or just to certain elements of it?

Mr Kerr:

For the Department, the statement relates only to the planning functions that remain with the Department. That refers to regionally significant applications. As for councils, the statement relates primarily to the development plan process, which is, of course, the key element, as it sets the policy framework for making all the planning decisions in the area. It also applies to the mainstream development management process for the councils. At this stage, that is the extent to which the SCI applies.

The Chairperson:

That all depends on whether there is good governance and codes of conduct and practice in councils. Those are key elements.

Mr Kerr:

Absolutely.

The Chairperson:

I want to talk about the development plans. At the minute, we have an area plans process. Should there not be some form of community plan? Is there no statutory requirement in the Bill to link community plans with development plans?

Mr Kerr:

Do you mean lower-level neighbourhood plans?

The Chairperson:

Yes. Let us say that we are looking at a spatial plan. It is fine to have an area plan that will basically designate or zone areas, but surely at that point, we should be looking at what is best for the area, community or town. Should that not be incorporated? Should there not be a duty to inform people about that process or to have some input from the community from that point of view, as opposed to just zoning land and saying that it is for industrial use, a housing development, recreation or whatever? The local community should have a say in such plans.

Mr Kerr:

Absolutely. We talked about spatial planning on Thursday. It is important that there is a link from the local development plan to the wider community plan so that, in effect, it becomes a spatial manifestation of the wider community plan. That is the intention, and, if possible, it will be done either through subordinate legislation or a local government Bill. We will look into that.

Ms Smith:

I think that you are perhaps talking about planning at a more detailed level. Is that right?

The Chairperson:

The issue is about being inclusive. We are in a situation where we zone land; the process is all about land use on its own. We have to get to a point where there is proper community consultation about the benefits of development schemes, whatever they happen to be. The process should be about more than business. When talking about housing developments, for example, the community interest should be included.

Ms Smith:

The approach is that "the community" means anyone who has an interest in the area. It does not just mean the people who live in the area or those who do business in it. That definition is wider in the Bill than it is in existing legislation. The statement of community involvement will set out how and when people will be consulted. Anybody who is part of the community will be able to look at the statement and see when the consultations and so forth will take place so that they can plan ahead. They will have the opportunity to contribute at those stages and to each of the

development plan documents. That means that they can contribute not just once, but all the way through the process.

The Chairperson:

Obviously, the statement of community involvement is an important part of the process, because it indicates who is included and who is not.

I suppose that we should move on to the small matter of third-party appeals. It is a minor matter that keeps rearing its head. We talked about this in the Assembly Chamber, and we are talking now about community involvement and front-loading the system. Unfortunately, there have been examples elsewhere, where, with the best will in the world, things have not gone to plan. There needs to be a mechanism to allow challenges to ensure that things are right. You are proposing not to introduce third-party appeals. Can you explain to the Committee within the next half hour why you believe that there is no call for a third-party right of appeal in the Bill?

Ms Smith:

As you say, the whole ethos and approach of the Bill is about front-loading. It is about getting things right from the beginning. Through the development plan process and the statement of community involvement, the community is involved in shaping the development plan through the community planning system. The wider shaping of the place and the clear linkages between the other issues that are involved in the community plan and the development plan are also important. Planning applications will need to be shaped in the context of the development plan.

In major and regionally significant applications, the responsibility is on the applicant to make sure that the community has the opportunity to input to the application. Therefore, there is a requirement on people to bring forward applications to consult the community before they produce their application. They have to set out what they intend to do, listen to the issues that the community raised, and then take them on board and discuss with the community how they will change the application. When it comes to application stage, they have to be able to demonstrate that they have gone through the process of community involvement, and they have to be able to show that they have done it right. If the planning authority, that is, the council or the Department, feels that the applicant has not done the consultation either properly or at all, it can decline to determine the application.

The idea behind including the community all the way through the development plan process and in the lead-up to important applications that are going to impact on people's lives is that the products that come forward will have been shaped. That means there should not be a need for third-party appeals.

During the consultation on the policy that went into the Planning Bill, views were taken on third-party appeals, and the decision that the Ministers took at that time was that the focus should be on strengthening front-loading and making sure we get that right. However, there was no focus on third-party appeals.

The Chairperson:
That decision was made by the Minister, wrongly in my opinion.

On the face of it, that is fine, because everyone is included. However, you could also argue that making an objection is only a paper exercise. I am not saying that everyone should be able to make an objection or challenge any decision for any reason; their reasons should be correct. However, that is not in the Bill. At the end of the day, a person may make a reasonable objection to a development, and that objection could challenge policy. In most cases, the development or whatever it is could be tweaked. The question is about whether the proposal will result in a proper consultation process. Will it be a material consideration, or will it just give people a voice and then that is it? That is why I think there needs to be some check or some appeals mechanism in the Bill.

