Northern Ireland
Assembly

COMMITTEE FOR THE ENVIRONMENT

OFFICIAL REPORT (Hansard)

Planning Bill

26 January 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Cathal Boylan (Chairperson)
Mr Trevor Clarke
Mr Willie Clarke
Mr Danny Kinahan
Mr Alastair Ross
Mr George Savage
Mr Brian Wilson

Witnesses:

Councillor Jack Beattie	)	
Councillor Arnold Hatch	)	Northern Ireland Local Government Association
Mr David McCammick	)	
Councillor John O'Kane	)	
Ms Catherine Blease	)	Northern Ireland Housing Executive
Ms Esther Christie	)	
Mrs Maire Campbell	)	Planning Appeals Commission
Mr Trevor Rue	)	
Ms Laverne Bell	)	Quarry Products Association (Northern Ireland) Limited
Ms Diana Thompson	)	Royal Town Planning Institute
Mr David Worthington	)	

Mr Ben Collins)
Liam Dornan) Royal Institution of Chartered Surveyors
Ms Diana Fitzsimmons)
Mr Bill Morrison)

The Chairperson: (Mr Boylan):

Our first presentation is from the Local Government Association. I welcome David McCammick, chief executive of Antrim Borough Council; Councillor Jack Beattie; Councillor John O'Kane and Councillor Arnold Hatch. I have met you all before. I apologise for the fact that we are running late, what with the traffic and everything else. I will open it up to you, and then I will open it up to members for questions. Perhaps you can highlight the key points in your paper; that will leave more time for members to ask questions.

Councillor Jack Beattie (Northern Ireland Local Government Association):

We have it written down in some sort of order.

Thank you for seeing us again. Each of us will present one or two key issues that we want to highlight from our written evidence. The comments on specific clauses are in our written response. We are happy to answer queries on those comments, but we have decided to present our strategic concerns.

My first concern is timing. The Planning Bill is vital to local government and is another stage of a long policy development process. The Northern Ireland Local Government Association (NILGA) has facilitated local government to develop policy positions and responses since the beginning of the reform process and is keen that that process comes to satisfactory fruition. However, local government is deeply concerned by the time frame in which the Bill is expected to pass through the Assembly, and we need time to undertake a comprehensive and detailed study of the Bill.

Many of the reforms that are proposed in the Bill may be good reforms, but the extreme time pressure is hampering our ability to properly scrutinise and examine the implications of the legislation. That increases the risk that large parts of the legislation will need to be amended in the early stages of the next Assembly. Local government would value the opportunity to go

through the Bill in greater detail, but time has not permitted us to do that.

We are consulting with the sector on how it wants to proceed, as the view has been expressed by many of our members and officers that the process of the Bill should be suspended until local government reform legislation can be introduced. Although it would be preferable to have a wider context in which to progress the Planning Bill, we realise that that may not be possible and that there is a very tight timescale. Local government does not believe that the legislation should be rushed and, if the Environment Committee shares that concern, proposes that, at the very least, a review mechanism should be built into the Bill as a safeguard.

NILGA is meeting on Friday to assess the strength of feeling on a potential suspension of the legislative process until the local government reform legislation is introduced. Of course, we realise that such a delay could cause consistency issues between this Assembly and the next Assembly and would impact on the reform programme for both planning and local government. However, a wider discussion within the sector is needed before we can give you a definite view on the proposed approach.

Councillor Arnold Hatch (Northern Ireland Local Government Association):
Thank you for the opportunity to present this evidence today. I will concentrate on resources and capacity, because there is a big concern about how much this is going to cost.

I want to highlight the principle of cost neutrality. In other words, the reforms should not cost the ratepayer any more money. The cost may be adjusted in terms of the regional rate and the district rate, but whatever that cost is, it will be coming off the regional rate and going on to the district rate so that, in total, it makes no difference to the ratepayer. That is the principle under which we have always operated: cost neutrality. We also need to build up the capacity of our members.

One of the main concerns about the whole programme of local government planning reform is about ensuring that the cost is neutral to the ratepayer. We are not satisfied that sufficient funding will be provided or that the new fees system will be appropriate or adequate to cover the cost of the service, once transferred. The service will not be self-supporting through fees, because that

would make fees far too high for people to operate.

We are not sure that satisfactory work has taken place to estimate costs or to develop a business case. Fees, even if increased, will be insufficient to cover costs. We note that enforcement and local government planning will not be covered by fees and are left to wonder how those services will be paid for.

Of additional concern are the proposals for compensation arrangements. Local government totally rejects clause 184(7), which leaves councils liable for bad decisions by the Department. That is reminiscent of the Northern Ireland Water situation and the gritting of footpaths; an attempt was made to put liability on councils. We reject that entirely. We feel that, if we do the job sufficiently well and within the rules and parameters, we should not be liable for bad decisions that may result from policies set by the Assembly.

NILGA argues strongly that the transfer of this service should be cost neutral to the citizen. Although we would value discussions with the Department and the Committee as to how cost neutrality will be assessed, we are not sure that there will be an independent assessment of those costs. That is because we have been trying since March 2009 to elicit good, reliable figures for costings from the Department and the Planning Service.

We are also concerned about the potential implications of the Department of the Environment's (DOE) budget plans, given that £4·9 million of savings have been identified as coming from planning, in addition to the severe reduction in staffing that the Planning Service experienced this year. Local government would value an early conversation with senior departmental officials on the funding of planning. Much greater transparency is needed on the finances of the planning system. We need an evidence base as a matter of priority to ensure that we build a sustainable system.

Preparation for the transfer of planning to councils needs to take place. As part of that, a huge capacity-building exercise is needed for elected members, officers who will transfer and existing local government officers to develop understanding and expertise in running the new system. At the very least, a training programme and scenario role-playing events are needed, and it is not

known where funding will come from to facilitate that necessary aspect of transfer. We are aware that the Minister has suggested pilot programmes to start in April, but there is no detail on those as yet and there is substantial concern about the governance of such pilots.

Councillor John O'Kane (Northern Ireland Local Government Association):

Local government considers governance to be a key issue in ensuring confidence in the post-transfer planning system. There are two aspects to our concerns. First, there is the structural governance that will cover decision-making responsibilities, structures and accountability of officers and members, which involves things like the change from six district offices to five area offices, etc. The second aspect of concern is the behavioural governance, to cover a mandatory code of conduct, ethical standards and other safeguards. Incidentally, a mandatory code of conduct was to have been introduced by 2011. That, of course, did not happen, although some good work by engaging with policy development panel (PDP) A. An interesting part of that was that there was a section in it that was to deal with planning. That section is blank — it never happened. I can let members see that if they wish.

NILGA cannot overemphasise the importance of the new governance policy to local government. As I said, the document on local government reform policy proposals is out for consultation at the moment. That deals with all the governance issues of the new councils. If and when they come into being, there will be a section specifically on planning. Therefore, we cannot overemphasise the importance of the new governance policy, and we are deeply concerned about how the proposed pilots will operate from March or April this year, in the absence of appropriate governance codes and legal protections.

We are also concerned about the lack of clarity on the demarcation between the Department and the councils' responsibilities, and how issues such as the development planning system and staffing responsibilities will operate should councils agree to work in clusters. There has not been enough engagement on those issues between local government and the Department. NILGA would value engaging with the Department to develop regulations, guidance and protocols to ensure that consistency in approach across local government is achievable and operational from the date of transfer.

We are unable to assume that such engagement will automatically take place, because all engagement with local government ceased when the strategic leadership board (SLB) ceased to meet in April 2010. The PDPs also ceased to operate from that date. We appreciate that there was meaningful engagement beforehand with departmental officials, but all of that has ceased.

More clarity is needed on the Department's role post-transfer. It is very clear from this Bill that the Department will hold a great deal of power over councils and an ability to intervene in some areas of work, even though councils will be financially responsible for the service. Again, engagement with the sector is necessary to obtain clarification on these issues of concern.

We must ensure that the legislation strengthens democratic accountability and that councils are the driver within the new system. Some kind of check on departmental powers is required, particularly given the financial implications for councils. We ask the Committee to ensure that Planning Service determinations, rulings and their outcomes, and any associated liabilities, will be retained as the sole responsibility and liability of the Planning Service as a government department. We believe that that can be enshrined in legislation. It is worth noting that, in the handover from councils to the Planning Service in 1972-73, liability for incomplete planning determinations was passed on to the service.

In conclusion, we welcome and look forward to the opportunities for place-shaping, etc that the return of planning powers to councils will give us, but we have a lot of concerns, particularly about the lack of meaningful engagement over the past year or so in the run-up to this. We think that the local government reorganisation Bill should have come before this Bill. That would include all the governance issues that I have raised.

Mr David McCammick (Northern Ireland Local Government Association):
I have been asked to speak on some of the implementation issues, and I will pull together some of the things that have been said.

Local government is pragmatic and capable of implementation when provided with the relevant information and resources. That does not appear to be readily available for the Planning Service at the moment. We are responding in a partial vacuum, and, as a result, we may have

more questions about planning than answers. We believe that development planning should be integrated with the local government reform, particularly the community planning provisions, but they will be provided for through separate proposed legislation — the reorganisation Bill, which is currently out for policy consultation.

How do we deal with the queries about the integration and implications between the Bills, when the two key pieces have not been launched together? That is particularly important in respect of the governance issues, their arrangements and structures that Councillor O'Kane has just spoken about. Local government may have its own view on some structures, particularly delivery structures.

I will talk a wee bit about communication on the development of this between the parties, and by parties I mean the sector and the Department. During communications about plans, facts and figures and so on, it helps to develop an understanding and confidence about what is planned. It is difficult to sustain confidence in the absence of that. For local government to confidently consider the implementation of a new planning regime, a number of things need to be dealt with initially, such as information about the old and new finance and funding models for the Planning Service. We are looking at that from a point of view of risk to the council.

There are questions about human resources (HR). What is the staffing complement, the structures, skills, expertise, location, contractual entitlements and industrial relations issues? I could go on; HR is very complicated. What about IT hardware and software? What are the specifications and performance requirements, and what are the contractual considerations there? Clarity is required on those issues and others, including assets, office accommodation, contractual issues around which we have no information on, and generally speaking, liabilities.

What are the transitional arrangements to move to this new regime? What is the time frame, and is there a transfer plan or a project plan for the new way of development? That is important when you remember that we are concerned about the current status of area planning systems. Plans in council areas are at different stages; mine is in critical need of a plan, as it is way out of date. There needs to be some clarity about how existing plans will merge into the new planning regime, and how local policies are going to integrate into regional policy. The regional

development strategy (RDS) has just been released for its 10-year review consultation, which is a material consideration.

We are worried about the practicalities of introducing a stringent new regime into a system that is in serious arrears. We suggest that additional resources are put by the Department into the area planning team in the run-up to transfer to ensure that plans are moved on a bit, but we acknowledge the economic conditions that we are operating in.

There are other issues, including developing the understanding and demarcation between the roles and responsibilities of councils and Departments, especially around the powers of intervention and scrutiny. There are other implications that have been mentioned in respect of the Planning Bill and the compensation requirements, and clarification on what that might mean for local government.

As a council chief executive, I am required to produce an annual governance statement, supported by various papers and business plans, covering the affairs of the organisation at the time, including risks. I am unable to make an informed judgement about the implications of the transfer of planning to councils, due to the inadequacy of the relevant business information. A due diligence exercise is required, and for that I need information.

In respect of capacity building, we do not have the skills and understanding required to deliver the service at the moment, which makes it difficult to design delivery arrangements suitable for councils. Therefore, regard must also be given to a new role for local government and council officers and the cultural implications of that.

In conclusion, we welcome the proposals, but we need more time to get the sector to a position where there is sufficient confidence to take on and deliver an acceptable standard of service based on the new regime. With the right resources and arrangements designed in partnership between the sector and the Department, I am confident that local government can deliver a new, improved planning service. We are not familiar with the legislative process and how to set back the Bill, or whatever the proper term is, and we are not rejecting it. We simply want more time, and we want to consider it in the context of the reorganisation Bill.

The Chairperson:

OK. Thank you very much. On the Floor of the House, all parties agreed to take the Bill on board, and it has now come to the Committee. We have a process to go through, and we will report on it. Then the Bill will go to the Floor of the House, and it will be down to the parties what decisions can and will be made. Therefore, the Committee needs to take on as much information as possible to try to influence the outcome of the Bill. There is no doubt that there are some good parts to the Bill; it is clearly evident. However, from the responses that we have received, there are a lot of questions to be answered. NILGA and many other organisations have raised a number of issues.

For clarification, we propose to take all the points on board, and we will ask the Department to respond before we make any decisions. As you know, there will be an opportunity through the clause-by-clause phase to change and ask questions.

With regard to your presentation, I agree that timing is an issue, but there is a process to follow through. I will ask the Committee to support me in respect of a review, whether it is a two-year review or a transitional period or whatever. We will ask the Department to ensure that there is a review and to see how it will operate and how it will be implemented. I do not think that members will have any issues or concerns about that, and I am sure that we will get support for that.

You also mentioned the lack of communication in respect of the planning issue. Our understanding is that until the governance arrangements are in place, the Bill will not be implemented, which is fine. You said that we should have had the governance in place before the planning.

There was a lot of good communication and a lot of work done with the strategic leadership board, but you said that it stopped in March or April. Is there anything that we can bring forward from those talks? Did you make any progress in relation to that in partnership, or has that all gone?

Cllr Hatch:

That evidence is still available and can be picked up on.

The Chairperson:

Are you going down the right route with that? Are you content with that?

Cllr Hatch:

Yes.

The Chairperson:

OK.

Cllr Hatch:

Would it be helpful if we sent that to the Committee?

The Chairperson:

It certainly would, but I know that, unfortunately, that part was exclusive of planning. There may have been some talk, but this process was clearly not talked about.

Cllr Hatch:

The principles are similar.

The Chairperson:

Yes, they are. There has been consultation, but that has been on the broad principles as opposed to the fine detail that we have today. You brought up the communication issue in your presentation.

Cllr O'Kane:

In the past, there were regular meetings. Now that the SLB is not meeting, the paths have ceased meeting, although the work and the evidence is still there and can be looked at again. There used to be regular meetings between the Department, for instance, and NILGA, which is the voice of local government. It is impossible to go around all the different councils. As far as I know, there

used to be a regular quarterly meeting between NILGA, as the voice of local government, and the Department. That is when issues could be tabled. That has not happened. There may be some sort of ad hoc communications, but they are no substitute for regular structured meetings.

The Chairperson:

Like I said, we will ask the planning officials who are here about how that communication gap will be sorted out over the next period depending on what happens with the Bill. The message should be that communication is needed now, and the issues in the Bill need to be addressed.

Resources and capacity building are major issues for us. All of the responses that we have had to date have highlighted that. As a former councillor, I agree that there needs to be capacity building in terms of councils and how they propose to go through all of that.

David talked about the funding model, and the Committee has asked about that on a number of occasions. To be honest, and I will say this to the planning staff, even when we talked about budgets here, the money from planning receipts during the good period was certainly not pumped back into planning. It should not be regarded as being on planning receipts only. We would like to see a proper funding model for the delivery of planning. That needs to be done in tandem with local government.

Cllr Hatch:

Local government is not afraid to make its contribution and to utilise building control services and the regulatory side of council functions to get some sort of synergy when planning does come over. However, getting a properly agreed funding model on which there is clarity is of key importance.

The Chairperson:

You talked about cost neutrality.

