Northern Ireland
Assembly

COMMITTEE FOR THE ENVIRONMENT

OFFICIAL REPORT (Hansard)

Planning Bill

10 February 2011

NORTHERN IRELAND ASSEMBLY

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

Witnesses:
Mr Stephen Gallagher)
Ms Irene Kennedy)
Mr Angus Kerr) Department of the Environment
Ms Maggie Smith)
Mr Peter Mullaney)

The Chairperson (Mr Boylan):

Welcome back, Irene, Stephen and Angus. We will go through each clause one by one, starting at Part 4. We will continue from clause 79. I will seek the Committee's position. We will deal with deferred clauses after we have dealt with the schedules and before we look at any other issues. I remind members that this is their last opportunity to respond to the clauses. I also

remind members that they are more than welcome to bring whatever amendments they feel have not been talked through in Committee to the Floor of the House at Consideration Stage.

Therefore, we will start clause-by-clause scrutiny from Part 4, which covers additional planning control. OK, gentlemen. With all of that in mind, and now that you are appropriately armed with all of the information and documents, we will move on.

Clause 79 (Lists of buildings of special architectural or historic interest)

The Chairperson:

Councils wanted further clarification of their role with regard to the clause. The Department stated that there would be no change in council responsibility.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 79 agreed to.

Clauses 80 to 82 agreed to.

Clause 83 (Issue of certificate that building is not intended to be listed)

Mr McGlone:

Why is there a need to issue a certificate for a building that is not intended to be listed? I thought that a certificate would only be issued for a building that is intended to be listed. Why would you go to all the bother of being that official? A letter would, probably, suffice.

Ms Irene Kennedy (Department of the Environment):

It is really is not much more than that. The certificate provides certainty for the developer or person who owns the property that the building will not be listed within the next five years.

Mr McGlone:

It seems a very formal way to simply say no. That has just struck me. It is a bit like getting a

certificate from the doctor to say that you are not sick. *[Laughter.]*

The Chairperson:

You can put laughter in the record. Are you content with that explanation, Mr McGlone?

Mr McGlone:

Whatever floats your boat.

The Chairperson:

I am not putting that to the Committee.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 83 agreed to.

Clause 84 (Control of works for demolition, alteration or extension of listed buildings)

The Chairperson:

I remind members that the Committee did not raise any issues in relation to clause 84.

Mr Savage:

I am concerned that some of our towns have quite a lot of listed buildings that have deteriorated to such an extent that they are having an adverse effect on those towns. I am thinking of a building in one town in particular, the whole left side of which has deteriorated. Some of the planners here will know exactly where I am talking about. Nothing is happening, and something needs to be done, either to help the owner to do something about it or knock it down and replace it with a new building.

As it stands, people want to develop old listed buildings. They were all right in the days of the horse and cart. The planners will not let the owners make any alterations. Something has to be done in that case. It is no secret that I am talking about Lurgan. Mr Mullaney knows exactly where I am talking about. There needs to be some relaxation so that the owners of buildings at the top end of the town can modernise. They want to do that, but they are subjected to

restrictions. Something has to be done about that.

The Chairperson:

We will find out the name of that town yet. Mr Mullaney's name was mentioned there.

Mr W Clarke:

I have a question about the £30,000 fine. I do not believe that that is a deterrent. During the boom, £30,000 was nothing. It would not even have covered the cost of a garage in a new development. We should look at an amendment that would increase that amount to around £100,000.

Mr Kinahan:

I agree. I was going to suggest that to the Department, because it should have the power to impose a suitable fine. I know that a row of eight Victorian houses in Ballycastle were flattened in one weekend. A £30,000 fine would have been a pittance in that case.

Mr Ross:

I would not disagree. During the boom years, as Willie says, it would have been factored into the overall cost.

The Chairperson:

Would you like to respond to Mr Savage's point?

Mr Peter Mullaney (Department of the Environment):

I will not comment on the specific town, although I am aware of the circumstances to which Mr Savage referred. The purpose of listing a building in the first place is to protect the built heritage. There is provision in the legislation to apply for listed building consent to alter a building. Whether consent is forthcoming is the issue, but the provision does and will exist.

Mr Savage:

All I want is something that will help owners to modernise and upgrade their buildings. They cannot do so because of restrictions placed on them by the Department. The big issue is that

people are land-locking quite a bit of property. Others cannot get to the back of their properties because of the old buildings along the front of the street. To be quite honest, for £30,000, it would be far better to knock those buildings down. People want to stay within the law, and something needs to be put in place to bring those buildings into play.

The Chairperson:

There are two issues. Will you consider an amendment to the fine, which Mr Kinahan, Mr Clarke and Mr Ross were —

Ms I Kennedy:

It is important to look at clause 84(6) and at the current offences and penalties. It states:

"A person guilty of an offence under subsection (1) or (5) shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £30,000, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both,".

Mr W Clarke:

I see that, but can the Department tell me of one developer who was jailed for knocking down a listed building? I am not aware of any; certainly not for two years. I do not know of any who were imprisoned for six months; not in my constituency, anyway. Even a fine of £100,000 during the boom would not have been a deterrent, but it is certainly more of a deterrent than £30,000. As Alastair said, people took that into consideration when they thought about developing the site and looked at how many houses they were going to put there. It is similar to what George said: taking the listed building out of the way provided for another site and paid for whatever fines they would face. It is the same with tree preservation orders as well: trees were just ripped out of the road and people took the fines. When the Ministers were asked questions about that type of behaviour, the response from the Department was that the matter was in the hands of the courts and that it could not interfere. We want the Bill to state that the deterrent will be at least £100,000 because I cannot see people going to prison for it.

Mr Kinahan:

I agree.

Ms I Kennedy:

Clause 84(6) points out that:

"in determining the amount of any fine … the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to that person in consequence of the offence."

There is flexibility in that provision for, potentially, a hefty fine. However, as Mr Clarke indicates, it is a matter for the courts.

Mr W Clarke:

If the legislation states that the maximum fine is £30,000, the judge will be influenced by that. He will give the maximum fine.

Ms I Kennedy:

That is for summary conviction. Conviction on indictment would be in a different court.

Mr Buchanan:

What difficulty does the Department have in raising the fine from £30,000 to £100,000?

Ms I Kennedy:

I am drawing to the Committee's attention that there is flexibility in the provision.

Mr Buchanan:

With due respect, that flexibility does not seem to have been used over the years. I know case in which listed buildings have been demolished and the developers got a slap on the wrist more or less, and that has been it. No action was taken against them. At least, if the fine were raised to £100,000, it would be some sort of deterrent for someone who knows that there will not be a court case and that they will not have to go to prison.

Ms Smith:

I am more than happy to ask the Minister whether he would be content with that amendment. Alternatively, it may be something that the Committee might want to put forward.

The Chairperson:

I agree. I think that the Committee would be willing to propose an amendment. It would be far

stronger. Will you bring the matter to the Minister? We will certainly consider an amendment. We will leave this clause, gentlemen? Are you content?

Mr W Clarke:

I do not think that we should leave the clause. We should table an amendment, and, if the Minister comes back to the Committee, we will remove our amendment.

Ms Smith:

That is fine.

Question, That the Committee is content with the clause, subject to a Committee amendment, *put and agreed to.*

Clause 84, subject to a Committee amendment, agreed to.

Clause 85 (Applications for listed building consent)

The Chairperson:

The Committee did not raise any issues with this clause. However, the Department has since advised that it will be make two textual amendments to this clause to ensure a consistent approach throughout the Bill. Are there any comments from departmental officials?

Ms I Kennedy:

They are minor amendments to clarify that any particulars in clause 85(1)(b) must be verified by such evidence as required by the regulations — that would be the list of building consent regulations — or by any direction. The amendments will also clarify, at clause 85(4), the time within which applications are dealt with by councils or the Department, because, in some cases, the Department will deal with such applications.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, *put and agreed to.*

Clause 85, as amended by the Department, agreed to.

Clause 86 agreed to.

Clause 87 (Call in of certain applications for listed building consent to Department)

The Chairperson:

The Department stated that the use of the call-in power would depend on the circumstances of each case. Are there any comments on the clause?

Mr Kinahan:

I have a general comment on listing, and it relates to my colleague's comment that the difficulty is that buildings are either listed or not listed. We sometimes need a middle ground. Listing tends to keep a certain structure. However, doing so sometimes prevents buildings being put to other uses. We need to look at this with a view to seeing whether it is within the powers of councils or others to vary what is retained in a building rather than just, religiously, save that building. The approach prevents a lot of buildings being used for other things. I know that that is a difficult one. I am just not sure how to get round it.

Mr Mullaney:

The situation pertains at the minute. Obviously, an assessment has to be made on the merits of the development proposal vis-á-vis the listed building, and the classic case is facade retention. There are clearly cases of listed buildings being amended or altered in a way that retains the integrity of the building and enabling development to proceed. It is always going to be a case of looking at the particular circumstances of each case. The intention behind listing a building is to retain it in its entirety. However, the other issue, which brings me back to Mr Savage's point, is that the purpose is to have a use for that building. Buildings decay if they are not put to use, so we have both those considerations.

Mr Kinahan:

I should at least declare an interest. I do not want to be fined £100,000 for knocking my room down.

The Chairperson:

Before we move on; which clause can we strengthen in response to Mr Savage's point about the use of buildings and everything else? Can we do anything?

Ms I Kennedy:

I think that that is more of a policy issue.