For example, someone could live 10 miles away from an area and drive through it and see that a major infrastructural route is being put through that place. The next thing they will find is that their journey has increased by half an hour, but they never had a say. I use that only as an example of someone's not having an opportunity to contribute. People should be given a proper opportunity to contribute. We do not want to get to a point where front-loading gives everyone a chance, but, at the end of the day, people are at meetings about developments just so that they can just put up their hands to ask questions. I believe that there has to be some mechanism to ensure that that whole process is correct and that it is not just about correcting someone's homework. Any application or development plan has to be conducted within proper criteria and be properly assessed and followed. There needs to be some mechanism for that. I have said that from day one, but other Committee members will have different views on that. It is a big issue. A number

of respondents raised it before now, and it certainly is not going to go away.

One other important point has come to the Committee's notice. It is not for the Committee to support one group or another. A lot of groups out there, such as Community Places and Disability Action, have lost funding but have contributed to the planning process and have given good advice. The Department has depended on those organisations. I am mentioning those two examples, but I am sure that there are others. How will you ensure that, through this Bill and this practice, there will be proper mechanisms to deal with that situation and with the added value that those groups have brought? How do you cover that? Are the consultations and bringing in the expertise and so forth all passed down to local councils so that they can deal with them? If that is the case, are the resources leaving central government and going to local government to cover all that?

Mr Kerr:

In a sense, the communities out there resource themselves in that, as you rightly say, they engage very well with the planning system, as many of us planners have found out to our cost on various occasions. I do not see any reason why that will change in the transfer of some of the functions to councils. I am sure that those groups will be as keen as they have always been to engage in the planning process, and the various different elements of the Bill that will enhance and increase the ways that the community can engage in the planning system will probably make them more keen. I imagine that that will continue.

The Chairperson:

In essence, are you saying that all those problems connected to that will be passed down to local councils?

Ms Smith:

When the councils become the planning authorities and draw up their own plans, the most fruitful engagement on a development plan, for example, will be that between the councils and the community, whether the community is organised into groups, business or the wider public. Therefore, it will be appropriate for the groups to deal directly with the council.

The Chairperson:

If something is being devolved downwards, a level of expertise obviously needs to be available.

Do you say the Bill includes the facility to ensure that that happens? The groups that I cited have a high level of expertise. Such expertise needs to be in place for the implementation of the Bill. Would you like to comment on that?

Ms Catherine McKinney (Department of the Environment):

Are you asking how they will engage with the local community?

The Chairperson:

At present, there is a level of expertise in the Planning Service's operations that is outside that of the Department. Funding is now being cut, and the funds that are available for that engagement are being reduced. If we are saying that that function is being transferred down to local government, will all that goes with that be the responsibility of local government, or will resourcing that and trying to support local government to get that in place before the Bill is implemented be looked at?

Ms Smith:

We are working to ensure that, when planning powers and the staff and resources transfer, councils have the resources that they need. As you know, we are looking at the structure of the Planning Service and preparing it for the transfer. We are also looking at the fees. The idea is that there will be a sound resource that will transfer to the councils.

The Chairperson:

Does that mean that, inclusive in the level of funding for those groups, a resource will be passed down to local councils?

Ms Smith:

Sorry, funding of what?

The Chairperson:

I mean funding of the likes of Disability Action and groups that have the level of outside expertise that the Department has access to. Does that carry as well?

Ms Smith:

That is not included.

The Chairperson:

It is a resource issue, obviously.

Ms Smith:

Yes, but it is not covered in the Bill. Councils would have grant-making powers. That does not need to go into the Bill, because councils already have the power to fund community groups.

The Chairperson:

Are you saying that the training issue should be in the Bill?

Ms Smith:

Training?

The Chairperson:

Should training and giving the expertise to local councils so that they can take on that responsibility be incorporated in the Bill?

Ms Smith:

We are looking at training in capacity building for councillors, council employees and our planning staff. The pilot programmes that the Minister mentioned in his statement are central to that.

Mr Weir:

We may need to make a clear recommendation about that in our report on the Bill. I am not sure that training can be legislated for, but we need to get commitments on the issue from the Department and flag it up strongly as a Committee.

The Chairperson:

As I said, these issues start to arise, and we need to find out about it. You may be correct to say that it is something that we cannot include in the Bill.

Ms Smith:

It is not really something that can be put in the Bill.