Cllr Beattie:

Yes.

The Chairperson:

I am just picking up on points that were made. We will pass all of those points on.

You also mentioned governance. We have talked to the Department about that when its officials have come up. Certainly, the local government reorganisation Bill will have to be moved forward, and hopefully that will happen in the next mandate. As I said, this will not be implemented, but there is a body of work to be done in this Bill to get that all ready to go.

You highlighted the issue of the independent examination. David, you talked about local policies and development plans and even an element of community planning. There has to be a connection between this process and the governance process in statute to make sure that there is complete tie-in. With regard to the independent examination, where the plans go back to the Department and are sent to the Planning Appeals Commission (PAC) and then brought back again, have you any comments on that?

Mr McCammick:

I will get back to you on that, Chairman. I do not have all the papers on it with me.

The Chairperson:

No problem; you can come back to us on whatever we need you to.

You mentioned the pilot schemes. The Committee is asking the Department about its proposals for the pilot schemes. Does NILGA have any indication about or information on those schemes?

Cllr O'Kane:

Absolutely not. At one stage away back, I think that three pilot schemes were in operation. I do not know whether those are the three that will come about. There have been so many changes since then, such as those in the Planning Service, and the three pilots were mooted about a year ago. I do not know what they are now or how they could run without governance arrangements.

Cllr Hatch:

That illustrates the lack of communication that exists. As an organisation, we should know where it is proposed the pilots will be run, how governance arrangements will be tackled and whether we will use the principles that are used for other governance issues. Those principles are fairly good, because they safeguard minorities and so on.

The Chairperson:

I totally agree, and obviously, the sooner we see that, the better. However, you made an interesting point when you said that, wherever those pilot schemes may be rolled out, the issue is about governance. I know that planning officials are here, and the Committee will put that across to them.

I will mention two other issues. You picked up on the hierarchy in development management here. We received a copy of a document that shows how the planning hierarchy is split into major, regional and minor development, but I do not think that you received that. Do you have any comments to make on that?

Cllr Beattie:

I have chaired NILGA for four or five years, and I know that changes take place in the Planning Service regularly. We go from dealing with one group of people, and another then comes in after them, and we are sort of on the outside. I think that we should have been on the inside, because, at the end of the day, we councillors will deliver all this. We have to know what money we have to deliver, what it is that we are delivering and how to resolve all the issues, such as those that the questions in our submission raise. I feel frustrated by sitting on the outside and by not being part of the process. In other words, things have been done to us instead of with us. I feel that that is a view that NILGA has held. It would like to have been more deeply involved. If NILGA had been involved earlier, some of these issues may have been addressed and may not have arisen at the last moment.

Cllr Hatch:

On the hierarchy issue, we have not had sufficient figures about the levels of staffing and so on, what their skills are and what it is proposed will be transferred. At my council meeting on

Monday night, I received some figures that were produced by the Northern Ireland Public Service Alliance (NIPSA), not by the Department. Obviously, therefore, the figures are available, and it would help if they were made available to everybody.

The Chairperson:

Arnold, I think that you touched on enforcement. Are we saying that that should be in the model? Is it to be outside the model? Do councils have any views on that element?

Cllr Hatch:

We would like enforcement to be part of the model. However, the history to date has been that it has never been funded or implemented sufficiently well. That is an area that we need to consider so that we can make sure that it is properly resourced.

The Chairperson:

I think that you highlighted part of clause 184(7), which states of stop notices:

> "Claims under this section shall be made to and paid by the council".

Would you like to expand on or make any comments on that?

Mr McCammick:

The degree of risk that is involved for local government is a concern. Talking about something in theory is fine, but what will be the practical implications of all this coming home to roost, in a manner of speaking? There needs to be more information to support it.

The Chairperson:

As Chairperson, I thank you for your presentation. I will invite questions from other members. The Committee will seek answers from the Department to the many questions that you brought along. We will pass on those answers and liaise with you through the Committee staff, as we have in the past. That should not be a problem.

Mr Kinahan:

Thank you for your presentation. We have a mass of information to raise and follow up. However, my concern is that we are trying to implement this too fast. This is the first of five questions. Given that we went slowly and did not get anywhere with the RPA, do you believe that we could do this better if we were to do the best that we can now and put in the structures that we had for the RPA, but condense it into a shorter time frame, such as six months? The bulk of the work would then go to the new Assembly. Is it manageable, and would we be doing it better if this were the first task of the next Assembly, assuming that the next Assembly, the Minister and the Department will want to take it through?

We seem to be going round in circles about the resources. We all know that the way that it is coming at us means that we need more resources. Councils have a whole lot more to deal while they are dealing with this. From your end, is there any way that we could get a best guess of what it would cost, even if a few councils told us, so that we would have something to work with both ways? We will push the Department if we can one way, but we need some guidance from the other side

You said that you thought that the review of public administration (RPA) or local government reorganisation should be in place first. That again pushes me back to my first question of whether we should wait until the reorganisation of councils was done. You mentioned liability and governance. As the Department seems to have a mass of power, do you have any suggestions as to what sort of checks should be put in place?

Finally, do you have anything to add that we have not touched on already? Is there an extra mechanism that we should put in place with the strategic leadership boards (SLB) or policy development panels (PDP) if we were to try to do things quickly? I have asked a mass of questions, and I know that we could discuss the matter for ages.

Cllr Beattie:

We are happy with the Bill and do not want to lose it. As the Chairperson said, a review will be built into the process, which will please some of us. You referred to the fact that a council may give permission for something to go ahead, but the Department decides to put a stop to it. Who

would pick up the bill for that decision? Would it be the council, or would it be the Department, because it had decided that the project in question should stop? Also, when the Department intervened, should it have done so earlier? There is also the matter of the power that the Department has over local government. All those things need to be looked at in more detail.

Mr McCammick:

The cost issue is difficult, and we have been asking for information on it for a couple of years. To some extent, it is not helped by the fact that local government and central government account for things differently. I have experienced some of that, as my council is looking at the possibility of a business plan for planning because we are so badly out of date. However, that is only part of the formula. We are looking at ways of bringing forward part of the new regime, although not all of it. We need information from certain services.

Cllr Hatch:

Where introducing parts of it now is concerned, I presume that there would be some form of consultation as to what you were proposing to put through now and that it would be left for further clarification, development and engagement when the new Assembly is set up. My gut feeling is that that would probably be wiser.

May I be excused? I have a bus to catch.

The Chairperson:

It is good to see that you are using public transport.

Cllr O'Kane:

The RPA was dragged out — very much so — although a lot of good work was done. Of course, as everyone says, the devil is in the detail, and, to prevent problems from arising in the future, you must get the details right and not rush things. However, we all have a tendency to take things to the ultimate and then debate and deliberate and so on.

There needs to be some mechanism for debating these issues. At the moment, there is no partnership between central and local government. Without being offensive to anyone, the

partnership is a bit like that between Fianna Fáil and the Green Party, where the communication was absolutely nil and was done through the media. That is the type of communication that we have.

I do not know what the mechanism would be. There could be reluctance to set it. The SLB and its predecessor, which was a policy panel whose name I forget, was a useful interface, and many proposals came forward from those panels. When people got down to teasing the proposals out, changes were made, and that delayed the process. The process was probably dragged out because of uncertainty about the local government reorganisation Bill and the boundaries, etc, and inertia set in.

There needs to be an interface between local government and central government. Along with dealing with all the governance issues, the PDP was to be a central/local government partnership forum. That was one of the last things that never got done, because everything stopped. It was envisaged that Departments would meet with representatives from local government on a need-to basis every quarter. In Wales, Departments meet on a statutory basis with local councils every so often. I think that that happens in Scotland, but I am not sure about England.

A lot of good work was done, and a lot of it can be picked up again. For instance, there was a lot of detail in the mandatory code of conduct, and the Department suggested proposals to that. When we got our teeth into it, quite a lot of things were amended. There used to be a quarterly interface between NILGA and the Department, which seems to have ceased, but I stand to be corrected. I am not a member of NILGA's officers group, but I think that that may be a starting point for exploring the issue. If it is going to be a partnership, there must be engagement. That is what we are looking for.

I pay tribute to the departmental officials who serviced those PDPs. Two members from each political party were also on the panel, and we spent some time deliberating all those issues, including the code of conduct and council constitutions. However, planning was the issue that we never got our teeth into. That section on that was blank, but we got some papers from the Convention of Scottish Local Authorities (COSLA) about what should be in it.

The Chairperson:

I do not think that we will follow the Fianna Fáil/Green Party model, to be honest with you. I think that it is time to move on from that. I did not think that that would be mentioned in this Committee.

Cllr O'Kane:

Every council, even under the new regime here, will have to have a code of conduct, which the Department may set. In Scotland and England, councils devised their own template for a code of conduct for planning, and I know that COSLA did the same.

The English model is very bureaucratic, and we do not envisage adopting it. The COSLA model has been in place for several years, but it has been regularly amended. Therefore, there are obviously teething problems with those models.

The Chairperson:

There definitely are. However, we will get the right model in the end.

Cllr O'Kane:

People will have to be educated. For example, in the new dispensation, how will planning agents approach councillors? How will the public approach councillors? How will councillors respond if a planning agent or a member of the public comes to them? For instance, if somebody said something about the incinerator in Glenavy, and a decision had to be made on it, that person would have to absent themselves. The English have a ridiculous situation whereby if one person lived in a row of terraced houses and a second person at the end of the street applied for an extension, the first person would have to exclude themselves because giving the other party a decision might be an advantage to the first.

The Chairperson:

We can argue about the issue all day. Governance and reorganisation are key elements of the issue, but we will stick to the Planning Bill for now.

Mr W Clarke:

Thank you for your presentation. I declare an interest as a local councillor in Down District Council.

This system will obviously be a major culture shock to a lot of people and different organisations, including councillors and the Department. There are lessons to be learned about planning reform from England and Wales, as well as from the South. Have you engaged with your equivalents about their experiences, how they have coped and what they would do differently?

I agree with what you said about partnership and communication. I have gone through a number of Bills now, and I can see that, in this instance, partnership and communication are not good enough. This is not a criticism of the Department, but I think that there needs to be an equal footing whereby both parties can sit down at an early stage and work through the process. They could even do that on a fortnightly basis. That sort of relationship needs to be built up. Coming to this Bill was a culture shock to the Committee in trying to get our heads around what we are trying to deal with. Therefore, I think that lessons need to be learned. People need to sit down regularly to work through all this. It is as though we legislate and you then do what we tell you. That is not going to work; we need to come together. Therefore, we need to tell the Department that that must happen.

A lot of work on capacity building training for our councillors needs to be done. Councils are very weak on training for councillors. I will not go into my personal experiences, but I know that any time that someone tried to do a training course, they were refused because of cost or some other reason. That is a serious issue that NILGA needs to examine.

I also asked the Department about the pilot schemes. We need to manage that change. We need to get all the agencies round the table, and we need the resources to do that. That has to happen in all areas, not just in three. There is no way that some councils can be discriminated against and left behind in the process.

We have been told that councils had to come forward to the Department and declare that they

wanted to do a pilot scheme, either through the transitional committee or through a cluster. The onus was on the councils to come forward and say that they wanted to take part. That was the first I had heard of that, and I am a councillor, so I was a bit alarmed. In reality, we need to sit down and work through this for a couple of years.

The other issue is that of third-party appeals. What is the membership's opinion about that? It is obviously pretty divided.

Cllr O'Kane:

There is no settled view as yet. That is a contentious issue, and there are difficulties about it even within parties. It could become a begrudgers' charter as opposed to being a protection for the community. That is an issue that NILGA has not had time to discuss yet, but I envisage that we will be discussing it on Friday. Jack knows more about it, because he is on the planning committee. I envisage that it will be carefully considered. I do not know what the actual decision will be. There are pros and cons to the matter.

Cllr Beattie:

There has been consultation with others. We went across to Scotland and saw the model operating there. For example, there was a guy who wanted to build a golf club, and there was an issue when a councillor went along to meet him at some sort of presentation but was debarred from whatever else happened. That shows that the code of conduct is very strict.

Third-party appeals are a contentious issue. I believe that you have to take on board third-party concerns, but, at the same time, they can be an impediment to good decisions going forward that need to do so quickly. Trying to strike that balance is very difficult. As I said, we have looked at what is going on elsewhere. England and the model that is used there were mentioned. However, the English model is a wee bit too restrictive. The problem is trying to get something that can work.

There are questions about the process. Where communication is concerned, I would have liked to have seen the Department working with us along the way, but, for different reasons in the Department, that did not happen. For example, the Department was not expecting the downturn

in the economy. It wanted us to take on around 300 staff in local government, which we could not have done. Problems occurred that were beyond our control, but, nevertheless, I think that we should have been consulted more often. We are still consulting with the Department; we have a meeting with Ian Maye on 2 February, so I think that perhaps now we are getting down to the nitty-gritty. However, I would have been happier if we could have done that earlier.

Mr W Clarke:

What is NILGA's position on the pilot schemes? Is it calling for councils to come forward to get involved in the pilot schemes?

Mr McCammick:

I understand that the Minister called for volunteers when he made his announcement just before Christmas. The timing in trying to deal with this has not been brilliant. There are so many aspects to it, and I understand there has been no joined-up conversation about which councils the pilot schemes could or should be run in. A call for volunteers was made, and, at this point in time, I am not aware that any hands were put up. However, I am sure that some will.

Mr W Clarke:

It is important that all councils are involved in the pilot schemes, even if there is just a representative group. A pilot scheme is no good to me, to tell you the truth, because there is so much work to be done that I am afraid that we will sleepwalk into it.

Cllr O'Kane:

Back when pilot schemes were first mentioned, the problem was that the Planning Service would not have had the capacity to service a lot of them.

Mr Ross:

I would point out that, if the scheme were rolled out everywhere, it would not be a pilot.

Mr W Clarke:

No, we could have them in clusters.

Mr Ross:

If it were everywhere, it would not be a pilot.

Mr W Clarke:

If we had big enough pilot schemes, we could have three that could be clustered.

Mr McCammick:

In calling for three or four councils to volunteer to run the pilot schemes from April this year, I understand that the Minister had a notion to roll it out across all councils by April 2012. The Minister wants to try to do it quite quickly and to tease out what problems there may be in managing the new system. However, as I said, I am not aware of any volunteers.

Mr W Clarke:

I want to make a point about capacity training for councillors. In my opinion, a training course for councillors must be set up now for community planning and planning responsibilities.

Cllr O'Kane:

Community planning is a huge issue, and different people have differing definitions of what it is. The expectations that everybody, including councillors, has of community planning are away up there somewhere. The requirement to engage with the community is also a serious issue that has to be addressed.

The Chairperson:

I know that, and we will. I am mindful of the time and that we are going over issues that we have talked about already. We will ask the Department about the pilot schemes. There have to be clear pilot schemes, but the key to all that is the review period and how that is rolled out.

Mr Savage:

Thanks for your presentation, gentlemen. All the delegations that I have heard present evidence to the Committee have welcomed the proposals. I am speaking now as a councillor on Craigavon Borough Council. When I joined the council, all the councillors were looking for more power. Now that power is within our grasp, we have to realise one thing, which is that with power comes

responsibility.

I can understand the position that you are in, Mr McCammick. At present, councillors can shirk their planning responsibility and leave it to the planners. That responsibility will now rest with the councillors, and, ultimately, it will rebound back on to chief executives such as yourselves. You are quite right to be concerned about that.