Mr Mullaney:

It is. It falls under PPS 6. The point that I made on clause 85 was that, as in the 1991 Order, there is provision to apply for listed building consent. I also made the point that the issue is one of outcome. To follow up on what I just said to Mr Kinahan, each case has to be judged on its merit. The purpose is to retain the listed building as much as possible.

The Chairperson:

That is the problem. In some cases, we need to use a bit of flexibility and common sense. Obviously, you have to look at policy first.

Mr Mullaney:

That is set out in PPS 6.

The Chairperson:

We will put a recommendation on that matter in the report.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 87 agreed to.

Clauses 88 to 92 agreed to.

Clause 93 (Duration of listed building consent)

The Chairperson:

No issues were raised by the Committee. We clarified the point that was raised by Belfast City Council. It requested further consideration on the duration of listed building consent, which is granted for five years.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 93 agreed to.

Clauses 94 to 96 agreed to.

Clause 97 (Revocation or modification of listed building consent by council)

The Chairperson:

I remind members that, at its meeting on 1 February the Committee requested that the departmental officials report back to the Committee on the need for and provision of arbitration in relation to listed buildings and conservation. The Department's response suggests that the proposed powers are a safeguard only to be used in rare, exceptional circumstances if a council fails to fulfil its duties. The Department is required to give notice or consult with councils before carrying out those actions. On that basis, it does not consider it necessary to establish formal arbitration arrangements.

Mr Savage:

That is the one that I have been talking about. I had better declare an interest as a member of Craigavon Borough Council. I would like some clarification on this matter, and I suppose that the Department has gone some way towards providing that. Councils cannot hold people to ransom who want to modernise listed properties. Half of those properties do not even have foundations. People want to do something to those buildings but are being restricted from doing so. I want to see something in the Bill that helps owners to go ahead and spend money on such properties in order to bring them into play.

The Chairperson:

Does anybody wish to comment? The Department is saying that this matter is covered by PPS 6. The Committee has previously discussed how planning policy statements are out rolled, and at the minute, we are seeing inconsistencies with PPS 21. However, the division is getting better at that. Mr Savage has obviously raised an important, valid point about what is happening in his constituency. If the Department is saying that PPS 6 covers this issue, it needs to ensure that guidance is sent out, otherwise we will need look at the Bill.

Ms Smith:

PPS 6 will cover it.

The Chairperson:

Can you give us that assurance?

Ms Smith:

Yes.

The Chairperson:

Mr Savage is correct: half the buildings have no foundations. Will you keep the Committee informed on whether the Department will give guidance about PPS 6 on the matter? Do members have any other points?

Mr W Clarke:

The Chairperson has clarified that guidance will be given. If a building is worthy of listing, then it is not a matter of whether it has a foundation. Centuries ago, a lot of buildings had no foundations. If it is a matter of keeping facades and interiors, that is fair. I do not know the particular circumstances in Craigavon, but people cannot just knock down listed buildings to encourage development. If there is a historical aspect to a building, it has to be preserved. People cannot just continually knock down our heritage until we are left with only glass and concrete. There has to be a line drawn. It is fair to consider the need for flexibility, but people just cannot take out buildings to put in new developments.

The Chairperson:

I do not disagree, but this comes to down to common sense. Sometimes frontages and doorways are not kept, but that usually depends on what a person wants to do with the building for modern living. That is something that people need to be very sensitive about. I agree that the facade is kept in most cases.

Mr W Clarke:

George was talking about buildings being taken down completely to open up opportunities for

new developments.

The Chairperson:

To be honest, it is down to PPS 6.

Ms Smith:

Yes, it is.

The Chairperson:

It is on a case-by-case basis.

Mr Kinahan:

I was just going to say that I agree. It will get to the point where an old building is in such bad order that no one will be able to afford its upkeep.

The Chairperson:

I do not think that there is anything wrong with your building, Mr Kinahan. We will be down for breakfast one of these days.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 97 agreed to.

Clause 98 (Procedure for section 97 orders: opposed cases)

The Chairperson:

I remind members that councils expressed concern about the degree of scrutiny being retained by the Department. The Department stated that this clause is part of its oversight role. We have continuously asked for a two-year review to be built into this. We will discuss that at the end. All that I am saying is that the councils keep reminding us about all of these things.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 98 agreed to.

Clauses 99 and 100 agreed to.

The Chairperson:

Gentlemen, we have scrutinised 100 clauses; only another 148 clauses and a few other matters to go.

Clauses 101 and 102 agreed to.

Clause 103 (Conservation areas)

The Chairperson:

I remind members that, at its meeting on 1 February, the Committee requested that departmental officials report back to the Committee on the need for and provision of arbitration in relation to listed buildings and conservation areas. I refer members to the Department's response. I will give Mr Kinahan a minute. Do members wish to comment? No.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 103 agreed to.

Clause 104 (Control of demolition in conservation areas)

The Chairperson:

I remind members that the Committee did not raise any issues. However, the Department has since advised the Committee that it wishes to make two textual amendments to ensure a consistent approach throughout the Bill.

Ms I Kennedy:

It is simply a matter of putting in "conservation area".

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, *put and agreed to.*

Clause 104 agreed to.

Clause 105 agreed to.

Clause 106 (Application of Chapter 1, etc., to land and works of councils)

The Chairperson:

I remind members that the Department stated that further details on this clause would follow in guidance and subordinate legislation. In addition, the Department has since advised the Committee that it wishes to make textual amendments to the clause to ensure a consistent approach throughout the Bill. We are now relying a lot on guidance and subordinate legislation.

Question, That the Committee is content with the clause, subject to the Department's proposed

amendments, *put and agreed to.*

Clause 106 agreed to.

Clause 107 (Requirement of hazardous substances consent)

The Chairperson:

No issues have been raised in Committee. Do members have any comments to make about hazardous substances?

Mr W Clarke:

Just on the £30,000 fine, again.

The Chairperson:

Indeed. Armagh City and District Council raised the issue of the £30,000 fine.

Mr W Clarke:

There is a huge amount of money to be made from removing hazardous waste.

The Chairperson:

Do members have any comments?

Ms Smith:

I am happy to raise that matter with the Minister, but it might be something that the Committee will *[Inaudible]*.

The Chairperson:

For clarification: that comment relates to clause 116, Mr Clarke.

Mr W Clarke:

I see that now, Mr Chairperson.

Mr Savage:

Some big containers of hazardous waste have been brought into certain areas recently and just detached from lorries. That has happened quite a bit in the Craigavon area. Who has the power to remove them?

Ms Smith:

That is in the Waste and Contaminated Land (Amendment) Bill.

The Chairperson:

A protocol is being put into place, through the Waste and Contaminated Land (Amendment) Bill, to see who deals with what. It is valid to raise the point. However, that relates to clause 116.

Mr McGlone:

How does this Bill fit in with the role of the Northern Ireland Environment Agency (NIEA) with respect to what is interpreted as a hazardous substance constituting pollution?

Mr Savage:

It sat there for six months —

The Chairperson:

Hold on.

Mr McGlone:

There is also the issue of fines. Could there be two issues: a hazardous substance that is illegal and one that constitutes further pollution, which is also illegal? What is the role of the local council, as it might be intended to be, and the NIEA, as it could be intended to be?

Ms I Kennedy:

I do not have an answer to that.

Mr McGlone:

It was not clear to me either.

Ms Smith:

The Planning Bill relates to planning. We cannot comment on waste, but we could come back to the Committee on that matter.

The Chairperson:

You know the issue.

Ms Smith:

Yes.

The Chairperson:

The key point is about the waste issue. However, that will depend on the protocol. Mr McGlone asked about the NIEA and its responsibility as opposed to that of the local council. A waste protocol is being agreed on the amounts and types of waste. Perhaps you could come back to the Committee about that. Mr Savage also raised specific issues in his council area. Will you respond to us in writing on behalf of the Minister on the issue of hazardous materials?

Ms Smith:

Yes, we will.

The Chairperson:

Are there any other comments, gentlemen? Are you content with that, Mr McGlone?

Mr McGlone:

Yes.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 107 agreed to.

Clauses 108 to 112 agreed to.

Clause 113 (Call in of certain applications for hazardous substances consent to Department)

The Chairperson:

I remind members that the Committee raised no issues about the clause. However, the Department has since advised that it will be making an amendment to the text of the clause to ensure a consistent approach throughout the Bill. The text of the draft amendment is in members' papers.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 113 agreed to.

Clause 114 agreed to.

Clause 115 (Effect of hazardous substances consent and change of control of land)

The Chairperson:

I remind members that the Committee did not raise any issues, but there is again an amendment to the text of the clause to ensure a consistent approach throughout the Bill. The text of that amendment is in members' papers.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 115 agreed to.

Clause 116 (Offences)

The Chairperson:

This clause deals with offences. I remind members that, at our meeting on 1 February, the departmental officials agreed to report back to the Committee on the possibility of criminalisation being included in this clause. The Department's response is included in members' papers, and indicates that it is already an offence. This clause creates a criminal offence if there is contravention of hazardous substances control. Mr Clarke, this relates to the fine as well. Will the departmental officials clarify the matter?

Ms I Kennedy:

It is a criminal offence and those are the penalties for it.

The Chairperson:

The £30,000 has been raised again; in these economic times. Mr Clarke, you had an issue about the fine in clause 116.

Mr W Clarke:

I would like the Committee to consider an amendment. Is there a schedule of substances so that we can get an idea of what we are talking about?