The Chairperson:

It is OK to transfer the functions when the legislation is being put in place, but we need to have the actual ability to carry out those functions. That is important. We have not seen the magic model that we have been asking for, that is, the workforce planning model that we were supposed to get six months ago that would outline how planning will roll out in local government. Perhaps that is something that we should just keep in mind.

Mr Kinahan:

I have a large number of questions to ask. Your definition of community is enormous; it includes everyone who touches the patch. Are you going to give guidance to people so that they know how to get to the community? At the moment, having watched one or two council debates on master plans, they really only half do it, and they need guidance to know how to get to everybody. Sometimes it is just about knocking on doors, but I think that the councils need guidance as to who the community is. You have given us a broad definition, but within that, we need the same again. Even when the Department goes out to consultation, it has to constantly rethink whether it is including everyone. Are you planning to produce some form of guidance?

Equally, will there be a publicity campaign that will explain to the public that they are now the community that is going to be consulted? Most people will not know that this is going on, because they do not read the papers. There needs to be a campaign to inform the public about what is going on. Again, I foresee a huge cost coming with that, and I wonder whether we have the resources for it. We cannot just throw it at the councils. That is my first question.

Mr Kerr:

The answer is yes, we are going to produce guidance that will assist in all that. One of the great advantages of transferring planning functions to councils is that they are closer to the ground in their areas and they have a better understanding than the Department could ever have about what is going on locally. The councils understand the ways to involve the community, and they know better than us who the community is. They know which groups are representative and which to steer clear of. All that gives the councils a fundamental advantage, given where we are going with planning.

The statement of community involvement will be a great tool, because it will allow councils to

set everything out. It would be quite innovative to use the Internet and other methods of consultation and to look at different ways of publicising things. It has, perhaps, been difficult over the years for civil servants in the Department to be more proactive locally in that sense. I see this as a big opportunity to address some of your concerns. To some extent, the measures do not always have to be massively expensive, but it will be the councils' responsibility to take that on. I am sure, as is the case in other jurisdictions, that the responses will be varied and that some are better than others.

Mr Kinahan:

I have other questions, but I will let others have a turn.

Mr McGlone:

Before we get into the computer business, it might be an idea to employ a different computer firm from the one that got the e-PIC project. That is a sheer disaster in accessibility and consultation. It is important that we got that on the record. You need to be a whizz kid to get in there and even when you do.

You talk about community consultation. Issues that come up regularly with elected representatives are neighbour notification, which is the most basic form of notification and consultation, and the lack of compulsion on an agent to be legally bound to notify those who are most likely to be impacted by a planning application. That is what drives most people batty.

Whatever about your consultation on the Internet or sticking up posters or signs here and there, if that bit is not right, the rest will fall. An application comes in, and people know nothing about it; an amended application comes in, and, again, they know nothing about it. That is the stuff that can literally drive people to tears. They are forced most of the time to chase their tails and make sure that they are fully engaged with the Planning Service. In other words, the consultation is stood on its head and, in fact, does not exist.

What ideas do you have to ensure that that most basic form of consultation is adhered to? Should there, in fact, be some sort of legal compunction to ensure that those properties and the surrounding addresses that are impacted by a planning application are notified?

Ms Lois Jackson (Department of the Environment):

I will try to explain it to you. Obviously, you know the way that it currently works. That duty would be transferred and placed on the planning authority, which would be the councils themselves. Other jurisdictions have moved away from applicants notifying neighbours. You cannot expect applicants to notify, because it may not be in their own best interests. Therefore, the planning authority is best placed to issue neighbour notification. That is what we currently do. Therefore, we will look at each application as it comes in and carry out the neighbour notification ourselves.

Mr McGlone:

That is what you currently do. However, that is the bit that is deficient, because not everybody is notified.

Ms Jackson:

It is not in statute.

Mr McGlone:

I will explain the situation as I see it. I may be wrong, but I do not think so. Who you notify is entirely dependent on what the agent puts on the application form. In other words, it could be said at the time that a particular application will affect neighbour x, y and z or a, b and c.

Ms Jackson:

We will look at that ourselves; we will not go on just what is in the application form. We will be able to pick up the dwellings that are on the electronic map system. Say that house number 32A, 32B or 32C has been built, but it is not on the form, we may be able to pick that up from the maps and from what is on the ground.

Mr McGlone:

Sorry, but that is consistently missed. If that is in operation in some places, it is clearly not in others. I am talking not about recent dwellings being missed on the electronic mapping device, but about houses that have existed for 50 years. I had one shortly before Christmas that was not neighbour notified about the original or the amended application. That is just one example. The house that should have been notified has been there in its present form for 70 years, with people living in it. That gives you an example of how the system does not work, and that is what really

causes people a lot of grief and emotional problems, especially if their problems and difficulties are neighbour-type disputes. Indeed, that can happen even within families.