However, I will come back to Mr O'Kane's point. You said that there has been a breakdown in communication over the past months, or for however long. You also said that there used to be quarterly meetings, so if there has been that breakdown in communication, the stage has been reached where quarterly meetings are not much use. There would need to be monthly meetings so that everybody can keep up to speed with what is going on. I think that time is important in all this.

When we listen to all that is being said about the Bill, which is only one aspect of local government reorganisation, we see why it has not taken place. I think that it is because so many people have been shirking their responsibilities. Whoever is in place after the next elections will have a responsibility, and the code of conduct will have to be adhered to. Training may be involved in the process.

There will be a big responsibility on whoever is going to be elected. If we look to give more power to local government, we cannot shirk those responsibilities. We have to face up to them. I do not envy you your job, Mr McCammick.

Cllr Beattie:

I agree. I know that that is the case, and I said at a meeting in Craigavon that we are now in the driving seat. However, the question is about what we are driving. If I can get that sorted out, we will know exactly where we are, including with the code of conduct and everything else.

The Chairperson:

It is a big job and a big undertaking, but you are up for it.

Mr B Wilson:

I declare an interest as a member of NILGA and as a councillor for North Down. I am interested in how the council will deal with the planning applications. A lot of applications will be decided by the planning officer, and a percentage will come to the council. What percentage will be determined automatically by the planning officer?

When applications come to the council, will a specific committee be set up to deal with planning, or will the full council be involved? If the full council will be involved, councillors will perhaps be unable to get involved in campaigns against planning applications.

The Chairperson:

Excuse me, Mr Wilson, I will just interrupt you. As Councillor O'Kane outlined, influence means that a corporate council cannot be involved. If the application is for somewhere in your area, for example, you would have to step out of that decision-making process.

Cllr O'Kane:

You are talking about the new arrangement. At present, planning officers deal with non-contentious planning applications in the streamlined system. That is working, and an increasing number of planning applications are going through that system. When the Bill comes in, councils will be required to introduce a scheme of delegation. In other words, they will delegate powers to planning officers, or a streamlined planning committee could deal with planning applications. That planning officer or streamlined committee with delegated powers will be able to make decisions, and they will not have to go back through the council's body corporate.

Every council will have to have a standards committee to protect people against abuses. If there are complaints, every council will be required to have a standards committee and a monitoring officer. However, there is an issue about whether every council can afford to have a monitoring officer. Complaints will then be assessed and dealt with.

Mr B Wilson:

Will the streamlined procedure take 80% of the applications, or will it take 20%?

Cllr O'Kane:

I am not sure how many it will take, but it is taking an increasing number, and it is working very effectively.

The Chairperson:

I am mindful of the question, but we are getting into the specifics of the Bill. The issue is that councils, like everybody else, will have to adhere to planning policy statements (PPS), area plans and the regional development strategy. That is all in the criteria. I do not mind the question being asked, but I do not want to get into the specifics, because there is no way that any council can tell whether it is taking 80% or 60%.

There is going to be a formula, and you mentioned the schemes of delegation. If you see anything in that that we need to amend, or if you have any questions about it, we will need to clarify the issues from the Department's point of view. If you are not happy with it, we will need to look at amending it.

I want to reiterate your earlier point, Councillor O'Kane. It is a valid point about whether councillors can influence decisions. The public will ask who they are voting in and why.

Cllr O'Kane:

They will ask what is going on.

The Chairperson:

Exactly. To move it up a further stage, it is the same as MLAs also being councillors. They are up here making regulations and decisions, and then they are up and down to councils. However, we will not get into that argument today.

Thank you for your presentations, gentlemen. No doubt we will be in contact with you.

Cllr Beattie:

Thank you for listening to us. We have a meeting on Friday, and we will forward some of the outcomes from that to you.

The Chairperson:

Thank you.

We will now receive oral evidence from the NI Housing Executive. I welcome Esther Christie, who is the assistant director of corporate planning in the Northern Ireland Housing Executive, and Catherine Blease. You are both very welcome. The procedure is that you make a presentation, after which I will invite members to ask questions.

Ms Esther Christie (Northern Ireland Housing Executive):

I have copies of my presentation if you would like us to hand them out.

The Chairperson:

If you have enough copies, please send them around.

Ms Christie:

It is a slightly more condensed version of our submission, which might be helpful.

Thank you very much for the invitation to give the Housing Executive's response to the Planning Bill. There are detailed comments and summarised recommendations on the Planning Bill in our handout. In view of the time constraint, if you do not mind, I will try to focus on our nine recommendations, which are listed in the handout. If I have any further time at the end, I may come back to some of the supporting comments, if that is alright with you.

The Housing Executive is generally content with the majority of the proposals in the Planning Bill. Our comments relate to Part 1 of the Bill, which deals with functions of the Department of the Environment with respect to the development of land; Part 2, which deals with local development plans; and Parts 3 and 4.

In the handout, you will see an outline of the Housing Executive's role as the strategic housing authority and as a key stakeholder in all levels of the planning system in Northern Ireland. The Housing Executive looks forward to developing a close working relationship with the new

planning authority in Northern Ireland, particularly in the areas of community planning, local development plans and planning application matters.

In general, we are content with Part 1. We offer supporting comments on Part 1 in the handout; I do not intend to dwell on those now.

Our first recommendation relates to Part 2, which deals with local development plans. The Housing Executive would like clarification on clause 6(3). That clause states that, where there is a conflict between two plan policies within one development plan, the previous adopted plan should be referred to for the resolution. That may not be appropriate; it may be preferable to defer to the Department to resolve any conflicting matters. We have some details of that in our submission, which I can return to if you would like.

The second recommendation on Part 2 is on clause 8(5), which we would like to see amended. That clause states that the council must take account of the RDS when preparing the plan strategy. Our view is that it would be preferable to retain the requirement for development plans to be in general conformity with the RDS.

Clauses 13 and 14 legislate for the council to review and revise local plans at such time as the Department describes or when the council deems necessary. Our third recommendation is that a standard time frame for the lifespan of a development plan and plan review would be preferable, particularly to stakeholders, who should then be expected to engage in the development plan revision process.

Fourthly, the Planning Bill does not seem to require a statutory link between the community plan and the development plan. In England and Wales, according to the Planning and Compulsory Purchase Act 2004, there is a duty that the:

"planning authority must have regard to— …

(f) the community strategy prepared by the authority".

The Housing Executive supports the inclusion of such a clause in the Planning Bill, to ensure that any community strategies are closely tied-in to the development plan process.

Moving on to Part 3 of the Bill, which is about planning control, our fifth recommendation is

around clause 24(2), which states:

"Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used".

The Housing Executive's view is that that clause is widely open to interpretation, and we feel that further clarification is required.

Our sixth recommendation is that we feel a definition and further details of what constitutes local and major developments should be set out in regional policy, possibly in the review of PPS 1. The Housing Executive would like to highlight that an agreement was made with the Planning Service that planning applications for social housing would be defined as major developments, and would, therefore, have pre-application discussion and performance agreements, which would apply to all social housing applications. We would like the Department to confirm that that agreement is still in place and will be addressed in secondary legislation and policy guidance.

Our seventh recommendation relates to clause 58, which states that an applicant may appeal a planning decision if their application for planning permission is refused or to remove a planning condition. The Housing Executive feels that clause 58 should revisit the potential for third-party appeals to be introduced, as was pointed out in the reform of the planning system report.

Our eighth recommendation relates to clause 60(1), which states that, where planning permission has been granted, development must be started within five years of the date on which permission was granted, or another period that may be longer or shorter, as specified by the council or the Department. The Housing Executive is concerned that any longer duration of planning permission may encourage land banking, which could lead to a shortage of development in the future as well as price inflation. It could also result in a lack of revenue for planning authorities if timescales for planning applications are too long and drawn out.

Our final recommendation relates to the fact that the Planning Bill is silent on developer contributions. In the 'Reform of the Planning System in Northern Ireland' report, the Department argued that it is right that developers contribute to the provision of infrastructure. We feel that the Planning Bill should revisit that particular aspect.

That concludes our recommendations. If I have the time, I could go over some of the

supporting comments.

The Chairperson:
Go ahead.

Ms Christie:
Thank you very much.

I return to Part 1, which refers to the functions of the Department of the Environment. The Housing Executive supports clause 1, which states that the Department will retain responsibility for formulating planning policy, which should be in general conformity with the RDS. We also support the idea that all planning policy should contribute to the achievement of sustainable development. Secondly, the Housing Executive supports clause 2, which requires the Department to prepare a statement of community involvement.

With regard to Part 2, which deals with local development plans, the Housing Executive supports clauses 4 and 5, which require a council to prepare a statement of community involvement when preparing development plans. The Housing Executive welcomes the fact that the development plan should contain two parts: a plan strategy and a local policies plan. Together, clauses 6, 8 and 9 state that the plan strategy should be adopted before the local policies plan is prepared.

The Housing Executive welcomes clause 17, which facilitates the joint working of two or more councils on a joint development plan. It also welcomes legislation supporting the Department's monitoring, production, examination and review of development plans, which would ensure consistency in approach across all council areas.

Finally, the Housing Executive supports clauses 46 to 49, which provide powers to decline to determine applications. A planning authority would be able to send back applications that are, in essence, duplicate, as there are no significant changes to material consideration. We feel that that is a very good efficiency measure that should facilitate the delivery of more efficient working practices for the planning authority and consultees.

That concludes my presentation, which I hope was helpful.

The Chairperson:

Thank you for your presentation. You have raised a lot of questions, and we may be asking the Department more questions. However, I want to go over one or two of your points. You have clarified your first recommendation, which relates to clause 6(3).

You referred to land banking, which has been a problem. Given the current economic situation, people have come to the Committee and asked about single houses as opposed to what you are talking about. Do we need to narrow down the type of development to stop the process of land banking, or are we looking at a front-loading system where everyone is involved and, hopefully, we will have community involvement?

Ms Christie:

The Housing Executive is looking at it from the perspective of supply and demand at a general level. We encountered an enormous problem before the market crash when land was in scarce supply. That meant that prices were very inflated, and that pushed the cost of developing social housing in particular, which is our main concern, through the roof. If the duration of planning permissions were to be widely extended beyond the five years, there could be an opportunity to lose control over the land supply issue. At least it is one measure that local planning authorities could enact to ensure that there is an adequate supply of land in their local area. We ask the Committee and the DOE to look seriously at that matter again.

The Chairperson:

For clarification, am I right in thinking that the identified need for housing will play a big role in that?

Ms Christie:

Yes. Under its statutory remit, the Housing Executive is there to assess housing need, and it carries out that function. The Planning Service and the new planning authority will be there to identify sufficient supply of development land. The difficulty arises when it does not have any

control over the supply of land that exceeds a reasonable statutory period of approval, and land banking, thereby, takes place. A scarcity of land in any council area will impact on the ability to supply much-needed social housing in particular, which is our main concern, and we ask the Department to look seriously at that issue again.

The Chairperson:

Thanks for bringing up that point. I am trying to pick up points that have not been addressed by other respondents. The land banking issue certainly needs to be looked at. A lot of people are now offering their land for social housing, which may be a sign of the market conditions, but it is something to think about.

I want to talk about your recommendation concerning the link between the community plan and the development plan. We talked earlier about reorganisation and governance and the whole tie-in. That needs to be in statute or tied-in in some way.

Ms Christie:

Absolutely. We thought that it was very interesting that the Planning Bill did not have specific reference to that, unlike the English and Welsh example. There may be an opportunity for the Department to look at that again to see whether there could be some sort of linkage there. That is our fourth recommendation.

The Chairperson:

That is a valid point. In respect of recommendation six, obviously PPS 1 will change. Will you expand on that?

Ms Christie:

Our particular interest is in ensuring that social housing is defined as major development in the regional policy plan guidance. That is very important because we have a protocol with the Planning Service whereby there are pre-application discussions for all social housing scheme applications. We feel that that is extremely helpful because it ensures that a planning application is right the first time, and it saves time at the end of the process.

We would like an assurance that social housing will be a major development category that will be taken forward in secondary legislation and policy guidance. We would like the Department to reassure us that that will happen. A number of social housing schemes are in the size threshold below that set for major planning developments as outlined in the reform of the planning system report of July 2009. It is imperative that the protocol that we have with the Planning Service in respect of pre-application discussions for social housing schemes continues into the future.

The Chairperson:

Funnily enough, I think that yours is the first response that I have read that mentions performance agreements, which is an issue that needs to be looked at. However, I want to talk about pre-application discussions. The Planning Service can direct applicants, but it cannot say one way or another in those discussions whether someone is going down the route of an approval. Some people have told me that they have had those discussions, but they were only discussions. In your experience, is there any way that we can open that up a bit more?

Ms Christie:

We looked at the pre-application discussions as focusing in on the planning application and giving an indication as to whether an application needed to be improved in its design or form or whether there were access issues that needed to be addressed. That allows the detailed planning application to be improved and enables the planning officer to have all the relevant material to handle the application once it is formally submitted to them. It is an efficiency measure because it saves the planner time, and there is less toing and froing between the applicant and the planning officer. We have found that social housing schemes, even if they are small, are never easy. Therefore, anything that saves time for the planning authority and for us is definitely to be welcomed.

The Chairperson:

Do you want to expand a bit on the performance agreements? What do you see in them? Where do you think that they should go?

Ms Christie:

Performance agreements are extremely important. Resource planning is certainly going to be a

critical issue for the planning authorities. The pre-application discussion and performance agreements help to project-manage the entire workload. Therefore, planning applications that fit the category and are permitted to have pre-application discussions and performance agreements are going to fare best, I would think. I certainly think that pre-application discussions and performance agreements are a fundamental part of the resource management of the new planning authorities.

The Chairperson:

Clause 10 deals with independent examination. How does that fit with your social housing proposals, that the decision on the development of land use should go back to council?

Ms Christie:

In the development plans?

The Chairperson:

Yes. It is OK having a pre-application discussion, but, ultimately, if we are trying to include everybody, it will come back to the council. Will you expand on how you see that?

Ms Christie:

In the development control framework we are seeking agreement that when a planning application is made for a social housing scheme, it will conform to the major scheme category. That would mean that it is facilitated by pre-application discussions, in order for the planning application to be of the right standard to enable the planning authority to make a decision on it, whether that is approval or refusal. All of the right elements should be in the planning application to enable an appropriate decision to be made on a social housing scheme. Therefore, it may well be that a better planning application goes through to the council from the planning officers with a suitable recommendation; either approval or refusal. We see it within the resource management stream in the development control side.

The Chairperson:

I have one final point. You spoke about developer contributions, and in some of the responses and presentations there has been some discussion about a community infrastructure levy.

Ms Christie:

The 'Reform of the Planning System in Northern Ireland' report from July 2009 looked at developer contributions. The Department put forward the argument that it was right for developers to contribute to the provision of infrastructure, and it put forward two options. One was the community infrastructure levy, and the other was taking an article 40 planning agreement process through. The Housing Executive is on record as preferring the latter, as we feel that it is a more direct link to a social housing scheme and that it would be more in line with section 106 in England.

The Chairperson:

I want to talk to you about the whole idea of the planning policy statements, the area plans and the regional development strategy. I know that there is another planning policy statement on its way — PPS 22 — which will have an element of social housing.

Ms Christie:

Draft PPS 22, as we understand, deals with developer contributions and is being prepared at the moment.

The Chairperson:

So, we are going to have a series of planning policy statements.