Mr Stephen Gallagher (Department of the Environment):

Substances are listed in the regulations, along with the relevant quantities. I would have to go back and look at them; it is a technical issue that I am not really qualified to talk about.

Mr W Clarke:

It would just give me a better idea. Why is there no custodial sentence?

Mr S Gallagher:

It matches other jurisdictions. We were asked to go back and look at that, and we can confirm that prison sentences are not handed down in other UK jurisdictions. That is where the Health and Safety Executive (HSENI) pointed us. We went back to the HSE to get its views on the imprisonment issue, and I will quote from its letter:

"While HSENI holds no expertise in planning law I recall the introduction of the 1993 Planning Hazardous Substances Regulations."

As operators of sites —

The Chairperson:

Excuse me; just for reference. What you are reading from needs to be handed to Hansard staff once you are finished with it.

Mr S Gallagher:

I will do that, yes. In essence, the HSE was pointing out that:

"As operators had sites in both jurisdictions it was seen as essential that the enforcement regime was persuasive and proportionate as well as comparable across the UK."

It went on to say:

"Currently, there is interaction on parity of the enforcement regimes though better regulation colleagues, with site operators taking note of any perceived differences within the UK. HSENI would hold the view that a comparable enforcement approach should be maintained within the UK."

We received that letter, which reflects the HSE views, yesterday.

The Chairperson:

Are we not devolved?

Mr W Clarke:

Exactly.

The Chairperson:

I know that we could talk about this all day. Mr Clarke, did you want to put a figure on that? The clause states a "fine not exceeding £30,000". What matters to the Committee is how many people have been prosecuted. Let us be honest, we know how enforcement has worked before and how the process has been rolled out. There have been very few convictions in cases in which hazardous substances have been involved and most of those cases were cleared by councils. That is the general belief anyway.

Mr Kinahan:

Where do the fines go? Do they go to Northern Ireland or to the Treasury?

Ms Smith:

My understanding is that fines go into the Consolidated Fund.

Mr Kinahan:

Which is where?

Ms Smith:

It is in the Treasury; sorry.

The Chairperson:

You do not need to apologise. The money goes back to the Treasury.

Ms Smith:

I will find out the answer to that question for you.

The Chairperson:

This relates to our earlier discussion of the other fine. Do members want to propose an amendment or leave the matter until we come back?

Mr W Clarke:

I want some clarity about whether the provision will apply to a particular site where substances are buried?

Ms Smith:

Yes.

Mr W Clarke:

I am trying to get my head around this. Are we talking about building sites or some other sites?

Ms I Kennedy:

More often, the sites would be industrial complexes in which chemicals are used for certain processes. Another example would be a water treatment works. The provision is not necessarily concerned with waste, this concerns the consent for hazardous substances to be on sites. There are very few applications, because the regulations exempt many of the normal day-to-day chemicals that are needed for industrial processes.

The offence could attract a fine of over £30,000 for conviction on indictment. The Committee should also be aware of that.

The Chairperson:

The Committee sought clarification on that matter and you provided that clarity with a slightly different explanation.

Mr Savage:

The issue of the disposal of hazardous waste is again raised in clause 116(3)(a)(i), which states that an appropriate person means:

> "any person knowingly causing the substance to be present on, over or under the land".

Hazardous waste is a big issue. A container load of it could be left on a farmer's land, and when the Department comes along the farmer will be the fall guy and will lose his single farm payment.

I am a member of the Southern Waste Management Partnership (SWaMP), and the Chairperson's colleague also sits on that partnership. We were faced with the issue of containers of waste being hooked off on farmers' land six months ago. Those responsible could not dispose of the waste and no one would take the decision about who owned the waste or who should dispose of it. It sat there for ages and ended up costing the various councils a fortune. It probably cost the DOE two fortunes before it was eventually removed. I would love some powers in this Bill so that such waste could be removed.

The issue is a big one and it will raise its head more often in the future. If people are doing things that they should not be doing and are under pressure, they may put the waste on a container and, under the cover of darkness, dump it outside anyone's place. I would love some clarification on that.

The Chairperson:

That does not apply to the Planning Bill, but perhaps Maggie would clarify the position.

Ms Smith:

That is a very important issue, and I am more than happy to come back to the Committee on it.

The Chairperson:

Mr Savage, are you happy for us to return to that issue later?

Mr Savage:

I am quite happy to leave it in your hands.

Ms Smith:

OK. Thank you.

Mr Savage:

I am only drawing it to your attention.

The Chairperson:

Given that clarification and the clarification on the fine; the issue has been cleared up.

Mr W Clarke:

I want more clarification, because I am totally confused.

The Chairperson:

We will have to leave it then.

Mr W Clarke:

I would also like to see what the fine is in the South.

The Chairperson:

Unfortunately, we will have to leave clause 116. How soon can you come back to us in relation to this matter?

Ms Smith:

Can I clarify where we are in relation to the fine? Are you asking us to go back to the Minister on the size of the fine? Is that correct?

The Chairperson:

What else?

Mr W Clarke:

We would like to find out how often it is being used and how big an issue it is. Then we can

decide whether the fine is an appropriate deterrent.

The Chairperson:

That is fair. Whatever we do not clear up today we will clear up on Tuesday at lunchtime. It will only take half an hour.

Clause 116 referred for further consideration.

Clauses 117 to 120 agreed to.

Clause 121 (Tree preservation orders: councils)

The Chairperson:

I remind members that, at the meeting on 1 February, the departmental officials agreed to report back to the Committee with further thoughts on the issues raised by the submissions on the clause, particularly the approach to dead or dying trees. Members also requested that the Department report back on the need for arbitration on the issue. The Department's response is in members' papers and argues that the clause provides that tree protection orders in relation to trees, groups of trees, or woodlands, include areas of trees, and it does not see a requirement for expanding on that. It does not intend to change its approach to dead, dying or dangerous trees.

That is very disappointing. Can we change our attitude towards dead or dying trees, if not our approach? OK members, the issue is clarified, unless anyone would like to make any points in relation to it.

Mr Kinahan:

My point may be a more general one, but I have a concern that, at the moment, many historic or important trees are not governed by tree preservation orders. People cut them down at weekends and there is nothing we can do about it. Is there any guideline coming through on trees and groups of trees? There are not that many tree preservation orders, so trees are often cut down and then everyone says that they wish they had saved them.

Mr Mullaney:

Obviously, we are talking about the future, when it will be for the council to impose tree preservation orders in relation to the amenity or historical value of a tree or group of trees. I

would think that, broadly speaking, that is already established. Whether, as with other things, further elaboration and guidelines are needed —

Mr Kinahan:

Could it be part of the local development plan to look at which trees need to be protected and which do not?

The Chairperson:

I think that I touched on the protection of trees within development plans or developments at another meeting.

Ms Kennedy:

Development plans could indicate areas where there is a particular landscape character.

Mr Mullaney:

Trees could be part of that.

Mr Kinahan:

I am happy.

The Chairperson:

We will put that in our report anyway.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 121 agreed to.

Clauses 122 and 123 agreed to.

Clause 124 (Replacement of trees)

The Chairperson:

I know that I said that this matter was not raised in Committee before, but I would like to seek views on it. We know about the issues involved in replanting trees at individual houses, never mind in urban developments. There is clearly an issue about who goes back to check whether the

work has been carried out, because that does not happen. Looking at the Bill and looking forward, maybe something can be done to ensure that that is part of the role of building control or local councils.

Mr Mullaney:

There are two separate issues. Clause 124 covers the replacement of trees that are covered by a tree preservation order. I think that the point that you are raising relates generally to conditions in which trees are required to be planted. That is a separate issue concerning the follow-up of conditions. I think that it is something that the Committee has raised before.

The Chairperson:

You are correct; I am sorry. When I read "replacement of trees", it brought to mind the non-compliance with conditions.

Mr Mullaney:

That is the point that you raised, but this is a specific point.

The Chairperson:

Are there any clauses that I can look at in relation to that matter?

Mr Mullaney:

There is obviously the general ability to impose conditions. It is really practice and resources that are the issue.

The Chairperson:

We will be happy to look at that.

Mr Kinahan:

It is a great clause, and I empathise with it. However, I want to raise an issue because of something that happened in my local area. If a diseased tree that is covered by a TPO comes down, it cannot be replaced, because the spot that it was on is diseased. There needs to be something in the Bill about that. Clause 124 represents the right thing to do, but diseased trees

cannot be replaced because the ground is diseased.

Mr Mullaney:

This is covered by clause 124(3)(a), which states:

"In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed …by planting the same number of trees—

(a) on or near the land".

Mr Kinahan:

OK.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 124 agreed to.

Clause 125 (Penalties for contravention of tree preservation orders)

The Chairperson:

I remind members that, on 1 February, departmental officials agreed to consider the possibility of codifying — that is a new word for us — the two offences in clause 125 in a way that retains flexibility but strengthens the law applying to trees. The Department's response indicates that it does not believe that the clause should be amended, as the current balanced approach benefits landowners and councils.

Mr W Clarke:

I seek a Committee amendment to the clause. The fine is outdated and not fit for purpose. For consistency in the Bill, we should look at a £100,000 fine, for the same reasons that we outlined earlier. During the boom times, trees were taken out, and the fine was built into the development costs.

The Chairperson:

Do you wish to raise the fine for contravention of a tree preservation order?