Ms Jackson:

I understand that.

Mr McGlone:

That can exacerbate a situation. In fact, I can think of another case that happened just a week before Christmas when notification was not issued. In that case, we are talking about a house that has been there for 40 years. Those are two examples straight off the top of my head where neighbour notification was not done. In both cases, that caused a lot of grief. I can understand an agent being told not to put that on the form and not to mention it or worry about it because it would only cause trouble.

Ms Jackson:

That is where the planning officers' duty should come in, and it should also apply when the officers are carrying out site inspections. It should happen; it is remiss that it does not, but I appreciate your point. However, we have not gone down the route of making neighbour notification a statutory requirement.

The Chairperson:

I am sorry, could you speak into the microphone, please.

Two points have been raised. Obviously you can use Google Earth. We talked about neighbour notification, and we raised that issue before. That needs to be put in statute. Notification is discretionary at the moment, so we need to look at it. Mr McGlone raised the issue before. Could we look at that?

Mr McGlone:

I want to go back to resources and financing, which we discussed earlier with Maggie. The Department's permanent secretary was before the Committee last Thursday. When I specifically asked him whether the transition would be smooth and cost neutral to local authorities, he said that he could not give that guarantee. I have already spoken to a number of my council colleagues and party colleagues about this. They have consistently been given assurances

through the Northern Ireland Local Government Association (NILGA), various local government fora, and, indeed, the Assembly. Straight off, it appears that the matter is not on as solid ground as it was once upon a time. Therefore, the matter will clearly have ramifications for any transition, smooth or otherwise, to local authorities.

Those of us who have served and, indeed, still serve, on councils do not want another bill to be heaped on us — a bill that ratepayers will have to cough up for. Likewise, the big concern with a transition that would not be as smooth as planned would be that there would be excess staff about the place. That would be one of the first problems facing local government. Therefore, in many ways, the exercise could become academic, especially for the 26 councils, if the transition is not smooth and cost neutral.

Ms Smith:

I will go back to what I was saying about how we are working in two ways to tackle that. On the one hand, we are looking at the fees structure. At the moment, that structure is quite odd in lots of ways, because the fees do not necessarily cover the costs of processing planning applications. Therefore, we are looking at that very carefully. We consulted on that quite recently, and we are preparing the papers as a result of that consultation. The idea and the aim are very much to make sure that there is a proper match between the structure of fees and the amount of fees coming in and the cost of processing an application so that the income is there to support the planning system.

On the other side, we are looking very carefully at the structure of the Planning Service. As you know, de-agentisation will happen at the end of March, so we will go into the new financial year with planning functions being part of the core Department. We have already looked at management structures and have done some restructuring and de-layering there. We are also looking at the wider structures and are making sure that we have the right number of people in the right places to service the new councils when they come into being.

Therefore, the approach is two pronged, and we are aiming to hand over a planning system that is properly resourced and able to carry out the functions that the councils need it to carry out.

Mr McGlone:

You are aiming for it, but the permanent secretary cannot guarantee it. That is the dilemma that I

am in, Maggie.

The Chairperson:

I know that you explained the fee, but, let us be honest, a range of fees needs to be looked at. The delivery model needs to be part of the whole process. It is being worked on.

Ms Smith:

Yes.

The Chairperson:

Obviously, that will also be done through the fees structure. I do not agree with you that there will be proper fees for proper planning services in that structure. When things were good in the Planning Service, a lot of money was made. It was not all about wages or covering, because, let us be honest, a lot of that money went back to the Treasury. We all know about the argument that money was made, the workforce was increased and so forth; we have talked to the permanent secretary about that. What we asked for, as a Committee, was a proper model for delivery. That is the model that has to be handed down to local councils so that they can deliver development control.

I know that you are looking at the fees to deliver that. Mr McGlone's point is that councillors see exactly what is coming down the tracks. All the processes need to be in place before any council can take them over. It may be outside the Bill, and work on fees, for example, may have been done; however, it is totally incorporated into what we are trying to achieve, which is reorganisation and so forth. This is a part of the whole process.

Ms Smith:

It is absolutely, Chairperson. Your point is important. A whole package of work is being done on this, and the Bill is a part of that package. If we are thinking about where the Bill will fit with the future fees structure, I should say that it continues the power to charge the fee. However, the fees themselves are in separate regulations. The consultation, which we have finished and which you will see the outcome of before very long, will feed in to some subordinate legislation. There will be an opportunity for the Committee to look in detail at the proposals for the changes of fees.