Mr W Clarke:

Thank you for your presentation. The Chairperson has touched on most of the points that I wanted to raise. You mentioned article 40 in relation to community infrastructure provision; will you expand on that?

Ms Christie:

An article 40 planning agreement is a legal document drawn up between a developer and the planning authority that specifies what measures should be contained within the development. It is stronger than a planning condition because it is legally enforceable. That is what attracts the Housing Executive to that particular measure. It can be specifically directed to the provision of

social or affordable housing. It would be equivalent to section 106 in England, which is a type of legal planning agreement. It is a contract signed by the developer and the planning service, and is, therefore, legally enforceable. It is a much more attractive proposition from the Housing Executive's perspective.

Mr W Clarke:

Would you be looking at that for community provision such as community centres?

Ms Christie:

Yes; the community infrastructure levy is very much directed towards that type of infrastructure. We understand that, in England, they are looking at hospital and education provision; we are much more interested in an article 40 planning agreement because it can be directed to the provision of social and affordable housing. We are very focused on that.

Mr W Clarke:

In some area plans, land is zoned for social housing and for mixed tenure. You spoke about land banking, but do you think that there is an opportunity to include provision in the Bill for capping an amount, say 25% or 30%, of that land at a lower rate for social housing, so that there has to be some social housing? There is a stigma around it; I have found as an elected representative that there are a lot of objections to social housing, just because it is social housing and for no other reason. People have bought homes in an estate and do not want social housing beside them. It is different from in mainland Europe where most people rent their homes, but there is this culture of buying homes in Ireland. Do you think that there is an opportunity to say that of all zoned land, a certain amount must be made available for social housing? I know that there is affordable housing, but I want to draw a distinction between them.

Also, in relation to land banking, you mentioned a five-year development period. I would welcome that as well. Would you like to see a situation where the Housing Executive or housing associations would have first option of taking that land? Perhaps they could buy it at a certain value.

Ms Christie:

To take the first question, it is our understanding that the aim of the regional development strategy was to produce mixed and balanced communities throughout Northern Ireland. We feel that the PPS 12 housing settlements policy was one of the vehicles for ensuring conformity with the RDS and the delivery of that objective, which is very important. Certainly, draft PPS 22 may help that and may include reference to a percentage allocation being given over to social or affordable housing, as Mr Clarke suggested. However, if development plans are to be able to deliver the aims of the regional development strategy and enable people to live in a mixed and balanced way, there need to be measures to address and deliver that.

Therefore, PPS 12 housing settlements was one aim. Perhaps, PPS 22 might help establish that as well. However, the planning system exists to try and deliver the regional development strategy's aims and objectives, which are, effectively, to have a balanced and mixed community. There should be no ghettoisation.

Our view is that land banking is about supply and demand. It is about ensuring that land banks are not created to the point where land becomes in such short supply that prices are inflated and, from our point of view, social housing delivery cost becomes extremely difficult to meet. A measure to enable planning approvals to be held within a five-year period would be helpful in trying to avoid land banking. Planning authorities will have to address that. To have a need is one thing, but the hardest thing is for planning authorities to have sufficient land to deliver on that need. Otherwise, we will have terrible difficulties in the future.

Mr W Clarke:

Thanks. There are probably legal implications for the issue, although not for what I will say, but just to tease this out: in respect of the zoning of land for social housing, we all went through the period when no land could be bought by housing associations. Should there be provision for social land to be bought at 25% or 30% below its valuation? Should such land be made available at that price? I know that there is legal stuff regarding that, but —

Ms Christie:

It is hard for me to say.

The Chairperson:

No, we could not.

Ms Christie:

Land and Property Services places a valuation on the land and the social sector buys at that valuation. Whether, because it is for social housing, that valuation is less than for other —

Mr W Clarke:

Is there a reduction?

Ms Christie:

In that sense, it may take care of itself, but that is outside my brief.

The Chairperson:

To follow up on that: if there is clearly identified need, is it not better for a council to be inclusive by looking towards a process of finding land that can be zoned for development? I do not agree with ghettoisation, but I have seen examples of where that has not happened. I have seen people paying £200,000 for a house in a development and the next thing is that people are renting the house next door. At the moment, the market is dictating that properties should be rented. Would it not be better — although I know that the Housing Executive already does this — for you to work alongside councils in identifying need and looking at where land should be zoned for housing development? I hope that will be the approach, as opposed —

Ms Christie:

We work with Planning Service and look forward to working with the new planning authorities to look at issues of that nature.

Mr Savage:

I have a quick question. I listened carefully to what Ms Christie said about the land bank. I am a councillor in Craigavon, where the Housing Executive has a pile of land — we have to be careful about calling it a land bank, or whatever. I welcome your suggestion about having pre-application discussions with planners. However, in all your discussions you will have to start to

build houses in which people want to live.

Far too many houses have been built in which people do not like to live. You must change that type of house. I see far too many of them boarded up. Change has to take place, and I hope that it happens through pre-application discussions. People no longer accept that anything will do.

Modern houses are being built in the Craigavon area. So much experimenting was done, but those houses are not better than — I do not want to say anything about that. We want to see modern houses in which people are proud to live. You have gone a long way down that road, and you should continue in that way.

The Chairperson:

Design is certainly an issue. Thank you very much for your presentation. You raised some new points, certainly about land banking. It is not about people buying land as opposed to a period of time. We need to look at that. We will put those questions to the Department and then come back to you.

Ms Christie:

Thank you very much for your time.

Mr W Clarke:

Could Research Services prepare a paper about the zoning of social housing elsewhere?

The Chairperson:

No problem.

We will now receive an oral evidence session from the Planning Appeals Commission. I welcome Mrs Maire Campbell, the chief commissioner, and Mr Trevor Rue, the principal commissioner. Marie, you are very welcome. Is this your first time in front of the Committee?

Mrs Maire Campbell (Planning Appeals Commission):

It is my first time before the Environment Committee, but it is not my first time before a

Committee.

The Chairperson:

No problem. I was referring to just the Environment Committee. Please make a presentation, after which members will ask questions.

Mrs M Campbell:

Thank you for inviting the commission to attend this session on the new Planning Bill. As I am sure that everyone is aware, the commission is the independent appellant body in the planning system. That position will not change with the review of public administration and the transfer of planning powers to local councils. We have a range of statutory functions: to decide appeals; and to hear and report with recommendations on a range of matters referred to us, mostly by the Department of the Environment. Those include objections to draft development plans and major planning applications.

I intend to refer briefly to some of the comments in my letter to the Committee about the Bill and then respond to any issues that members want to raise, if that is OK with the Committee.

The Chairperson:

That is fine.

Mrs M Campbell:

I will make reference to matters referred to the commission. There are a number of instances of those throughout the Bill, but I will refer in particular to clauses 10, 16, 26 and 29, which deal with examinations into development plans and public inquiries and hearings into major planning applications. To date, only commissioners of the Planning Appeals Commission have conducted such examinations, inquiries or hearings. We have reported to the Department of the Environment, which makes the final decision about the plan or application. The Bill proposes that the DOE should be able to appoint other persons to do that work. I have queried whether that is appropriate, whether those people would be independent and whether the examination, inquiry or hearing that they conduct would be fair and independent. That is because the other persons involved would be appointed by the DOE, and the Bill retains a significant role for it in adopting new development plans and deciding major planning applications. It also has other functions

throughout the Bill.

We have also said something about submission notices, which are addressed in clauses 43 and 44. They are a bit like enforcement notices but require the submission of a planning application if something is built or the use of a building is materially changed without consent. The DOE policy statements include that as an aspect of enforcement. For that reason, it should be included in Part 5 of the Bill, which deals with the whole topic of enforcement.

However, we have a further point about submission notices. The grounds of appeal against a submission notice are limited, compared with the grounds of appeal against an enforcement notice. Someone who gets a submission notice cannot argue that they should not have got it because they are not the owner or the occupier, nor can they argue that the notice was not correctly serviced.

The most critical factor is that the person can only argue that the matters in the notice do not amount to development. What constitutes development is explained in clause 53. In addition, the Planning (General Development) Order 1993 permits a person to, for example, enlarge or improve their dwelling house or erect a building on their site within their curtilage. If a person is a farmer, the Order permits him to erect certain agricultural buildings. Those are all subject to specified restrictions. If his building is within those specified restrictions, what he has done is development, as defined by clause 23, but it is permitted development under the Order and he does not need to submit a planning application for it because he has express consent for it.

However, if a person is served with a submission notice about such a building, he cannot appeal to the commission on the grounds that what he has done is permitted development. He can only argue that it does not amount to development. We have had a number of appeals on that point. We pursued the point at a judicial review application and lost before the courts. That problem should be rectified to stop people's only recourse being the possibility of an expensive judicial review. People ought to be able to argue, in response to a submission notice, before the commission that they do not need to submit a planning application for the development, because it is permitted development under the Planning (General Development) Order.

We have also said something about clause 75, which deals with planning agreements. A planning agreement is required to ensure that a developer does or does not do something that could not be covered by a planning condition attached to a planning approval. It is an agreement between the developer and the DOE, and it takes a very long time to complete. For example, one took four years after an appeal.

If developers could draw up unilateral obligations, they would be volunteering to do something to facilitate their developments. If developers submitted unilateral obligations to the DOE, for applications, or the commission, for appeals, the long delays in negotiating and drafting agreements could be avoided, which could speed up the process of delivering appeal decisions.

The final issue that we said something about was costs. The Bill contains no provision for applications for costs in an appeal context, so parties have to bear their own costs. However, applications for costs could arise — and this is the situation in England and Wales — where one participant in an appeal has been put to unnecessary expense by the unreasonable behaviour of another. The provision applies in GB and the Republic of Ireland. We suggested it because we thought that it would be an important restraining influence on a party's behaviour in an appeal and encourage all to approach appeals in a reasonable, cost-conscious manner.

If the Bill were to make provision for cost applications, those would be considered by the commission, as in England and Wales and the South of Ireland, and they may be successful if, for example, a proposal were to be amended or partly withdrawn at the last minute or if an additional reason for refusal was to be suggested at the last minute. Those are the main points that I want to talk about.

The Chairperson:

You are very welcome. I wish to seek some clarification. *[Inaudible due to mobile phone interference.]* Obviously, there is concern about how the four- and ten-year rules help you, as regards enforcement. It is a problem. What other way could we deal with that? Obviously, you are well aware of the four- and ten-year rules, because they come to council a lot in relation to enforcement. What exactly are you saying?

Mrs M Campbell:

What I am saying does not affect the question of immunity from enforcement. All I am saying is that when one is served with a submission notice, one ought to be able to argue that — *[Inaudible due to mobile phone interference.]*

Presently, one can only argue that it does not amount to development. One cannot argue that it does amount to development but that one is permitted to do it under the GDO. People cannot argue that before the commission. The only way that they could argue that would be by seeking a judicial review of the Department's action in serving a submission notice on them.

Mr T Clarke:

Would your suggestion close the opportunity to use the four- and ten-year rule?

Mrs M Campbell:

No, it does not affect the four- and ten-year rule in any way.

The Chairperson:

The issue of the independent examination has raised its head, so I want to hear you views on that. I want some clarification. We are trying to get a process, and, through some of the presentations that we have had, we have talked about spatial planning. The Bill indicates the way in which we should get everybody involved in the front-loading system. If we take it to the extent of developing a plan that goes back to the Department for independent assessment, people may look to you or to an independent body to consider it. In setting down the criteria to deal with the Planning Appeals Commission — having gone through council in the past number of years, I have seen some change in the percentage of applications that are upheld — is the process supposed to assess applications to ensure that the Planning Service has done its job correctly? It is run along almost the same lines as the ombudsman. One is allowed to appeal, but is the problem that you are still using the same criteria to assess whether it has been carried out? Do we need to look again at whether there will be a proper, independent check, and do you believe that the criteria laid down for you to process or independently check the system are adequate?

Mrs M Campbell:

My points related to the referred work. If the commission is deciding an appeal, its approach is to decide whether the Department has sustained the reasons for refusal that have been raised or whether the objections to the proposal have been sustained. I am not suggesting that there should be any change to that approach.

The Chairperson:

I have seen that it has not been that way, and there have been changes. Do we need to look at that process, or are you happy with it?

Mrs M Campbell:

I am not quite sure what changes you have in mind.

The Chairperson:

I am only asking you. I have gone to appeals, and the criteria and process used in an independent examination are practically the same as those used by the Planning Service when assessing an application. If a council comes along with a whole development process and an idea of what it wants for its area and the plan goes to the Department, the Department might say that that needs to be independently checked. Do the proper processes exist to independently check or assess plans? If it were to go outside the commission, would others assessing a plan be properly qualified to do so?

Mrs M Campbell:

If the commission is making a decision on an appeal, it must take account of the development plan and all other material considerations, namely the planning policy statements produced by the DOE. We must interpret and apply those, and, in making a decision, we must decide whether the Department's reasons for refusal are sustained or whether the objections are sustained. That is our role in an appeal, and we issue a decision on an appeal. Our decision on the appeal is final other than on a point of law, and that is where judicial review of a decision of the commission comes in, as our appeal decisions are subject to the scrutiny of the courts.

With our referred work, which involves looking at the conduct of an examination to consider

objections to a development plan or the conduct of a public inquiry or a hearing into a major planning application, what we do is gather all the evidence. We consider evidence from everyone who wants to make representations about a development plan and everyone who wants to make representations both for and against any major planning application. We weigh the evidence and report to the Department on it, with a recommendation as to what the outcome should be. The final decision is made by the Department.

We are saying that the process that we carry out is a rigorous and independent analysis of the objections to a development plan or of all aspects of a major planning application. That rigorous process should continue. If that process is sought to be conducted by persons who are appointed by the DOE and who report to the DOE, which makes the final decision on the application or on how a plan should be adopted, that will not be a fair and independent process.

The Chairperson:

I do not want to get bogged down in it, but that is something that this Committee needs to look at. That is what I am concerned about. It is fine saying that it is an independent process, but if somebody brings in any material information or consideration, what weight is given to that? We have seen in the past where decisions have gone one way or another. Do you understand me?

Mrs M Campbell:

As in all aspects of planning, there has to be an element of judgement.

The Chairperson:

I agree. So long as it is consistent, that is all that I am saying. But what we are teasing out in this —

Mr T Clarke:

Chairman, if you do not mind my interrupting you, I would like to make a point about that. Like you, I have been at a few Planning Appeals Commission hearings, and there is something that I have always found strange about them, particularly when I consider the bit in the submission about the Bill's omission of a provision on costs. Sometimes, applicants bring evidence late in the day that the commission will consider. I have always founds that strange, because that can actually change a decision.

I sat in on a recent case where that happened. If the evidence had not been allowed, it would be fair to say that the Planning Appeals Commission would have found in favour of the Planning Service. However, the late submission was allowed and accepted, and it actually changed the decision. Nevertheless, I welcome your suggestion about a provision on costs, because I think that that would be a very useful tool. It would prevent some cases from going to the PAC and would prevent the Planning Service from pushing people to that expense and prolonging applications. The only bit that worries me is that late submissions are sometimes accepted.

The Chairperson:

We can only use our own experiences as examples. In one case, an application was turned down because of a lack of integration. However, by the time the appeal came round and we went out to look at the site, the site had been substantially changed. I am only using that as an example.

What are saying is that we want to have a process where applications are properly assessed. Obviously, the Planning Appeals Commission goes through that process and does that body of work. However, I do not want it to be an exercise where people present evidence but do not actually get an opportunity to present a strong and robust challenge to the system in the proper way. It comes back to the third-party right-of-appeal issue. That is all that I am saying.