Mr Kinahan:

I want to play devil's advocate. Tree preservation orders are put on groups of trees. I only know that from the experience of a developer who said that it was all right, and that he could prove that

that tree and that tree and that tree were not very important. The end result was that, out of 200 trees, only 10 were important. There needs to be an appeal system or some system for challenging that. The fine is right — whatever level we put it at — but there must be a way of looking at which tree or group of trees is important. Do you see my difficulty?

Mr Mullaney:

There are two things there. One is the penalty and the other is the remedy afterwards. In that sense, it is not just sufficient to have a penalty; there has to be some outcome that requires the planting of replacement trees, which goes back to the previous clause. There is obviously the deterrent or the penalty aspect, but what do we want to achieve? Although it is regrettable to be in such a situation, we want a replacement.

Mr T Clarke:

Surely, if the tree preservation order has been taken out before the development takes place, the appeal should be to the tree preservation order and not to the contravention of planning.

Mr Kinahan:

Yes, it is an appeal of the tree preservation order.

Mr T Clarke:

That should happen before the contravention of the planning. If a tree preservation order is put on a tree, which would happen before a planning application is made, the appeal should be to the preservation order, not to the contravention of the planning that comes afterwards.

Mr Kinahan:

I think that is right.

Mr Mullaney:

Mr Clarke is quite right: the tree preservation order has authority in its own right, irrespective of whether there is a planning application.

Mr T Clarke:

If there is an appeal to be made, it should be made at the outset when the preservation order is made, not subsequently when someone decides to make a planning application to try to use it as a tool to get the application passed. The appeal should be made as soon as the preservation order is put in place.

Mr W Clarke:

I agree with Trevor. If someone is trying to revoke a tree preservation order because a tree is diseased or whatever, it can be done in that process. I am talking about a number of trees together. I am thinking about Newcastle in my constituency, where a number of trees were taken out. The fine of £30,000 was not a deterrent at all; it was just added to the development costs. We are trying to achieve a deterrent. For consistency, we should put it up to £100,000, because it is outdated. Perhaps when it was set, £30,000 was a lot of money — it is still a lot of money.

Mr T Clarke:

But it is nothing compared to the value of a site.

The Chairperson:

Are members content?

Ms I Kennedy:

There is no appeal mechanism when a TPO is applied. The appeal would kick in when someone applies for consent to do works to the tree and that consent has been refused. There is then the opportunity for appeal.

The Chairperson:

Are members happy to raise the fine?

Members indicated assent.

Mr W Clarke:

Will you bring that back to the Minister?

Ms Smith:

Yes, we will.

The Chairperson:

Depending on what the Minister says, we will agree the clause subject to amendment. If the Minister agrees to go with it, the Committee will withdraw its amendment.

Ms Smith:

So, the Committee's amendment will be to raise it from £30,000 to £100,000.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 125 agreed to.

Mr T Clarke:

There is a difficulty with how it is worded. It is a fine "not exceeding £30,000". Unfortunately, when people go to court, they seem to stay away from the upper limit of the fine. While we might set a fine not exceeding £100,000, would it be in order to include "not less than" as well? A fine of £100,000 may be introduced. However, there was a case recently when a judge fined someone £1 for not wearing a seatbelt, while there was a maximum penalty.

Mr Kinahan:

It could be "not less than £50,000".

Mr T Clarke:

Yes, something like that.

Mr Ross:

I do not necessarily go along with that. There has to be discretion. The point that the Committee tried to make about having a £100,000 fine in the Bill is that it looks like more of a deterrent. We are not the people responsible for it.

The Chairperson:

I agree. It is the deterrent, and we want to raise that. It sits on the face of the Bill.

Mr Ross:

We want to give the judges discretion. We are not giving them direction.

Mr T Clarke:

We are not giving them direction. We are just saying "not less than".

Mr Ross:

That is a sort of direction.

The Chairperson:

Gentlemen, are you content with the clause, subject to amendment? Do we need clarification on that? Do I need to read it again? Are you happy enough? I know that we are bandying figures around. Please do not record this bit. That is fine. It is about time that we raised the fines.

Ms Smith:

Whatever amendment you are saying —

The Chairperson:

If the Minister agrees to raise the fine, that is OK, but if not, we will withdraw our amendment.

Clause 126 (Preservation of trees in conservation areas)

The Chairperson:

The Committee did not raise any issues in relation to clause 126. We had discussions with the south Belfast residents, and only one of a number of groups. They talked about the protection of conservation areas, how that is enforced and how people comply with the conditions and everything else. There seems to be a problem with that. They raised that issue in relation to trees as well. We need to look at that. Maybe the solution lies with building control in local councils.

Mr Mullaney:

There is a wider issue about enforcement in conservation areas. However, clause 126 protects trees in conservation areas. That is an important provision.

The Chairperson:

It does do that, but we have seen cases where trees have been removed, and things have been changed that should not have been changed. I know that we are talking about imposing fines, but in time, generally, there may be a role for building control officers or somebody else to ensure that conditions are complied with.

Mr Mullaney:

It is a point that we have dealt with before. It comes down to the practice of enforcement.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 126 agreed to.

Clause 127 agreed to.

Clause 128 (Review of mineral planning permissions)

The Chairperson:

At the meeting on 1 February, the departmental officials agreed to report back to the Committee on the need for centralised expertise in this area. There was a feeling that such expertise is not required on a frequent basis and may be costly for councils. The Department recognises that there are a number of specialised areas in the planning system which councils will wish to consider how best to deliver. It suggests that one option might be a shared service delivery model. That is fairly reasonable.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 128 agreed to.

Clause 129 agreed to.

The Chairperson:

That concludes Part 4 of the Bill. I refer members to the clause-by-clause summary of Part 5,

which deals with enforcement.

Clause 130 (Expressions used in connection with enforcement)

The Chairperson:

At the meeting on 3 February, the Committee requested details of the number of staff transferred from Planning Service to the enforcement section and a reply on how the issue of legal costs influences decisions on enforcement action. Members also requested figures on the number of enforcement cases that the Department considered it expedient to pursue.

The departmental response indicates that in 2004-05, enforcement teams were bolstered throughout the planning agency, with each divisional office and headquarters having dedicated enforcement staff. The number of staff employed in enforcement in 2009-2010 was 50. The response also notes that legal costs do not influence the Department's decisions to take enforcement action.

The key objectives for planning enforcement are: to bring unauthorised activity under control; to remedy the undesirable effects of unauthorised development; and to take legal action where necessary. The Planning Service will investigate all alleged breaches but will prioritise those which, in the Department's opinion, are likely to cause the greatest harm. Lists of indicative numbers of breaches and enforcement actions in 2009 have been provided. There are currently 3,928 open cases and 5,415 closed cases, and 406 enforcement notices have been issued. Does anyone want to raise any points?

Mr T Clarke:

I would like more time to dissect it.

The Chairperson:

We can defer it and get clarity from the Department.

Mr T Clarke:

I can see possible questions in it. I would like more time to analyse it.

The Chairperson:

We can defer it until the next meeting if you wish, as we have a couple of other clauses to come back to.

Mr T Clarke:

OK.

The Chairperson:

No problem. We will defer clause 130. Do we need more information?

Mr T Clarke:

I have not had time to look at this, but it talks about the number of cases opened, the number of cases closed, and the number of enforcement notices. I appreciate that some of the cases are closed. Were they closed because it was not expedient to pursue them, or because they concluded what they set out to do? I do not see a column for that.

Ms Smith:

In that group, there will be cases that are closed because they have been seen through to fruition, and there will be cases that are closed because they are not being pursued.

Mr T Clarke:

That is the point that I was trying to make the last day. That does not actually tell us anything. We are all aware that there are many cases where people have breached planning or flouted the rules. I appreciate that there is a team, and we have the figures here to show how many people are involved in enforcement. However, it does not tell us how many of those cases have actually been successful. To bring the figures for files that have been closed because they have not been expedient and files that have been closed because they have been resolved into one sum does not give us a clear picture of what is happening.

The Chairperson:

Can you clarify some of those points?

Ms Smith:

We can get some.

Clause 130 referred for further consideration.

Clause 131 (Time limits)

The Chairperson:

At the meeting on 3 February, the departmental officials agreed to consider an amendment to reduce the timescale for change of use from 10 years to four years. We have not received a response to that.

Ms Smith:

I can tell you what the decision is —

The Chairperson:

Tell it like it is, Maggie.

Ms Smith:

We have an amendment, but it has not reached you on paper yet. The Minister's amendment raises the four-year period to seven years and reduces the 10-year period to seven years. Therefore, in each case, it is seven years.

Mr T Clarke:

That is called playing chess.

The Chairperson:

I do not know about that. I will have to defer the clause. I have been having some discussions on it, and I think that I will defer it until Tuesday to allow for some discussion.

Just for clarity, I know that Mr Clarke asked about enforcement. A number of cases are sitting in the bracket of four to 10 years. We need to be serious. It could be any building. They are

mostly residential, but may not be residential, buildings. They are buildings that are sitting there for four years and cannot be touched, practically. There is also change of use. There are quite a number of applications for retrospective planning permission to retain a business use that are not within the 10-year bracket. If we went four and four, a substantial amount more would have to be looked at, unless you are going to say that there is a clean break from that period. Seven and seven is a bit extreme.

Mr T Clarke:

Four and four would be much better.

The Chairperson:

Maybe we will look at that again; we will certainly come back to this clause.

Mr T Clarke:

Surely any breach is from the date, so, if a file on that were open, the breach would have been made already.

Mr W Clarke:

This would not apply.

Mr T Clarke:

This would not apply. The breach would have been made already. Is that right, Maggie?