The Chairperson:

There needs to be a proper range of fees. Just because there are more applications for, for example, single housing, does not mean that we arrange the fees to suit that. It has to be in proportion and provide VFM, that is, value for money. The Committee has discussed some of the bigger developments and the range of fees that was charged in the past. That certainly needs to be looked at.

Ms Smith:

Absolutely. The report that we will bring to you aims to do exactly that. It aims to put in place a fees structure that is realistic and fair to everybody.

Mr Kinahan:

Would you consider getting a council to sit down and think it through from its point of view, now that it knows what is coming? It could assess what it needs to have in place, so that we know the costs from the other end. That is my concern. We know that a fees structure is needed to pay for it. However, I feel that we are moving into the dark and that we will not be ready for this.

Ms Smith:

I am sorry, are you talking about the fees?

Mr Kinahan:

I am just suggesting running a pilot scheme in one council; however, you may have an alternative plan that can tell you, from a council's point of view, what extra resources councils feel they will need to take this on. Councils know what is coming from planning. If you were to sit a council's chief executive down and ask them what they need to have in place in personnel and average running costs, you may find that the costs are much higher than we are estimating.

Ms Smith:

The pilot scheme that the Minister is planning was one of the things that he announced in his statement at the end of November. That will kick in at the beginning of the new financial year.

The purpose of those programmes is to start looking at how all this will work when powers transfer to councils. Therefore, it will involve the councils and the Department testing the arrangements to make sure that we get the functional parts of the arrangements absolutely right

before the powers transfer. The idea is to start with two or three programmes in different council areas and then to roll them out so that, by the end of the financial year, every council will, to some extent, be involved in a project working with the Department to test the new arrangements. All of us will be learning about exactly how the new powers will work in practice as we go along. It will be as close as we can get to the future scenario, without actually transferring any functions.

Mr McGlone:

I am sorry; I may have been a wee bit distracted, but did you refer to the end of the incoming financial year?

Ms Smith:

I was talking about the incoming financial year. The pilot programmes will start some time after May —

Mr McGlone:

I am sorry, Maggie, what will be the extent, anticipated role and functions of those pilot programmes? What will they do? What does the Department anticipate those pilot schemes will do?

Ms Smith:

They are there to involve councillors, council employees and planning staff in starting to look at and to test out the arrangements that will apply after the powers go to councils. It is a sort of practice run; it is almost a dry run. The details of how each pilot programme will work will need to be worked out between the council and the Department. Clearly, the programmes are there to benefit the councils.

Mr McGlone:

Are we talking about pilot programmes running in shadow form? Will they not be making decisions?

Ms Smith:

They will not be able to make any decisions, because they will not have the power to do so. However, they will be able to work towards a situation where they feel that they are acting as though they had that power. Therefore, it will build up over time.

Mr McGlone:

That sounds like local government group therapy of some kind.

Ms Smith:

That is an important point, because it is really about helping everybody to have the opportunity to learn about the new system, to understand it, to feel that they have the confidence, ability and capacity to act on the new system and to practise all that before it comes into effect.

Mr McGlone:

OK. Thank you.

The Chairperson:

I hope that you got some of the answers that you were looking for, Mr McGlone.

Mr B Wilson:

On the first of a number of points that I want to discuss, we talk a lot about consultation and pre-consultation. However, it has largely been my experience that we are consulted and then ignored. How extensive will the consultation be? Are there guidelines about who must be consulted?

Ms Jackson:

There will have to be. The local authority will set out to the applicant who they should consult about planning applications. That will be part of the statutory requirements of pre-application consultation. Lists need to be put in place, and there must be guidance that is well circulated and well understood in the area. We are fully aware that the matter does not rest in just one piece of legislation, and there will be more guidance to explain the process more fully. Councils will be able to advise applicants, who will then be required to carry out that consultation. The test then becomes whether they have consulted with them in the first place, the extent of such consultation and what was done to take on board community views. They have to explain that in the report that is submitted with the planning application. The planning authority involved has that strong power to decline to determine a planning application if it feels that the full duties of pre-application community consultation have not been met or if elements that it requested were not carried out.

Mr B Wilson:

Evidence from Scotland suggests that pre-consultation is not working and that it has had to be strengthened because it has not been particularly effective. Do you have any thoughts on that?

Ms Jackson:

The process is in its infancy there too. That is an area that is evolving and developing across the whole of the UK. It is certainly an area that everyone is very interested in. We are learning from any experiences that we have seen and that are happening in the other jurisdictions and from which we can gain. We have taken all that on board in devising our own requirements for community consultation and how we will explain that in subordinate legislation and detailed guidance.