Mrs M Campbell:

Certainly, commissioners are trained to be investigators, and they play that role. They do not merely sit and listen to evidence. Rather, they investigate the evidence and pursue the issues with all parties involved in an appeal. They then apply their expertise and experience to the issues presented in the appeal and make a judgement after having gathered all the information, including their own input. We want to ensure that that system is as rigorous as possible.

The Chairperson:

That is fine, Marie. However, we, as public representatives, want to ensure that applicants are being properly represented by those whom they pay to represent them. In the past, we have seen exactly what representation people are getting. People are going down the road of appeals, which costs them a substantial amount of money. We need to look at that as part of the whole process.

If the Department were to assign the process to the Planning Appeals Commission, would you have the capacity to deal with that?

Mrs M Campbell:

We should be able to deal with it. We are currently dealing with three development plans — Belfast, Magherafelt and Banbridge — and are just about to start work on the northern area plan. That is a fairly significant involvement from commissioners. We are also attempting to process six major planning applications throughout the year. However, a number of those have been delayed, primarily because either the applicant or the Department is simply not ready to go ahead. A lot of the applications are getting bogged down by the need to provide further environmental information. When we start to process those applications, we find that they are being continually delayed.

The Chairperson:

I would like your view — and I am not asking whether it is your personal opinion — on where we are with existing local developments plans. How will they impact on councils over the next three or four years when it comes to considering the whole notion of local policies, planning policy statements, development plans and the regional development strategy, as well as what is actually best for communities, what the councils' input will be and what local communities wants? Where does that sit with the existing plans and the plans that you are looking at?

Mrs M Campbell:

Once we have reported to the Department on the plans that we are looking at, it will go through the process of adopting those plans. Once adopted, a plan will be the plan for an area until it is replaced by another plan.

The Chairperson:

I understand the process. What I am saying is that we are going down the route of spending money now to adopt a plan that could be in next year or the year after, and then once the powers transfer to councils, they are operating in two years' time and they look and they go. Then there is a period of time, obviously, when they cannot review it. I would like your opinion on that.

Mrs M Campbell:

We will look at the statutory provisions. There is still provision that, in determining planning applications, account must be taken of the development plan and all other material considerations, which is the policy. That provision will apply to councils as it applies to the Planning Appeals Commission in determining appeals.

The Chairperson:

Most of those who have responded to the Committee raised that as a problem. It is fine saying that you look to the regional development strategy, area plans and bottom-up planning policy statements, but that issue has been raised and we may need to look at it.

Obviously, do you see the need for the Department to appoint independent —

Mrs M Campbell:

No, we do not see a need for that. We suggest that the commission should continue to do that. There are alternatives to appointment by the Department of the Environment, such as appointment through the Office of the First Minister and deputy First Minister to work to the commission. There is precedent for that. It would, in effect, be appointment by the commission almost, more or less, through OFMDFM.

Mr T Clarke:

I share the commission's opinion. I am struggling to understand why the Department would want to appoint someone, and I can see the problems that it would create. Can you see why the Department wants to do that?

Mrs M Campbell:

I have not had detailed discussions with the Department about it. However, I have certainly had hints that it is due to a resources issue in the commission that might relate to the position a couple of years ago when we were dealing with a large number of development plans and a large backlog of appeals. That backlog has now been cleared, the development plans will be delivered shortly and I am confident that the commission has the resources to deal with development plans and major planning applications. If the resources are not in place when matters are referred to the

commission, it should be able to acquire them. For example, the commission has part-time panel commissioners who also work for the Planning Inspectorate in England, An Bord Pleanála in the South and the Directorate for Planning and Environmental Appeals in Scotland.

Mr W Clarke:

Is the point about the planning obligations for the developer — presenting those draft obligations — in regard to temporary sewerage and road infrastructure or flood-prevention measures?

Mrs M Campbell:

Many of those issues can be covered by conditions attached to a planning approval. You would need planning agreements or planning obligations. The main difference is that a planning agreement must be an agreement that is reached between two parties, which takes time to negotiate, while a planning obligation is a unilateral — *[Inaudible due to mobile phone interference.]* — this is how I propose to contribute to education in the area, those kinds of things. That cannot be covered by a planning condition, because it is not sufficiently related to the development.

Mr W Clarke:

Dead on; thanks for that. My other point relates to the awarding of costs for unreasonable behaviour. Is that where there is no planning policy and you are bringing a case that you have no chance of winning? Is that what you are saying? It is my experience as a councillor that a lot of stuff is sent in your direction when there is not a hope in hell of it being successful, and that certainly clogs up the system.

Mrs M Campbell:

That is true. It there is clearly not a hope in hell of it being successful, that might justify an award of costs. Applications for costs in England and Wales are where there has been unreasonable behaviour and unnecessary expense.

The best example is where someone who is pursuing a very extensive application involving, say, housing, shopping and industry and there is a lot of objection to the shopping aspect of it. They pursue it right until the very last minute and then, at the very last minute, when everyone

has prepared objections and appointed consultants to deal with the shopping aspect, they withdraw it. That would be unreasonable behaviour leading to unnecessary expense. They could have withdrawn at a much earlier stage in the process.

It could also apply in instances where the planning authority suddenly decides at the last minute that it had better have a land contamination survey, when it has not been mentioned before. If it were an issue, it should have been mentioned before. It works both ways, and if the planning authority introduces an additional reason for refusal at a late stage.

It is all about parties revealing their hands earlier in the process, rather than trying to wait tactically to try to catch out the other person. Planning appeals do not work like that anyway. They are about gathering the information and making a decision. Tactics do not really work because we have to find the information anyway.

Mr W Clarke:

Dead on. Thank you.

Mr T Clarke:

Is it not more than that? Those are very extreme examples. Most of us have experience of where planners try to make a decision at an early stage that they do not want a particular application to succeed. It may be something more minor, a house, a bungalow or whatever it might be, and the Planning Service puts the applicant to the expense of going to the PAC. I have seen that often, and I am sure that other members have seen it in council. Perhaps the majority of people withdraw, but a stubborn applicant will decide that he will go ahead because he has the money to pay an architect the £2,500 or £3,500 to get it to PAC. The figures are sometimes staggering. Many of the appeals are won. Planning Service deliberately pushes people right to the wire to get them to withdraw or to see how many of them are prepared to go to the PAC. You have outlined very extreme cases where huge amounts of money are involved, but other people are put in an invidious position where they have to put up their money to take the challenge.

I enjoy seeing the figures from the PAC. At certain times of the year, you can have a third of decisions being overturned, which suggests that the Planning Service does not necessarily make

the right decisions. If there were more checks and balances, your workload would probably be less.

Ms M Campbell:

I used the extreme examples to illustrate where costs can arise. They apply where there has been unreasonable behaviour and unnecessary expense. That is the way they are assessed. The figure of appeals allowed runs at about 30% to 33%, which is commensurate with the figure in England and Wales. It is around about the same there. There have been times when it has been higher, depending on policy issues.

Costs are not usually awarded simply because the Department is unsuccessful in determining an appeal. It has to be unnecessary expense, as a result of unreasonable behaviour. It is not a pure winner-takes-all situation.

Mr T Clarke:

It should be.

Ms M Campbell:

Well, that is a point of view. I am just saying what is the system in England, and that is the system I advocate here.

The Chairperson:

It still brings us back to the agent issue. There are more issues to be brought forward there. It is ridiculous that we have not dealt with that at all in this Bill. Some of the applications being put in have been absolutely ridiculous.

Mrs M Campbell:

I will allow you to take that up with the agents.

The Chairperson:

Having better agents obviously means less work for you. Thank you very much for your presentation. We will now take oral evidence from Laverne Bell of the Quarry Products

Assocation (QPA). You are very welcome. You have been before the Committee on a number of occasions, so you know the process.

Ms Laverne Bell (Quarry Products Association (Northern Ireland) Limited):
On behalf of our members, thank you for giving QPA the opportunity to respond to the Planning Bill. Planning is vital to our industry, so we are very interested in the transfer of powers to councils. Our industry has a part to play in helping to deliver planning reform by submitting high-quality applications informed by community views. As I go through the clauses that we comment on, I will be optimistic about adding in the after-uses of quarry applications. Given the number of clauses, I will only deal with the key areas of concern to the minerals industry.

There should be a definition of "sustainable development". We have seen that in many Departments, in council strategies and even in the industry's own strategies. Some people have different definitions, and that should be added to the interpretation section of the Bill. The definition in the Government's sustainable development strategy could be used.

Clauses 6 to 22 relate to local development plans. We are concerned that local development plans do not include minerals or their safeguarding. We spoke to the Committee before about a minerals mapping programme for Northern Ireland, to analyse supply and demand, and zoning to safeguard minerals. Areas have been zoned as areas of no constraint in previous local development plans. That did not look at where our future minerals supply will come from.

We are pleased to note that a minerals mapping programme is listed as an environmental programme in the DOE budget. However, we are concerned that funding has not been secured for that. We will make the same point at the regional development strategy review. We suggest that an amendment be made for mineral mapping and safeguarding to be included in each council's local development plan. It would also be beneficial for neighbouring district councils to work together on local development plans.

We support clause 27 and clause 28 but ask for a definition of "community", because it can sometimes be difficult to identify who the defined community is. That should be in the interpretation section of the Bill. Under clause 32, there are no permitted development rights for

the minerals industry in the general development order. We have reported on previous consultations on this. We would like assurances that that will be in the Bill.

I turn to planning applications. In clause 40, there is no mention of performance agreements and pre-application discussions. That is a core element of planning reform and something we supported in the consultation paper. Performance agreements should be in place before submission of an application. That is a central part of pre-application discussions. Again, that is down to the front-loading of the development management system. We suggest that performance agreements alongside pre-application discussions for major and regionally significant projects be included in the Bill.

On determination of planning applications, we have commented under clause 45 and clause 52 on conditions that are applied to planning approvals. We have brought that up with the Planning Service before. We believe that it would be good practice for the Department and councils or the planning authority initiate a practice of informing developers or agents of the draft planning conditions that are imposed before they stamp and approve the forms. That practice would be beneficial to the industry and to the Department and councils in processing mineral planning applications, as it would highlight any unworkable conditions before the decision notice is issued.

We have evidence of industry having permissions approved with unworkable conditions. Asphalt plants have been given approval with conditions of working hours of 7.00 am to 7.00 pm. You will be aware that that is not commercially viable for the industry. An asphalt plant would possibly have to open at 5.00 am for lorries to be going out the gate at 7.00 am. Those conditions have sometimes been applied as a mistake by a planning officer. It is difficult for a client to go back and take it out. In some cases, the company might just decide to leave it there. Therefore, we are suggesting a clause to provide that the Department or councils consult the developer on conditions prior to planning approval. However, we recognise that the planning authority is the decision-maker.

On clause 53, with deals with the power to impose aftercare conditions on the grant of mineral planning permission, I will give you a few paragraphs to back my suggestion that nature conservation be added. The three stated aftercare conditions in the current legislation and in this

Bill relate to agriculture, forestry and amenity. I am proposing that nature conservation should certainly be added either alongside amenity or as a fourth aftercare condition.

I am sure that you are all aware of the significant opportunities that this industry can give in creating new habitats and protection of species. The industry is doing that, and it has been put forward in restoration objectives, but there is an opportunity to have it in legislation. Therefore, I have suggested that nature conservation be added as a fourth aftercare condition, and that a definition of nature conservation be added to the interpretation provisions. We believe that the developer should take advice, whether from the Department of Agriculture, the Forest Service, the Environment Agency, councils or a relevant NGO on such matters under those aftercare conditions. Again, we are looking at local priorities in those areas. In clauses 53 to 55, on restoration and aftercare, steps may be specified in aftercare conditions. Again, a natural succession is regeneration. It is an opportunity to create biodiverse habitats on site. That should be added.

We have comments on duration of planning permission. Again, the comments on the clauses relate to changes in permissions, conditions or modifications. We have stated that if any changes are made, it should be done in consultation with the developer. If any conditions are made in error by the planning authorities, there should be no fee to change them because that is their mistake. We raise again the issue of consultation prior to approval of imposing conditions.

The review of old minerals permissions is included in the Bill. We have read through both schedules, and we are content that it is what has been communicated to us. However, our concern is that there is no mention of the timescale for delivery.

We support increased fees and charges for respective planning permissions, but we question what is meant by “a multiple of the charge or fee”.

In respect of the duty to respond to consultation, we feel that statutory consultees should be required to respond to planning authorities within a specified time frame. Any extension to the time frame should be agreed with the applicant. This has caused our industry significant delays in the planning system, and we responded to the matter in the previous consultation. We suggest

an amendment to the Bill to set a specified time frame of 21 days for comment. We are content with the guiding principles in clause 225, which relates to minerals.

The Chairperson:

OK. Thank you very much. You suggested a time frame of 21 days. Would that be for all applications? On some of the major application, would you expect statutory consultees to respond within that time frame?

Ms L Bell:

We feel that with pre-application discussions, the industry will be front-loading the system. Any reports to be carried out will be done with the application, and, if there is an issue, the operator will be notified and a new time frame agreed. However, experience within the industry shows that planning officers might wait for months for statutory consultees to come back. Sometimes, their applications are sitting in somebody's in-tray, and, regardless of whether a response is made, they are put back to the consultees and there is a specified time frame for them to respond.

The Chairperson:

OK. Thank you. You said that minerals should be looked at in terms of the local development plans. In the absence of mineral mapping and identification, are you suggesting that councils or council clusters should look at that?

Ms L Bell:

Yes, indeed. It is about the geology of the minerals and the location. Therefore, they are of interest in council boundaries. It has not been considered before in local development plans, and it is something that the industry feels very strongly about.

The Chairperson:

OK. What about PPS 19?

Ms L Bell:

PPS 19 should be published in advance of this.

The Chairperson:

You talked about conditions, and I just want to clarify a point about aftercare conditions. Many sites are not properly maintained, and I would look at the nature conservation. You asked for guidelines on the conditions of planning approval. Is it not standard practice to consult the developer on the conditions prior to planning approval?

Ms L Bell:

No. I spoke to my affiliate agents in the association about that, and they said that it is not standard practice. Article 31 applications are dealt with by a notice of opinion indicating that the Department proposes to grant or refuse planning permission. A similar procedure could be recognised in the Bill.

The Chairperson:

If you have received approval for a house, you must comply with where it goes and different things, although there may be a wee bit of scope. However, if you apply to extract minerals, are you just given an area and that is it? Are there no conditions? Are the conditions or some guidance not clearly outlined in the planning approval?

Mr T Clarke:

What Laverne is saying is about the time when you can expect to get those.

Ms L Bell:

The Department has a set list of model conditions that it uses and applies. Approvals are set with a number of conditions, and aftercare, for instance, is one of them. However, there are conditions that we see as unworkable; for example, a time condition. It may not have been raised as an issue in the pre-application discussion by the community or the environmental health officers, but the condition may have gone ahead.

The Chairperson:

Thank you. I was just seeking clarity.

Mr T Clarke:

Although it is the same for any application — obviously, mineral extraction is different — are they not all article 31 applications?

Ms L Bell:

Some are pulled in under article 31, but others could be extension to plant or smaller areas.

The Chairperson:

Clearly, that is the problem, because of the policy.