The Chairperson:

You may find that some of the enforcement cases have not been followed through.

Mr T Clarke:

Yes, but the breach has applied.

The Chairperson:

Once you come back with more information on Tuesday, we will find out exactly what has been going on. We will come back to this clause on Tuesday.

Mr T Clarke:

To be fair to the Department, I am asking for figures on cases that are closed as opposed to those that are open. We would nearly need an indication of what some of the open cases are for. Are they because of change of use or because of unauthorised development?

Mr W Clarke:

Can we get clarity about the cases that being dealt with now? Will the legislation apply to cases that are already in progress?

Ms Smith:

Any amendment would not apply until the legislation comes into force.

Mr W Clarke:

So it would impact on investigations that are ongoing now?

Ms Smith:

No, it would apply once the Bill comes into force. The Bill is tied into the whole issue of the governance arrangements, the ethical standards and the transfer to councils, so that is some way away.

The Chairperson:

Seven and seven, Maggie. It is always good to come back with that. It is like playing a game of chess. We will talk about it on Tuesday. We will defer clauses 130 and 131 to Tuesday.

Clause 131 referred for further consideration.

Clause 132 agreed to.

Clause 133 (Penalties for non-compliance with planning contravention notice)

The Chairperson:

At the meeting on 3 February, the departmental officials agreed to consider an amendment to raise the level of fine to level 5. The departmental response indicates that the Minister will bring

forward an amendment to clause 133(4) to that effect. In addition, the Department has since advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill:

"At clause 133, page 85, line 21, leave out '3' and insert '5'."

That raises the fine to level 5. What is the amount of fine at level 5?

Ms I Kennedy:

Level 5 is £5,000.

The Chairperson:

Please do not mention figures. We have mentioned £100,000 enough as it is.

Mr W Clarke:

I did not start it; you did.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, *put and agreed to.*

Clause 133 agreed to.

Clause 134 (Temporary stop notice)

The Chairperson:

Departmental officials agreed to provide further information on the number of stop notices that have been issued. The departmental response is that, since 2009, 10 stop notices and seven temporary stop notices have been issued. Of the temporary notices, three were followed by a notice and one by an injunction.

The Department notes that clauses 149, 150, 184 and 186 also relate to stop notices. Professor Lloyd indicated that he could see the need to have stop notices but hoped that they would not have to be used under the new planning system. In addition, in response to queries raised by south Belfast residents' groups about stop notices, the Department said that powers to issue temporary stop notices are carried forward into the Bill at clause 134. That enables the Department to prevent unauthorised development at an early stage without first having to issue an

enforcement notice. The provisions also impose certain limitations on activities and specify that contravention of such a notice is a criminal offence punishable on summary conviction by a fine of up to £30,000 or on indictment by an unlimited fine.

That was welcomed by residents in Armagh city and south Belfast residents' groups. It is there to be used. Obviously, that will be down to local authorities, but it is about all types of enforcement, information and ensuring compliance, as you well know, Mr Mullaney. The question is how that system will roll out. There has to be a role in a local authority for a specified person to carry that out.

Mr Mullaney:

Again, it is a matter of resources and practice. One would have thought that each council, as planning authority, would take its enforcement duties seriously and put in place a structure, whatever that structure may be, to meet its obligations under enforcement powers.

The Chairperson:

Building control has a certain responsibility. We have noticed on a number of occasions, even in enforcement cases, that it has been a phone call to the office and a complaint. Whether or not people believe in that way of doing things, once somebody receives planning permission the condition should be complied with, as opposed to the system that operates at the minute.

Mr Mullaney:

That is the same point. It is a question of the planning authorities — the councils — prioritising whatever they wish to undertake and looking at the resources for that.

The Chairperson:

Again, resources are an issue that we will be talking about.

Ms Smith:

Yes.

The Chairperson:

Do you have the issue of resources sorted for the end, Maggie? Do you have a whole file ready to tell the members of the Committee how that will be rolled out?

Ms Smith:

We can tell you some things when we get to that.

The Chairperson:

Any other points on stop notices, gentlemen? I am content with that.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 134 agreed to.

Clauses 135 to 137 agreed to.

Clause 138 (Issue of enforcement notice by Department)

The Chairperson:

There were no major issues with this clause. The Department said that this is an oversight power.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 138 agreed to.

Clause 139 agreed to.

Clause 140 (Variation and withdrawal of enforcement notices by councils)

The Chairperson:

This is an oversight power of the Department. Do members have any comments?

Mr McGlone:

Belfast City Council made a relevant point, if I pick it up right, that this should be the responsibility of a single authority. That could be to ensure consistency of application. Councils

may be less diligent or more diligent. How will the overall consistency of the circumstances under which enforcement notices are withdrawn or varied be monitored?

Ms Smith:

When the powers move to councils, they will be the authorities with the responsibility for enforcement, so they will be able to make sure that their enforcement is properly designed and exercised to address the needs of their areas.

Mr McGlone:

Maybe I did not articulate myself properly at all there, Maggie. We will work with the 26-council model, since it was raised during the week. Under that model, you could have 26 variants of the circumstances under which you had a variation or withdrawal of an enforcement notice. I am looking at the consistency of application of the circumstances under which you vary or withdraw an enforcement notice. It is relatively simply at the minute insofar as it complies or is referred up to headquarters for guidance or whatever, if it is that complex or complicated. How do you ensure consistency when you have multiples, just as you ensure consistency of interpretation of ordinary planning policy throughout?

Ms Smith:

Every council will need to comply with the legislation in how they do that. Ultimately, however, the council is the authority and will take decisions for itself. There will be differences in the way that councils do things.

Mr McGlone:

That is my concern. In most cases, enforcement notices boil down to interpretation of policy, whether a planning application adheres to policy and all that stuff. However, it is a question of ensuring consistency of application. I live in Cookstown District Council area, but move down the road a wee bit and I am into Magherafelt District Council's area. You could conceivably have different variants or emphases, with one planning application going to enforcement and one being withdrawn in more or less the same types of cases. Not every case is the same, but the mechanism that is put in place must ensure that policy is applied fairly consistently across the board.

Ms Smith:

I will ask Irene to clarify what is in the Bill on that point, and I will then say something about the overall position.

Ms I Kennedy:

Part 10 of the Bill may assist with that, because it deals with the Department's audit powers. The Department could conduct an audit or appoint someone to conduct an audit into how councils deliver the different functions, or, indeed, particular functions, under what will be the Act. Obviously, the aim of that type of audit and assessment work is to disseminate best practice, but it could also be used as a mechanism to review how a particular council delivers its functions.

Mr McGlone:

I am trying to get my head around that. Would that function include an audit of the application of policy, in the same way as an auditor audits the books, how money is spent and whether the system complies with proper practice and due process? Would that audit be built in to the handover process? Would it also be a regular and consistent feature that would be carried out on an annual basis, for example? If it were, everyone would know that a particular council would be audited at some time in that year. I am also interested to hear how the good practice will roll out from those audits. I presume that the auditors will all be fully qualified planners with an audit function. Indeed, they would have to be, because how else could it be determined how policy was interpreted?

Ms I Kennedy:

Obviously, councils are expected to be aware of policy and the language that relates to enforcement, and they are also expected to follow that policy in the delivery of their functions. The Bill does not stipulate that a council's performance will be assessed every year. The best way to deliver the Department's audit function still has to be resolved.

Mr McGlone:

I am trying to get a handle on how that mechanism will work post-handover.

Ms I Kennedy:

A lot still has to be worked out about precisely how all that will work. There will be discussions with councils to make them aware of that.

Mr McGlone:

I would like to think that the powers will be in place before those discussions with the councils happen. Perhaps I picked you up wrong, Irene, but I am talking about this all being dealt with before the powers are handed over.

Ms Smith

Yes, and it will be. At the moment, we are putting the framework in place. We have the legislation and PPS 9, but other work within that framework, including that on those practical matters, needs to be done before the handover. Work also needs to be done on what the relationship between the Department and the councils will be. The audit function is part of that relationship. However, it will be looked at, and the arrangements will be put in place.

Mr McGlone:

Will it be looked at with a view to some structure and mechanism being set up, along with a way to let us know how it is working?

Ms Smith

Absolutely. The Department is putting in place structures that are as close as possible to those that will be in place when the councils get the powers. We are starting that process now to make sure that everything is lined up and the functions are there and ready to take over on day one.

Mr McGlone:

Is there more to come?

Ms Smith:

Yes.

The Chairperson:

Thank you, Maggie. I was getting ready to wind that discussion up.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 140 agreed to.

Clauses 141 and 142 agreed to.

Clause 143 (Appeal against enforcement notice — general supplementary provisions)

The Chairperson:

The Department stated that this clause is part of its oversight powers and that it would have to consult the councils before using it, which is welcome.

Question, That the Committee is content with the clause, *put and agreed to*.

Clause 143 agreed to.

Clause 144 (Appeal against enforcement notice — supplementary provisions relating to planning permission)

The Chairperson:

The Committee did not raise any issues with this clause. However, the Department has since advised that it will be making a textual amendment.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to*.

Clause 144 agreed to.

The Chairperson:

We are at the halfway stage.

Clause 145 (Execution and cost of works required by enforcement notice)

The Chairperson:

The Committee did not raise any issues with this clause. However, the Department has since advised that it will be making a textual amendment to ensure a consistent approach throughout the Bill.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to*.

Clause 145 agreed to.

Clauses 146 and 147 agreed to.