Mr B Wilson:

Will you take into consideration what is happening in the rest of the UK and then —

Ms Jackson:

Absolutely, and that is all that is part of our research.

Mr B Wilson:

Many of us are disappointed that you have decided to exclude the right to third-party appeals from the Bill. At present, there is a perception that, because applicants can appeal, the system is biased towards them, and, because of that, there is no public confidence in the planning system. Have you looked at that? Obviously, you have done some research on third-party appeals. Do you not feel that public confidence could be increased by including in the Bill the right to such appeals?

Ms Smith:

It may be worth saying something about the way that the Planning Appeals Commission would conduct appeals under the new system. That is a concern. I know that you want to talk about a wide range of issues, so I do not want to repeat too much of what I said earlier, but the whole ethos of the system, which is set out in the Bill, is to focus on making sure that there is proper and intense involvement for everybody early in the process. As we go through the process, either of making the development plan or of a developer bringing forward a major application, we must also make sure that the public have the opportunity to contribute and that issues will be dealt with

at those stages.

In the interest of public confidence, the statement of community involvement will give people the information that they need to prepare for and contribute to the process. From the beginning, someone who lives or works in the area should, by looking at the statement of community involvement, know that they are part of the process, that there is an opportunity for them to contribute, should they wish to do so, and that they should be able to plan well ahead for that contribution. As a result, the public can have confidence that they have a role in the process. That is one of things that is lacking at the moment.

Mr B Wilson:

There is a great lack of public confidence in the planning system, particularly in the bias towards development. Sustainable development in particular should be taken into consideration. Everyone knows what they are doing as they go through the planning process at every stage, and they get as much information as possible. However, if the applicant does not like the result, he can appeal, but the objectors cannot.

I am concerned about what is not in the Bill. Things have been developing in the past few years in England and Wales. For example, there is the Localism Bill, the good neighbourhood agreements and, obviously, the developer's contribution. How extensively do we use the developer's contribution at present?

Ms Smith:

The Bill gives us the opportunity to use it a lot more. One of the changes that the Bill will introduce is that there will be a greater opportunity for developer contributions to be made. At the moment, through planning agreements, the Department of the Environment can accept contributions from developers, but we cannot pass them on to anyone else. Therefore, any contribution that was received could be used only to support activity that was within the Department's responsibility. The difference that the Bill will make is that it will allow the planning authorities to bring contributions in to the planning authority, that is, the council or the Department. That is covered in clause 75(1)(d) and 75(1)(e). However, it will also allow for a contribution to be paid by a developer via the planning system to another Northern Ireland Department. That changes the whole scenario, because it means that we can bring in developer contributions and use them for a function that is not a DOE function.

We are working on an example of that. In fact, the Minister will shortly be putting to the Executive a planning policy statement (PPS) that deals with developer contributions. Our Minister did that piece of work with the Minister for Social Development. The purpose of the developer contribution is to support social housing.

Therefore, on the one hand, you have a new social housing policy that the Minister for Social Development has developed, and, on the other, we are introducing a planning policy statement that will allow the planning authority to collect a sum of money from developers who are bringing forward housing developments and to make sure that that gets to the Department for Social Development (DSD). Clearly, that can come into effect only with this Bill, but we will be consulting on that very soon.

Mr B Wilson:

That money can go to local Departments. Is that correct?

Ms Smith:

Through this Bill, the PPS, which we are bringing in, and the social housing policy, which the Minister for Social Development is bringing forward, will operate together to require developers to hand over to the Department for Social Development some money that comes from housing developments. That money can then be used to provide social housing.

Mr B Wilson:

Does that mean that a council could not use that money for, say, a new community centre?

Ms Smith:

That could be done in other ways.

Mr B Wilson:

The council, as the planning authority, would get that money. Does that then mean that they should not be able to use it as they feel fit?

Mr Kerr:

That is what that clause facilitates.

Ms Smith:

That clause allows for that.

The Chairperson:

For clarification, did you say that there will be another planning policy statement?

Ms Smith:

Yes, PPS 22.

The Chairperson:

OK, that makes PPS 22, 23, and 24 — I think that that is enough. Can you please clarify what clause you are referring to?

Ms Smith:

Clause 75(1)(d) states:

"requiring a sum or sums to be paid to the authority".

Clause 75(1)(e) continues:

"requiring a sum or sums to be paid to a Northern Ireland department".

The Chairperson:

Mr Wilson, are you cleared up on that subject?

We will still go back to the issue of third-party appeals. The issue is about whether there are meaningful contributions and what people think of that where objections to planning applications are concerned. There still needs to be some mechanism to deal with that.