Mr T Clarke:

If that were changed, the danger is that it would slow down the process again, because the authority would be going back out to consult the applicant again. If you did it for them, you would have to do it for private dwellings as well, because they come under the same category.

The Chairperson:

Yes, but Laverne is talking about the list of consultees and the response, and that all of that should be included in the discussions — the pre-application discussions in particular.

Ms L Bell:

Yes, in that process. However, it is the case where it has gone through without any issue of using the time one. Then, when the operator receives his approval and an unworkable condition is listed, the agent will have to go back through the legislation process to get that condition taken off.

The Chairperson:

That is fine.

Mr W Clarke:

Is the time condition coming from the councils' environmental health perspective in relation to the noise and stuff like that? Where is that coming from?

Ms L Bell:

From my knowledge, the planners have a set list of model conditions, and the time one — from 7.00 am to 7.00 pm — is one of those model conditions. Sometimes, that can be applied.

The Chairperson:

You have mentioned the statutory consultees, and we will look at that area. Thank you.

Committee suspended.

On resuming —

The Chairperson:

We will now receive a briefing from the Royal Town Planning Institute (RTPI). I welcome Diana Thompson and David Worthington.

Ms Diana Thompson (Royal Town Planning Institute):

Good afternoon, and thank you for facilitating our request to provide further evidence in support of the Royal Town Planning Institute's written observations on the Planning Bill. I am the incoming chair of the local branch of the institute. With me is David Worthington, who is a past chair and a current member of our policy and practice committee, which meets quarterly at our London headquarters.

I will deliver the principal presentation, and, following that, David will assist me on any points of clarification or additional information that the Committee may seek.

You probably know that the RTPI is the leading professional body for spatial planners in the United Kingdom. We are a charitable organisation that has the purpose of developing the art and science of town planning for the benefit of the public as a whole. We have over 20,000 members, 500 of whom reside in Northern Ireland. They are drawn from the Planning Service, local government, the public sector, the community and voluntary sector, and the private sector. The reforms are of great interest to our members, who work in and use the system on a daily basis.

As a general proposition, the RTPI supports the reform of the planning system in Northern

Ireland and the devolution of planning powers to the lowest level of government. On the whole, we welcome the Bill. Rather than repeat the content of our written response, however, we want to use our time this afternoon to explain in more detail our main concerns with the Bill as it is presently drafted.

We have identified four topics to discuss: the acceleration of the process and its consequences; whether the reform will be adequately resourced; the timing of an introduction of the plan-led system; and the role of the Department. The Committee will also be aware that the RTPI is taking part in the stakeholder event tomorrow, when we will address three of the four topics that you have invited some comments on.

As we indicated in our submission, we are uncomfortable about the Bill's being launched in the mouth of the Christmas break. We are also uncomfortable about the Bill's anticipated expedited passage in the Assembly's current term. The Bill is a complex document, and our members are concerned that the amount of time that has been set aside for its scrutiny, particularly at Committee Stage, could well be construed as an underestimation of its intricacy and of its importance for the future of Northern Ireland. That said, the institute fully appreciates the need to reform the planning system in Northern Ireland. Reform is overdue, and we support the current impetus and enthusiasm for delivering positive change to the system.

It is unfortunate, however, that the timetable appears to be dictated by the looming dissolution of the Assembly in the spring. The institute supports openness and transparency in the process and is keen to avoid any perception that the acceleration will undermine meaningful consultation with the planning profession. We do not want the acceleration to result in an underdeveloped framework that stymies, rather than stimulates, sustainable economic growth and that lacks public confidence.

There are two particular issues of concern. The first is the reliance on much subordinate legislation and many other regulations to give effect to the proposed reforms. We do not see any commitment to their production and content or to a timetable for implementation. Our legal associates, who are also members of the institute, tell us that the detail may well be unworkable in our particularly litigious environment. They raised concerns about how the drafting will stand up

to scrutiny. They urge that careful attention be paid to the final drafting and wording of clauses.

Secondly, it is far from clear how or through what mechanisms the new legislation will be delivered by newly created planning authorities. There seems to be a lack of integration between the planning reform and the parallel reform of local government and the transitional arrangements. In our view, the Committee must seek clarification on both points from the Minister.

Our second topic is about resourcing the reform. Our members have highlighted the need for the reform to be adequately resourced. The issue is not just the financial consideration; it raises personnel and staffing issues, as well as the capacity of councillors to embrace the full suite of planning powers that are to be devolved.

As far as the training and education of councillors is concerned, the RTPI can provide significant assistance and can offer links to other councillors in the UK through our politicians in the planning association, which is administrated through our headquarters. We are keen to take a proactive and participatory role in the development of professional training sessions for planners and councillors, and we intend to raise the matter directly with the Minister in the near future.

It is clear to us that the proposals will require major cultural change and additional funding. The institute fully understands the budgetary pressures that are on the Department, given the significant fall that there has been in application receipts over the past 18 months. For that reason, we accept that it is necessary that a review of planning fees takes place. However, we were disappointed that the consultation paper that emerged late last year did not contain a comprehensive overhaul of fees and that wider funding issues remain for future consultation. The institute has already warned that planning fees should not be the sole source of funding and that there must be a public funding base that might come through rates, for example. We think that the review should be completed swiftly so that a situation of certainty and stability in the planning profession and the wider development industry can be created. In the meantime, we are certain that the Department must keep a balanced view of efficiency savings, the maintenance of a professional and fit-for-purpose service and the ability of a development management to levy fees to match costs without jeopardising the potential for economic recovery. If fees are to be

increased, our members are certain that that must be matched by a quality service for its customers and a service that supports economic recovery.

The institute has another concern in that area because of the loss of professional expertise in the Planning Service through redeployment and the very recent announcement on potential future redundancies. The institute is already on the record as having made the point, and we would like to restate it, that it is anxious that the haemorrhaging of the professional planners carries significant risks for the operation of the planning system in Northern Ireland. It has inevitable consequences for the delivery of the priorities of the Northern Ireland Executive and the Programme for Government. The Committee must seek assurances from the Minister that individuals who exercise planning powers are properly trained, that all units and functions of the new planning hierarchy in Northern Ireland are adequately staffed by professional and administrative staff, and that there is adequate funding that does not rely on receipts that come from applications or other revenues that are generated solely by the system's users.

The issue of resourcing takes us to our third point, which is to do with the timing and introduction of the plan-led system. We note that there is some inconsistency between clause 3 and clause 25. One requires the Department to take decisions in accordance with the plan, and the other requires the council to have regard to the development plan. The Committee will be aware that previous resourcing difficulties in combination with the external judicial proceedings have meant that preparatory work on updating and renewing development plans has largely ceased. The consequence is that, from 1 January 2011, we have only one up-to-date area plan that covers the two district councils of Ards and Down. That is about 8% of Northern Ireland, compared to about 19% of local plan coverage in England. The Department for Environment, Food and Rural Affairs has strongly criticised that figure.

It would be unfair and inequitable to expect newly formed local councils to take decisions on the basis of planning frameworks that were, in some cases, prepared almost 20 years ago in economic and other circumstances that were very different to those than exist today. Although the institute supports the introduction of the plan-led system, we are certain that its introduction must be held back to allow the new generation of local plans to be rolled out.

Our views are reinforced by the lack of detail on the new community planning framework that is also proposed. It seems to us that there are a number of unresolved issues with it, including the definition and identification of community; how it interrelates with the other elements of the area plan framework; how conflict is to be reconciled when policies pull in opposite directions; and how community plans will be timed and sequenced against the delivery of local plans. We consider that the presumption in favour of development should remain in the interim, although assurances must be sought from the Minister that the new suite of plans will be expedited following the devolution of planning powers.

We also wonder about the role of and relationship with the emerging regional development strategy review, which sits at the top tier of the policy hierarchy. The RDS was material to decisions on individual planning applications and appeals, but at draft and adopted stage, the area plans have a statutory requirement to be in general conformity with the RDS. However, that statutory requirement appears to be diminished in the Bill. We can find only two references to the RDS in the Bill. The first requires policy to be "in general conformity" with it, and the second requires local development plans to "take account of" the RDS. It seems to us that there is some uncertainty regarding the status of the RDS. Indeed, the 10-year review of the RDS confirms that the statutory requirement is under review. The Committee must seek clarity on the role of the RDS, because, without a clear strategic vision and guide, there is the potential for local authorities to focus solely on their own agendas, which will lead inevitably to long-term bad delivery and cause difficulties with balanced delivery.

Our final point relates to the Department's role. We understand the need to retain some degree of control and oversight of the delivery of planning functions in Northern Ireland. However, our members feel that the Bill is drafted in an overcautious and inflexible manner that will deprive local authorities of the ability to freely exercise their planning functions. We urge the Committee to challenge those areas of unchecked and unnecessary departmental intervention, which must inevitably result in the duplication of manpower and resources.

The Bill provides for much departmental involvement in the area plan, for example, with its statement of community involvement, a timetable for review, the terms of such a review, or the revision to the plan. The Bill also allows the Department to prescribe the form and content of the

plan and to refer it for independent examination. There is also provision for the Department to consider the independent report that comes back from the examiner.

It seems to us that the checks and balances that are built in through the intervention and default powers in clauses 15 and 16 are adequate to safeguard the Department's position. We consider there to be significant replication between the development control and management function in the powers provided in clauses 26 and 29. It may well be that there is a timing problem between the Department's determination for a proposal that is regionally significant or a major application. That would have a knock-on, delaying effect for the commencement of the 12-week consultation period. That must also frustrate development ambitions.

However, we support the schemes of delegation, which mirror the existing streamlined arrangements in the Planning Service. In fact, the Planning Service won an award with the RTPI in London. We are keen to see those arrangements retained in the new planning framework.

We welcome the proposals for the Department to set performance targets for local authorities. However, that must be about much more than naming and shaming. There must be some financial sanction for those councils that fail to determine their applications and to deliver their planning functions in a timely manner. In the same way, authorities that consistently achieve their targets must be rewarded. We consider such carrot-and-stick mechanisms to be enormously important in securing responsiveness, speed, simplicity and, most of all, deliverability. Those are important characteristics that ensure the professionalisation of the system.

To sum up, the RTPI welcomes reform. However, it seeks clarification, assurances and revisions on a number of aspects of the Bill, including the production of subordinate legislation; integration with the parallel local government reform; adequacy of resources; prompt roll-out of the new generation of area plans; and departmental intervention powers, which should be considered and appropriate.

We look forward to continuing our dialogue with the Department, Minister and Committee as this important legislation emerges.

The Chairperson:

Thank you very much. You are very welcome here. I will just pick up on a few points. You mentioned retraining for agents. Many councillors or former councillors are MLAs. I have sat on a council myself, and I know that some of the applications that we had to decide on were unbelievable. Ordinary architects who knew nothing about policy were putting in an application on behalf of somebody who may as well have done it themselves. Is there any scope in the Bill, or anything that we could consider including in it, regarding guidelines on advice? I will not say that someone would have to have a qualification, but I want to ensure that the people giving advice on applications have the appropriate training, rather than people asking someone for advice just because they have a whole load of letters after their name.

Ms Thompson:

That is a big question. You are asking how planning can become more professional, and the RTPI would like to see only people with professional qualifications and chartered members of the RTPI giving planning advice. It is difficult to control because every man and his dog thinks that they are planning experts.

The Chairperson:

We are well aware of what we are proposing to transfer and how difficult that is going to be and that there is a need for a transition period. You talked about capacity building, in which you have a degree of expertise. It is a major training programme; how do you see your role in it?

Ms Christie:

We have run some councillor training programmes in the past; in 2009, when it looked like the RPA was kicking off, we engaged with NILGA in particular. It will be a matter of picking that up again and, hopefully, rolling out some sort of training programme.

The Chairperson:

It comes down to resources again. It cannot be all fees-based; you mentioned it being rates-based as well. I would like to tease that out a wee bit, because, as public representatives, we will have to answer to ratepayers on that. Leaving area plans aside, if we take the likes of development controls, which is now development management, how would you manage the fee structure for

that side of it? How does it operate in other jurisdictions?

Mr David Worthington (Royal Town Planning Institute):

Very few councils across the water manage to operate their planning system with a funding level that is made up of more than 50% of charged fees. For most local authorities in England, the fee level that they are able to recoup counts for less than 50% of the actual running costs of the planning departments. That was something that the outgoing chairperson of the branch found out as part of the overall cost exercise that we and the Department were engaged in over the summer, when it became clear that members of staff were going to be relocated.

Ms Thompson:

The Committee might also be aware of a report that has been commissioned by the Planning Advisory Service in England regarding the subsidisation of planning departments, 'Where does all the money go?' We can circulate copies of that to the Committee. It basically comes to the conclusion that it should not all be generated through application receipts because it is a public service, so there should be some sort of public money funding it.

The Chairperson:

It is a public service, but when it comes down to the finances, you have to look at it from a business plan point of view. On numerous occasions, we asked about the planning model, because councils will need it, but it has not come to us yet. If you were developing a business plan in the private sector, you would develop your plan and decide the number of people you need on a value-for-money basis. The problem is that we tend to forget that it is a public service.

Mr Worthington:

A manpower plan based on projected staffing levels against potential application receipts is essential. When the review of fees came out, we were concerned that those two things were not allied to the manpower review.

The Chairperson:

Perhaps we should say people power.

I agree, and we have asked for the model. There was a time when applications were coming in and things were good in the Planning Service, and I can assure you that all the fees that were gained did not just go into the model or to cover staff costs; the amount of fees was well above that. Those fees went to the Treasury or somewhere else. We have to get a proper model in place.

Mr Worthington:

The Planning Advisory Service report might be of assistance with that.

The Chairperson:

We heard about the accelerated time frame, and we know that there is a good body of work to be done. We also know that we have an opportunity to change things during the clause-by-clause scrutiny. The devil is in the detail. You mentioned subordinate legislation, and we need to look at that. In addition, we were thinking of looking at a review period.

Ms Thompson:

Various parts of the Bill refer to regulations. What will those regulations say? When will we get a chance to comment on them? A lot of this is reliant on something else.

Mr Worthington:

A lot of the nuts and bolts of it do not work without subordinate legislation.

The Chairperson:

There is no doubt about that. You also touched on reorganisation and reform. Obviously, the Bill will not be implemented in any shape or form until proper governance arrangements are transferred, and that is fair enough. However, it has to run in conjunction with community planning, which I want to discuss now. Diana, you said that there should be more reference to the RDS. On the other hand, you talked about councils having their own agenda and about the Department's analysis. It is about combining all those parts.

I want to ask you about the statement of community involvement, which will be important. Who and what will be involved in community participation? Will you comment on how we

should deal with the community issue?

Ms Thompson:

We talked about that with our policy officer. I do not know whether the Committee will remember, but an organisation called Planning Aid, which is equivalent to legal aid, used to operate in Northern Ireland. There were resourcing difficulties with it and it has been dormant for a number of years, but we think that this might be a real opportunity for Planning Aid to come back to Northern Ireland. The system is set up and well developed in England, and it can work with communities to help them to become involved in planning processes. As a branch, we will be exploring whether that is a possible way to support communities.

The Chairperson:

Our system works on planning policy statements, area plans and regional development strategies. Indeed, there is a suite of planning policy statements; we might have 100 of them by the end of this mandate.

Ms Thompson:

They are being produced fast and furiously.

The Chairperson:

You talked about area plans, and we cannot forget that a body of work has been done on them. Good work has been done and resources have been spent. My problem is that that work might be wasted. What do you see happening if planning at council level is implemented in two years' time? As you said, councils might have a different view on planning matters.