Clause 148 (Enforcement notice to have effect against subsequent development)

The Chairperson:

At the Committee's meeting on 3 February, departmental officials agreed to consider an amendment to the clause to raise the level of the fine from level 5. The Department's response indicates that the Minister takes the view that it would be proportionate to raise the fine to £7,500, and it will bring forward an amendment to that effect. I think that members would welcome that.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to*.

Clause 148 agreed to.

Clause 149 (Service of stop notices by councils)

The Chairperson:

Departmental officials agreed to provide further information on the number of stop notices, which are also dealt with under clause 150, that have been issued. This matter has already been discussed under clause 134, and members were content with the information that was provided.

Question, That the Committee is content with the clause, *put and agreed to*.

Clause 149 agreed to.

Clauses 150 and 151 agreed to.

Clause 152 (Fixed penalty notice where enforcement notice not complied with)

The Chairperson:

The Committee did not raise any issues with this clause.

Mr T Clarke:

Does this tie in with something that we were saying on Tuesday about fixed penalty notices not being complied with? It probably goes back to the statistics that we were asking for. Is the clause strong enough? I think that we should park the matter until Tuesday, when we will get the figures about closed cases. Notice has not necessarily been complied with just because cases have been closed for expediency. Is the clause strong enough?

The Chairperson:

Once we see the figures, we will discuss the clause again on Tuesday.

Mr T Clarke:

We do not actually want an enforcement section, but we need one, because people breach planning. Where we have an enforcement section, we want it to be effective, so that councils can prevent people from abusing the system.

The Chairperson:

We will park clause 152.

Clause 152 referred for further consideration.

Clause 153 (Fixed penalty notice where breach of condition notice not complied with)

The Chairperson:

We will need to park this clause as well. This is like taking a taxi. We are going to park clauses 152, 153 and 154.

Mr T Clarke:

I think that we can reach a resolution easily, as long as we make sure that there are effective measures in those clauses.

The Chairperson:

We are going to leave those clauses until Tuesday.

Clauses 153 and 154 referred for further consideration.

Clause 155 agreed to.

Clause 156 (Issue of listed building enforcement notices by councils)

The Chairperson:

The Committee raised no issues on this clause. Do members have any comments to make?

Mr McGlone:

I raised an issue when we were dealing with this matter previously, and I see that Armagh City and District Council and Belfast City Council raised the same issue. It concerns the whole question of from where the expertise and resources are going to come and the practical outworking of that. Those rest with the Department at the moment. Has there been any further information about that?

The Chairperson:

There will be a response to that later, so we will raise the issue at that point. We will discuss the issue of resources later.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 156 agreed to.

Clauses 157 to 159 agreed to.

Clause 160 (Urgent works to preserve building)

The Chairperson:

An issue was raised about this clause. At our meeting on 3 February, the departmental officials agreed to provide further clarification about ownership. The Department's response is in the tabled papers and indicates that, under this clause, the planning authority may carry out and recover the costs of urgent works to either a listed building or a building in a conservation area whose preservation is important for maintaining the character or appearance of that area. The owner must be given at least seven days' notice of the work to be carried out, and it will have 28 days to appeal.

In addition, the Department has since advised that it will be making two textual amendments to ensure a consistent approach throughout the Bill. Do members have any comments to make on

that?

Mr W Clarke:

Does that also apply to scheduled buildings and monuments?

Ms I Kennedy:

It applies to listed buildings and those that are in a conservation area for which the Department has given a direction. Scheduled monuments come under different legislation.

Mr W Clarke:

Are they covered in the same way as listed buildings?

Ms I Kennedy:

I am not sure whether there is the same provision for urgent works.

Ms Smith:

We can check that. Different legislation is involved.

The Chairperson:

Are there any other comments? Are members content with the Department's explanation? Mr Clarke, we will receive more information about your query.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 160 agreed to.

Clause 161 (Hazardous substances contravention notice)

The Chairperson:

The Department stated that the HSENI's role under this clause would be left to guidance. Do members have any comments to make on this clause? Can we have clarity on the HSENI's role? It is not defined in the Bill, so are you saying that it will be defined in guidance?

Ms I Kennedy:

Yes.

The Chairperson:

Do members have any comments to make on clause 161?

Question put, That the Committee is content with the clause, *put and agreed to.*

Clause 161 agreed to.

Clauses 162 to 166 agreed to.

Clause 167 (Enforcement of orders under section 72)

The Chairperson:

The Department stated that this clause will form part of its oversight powers. In addition, the Department advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill.

Mr T Clarke:

What does "under section 72" mean?

The Chairperson:

Will you please clarify that?

Ms I Kennedy:

Clause 72 deals with:

"Orders requiring discontinuance of use or alteration or removal of buildings".

That is the enforcement provision that will allow those orders to be enforced under what will be section 72.

Question put, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 167 agreed to.

Clause 168 (Certificate of lawfulness of existing use or development)

The Chairperson:

The Committee did not raise any issues about clauses 168 or 169. Do any members want to ask questions about those two clauses?

Mr T Clarke:

Does this go back to what we were saying about what happens after four years and 10 years? Is it tied into that type of stuff again?

Ms I Kennedy:

They are linked. After four years or 10 years, a certificate might be issued to say that the development in question is lawful.

Mr T Clarke:

That answers my question.

The Chairperson:

It would still apply every few years, no matter what year it was issued in. The certificate still needs to be issued.

Ms I Kennedy:

Those years would have to be taken into consideration before a certificate were issued. The time limit is one of the factors.

The Chairperson:

You will get that sorted out. It still does not matter, because we can park it. I think it applies anyway.

Mr T Clarke:

They come separately. That does not tie us down. Whatever we agree on the years, if we can get an agreement, regardless of what it is, that ties us to the agreement. However, it does not tie us to

anything specific itself.

Ms I Kennedy:

I am just scanning the provision at the moment. It does not mention those —

The Chairperson:

I agree. However, we can still agree the clauses today. We are definitely going back to these clauses.

Question put, That the Committee is content with the clause, *put and agreed to.*

Clause 168 agreed to.

Clauses 169 to 171 agreed to.

Clause 172 (Appeals against refusal or failure to give decision on application)

The Chairperson:

The Committee had no issues with this clause. However, the Department advised that it will be making a textual amendment to this clause to ensure a consistent approach throughout the Bill.

Question put, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 172 agreed to.

Clause 173 agreed to.

Clause 174 (Enforcement of advertisement control)

The Chairperson:

No issues were raised about this clause. However, the Department advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 174 agreed to.

Clause 175 (Rights to enter without warrant)

The Chairperson:

The Department stated that clauses 175 to 177 will allow the Department or councils to enter land.

Question, That the Committee is content with the clause 175, *put and agreed to.*

Clause 175 agreed to.

Clauses 176 and 177 agreed to.

The Chairperson:

That concludes Part 5 of the Bill. We will now turn to Part 6, which deals with compensation.

Clause 178 (Compensation where planning permission is revoked or modified)

The Chairperson:

Departmental officials agreed at the meeting on 3 February to provide information on both the total number of applications that were revoked and the amount of compensation that was paid. They also agreed to consider an amendment to require the Department to pay the compensation that is due when a council is not fulfilling its responsibilities under the legislation and when the Department exercises its power to revoke a planning permission. The Minister will not bring forward an amendment to make the Department responsible for compensation if it revokes an application. Did we receive information on the number of revocations of applications?

Ms I Kennedy:

Yes, I am sorry; that came to you late.

The Chairperson:

Members have that information now. I think that Mr Clarke brought up the issue of compensation.

Mr T Clarke:

Was it about the PAC?

The Chairperson:

It was about revoking planning applications.

Mr T Clarke:

Yes, I brought that subject up. The departmental officials were to give us an indication of the number of properties involved.

The Chairperson:

Members have that information in their tabled papers.

Mr T Clarke:

We had a table to consider at the previous meeting, but I cannot remember the figures. The information that I am looking at details the number of revocations over a period of years, but I cannot remember the cost.

Ms I Kennedy:

The costs were provided in the clause-by-clause table.

The Chairperson:

Sorry, what page is that?

Ms I Kennedy:

The Department's response might assist.

Mr T Clarke:

The figures show that there were 24 revocations between 2000 and 2006. I am not trying to be awkward, because it is very difficult to tell the figures for each year, but in 2005-06, you paid out £43,500. It is difficult to know whether that was for one or more cases. Given the value of the sites, it would probably be for one of those years. In 2007, £11,000 was paid out, but that would not compensate anyone for the loss of a site.

Mr S Gallagher:

For reasons that I will come to in a moment, we have difficulty in tying compensation payments to revocation and modification cases. As I said, our records show that there were 24 revocation and modification cases between 2000 and 2006.

Compensation for revocation and modification is dealt with under the Land Development Values (Compensation) Act (Northern Ireland) 1965, also known as the 1965 Act. Prior to 2000, the 1965 Act also dealt with both compensation and refusal of planning permission in certain very closely controlled and specified cases. The last of those cases went through the system around 2006. Unfortunately, however, our records do not distinguish between the two, so there is a mixture of compensation payments for both the refusal of planning permission and for revocation and modification. We cannot tell what payment was made for which circumstance before 2006. However, we are clear that no payments were made for revocation and modification between April and November 2010 and in the financial years 2009-2010, 2008-09, 2007-08 and 2006-07.

We can say that it is normal practice to revoke or modify planning permission only with the agreement of the parties concerned, so, in those cases, no compensation liability would arise. It is very likely that those 24 revocation and modification cases did not give rise to compensation, but the records mean that we cannot be categorically certain about that.