We received more responses today, and there seem to be more and more about that issue. Therefore, I think that you will be hearing a wee bit more about third-party appeals, and perhaps we will try to influence the Minister to look at that. In all the processes, it seems on the face of it that it is fine to be inclusive, but I think that there needs to be a proper appeals mechanism. However, we will no doubt come back to that.

Mr Kinahan:

I am certainly concerned about the timing. You raised lots of matters that need to be clarified by the end of the year. I thought that, during Question Time in the Assembly Chamber, the Minister indicated that he wanted this Bill to come in within six months. We need to try, at some stage, to get a handle on when we are going to get these provisions in place.

My next concern is about the hearings. Your submission states who a council could ask to a hearing and who it could not. Sometimes in councils things are not quite as fair as they should be. Is there an appeals system to make sure that people are being included and that they can appeal to somebody?

My last question is about equality issues, but I may have missed any discussion about that when I went into the Assembly Chamber. How will you put robust guidance or rules in place so that a council that is very much one sided, from, say, a sectarian point of view, does not exclude the minority but still works democratically? I do not know how you square that, but I have seen it happen in council. I am not sure that the issue is always necessarily sectarian, but there are lots of different ways that someone can be left out.

Ms Smith:

Picking up on the equality point first, a council is a public authority under the Northern Ireland Act 1998 and is bound by section 75. Therefore, in carrying out its functions, it must carry out the equality and community relations duties in section 75.

I think that you were also touching on the function of the council itself.

Mr Kinahan:

Yes.

Ms Smith:

That is covered in the consultation on governance that is going on at the moment.

The Chairperson:

I am sorry to interrupt, but is there anything in the Bill to ensure that local councils carry out their section 75 duties?

Ms Smith:

That is not in the Bill. All that is covered in the Northern Ireland Act 1998, under which councils, similar to the Department, are bound. Therefore, they operate under the same provisions as other public authorities.

The Chairperson:

Peter may know the answer to this, but how is that monitored to ensure that those provisions are met?

Ms Smith:

Angus may want to say something about the monitoring process that we are committed to.

Mr Kerr:

As you know, from Thursday there will be a requirement to monitor the local development plan. That will end up being an annual requirement to show how the development plan is being implemented. It will include looking at any impacted flow from equality requirements and suchlike. Of course, as we talked about, we have the facility for the Department to intervene at various different points if needed. That may be the case if something is going awry with how a council is carrying out its section 75 duties, and the Department may, for example, take over a planning preparation or call in a planning application. Therefore, those facilities are there.

The Chairperson:

Obviously, we need to look at this now because it is a major function that councils will carry out. Do you wish to raise another point, Mr Kinahan?

Mr Kinahan:

No. I raised the issue of hearings and whether a system was in place.

Ms Jackson:

Are you talking about the pre-determination hearings, as they are referred to in the Bill?

Mr Kinahan:

I cannot remember whether you cleared up the point about someone's being excluded.

Ms Jackson:

The pre-determination hearings are dealt with in clause 30. As I was going to mention earlier in response to something that you said, those hearings are the facility to allow objectors to have their case put forward to a council or a committee of the council before an application is determined. Therefore, it is another route and another facility for objectors. The details of that and to whom it will be open will, again, be prescribed in subordinate legislation. The issue is one for councils, in the sense of finding resources to allow hearings on all planning applications or on just certain types. At the moment, we envisage that there would be mandatory and discretionary hearings, and it would be for the discretion of individual councils to decide what to hold a hearing for.

Mr McGlone:

For Mr Kinahan's benefit, I should point out that I asked earlier that full details of any equality evaluation that had been carried out either by the Department or on its behalf be provided to the Committee for scrutiny. The issue of monitoring came up in a previous document on local government reform, and it seemed to be that where the monitoring role should kick in was quite loosely thought out, if at all. There was a suggestion about having independent monitoring officers, and questions were asked about where they should come from. That is because if those officers were employed by the council, they would clearly not be independent of the council, and nor could they be. I am trying to get a handle on how, in practice, this monitoring would be done. If the Department does it purely on an annual basis, things could be happening. I want to get a bit of a handle on the practicalities of the outworkings of this. How, in fact, would this be done?

Mr Kerr:

I am talking about monitoring the local development plan. I am not talking about the local government monitoring functions, such as the centre audit, that would be carried out. It is envisaged that the monitoring would be done against indicators that would be set in the plan. The locally developed plan would have objectives and achievement targets. That is particularly true of the new style of plan that we are trying to move to, which has a more spatial planning approach. The annual monitoring would be done against those indicators to determine the extent to which the plan is or is not being delivered. That would allow the council to make changes, as and when required, to allow the plan to deliver effectively if there is a problem.