Ms Thompson:

There is no doubt that those with the PAC must be adopted. It would be an outrage for all that work and expense just to be scrapped. It is important that those are concluded and become an interim guide for development in different areas. It is more a case of trying to get areas such as Omagh or Strabane on track; areas where the area plans are a number of years out of date. The development plan framework is particularly suffering in areas west of the Bann.

The Chairperson:

Armagh, too.

Ms Thompson:

Absolutely.

The Chairperson:

I will put in a plug for Armagh as well. Do any members have questions? You are all very quiet today. We propose to ask the Department to respond to the questions and ideas from you and the other respondents. We will try to get those responses fairly quickly.

Ms Thompson:

It might be helpful if we sent our speaking notes. That would cover everything that we said.

The Chairperson:

The document that I have is very good, but you can send the notes also. With regard to the timing, we have a process to go through. That was accepted in the Chamber, and I as Chairperson of the Committee accepted that. There has been some good work but subordinate legislation and capacity building are key, as is a review of the transition period and roll-out. You have a big role to play. However, I come back to the issue of agents, and I make no apologies for that. That has to be part of this process.

Mr Worthington:

The design and access statements and the community consultation exercises for the more major applications will obviously raise standards. It is a question of whether something needs to be built in on the lower levels.

The Chairperson:

The issue is not about just land use; it should also be based on community need.

Mr T Clarke:

We seem to concentrate on the higher levels. If I am picking correctly up on what the

Chairperson is saying, the problem is that agents sometimes submit applications knowing fine well that they do not have any merit. We need to go from the bottom up.

Ms Thompson:

There does need to be a sea change. It should be a bit like being a doctor, in that you cannot practise unless you are professionally qualified. Ideally, that is how the planning profession should be.

Mr T Clarke:

You did not suggest that in your submission.

Ms Thompson:

As an institute, there are trade union issues that are very difficult for the institute to take a view on.

Mr T Clarke:

It would be easier for us if that suggestion came from a body such as yours, as opposed to from us. We are only prejudging what we see on the ground, whereas your institute represents a body of people. A recommendation such as that coming from you would probably be more persuasive.

The Chairperson:

I know that there are issues. We have experience on the ground and that is all part of the process. We could outline specific details. All that I am saying to you is that that aspect has to be looked at if we are to get this right.

Mr Worthington:

We need to bear in mind that, at the moment, we operate a system that has a presumption in favour of development.

The Chairperson:

There is no harm in that, David.

Mr Worthington:

I know but —

The Chairperson:

As someone from a rural constituency, I definitely do not see any harm in that. However, I agree with you.

Mr Worthington:

That means that there is less certainty in the system. You cannot say for definite that an application will be refused. Well, you can but —

Mr T Clarke:

You can; that is the problem.

Mr Worthington:

It is quite difficult to say that. I have advised people that things will be refused and they were not.

The Chairperson:

I know the feeling.

Mr Worthington:

My point is that when we move to a plan-led system, it will introduce a lot more certainty because the plan sets out what is approvable and what is not. So, you may find that that helps to ease some of the —

The Chairperson:

I suppose that that could be undermined in some ways by a suite of planning policy statements. Do not get me wrong; I am just saying that there are challenges to that system too.

Mr Worthington:

There is a need for the planning policy statements to be condensed and made more

straightforward, and to try to stop them from pulling against each other, as some do.

The Chairperson:

Once we have 100 planning policy statements, we will need to condense them to about 25. You indicated that most of this will come back to the Department, and we spoke about the independent examination of planning appeals. We will go through this body of work, front-load the system and try to develop a plan. However, it could be a case of everyone wanting their own way, so some check needs to be in place. How do you feel about plans being sent for independent examination and then going back to the Department?

Ms Thompson:

That will be another layer of bureaucracy and potential judicial review. Some canny solicitor could ask why the Department agreed with something when the PAC did not and the council did something else.

The Chairperson:

That is fine, we are scrutinising the Bill and must record that view. We need to look at this and see how things will materialise.

Mr W Clarke:

Thank you for your excellent presentation. On the issue of capacity building, a broad range of people will need to be retrained, including elected members, council staff and planners. It will be a culture shock for all of them. That is particularly the case with spatial planning and bringing the different statutory agencies on board. What are your thoughts on the pilot schemes that were announced by the Minister? Are you involved in their roll-out? Will you provide training courses for councillors on spatial planning and the planning process?

Mr Worthington:

We were present when the Minister proposed those pilot schemes, but I am unsure as to whether we will be involved in their roll-out. We think that they are a good idea, if they are workable with the legislation and do not end up creating more mayhem and more fees for solicitors.

We intend to roll out a programme of training that is specifically tailored to councillors. At one point there was a suggestion that the Town and Country Planning Association would hold its annual conference in Northern Ireland. As RPA receded that was taken off the agenda, but it could be brought back on again and a programme of training could be worked out.

Mr W Clarke:

Obviously, there are clear lessons from what happened across the water in the area of planning reform. Do you see any comparisons between what happened there and what is happening here? Is there anything that we should do differently?

Mr Worthington:

The Localism Bill that is going through the House of Commons will bring in a planning system in England that is different to the one that we are working on. When the Localism Bill was first discussed, one of the key issues was the notion that communities would be allowed to define themselves. That would have produced inward-looking plans, but the Localism Bill as introduced provides that councils rather than communities should make that definition. We have a number of shared space initiatives here that encourage communities, particularly those in areas with a lot of peace lines, to look outwards, towards each other. It is important that communities here do not self-define but are defined by councils, to avoid inward-looking plans.

The Chairperson:

There is a serious need for capacity building and resources. I thank the witnesses for their presentation and I look forward to working with them again.

The Chairperson:

We move on to the oral evidence session from the Royal Institution of Chartered Surveyors (RICS). I welcome Ms Diana Fitzsimmons, Mr Bill Morrison, Mr Ben Collins and Mr Liam Dornan. You are all very welcome. Please give a presentation to the Committee and then I will open the meeting to questions from members.

Mr Ben Collins (Royal Institution of Chartered Surveyors):

I am the Northern Ireland director of RICS. I will say a few brief words of introduction, and then

each of my three colleagues, all fellows of RICS, will make a brief contribution. We understand that we have 10 minutes to make a presentation at the start.

The Chairperson:

We will give you a wee bit more than that.

Mr Collins:

Thank you for giving us the opportunity to speak to you about the Planning Bill. RICS has a requirement to act in the public interest and provide advice to the Government of the day. We have 3,000 members who work across land, property and construction in this region, including all aspects of the planning process. Our oral evidence will be supplementary to the written evidence. It can also be made available in a written format should the Committee wish.

As our written submission suggests, we are generally supportive of measures to devolve more planning responsibilities to councils. However, we will use this evidence session to highlight our concerns about implementation issues. Liam Dornan will deal with implications for councils, Diana Fitzsimmons will deal with development plans and third-party appeals, and Bill Morrison will deal with conservation areas and governance.

Mr Liam Dornan (Royal Institution of Chartered Surveyors):

I will touch briefly on a very important issue for local councils, which is capacity building in councils. This is quite a big move, when one thinks of the way in which planning was devolved to a separate Department. RICS recognises that there is a need to ensure sufficient capacity in central and local government to ensure that the reform of the Planning Service is delivered in an effective and efficient manner. To that end, we hope that staff in the new planning services in central government and local authorities will be provided with sufficient resources. RICS has offered the Department assistance with training, and Minister Poots said during Question Time that he would welcome that.

We welcome and support the inclusion of a statutory duty in the exercising of planning functions. We encourage the Committee to impress on the Minister the importance of sustainable development and the need for councils to comply with the spirit of the legislation. RICS

recognises that councils, in their statutory functions and daily business, strive for sustainable solutions for development in their areas, especially when building new facilities for the public in their area.

Clause 18 concerns the power of the Department to direct councils to prepare joint plans. RICS has concerns about councils being directed to work on joint plans in that fashion. We would welcome some kind of incentive to councils that decide, without direction by the Minister, to engage in the production of plans without intervention. A joint approach in some instances would be important, but councils coming together of their own volition would be better than their being directed by a third party.

Clause 25 deals with the hierarchy of developments. There are still some issues to be clarified in that regard. The proposed legislation states that the Department can decide that a local development is a major development. Some elements of the criteria for those decisions are contained in clause 31. We need some clarification as to when the Minister can invoke that clause. This could be an issue with some of the local developments in our major cities, such as Derry, Belfast, Newry and Lisburn, depending on the size of the projects. It may undermine the workings of local authorities.

Clause 26 deals with the definition of "regional significance". RICS has some concerns, as were described previously. It may bring the Minister and the council into conflict if the Minister or the Department suddenly decides that a local development is regionally significant and should, therefore, be looked after by central government and the Minister.

Clause 27 deals with pre-application community consultation. That part of the Bill will place a duty on a council to consult with the local community. That is important if the local community is to have an input into development in an area, especially where regionally significant projects are concerned. The applicant is responsible for that consultation, and the RICS would like clarification on issues that deal with the definition of community. That includes how far that definition goes in the consultation and the breadth of the consultation that is required by the process. It is important for the developer to consult with the council on that so that the council can use its good services to maximise consultation with local people.

Ms Diana Fitzsimmons (Royal Institution of Chartered Surveyors):

I am a planning consultant and the office director of Turley Associates. We have about 100 applications with the strategic projects team in the Planning Service. Those applications are for regionally significant projects. We have another couple of hundred applications with the local divisional planning offices. I was formerly principal commissioner with the Planning Appeals Commission, so I have experience of conducting two development plan inquiries. Before that, I was an academic, and before that, I was a planner in the DOE's Planning Service.

The points that I want to make are about the proposed plan-making system and the fact that third-party appeals are lacking in the Bill.

The RICS supports the fact that councils will be making local development plans, the two elements of those being the plan strategy and the local policies plan. It also supports the fact and that those two elements need to be consistent with each other. However, we have some issues about how quickly local councils will be able to do that. Obviously, the big issue is always timing and the timeliness of plan preparation, particularly in the context of a plan-led system, which the legislation will introduce.

Developers and inward investors need a very predictable planning system, and that is very much part of the reform process. We agree that councils, in preparing their local development plans, must take account of regional policy and guidance from DOE, DRD and OFMDFM. They must also contribute to sustainable development. All those matters are in the Bill.

As we are all aware, sustainable development is a term that has been defined differently by different people, so it is quite difficult to cover. The local development plan must also comply with any EU obligations. Therefore, it will not be an easy process for councils to carry out plan making, because they will have to listen to what people on the ground, or at the coalface, have to say while being in accordance with all the higher-up plans.

Obviously, the Bill is very much the skeleton of the new development plan process. The Bill states that a lot of that will be developed further through development Orders and regulations,

which will be the meat on the skeleton. It is very important that those Orders and regulations are issued as soon as possible so that we can see exactly what is required in the form and content of a plan, the consultation procedures, the content of a statement of community involvement, the plan review process and procedures. We should also be able to see exactly what is required in the content of an annual report on a plan, which the council will prepare. We do not see any of that detail in the legislation, so it is obviously for Orders and regulations to cover.

We note that the DOE will retain extensive plan-making powers. You may want us to comment further on that. We think that that is probably OK at the moment, because it reflects nervousness in the Department about the councils' ability to carry out those plans in a short time. That may change over time, and the Department of the Environment will hold fewer powers of direction.

We are concerned that community planning is not mentioned in the Bill. It is the layer below the local development plan, and it will obviously be a non-statutory planning process. Given that practice in community planning differs right across England and Scotland, we are not quite sure what community planning is and what it will be about. We need to learn from best practice across the water. For example, who will prepare the community plan? Will it be an all-district community plan? What groups will be consulted in the process of preparing such a plan? We need to avoid community disillusionment with the public participation process, so we suggest that people are consulted once on both the local development plan and the community plan to avoid death by consultation.

We believe that training for councillors and council officials is very important. It is important that the measures are not introduced until new councillors and their officials have received thorough training. That is because the system needs to be seen to be fair, impartial and open. It also needs to be seen to comply with all the regional planning policy statements and the regional development strategy. That is not an easy process to match up, as it is very much a balancing process. The RICS is happy to contribute to training councils.

The PAC is the preferred vehicle for the examination of a plan, as it is well trained and has a track record of being open, fair and impartial. However, if there is a huge backlog of plans

waiting for examination, we can see the merit of having a well-trained independent examiner.

When it comes to making representations on the soundness of a plan, which is in the Bill, there should be an opportunity for those defending their interests against such a representation to be heard at the examination as well. However, I do not see that, which used to be called counter-objecting, in the legislation.

Another issue to consider is the definition of the soundness of a plan. In England, the word "soundness" has caused a lot of problems for the Planning Inspectorate. In fact, it turned away the first two plans that were submitted to it for examination because they were not sound. We need to be careful that we do not get bogged down. Therefore, we need a definition of the word "soundness".

Finally, third-party rights of appeal are not included in the legislation. The RICS has traditionally been against introducing third-party appeals on the grounds that they would further delay decisions on planning applications. However, if the Assembly is keen to introduce such appeals, it could learn a lot from the system in the Republic of Ireland, where such appeals can be made only by those who have objected in the first instance. The appeal has to be submitted within four weeks with a full supporting case. In practice, there are no oral hearings in the Republic of Ireland, so it is a very speedy system of appeal.

Mr Bill Morrison (Royal Institution of Chartered Surveyors):

By way of background, I am a planning consultant, as is Diana. Formerly, I was divisional planning manager for Downpatrick and Belfast, so I have a little bit of insight about both inside and outside the system.

The Chairperson:

Your name rings a bell.

Mr Morrison:

I want to make three points on behalf of the RICS. The first is a general point, the second is about conservation and is quite specific, and the third is about something that could be introduced

into the Bill if people were minded to address the pressing problem of planning delays.

I will deal first with the more general observation. Picking up from the Chairperson's comments at the end of the Second Stage debate, we asked whether the Bill would work in practice, whether it would do what it intends to do and whether anything had been overlooked. Generally, the RICS takes the view that the Bill does what it says on the tin: it transfers planning powers to district councils with a few additional tweaks. Perhaps it is the additional tweaks that need to be looked at fairly carefully. The Bill contains the checks and balances, but the RICS would endorse two points that the Chairperson made at the Second Stage debate that powers for planning should not go to councils before they are:

"working within a new statutory governance framework and an ethical standards regime". — *[Official Report, Vol 59, No 2, p117, col 2].*

Similarly, we say that links between community planning and development plans need to be clearly explained. Diana has addressed that particular point.

The more specific point that I want to make addresses clauses 103 and 104, which relate to conservation. Generally speaking, the powers in those clauses will come across from the Planning (Northern Ireland) Order 1991. In our opinion, the introduction of additional factors needs to be looked at carefully. The proposals are to change the conservation law to bring partial demolition under control and to apply an enhancement test to development. We feel that those measures should be approached with some caution. They address long-standing case law in England, and, despite the passage of time, no attempt has been made to change that. That sends a signal that there may be something to be cautious about in introducing those two measures. All that the RICS wants to do is flag that up and ask that the Committee look carefully at that particular element.