Mr T Clarke:

That is a bit clearer, in that someone will not lose anything if there is agreement. Can we have something in the clause that will ensure that people are protected if there is no agreement and that compensation will be paid at a particular value? The number of cases is low, and, as Stephen said, compensation has been paid only by mutual agreement between the applicant and the Planning Service. That is fair enough if that agreement can be reached. I am concerned that, in cases where mutual agreement cannot be reached, we will revoke someone's planning permission and they will be at a loss. I know that the number of cases is low, but can a protection measure be built in for people in those circumstances?

Ms I Kennedy:

Most cases will be settled by agreement. For example, one person will go off the site for which

they have approval to another site, and compensation will not be applicable. However, the legislation provides that, in other cases in which revocation is necessary, the person concerned is in a position to claim for compensation.

The Chairperson:

Does that mean that it is built in?

Ms I Kennedy:

It is; it is in the legislation.

Mr T Clarke:

So is it there already? That is good.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 178 agreed to

Clauses 179 to 181 agreed to.

Clause 182 (Compensation in respect of tree preservation orders)

The Chairperson:

The Committee did not raise any issue on clause 182. Do members have any comments to make?

Mr Kinahan:

I am happy enough with it.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 182 agreed to.

Clause 183 (Compensation where hazardous substances consent modified or revoked under section 115)

The Chairperson:

No issues were raised in relation to this. Stop notices were discussed, but I like to think that we would not get that far, Peter, in terms of compensation for issuing temporary stop notices if there is proper compliance.

Mr Mullaney:

Quite so, Chairman.

The Chairperson:

We discussed that at clause 134.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 183 agreed to.

Clauses 184 to 186 agreed to.

Clauses 187 to 195 agreed to.

Mr McGlone:

Sorry, Chairperson. Clause 189 is about the purchasing of land. There seems to be an issue around clarification being required about the term "reasonably beneficial use". Where has that gone, or what is the response from the Department in that regard?

Ms I Kennedy:

Reasonably beneficial use will vary in each case. In some cases it may be pretty obvious, but, otherwise, it has to be looked at in a bit more detail. I am afraid that each case is determined by the piece of land, where it is, what the surroundings are and the circumstances. It is very difficult.

The Chairperson:

It is based on its own merits.

Mr McGlone:

It has been raised as an issue, so is it about interpretation?

Ms I Kennedy:

It is.

Mr McGlone:

OK. Thank you.

The Chairperson:

That completes Part 7. I ask members to turn to the clause-by-clause summary paper for Part 8.

Clause 196 (Historic Buildings Council)

The Chairperson:

At the meeting on 3 February, the departmental officials agreed to provide information on the current system for dealing with listed or historic buildings. The Department's response indicates that it is responsible for the listing and delisting of buildings of special architectural or historic interest.

Mr Kinahan:

There is quite a lot here. Can we deal with this on Tuesday, or will that cause problems?

The Chairperson:

Just take a minute to read the departmental response about the current system for dealing with it.

Mr T Clarke:

The issue the last day was that some people believed that the DOE would not be taking any responsibility and that it would be over to the Historic Buildings Council. This clarifies that situation: the DOE will still be responsible through the NIEA and the Historic Buildings Council. There was a concern the last day that the councils would go directly to the Historic Buildings Council. Was that not the issue?

Ms Smith:

The Department will still be responsible for listing and delisting. However, it seeks advice from the Historic Buildings Council, which is a statutory advisory body whose members have relevant expertise in historic buildings.

The Chairperson:

It is something that Mr Dallat raised.

Mr T Clarke:

I thought that he was concerned that the councils had to go directly to the Historic Buildings Council and that there were not enough measures there. The fact that the Department will still be doing that is there.

Ms Smith:

The responsibility for listing and delisting will stay with the Department, because it is a highly specialised and technical area.

Mr T Clarke:

His concern was that taking that responsibility away from the Department would cause dilution; he was under the impression that the councils would have that responsibility instead.

The Chairperson:

No, it will not. We sought assurances about that and have received information on it today.

Question, That the Committee is content with the clause, *put and agreed to*.

Clause 196 agreed to.

Clause 197 (Grants and loans for preservation or acquisition of listed buildings)

The Chairperson:

At the meeting on 3 February, departmental officials agreed to provide clarification on whether councils will be charged for services by NIEA and information on who would be responsible for a national register of trees. The Department's response indicates that statutory bodies will be designated through subordinate legislation as statutory consultees to the planning system. A list is being compiled with a view to public consultation. So far, there has been no discussion of fees with any of those bodies. The Department also noted in an earlier response on statutory consultees that clause 224 will place a duty on those bodies to respond within a given time frame. It also indicates that there is no statutory national register for trees and that the Department of

Agriculture and Rural Development is responsible for forestry.

Mr T Clarke:

Does that mean that, if and when the Department is likely to consider implementing fees, it will put that out for consultation before doing so?

Ms Smith:

Yes. In fact, we have just been out to consultation on the fees.

Mr T Clarke:

No, this is about the fees for consultative work, about which the councils had raised concerns. Your response says that there are no fees, although I do not think that you actually said that. However, the Department might consider implementing them at a later date. So, if it did, would it go to consultation first? Our agreeing to this today does not mean that we agree to the Department's bringing in fees, because we should have an opportunity to consult on that at a later date.

Ms Smith:

There are no plans whatsoever. That issue has not been raised as regards the statutory bodies.

The Chairperson:

Listen very carefully while I read out the Department's response:

"Some statutory bodies will be designated through subordinate legislation as statutory consultees to the planning system, a list is being compiled with a view to public consultation. So far, there has been no discussion about fees with any of these bodies."

Mr T Clarke:

"So far" means that the Department has not ruled that out. If consideration is given to fees in the future, will that be subject to a consultation process? Our agreeing to clause 197 today does not mean that we agree to the Department's implementing fees. We are agreeing to the clause as drafted, but they can consult on fees at a later date.

Ms Smith:

Yes, the fees are a completely different matter.

Mr T Clarke:

That point was raised because the councils were concerned about the fees. So, we are really addressing their concern. We are not agreeing to fees.

The Chairperson:

No.

Mr T Clarke:

That is all right.

The Chairperson:

No problem.

Mr Kinahan:

As regards the comment that there is no national tree register, someone — I know this because I have met him — is being paid by the Irish Government to go round Ireland logging all important trees.

The Chairperson:

Logging them? *[Laughter.]*

Mr Kinahan:

There is someone doing that.

The Chairperson:

Excuse me a minute, please. Sorry about that; apologies. With that in mind, and with all that information, is the Committee content with clause 197?

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 197 agreed to.

Clause 198 agreed to.

Clause 199 (Acceptance by Department of endowments in respect of listed buildings)

The Chairperson:

The Department confirmed it will retain the powers in respect of listed buildings. I think that we are content with that, gentlemen.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 199 agreed to.

Clause 200 agreed to.

The Chairperson:

That concludes Part 8 of the Bill. We are in the home straight.

Clause 201 agreed to.

Clause 202 (Procedure of appeals commission)

The Chairperson:

Departmental officials agreed at the meeting on 3 February 2011 to consider an amendment to stop the practice of new information being presented at appeals. The Department's response indicates that the Minister will bring forward such an amendment. I will defer this one until Tuesday. I need to look at it, because there may be issues. Mr Trevor Clarke brought that issue forward.

Ms Smith:

You do not have the amendment because it is an amendment that makes quite a difference. It takes quite a lot of drafting and is being worked on.

The Chairperson:

Will we have it for Tuesday?

Ms Smith:

Yes.

The Chairperson:

All things being equal, I am slightly concerned. The principle behind the idea is fine in terms of what Mr Trevor Clarke raised last time, but I need to have a look at that again.

Ms Smith:

Would you like us to say something about the detail of the amendment, or would you prefer to leave that until later?

Mr T Clarke:

We cannot agree it without the wording.

The Chairperson:

No, we cannot agree without the amendment.

Mr T Clarke:

We are better waiting until we get the wording.

The Chairperson:

I agree. We need to look at it again.

Mr McGlone:

This issue is about what some would call late evidence and others would call new evidence. There is the principle of natural justice: you could have new evidence that was relevant to the case but, for whatever reason, people just had not got it. Where do the principles of reasonableness or natural justice figure with regard to the admission of what might be called late evidence? I can see situations when flexibility could be needed.

Mr T Clarke:

I suggested that the last day because when a case is taken to the PAC it is for non-determination or determination of a planning application by the Planning Service on the information provided. I am sure that many of us have been at appeals where developers come in and make an amendment to the scheme at the last moment and present it on the day of the hearing. The planners, who have never seen that information, are then given half an hour to view it.

That is unfair to objectors and the Planning Service. Developers are very good at that because they usually put in for a large development, get it turned down, go to the PAC, and come in with a late submission, especially on the day of the hearing, which is the first time that the Planning Service has set eyes on it. The commissioner looks at the information and the PAC takes it as a material consideration. It is an abuse of the system to take the Planning Service to the Planning Appeals Commission because it has taken a decision on the basis of the information provided. That is all that the commission should take into consideration.

Mr McGlone:

I was not even thinking of developers there. I hear completely what Trevor is saying in the case of non-determination. I can understand that. However, I hope that cases of non-determination should be fewer now.

Mr T Clarke:

A case should only be before the PAC for non-determination or because of a planning decision by the Planning Service. Most of the ones I have seen are where developers change applications, particularly for apartments. They reduce the number of apartments and bring the revised scheme to the commission on the day of the hearing. That is the first the Planning Service sees of it, and it is unfair.