Mr McGlone:

I want to tease this out. Is it the case that, if the monitoring officer or whoever discovers that something is askew, the sequence will be that there will be an edict from the Department asking that it be put right?

Mr Kerr:

That is not necessarily the case. The council will carry out the monitoring. Let us say, for example, that it is monitoring the housing issues of the plan —

Mr McGlone:

This goes back to the point of whether the councils will monitor themselves.

Mr Kerr:

Yes. The councils will monitor the implementation of the plan and will have to report to the Department. There will be no heavy-handed approach from the Department, because there is nothing specifically in the Bill about the Department's saying that a council must do x, y or z. Therefore, it will adopt a light touch in those circumstances. However, it could be clear from a council's monitoring that, for example, there was a problem with housing and that much more housing was being built in the planning area than was originally envisaged in the plan. In that unlikely situation, the council itself would probably want to take action and review the plan to add further land to it. However, in a scenario where the council is not doing anything about a particular situation, the Department will have the opportunity to contact that council. It is also important to realise that, in the development plan approach, there should be close links between the councils and the DOE, just as happens in other jurisdictions all the time. A lot of this should not be a surprise.

Mr McGlone:

What I am trying to say is that, if the council is monitoring itself, it is not going to be critical of itself to the point where it has to invite the Department to become involved.

Mr Kerr:

We are talking only about the implementation of the development plan.

Mr McGlone:

I am thinking out loud. The only point at which I can see something like that happening is, for example, where there was not enough compliance with the regional development strategy and not enough land was allocated for a specific purpose and had been kept. We went through all that earlier. Is that the sort of thing that is envisaged, or is it meant to deal with situations where, for example, land is inappropriately zoned and is picked up in a monitoring exercise? I will say no more than that, other than to say that that is land that should not have been zoned. Is that the point at which the Department's involvement would kick in?

Mr Kerr:

If land were inappropriately zoned, one would think that it would be picked up during the independent examination. Hopefully, a sound plan emerges from the independent examination with a set of clear objectives and a policy direction that the council wants to go in. The council is responsible for monitoring that. The Department has agreed broadly with those directions. The council monitors how well it is achieving the set objectives. Presumably, because the council itself sets those objectives, it will be keen to see that they are met. The Department is always in the background, but, essentially, we are handing the local development plan powers to the councils. It is their responsibility to ensure that they achieve whatever it is they want to through their local development plans. That is the new direction in which we want to go. We hope and trust that the councils will take on that responsibility and deliver on it. I am sure that they will.

Mr Buchanan:

I want to return briefly to the issue of the developer contribution and levy. You said that the Minister is bringing in PPS 22 on the back of this Bill to deal with that.

However, I am not so sure that the community will still be the beneficiary. Will this still be under the Department's control, or will it be under that of the council? I just want to make sure that the community that is affected will benefit from the developer's contribution. That is where there is a difficulty, in that no community benefit is coming from some of the huge developments that are going into some areas. We must ensure that the right mechanism is there so that the community that is affected will be the beneficiary. The benefit could be a sporting facility or something that is lacking in the area and that needs to be put in place. You mentioned social housing. That is one part of community benefit, but it is only one. A lot more could be done.

Ms Smith:

Can we break that down? The Bill provides the mechanism for the transfer of the resource. What is done with that resource is a different matter in lots of ways. The work that our Minister and the Minister for Social Development have done and that I talked about is one way in which developer contributions can be used. That does not limit it only to social housing; it is just that the policy happens to have been brought forward for that purpose. There could be other ways that developer contributions can be used. Mr Kerr, do you want to add to that?

Mr Kerr:

No. I think that you are absolutely right. Councils could use developer contributions to provide facilities, of whatever nature, that are required locally. Indeed, councils are best placed to know what those are.

Ms Smith:

By broadening the range of authorities that can receive money, the Bill provides opportunities that people will be able to use in the future.

The Chairperson:

Can I ask for clarification on whether the main body of the planning policy statement refers to social housing? Is that correct?

Ms Smith:

The planning policy statement that the Minister has been working on is written specifically for social housing.

The Chairperson:

Obviously, clause 75 is about contributions.

Ms Smith:

Clause 75 will allow for the money to be transferred from the developer to the planning authority or to a Northern Ireland Department. It does not say anything about how it should be used. It provides an opportunity — it is enabling.

The Chairperson:

I wanted clarification on another planning policy statement. I look forward to going through that one as well.

Thank you for your time. No doubt we will be seeing you soon.