I will turn now to the no harm test. If something is proposed in a conservation area, the law as it stands states that:

"the desirability of preserving or enhancing the … conservation area"

should be taken into account. In other words, whenever we look at a development proposal, we must ask whether it preserves or enhances the character of the conservation area. The courts in England have taken the view that the critical element is that it causes no harm. The no harm test is fundamental to planning policy. That is the point that the RICS wants to underline. If a proposal causes no harm, it should be allowed in principle. However, the Bill proposes something that goes a stage further by introducing a test to ascertain whether a proposal enhances conservation.

I am a supporter of historic buildings and conservation generally. I am member of the Ulster Architectural Heritage Society, which champions this measure. However, I am concerned that it may take planning one step too far. It makes it very difficult to conceive of how a development would measure up to the test of enhancement. If a proposal is put forward, and it causes no harm, we can understand that. If it has to enhance an area, we wonder what is going to be involved.

My second point, which is also addressed in the Bill, is partial demolition. At the moment, if someone is in a conservation area and is required to carry out demolition, the courts have ruled that consent is required only if the building is to be totally demolished. If it will be only partially demolished, consent is not required. That has been addressed in the Bill, but it raises questions about whether it will lead to an abundance of planning applications for every minor issue that might have to be dealt with. For example, a householder wanting to push down a wall in their back yard will now ask whether he needs conservation area consent. They may or may not need planning permission, and, in many cases, it will be permitted development. However, such a case will fall under this element of the Bill. The complication is that there could be a lot more planning applications and applications for consent to demolish. That would introduce bureaucracy and would raise the question of whether it is absolutely necessary. If it ain't broke, don't fix it.

My third point addresses the concerns that are prevalent at the moment about delays in planning processes. The RICS notes and commends the Planning Service's successes in streamlining. The Planning Service has done a lot over the past two years, after it got a lot of criticism about the length of time that applications were stuck in the process. Things have improved.

We welcome clause 224, which will introduce consultee obligations. In other words, if someone is consulted in the process of planning applications, they will have to reply within a certain time or suffer some consequences that are yet to be determined. That at least puts pressure on consultees to come back with responses in time, which is a positive move.

However, processes remain cumbersome, and that is compounded by challenges or the threat of challenge at various stages, particularly where public inquiries are involved. I am talking and thinking about Sprucefield, Belfast City Airport or, most recently, Newtownards. The RICS feels that some thought could be given in the Bill to measures that would address the Minister's concern that issues should be resolved at inquiries and by decision-takers, with the courts being the last resort. That must be right.

Therefore, the question that I ask on behalf of the RICS is whether there is merit, under the Bill, in setting up a new regime to prevent challenges ahead of a planning decision and to raise the bar in what needs to be demonstrated. The significance of that, ahead of the planning decision, is that, at the moment we have challenges coming at various stages of the process, and when the application goes to public inquiry for one reason or another, environmental issues may not have been addressed, so the inquiry is pulled and the application is looked at again.

If the Executive and Assembly could introduce a law that stated that there could be no court challenge until such time as a final decision had been taken, a lot of the delay factors in procedural challenges, some of which may be mischievous, would be taken out of the process. All challenges add to delays, so such a law would allow one opportunity at the end to challenge the decision if there had been a procedural flaw. We may get better-rounded judgments from the courts about whether the impact of the application was such that it required the matter to be looked at again. We feel that that is an issue that could be dealt with in the Planning Bill, and this might be the very opportunity to do that.

The Chairperson:

Thanks very much. You have provided a lot of food for thought. Other respondees raised many of the same issues. However, I will try to touch on some of the specific issues that you raised. I

will start with you, Mr Dornan. Obviously, resources and capacity building are major issues for you in the transfer of all these functions.

Mr Dornan:

They are major issues. However, we do not want them to become absolutely huge issues, because the time frame is quite short. For example, April 2011 is one of the key dates. We do not want to be guilty, if that is the right term, of having a change for the good that does not turn out to be good. I believe that there will be enough of a burden on local councils dealing with, if I am correct, nearly 350 renewable energy applications in the planning system that do not seem to be going anywhere at the moment. The worst that could happen is that we make the changes and put people through the pain without improving the system. Therefore, resourcing, training and building capacity in local councils are absolutely essential for this shift in the planning system.

The Chairperson:

I will put it to the Committee for agreement, but there is to be a two-year review of how this whole process rolls out, which is fine. However, we are clear that, until the governance is in place, the Bill will not be implemented. The pilot programmes may give us a feel for exactly how the process will work. We are in agreement about that, although, as I said, the important issue is the capacity building, which everybody has mentioned. How do we deliver that when it comes to deciding fees and getting the model to run that all out? Do you have any comments on that? Should the system be entirely fees based?

Mr Dornan:

Interestingly, the Planning Service has just put its fees up by 20%. I think that it was last year or the previous year that the fees were increased by 20%, and we have seen a downturn in economic activity. I think that the fees structure has to suit the service that we deliver. Moving planning to local councils should really be cost negative. There should not be any huge cost in moving planning from one government Department to another government agency.

The Chairperson:

Obviously, there is a cost with training and capacity building. Having said that — I am sorry, the point has gone out of my head. I will have to come back to it.

Mr Dornan:

To supplement that, I will give you an example of how training will help the situation. For the past three days, I have been involved with training. I work for Belfast City Council's building control service, and for the past five years, we have been helping LPS to finish off its rating surveys and to get ratepayers' bills out quicker. That ultimately helps absolutely everyone. We have been training with the Institute of Revenues, Rating and Valuation (IRRV), which is the professional body for rates collectors on these two islands, to try to improve the collection of rates and make that process more efficient. I believe that capacity building involves training for elected members and people working in local government. As my colleagues said, we have offered training, and we have offered to be involved in training for the new services in the councils.

The Chairperson:

Planning is still a public function. When dealing with finances, there has to be value for money, but people sometimes have to weigh up what they are getting. For example, we have seen planning rolled out in central government through the Department for a number of years, and we have also seen that fees have been accumulating recently, so the service did not exactly meet the amount of necessary work.

Nothing has been said about the actual model that will be used to transfer planning down to the councils and how much work that will take. The previous presentation mentioned fees, but it also looked at the rates base. That would need to be part of how the system is rolled out over the two or three-year period or whatever period of time it is. It is something to seriously consider. We cannot just hand power down, decide to train people up, think that everything is fine and then tell ratepayers that that is what we are doing.

Diana, you mentioned the plan-led process for councils and the timing that is involved in that. You talked about surveys, districts, designating roles and everything else. You worked in the area-planning process, so from your experience, how do you see that element?

Ms Fitzsimmons:

I was wondering whether there could be some sort of central resource for the 11 councils so that they can carry out a lot of the survey work. There are people in the Planning Service now who are quite skilled at doing development plans, and there are other people who have never done any such work. Rather than each council having to learn, possibly once every six years, how to do a plan, if there were a central resource that would help them out, as it were, and possibly carry out some of the analysis and research for them, they could then, after community consultation, evolve that into options and a plan. It might be a good idea to take some of the technical side of the process to a central resource.

The Chairperson:

How would you tie in the reality of that? We are talking about land use and zoned planning and community aspirations. We have to consider what goes along with that, such as the community plan element, local policies, statements, area plans and the RDS. How do you think that that whole process will work out?

Ms Fitzsimmons:

From what I have read, it seems to me that the community plan will be an all-district one. There are issues with that in that it becomes a wish-list for hospitals, schools and parks and so forth, yet the regional development strategy states what we can afford as a region.

The Chairperson:

I agree, and that needs to be teased out. That is why I asked you. We talked about spatial planning and land use planning, and spatial planning is about more than just using the land and places. It is also about the hierarchy that you mentioned.

Ms Fitzsimmons:

In an ideal world, the elements of the community plan that feed in to land uses should be taken on board by the local development framework and then worked through. Councils will have to make very hard decisions about which town centres will grow and which will not and where hospitals will be built. For example, community planning may result in people wanting a lot of small hospitals, yet the strategic plan will require large, specialist hospitals, as that is more economical.

Therefore, it will not be an easy process.

The Chairperson:

I can well believe it, but we seem to be gearing up to move in that direction.

Mr Morrison:

It will probably have to be revisited when the proposals for local government come forward. One of the ways of simplifying the issue is to consider the development framework as just one means of delivering the community plan. In other words, there is a hierarchy, and the community plan is more important and on a larger scale for all aspects of local authority expenditure.

The Chairperson:

No doubt it will be one step at a time. Diana, we talked about the PAC earlier. We may create duplication if we create a process in which plans are sent to the Department with the possibility of their being sent to the PAC and returned to the Department. You have been on the inside of that process, so what are your views on that point?

On the capacity issue, Bill told the Committee that there is a backlog as a result of redeployment and other issues. That backlog could be cleared quickly, but further problems could be created if we move it on a further step, as decisions will need to be made. There is nervousness in the Department about this, which is fair enough.

Ms Fitzsimmons:

The Planning Appeals Commission has evolved the process. It used to take a very long time to conduct a public inquiry. Examinations are much quicker, as they are commissioner led, but they could be further tightened and speeded up quite substantially. For example, a lot of people do not turn up when they said they would, and there is a great deal of time wasting. A number of commissioners should work on one plan to get it through quicker. In my opinion, the point is to use the Planning Appeals Commission's resources effectively.

The Chairperson:

Bill, just before I open it up to Committee members, you spoke about clause 224 and the duty to

respond to consultations. I will not mention my experiences as a councillor, but, given that there are different applications for different developments, should the time frames for the receipt of consultees' responses to such applications be broken down?

Mr Morrison:

Clause 224 will leave a lot to development Orders and so on to specify what sanctions will be placed on consultees. However, at least the provision is in the Bill, and there probably will be an insistence from Departments for those responses to come back on time.

One way that a consultee can get out of that duty is to say that they need more information. That is a delaying factor that perhaps no legislation can overcome. If someone needs more information, it must be provided and the file is put away until that information arrives. The recognition that consultee responses are crucial to the time frame of processing planning applications is important, and I am glad to see it in the Bill.

The Chairperson:

We can move that on and say that, for the consultee to be able to say that, the processes need to be right from the start. If a consultee is able to stall the process by saying that they have not been sent certain information or they need a question answered, should there not be a time frame for that? You have spoken about procedural flaws and planning delays in general, and there are certain criteria that you have to go by. I will ask you about agents in a moment. However, the process is a tick-box exercise, and, if mistakes are made, applicants could argue that their agent did not fill in the application properly. The case officer would then have to go back to the person who validated that application.

Surely to God if you are telling me that about the procedures and duty to respond, and the consultee is saying "you have not sent me this" or phoning up to say "give me another week", whoever is sending that information has a duty to respond. Do we not then need to look at that process and the criteria?

Mr Morrison:

The criteria have tightened. The whole validation process is a lot tighter than it was and probably

as tight as it can be. The problem with consultees is more to do with the fact that the resources of the Department or agency that is dealing with the responses are not made available. Clause 224 will ensure that resources are given by other Departments to the processing of planning applications.

Ms Fitzsimmons:

The Planning Service's strategic projects team now has in-house representatives of the Northern Ireland Environment Agency and Roads Service. That in-house element helps to speed things up. Maybe councils need a similar in-house team with their own NIEA and Roads Service people to work with them on planning applications in a more joined-up process in each council.

The Chairperson:

We could call them mistakes, but we need to learn from what went on in the past.

Mr Morrison:

You can learn from successes as well as from mistakes.

The Chairperson:

Yes, certainly. We will not get into which consultees hold up the process, because we will be here all day. I talked during the previous presentation about agents and their training. No disrespect, but I have sat on a council and it is only when a person gets a refusal that you get a phone call asking you to speak up at a council meeting for them. There are people who may be good architects but when it comes to planning policy, or knowing policies, you might be safer to fill in the application yourself and send it in. I am being honest; that is what happens. Is there anything in this? Have you any recommendations or any views?

Ms Fitzsimmons:

The RICS could perform a useful role in assisting councils, the Department of the Environment and the Planning Service in training applicants if there is a relationship there that needs improving.

The Chairperson:

That is what is happening out there. Do not shy away from it. In all the processes that we are trying to get right, we have experienced that at council level and we need to look at it. I am not saying that we put that in the Bill. Perhaps it could be a recommendation.

Mr Morrison:

Your worry is uninformed agents who may be —

The Chairperson:

That is there; it is on the ground.

Mr T Clarke:

Not necessarily uninformed.

The Chairperson:

No, not necessarily uninformed.

Mr Morrison:

The planning system should not be dependent on high skills. It should allow people to be able to submit an application properly. However, that might require training of agents.

The Chairperson:

We thought that e-PIC would cure that problem but I do not think that it is working just yet.

Mr Morrison:

Yes.

The Chairperson:

Let us be honest: we have seen what is happening on the ground. All I am saying is that that needs to be highlighted. You maybe do not have to be a rocket scientist to put in an application but you certainly need to know a wee bit about planning policy and criteria.

Mr Dornan:

In the building control system in this country you do not have to be an architect to submit an application. Local councils and building control services would like to have a particular type of person submit an application because that would dictate the information that is supplied and make it easier for the council to make a decision. I think that that is what you are referring to.

The Chairperson;

I had just better clarify that point for the Hansard report: I used architects as an example only. I agree with you, and we will speak no more on it.

Mr Dornan:

What I am saying is that there is no limitation on anyone being an agent in the building control end of the business. Whether they are a surveyor, architect, engineer or a lay person, they have a right to submit an application for consideration by the local councils. That is the case here, and it may well lead to delays in the consideration of that application.

The Chairperson:

If people want to put in an application, there are certain ways of going about it, including using the 'Yellow Pages', word of mouth or their contacts. That is fine. I have made the point clear.

Mr W Clarke:

Following on from what the Chairperson said about having to get agents for simple applications, surely, since the Planning Service was set up, there has always been an onus on the Department to provide that information to the applicant at the beginning of the process. Surely front-loading the service at that stage will do away with the need for agents. If more resources were put in at the front end, it would help people with their application. I know that people phone up a planning office and are told that it is too busy and to stick in an application for the planning office to decide what points need clarified. That is a drain on people's resources. I think that there is a duty, perhaps through resources being directed from central government, to put the money into Planning Service at the beginning of the process.

Mr Morrison:

In fairness, the Planning Service has moved quite far in that direction, not so much with the e-PIC system but with the website.

Mr W Clarke:

Ordinary lay people do not get trained on that.

Mr Morrison:

It is a complicated business.

The Chairperson:

There is nothing simple about planning.

Mr W Clarke:

It has nothing to do with the computer systems. I am talking about having a one-stop shop whereby people come into a planning office and go through their application. People should have at least one opportunity to do that.

Mr Morrison:

As a general observation, one of the things about giving powers to councils is that there is a danger that each council will behave in a different manner with regard to these things.

Ms W Clarke:

As planning offices do.

Mr Morrison:

Yes. Even on the question of fees, which you touched on, it seems that it would be difficult if each council area were to set its own fees. There is an argument for keeping them consistent across the board.

Ms Fitzsimmons:

Clause 40 states that an order will be made that will require particular types of applications for

planning permission to have design statements and access statements. That is the English system, and it takes a professional person to do that, as opposed to an unqualified agent or an applicant. That is one of the things that will be required in the future.

The Chairperson:

That is fine. I think that you are correct on that.

We are being told that we will not have enough time to scrutinise the Bill, but a lot of questions will be asked before we are finished. We have an opportunity to get it right. There will be a transition period when people take time to bed in and get it right. Subordinate legislation will determine how it rolls out on the ground, and some of the issues that we talked about today will raise their heads. For the record, I have nothing against those architects — or architects in general — but I am giving examples of what we have heard, and we need to look at that. Thank you.