We have all asked for statistics on the decisions made by the Planning Service. Approximately 33% of its decisions are overturned at the Planning Appeals Commission. That is unfair as well, because Planning Service has not judged all those applications as they appear at the PAC. Some of those statistics are based on new information provided at the PAC hearing. If that were provided before it got to that stage, the chances are that the Planning Service would

have come to the right decision in the first place. The ball is in the court of the developers to provide the information before it gets to the stage of a refusal.

The Chairperson:

I have an issue with this. Principally, Mr Clarke is right. All the information should be brought forward. However, I suggest that, in the amendment, Planning Service be given a period of time to see it before the appeal on the day. I do not rule out bringing the new information but, if Planning Service were to see it a day or two beforehand, that would be another matter.

Mr T Clarke:

That is still not fair, because —

The Chairperson:

No. I understand that, but I am entitled. We can look at many decisions over the last five years, that is, my time in council. Many a decision was unfair and mistakes were made by Planning Service. We are going to discuss this amendment on Tuesday. I am just throwing it out here. I agree that all the information should be provided.

I have another issue, as I have said before on this Committee, and that is about the issue of the PAC being independent and it just being a tick-box exercise. It is only assessing whether the Planning Service has assessed the application properly. There is no flexibility or common sense and it is strictly down to policy. In one case, a person can make a decision interpreting policy in a particular way; in another area, they might look at it in a different way. Planning is about individual applications assessed on their own merits, no matter what size it is, no matter what the development is, generally speaking. There are issues with some of the developments, problems and decisions.

We need to be careful. I will have to bring this one back and we will discuss this on Tuesday. All new information should be brought forward.

Mr T Clarke:

Applicants hves the opportunity for a discussion with planners and can speak to them about what

the application is about. The first time an application goes to council it may be refused, but the applicant has an opportunity to defer that and bring new information to the table again and meet the planners, provide the new information and amend their schemes. If the applicant is not prepared to do it at that stage, he has exhausted his opportunities. They are given ample time.

While I often disagree with the Planning Service and do not know how it arrives at its decisions, there is recourse to the PAC. Applicants have opportunities on at least two occasions to meet the Planning Service face-to-face and put forward their case. Planning Service may even make suggestions as to what can be done to make the scheme more suitable for them to approve. If an applicant does not take those opportunities, he should not be given the opportunity, after refusal, to go to the Planning Appeals Commission.

The Chairperson:

I understand where you are coming from, and we can talk about this. I can argue the point back to agents putting in applications and then they are refused. I am only talking about single applications that are dealt with over a long period of time and then go to appeal. If people were given proper information at the very start, and proper advice 3 we can talk about that all day. We will consider this clause again on Tuesday, but members have heard the debates about it. It is up for discussion on Tuesday.

Clause 202 referred for further consideration.

The Chairperson:

That concludes Part 9 of the Bill.

Mr T Clarke:

I agree with what you said about information. However, if the wording reflected an amendment to a plan, it is usually an amendment to a plan that is the biggest flouting of the rule. It is one thing if there is new evidence that makes a case different, but changing a development from 24 houses to 16 is altering a plan, Patsy. That is a complete change of the original plan. However, if they provide new information that the Planning Service has overlooked, that is slightly different.

Mr McGlone:

Yes, that is the bit that I am on about.

Mr T Clarke:

It is a question of the choice of words and what material is considered.

Mr McGlone:

Words such as “reasonable” or “complying with natural justice”. I am thinking of special needs cases.

The Chairperson:

You are correct. You know the planning system as well as I do, Mr Clarke. You are right: we will discuss that issue. Also, an issue has been raised with regard to clause 102. With your agreement, gentlemen, we will maybe look at that again on Tuesday. It is in relation to acts causing, or likely to result in, damage to listed buildings. With your agreement, we will come back to clause 102 on Tuesday.

Members indicated assent.

Mr W Clarke:

That is what I am talking about; it is like arson attacks.

The Chairperson:

OK. We will talk about that on Tuesday, Mr Clarke.

Mr Buchanan:

There are too many Clarkes on this Committee.

The Chairperson:

Yes, that was Mr Willie Clarke, just for the record. OK, let us turn to the clause-by-clause summary paper for Part 10.

Clauses 203-205 agreed to.

Mr McGlone:

Presumably that level of scrutiny is tied in with the audit function and the likes. We are getting more detail on that anyway

The Chairperson:

Yes, we are getting more detail.

Clause 206 (Report of assessment)

The Chairperson:

The Department stated that "may" in this clause provides greater flexibility for the Department.

Question, That the Committee is content with the clause, *put and agreed to.*
Clause 206 agreed to.

The Chairperson:

That concludes Part 10 of the Bill, gentlemen. We now move to Part 11.

Clause 207 (Application to the Crown)

The Chairperson:

Members requested a departmental response on Crown land in the Clean Neighbourhoods and Environment Bill. Will you give us some clarification on that response?

Ms I Kennedy:

I think that that was between the Committee and the Clean Neighbourhoods and Environment Bill. We do not have sight of the response. It is more —

The Chairperson:

That is fine. That is OK.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 207 agreed to.

Clause 208 (Interpretation of Part 11)

The Chairperson:

The Committee did not raise any issues with this clause. However, the Department has since advised that it will be making two textual amendments to the clause to ensure a consistent approach throughout the Bill. I am content with that.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, *put and agreed to.*

Clause 208 agreed to.

Clauses 209 to 214 agreed to.

The Chairperson:

That concludes Part 11. I ask members to turn to the clause-by-clause summary paper for Part 12.

Clause 215 (Correction of errors in decision documents)

The Chairperson:

No issues have been raised by the Committee in respect of clauses 215 to 218.

Mr McGlone:

I seek a bit of clarity. I am a bit thrown by the double negatives. Clause 215(3) states:

"But the council must not correct the error unless not later than the end of the relevant period it receives a request mentioned in subsection (2)(a) or sends a statement mentioned in subsection (2)(b)."

I think that there is a double negative there. That is probably legalistic stuff.

Ms I Kennedy:

It is just pointing out that there will be a time frame within which the council must correct the error.

Mr McGlone:

I am sure that the English is brilliant and all that, but it is a wee bit unintelligible to me. There are

double negatives in a sentence and stuff, and an "unless" thrown into the middle of it. It is probably perfectly right, but at 1.00 pm in the day —

The Chairperson:

Is the Bill Office OK with it?

Mr McGlone:

Can you make sense of it?

The Clerk of Bills:

I can make sense of it, but it is not necessarily my job to comment on the drafting. I can see that it is specifying that a time period will be given in the development order, and it is saying that any error must be corrected within that time period. I see the double negative, and it may be necessary to read it a couple of times.

Mr McGlone:

The language used is cumbersome. I do not know whether it can be changed.

Ms I Kennedy:

We can certainly talk to our legal people.

Mr McGlone:

It is just that I read it and I am only —

The Chairperson:

This is a clause that we were going to agree, but if we need to change it, Mr McGlone —

Mr McGlone:

I am not saying that we need to change it. I am suggesting that it might be written more simply, in a way that is more intelligible. The language is cumbersome.

The Chairperson:

I will defer a decision on clause 215, and we will bring it back on Tuesday.

Mr McGlone:

Thank you.

Clause 215 referred for further consideration.

Clauses 216 to 218 agreed to.

Clause 219 (Fees and charges)

The Chairperson:

The Department has stated that a review of fees is under way and that it will set the fees for the first three years before the situation is reviewed. I am content with that.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 219 agreed to.

Clause 220 agreed to.

Clause 221 (Grants to bodies providing assistance in relation to certain development proposals)

The Chairperson:

At our meeting on 3 February, departmental officials agreed to contact the Department of Finance and Personnel to discuss the possibility of removing its oversight role under this clause. Officials also agreed to consider the proposed amendment from Community Places.

Members have the Department's response, which indicates that the Minister will bring forward amendments to remove DFP's oversight role in issuing grants and to expand paragraph 221(1)(a) to include the words "of planning policy proposals and". Do members have any comments to make about that?

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, *put and agreed to.*

Clause 221 agreed to

Clause 222 (Contributions by councils and statutory undertakers)

The Chairperson:

No issues on this clause were raised, but the Department has since advised that it will be making four textual amendments to the clause to ensure a consistent approach throughout the Bill. Members have a copy of the draft amendments.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, *put and agreed to.*

Clause 222 agreed to.

Clause 223 (Contributions by departments towards compensation paid by councils)

The Chairperson:

No issues were raised on the clause. Once again, the Department has advised that it will be making a textual amendment to ensure a consistent approach throughout the Bill. Members have a copy of the draft amendment.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 223 agreed to.

The Chairperson:

That concludes Part 13 of the Bill, so we will move on to Part 14, which deals with miscellaneous and general provisions.

Clause 224 (Duty to respond to consultation)

The Chairperson:

The timescale to respond to consultation is likely to be 21 to 28 days, and holding responses will not fulfil that duty. In addition, the Department has since advised that it will make two textual amendments to the clause to ensure a consistent approach throughout the Bill. Members have a copy of the draft amendments.

Mr T Clarke:

What happens if people do not respond to the consultation after 28 days?

Ms I Kennedy:

Obviously, the local authority will chase up the response. The local authority, that is, the council as the planning authority, could make a decision based on the information that it has. It would have to decide whether it could proceed and make that decision in the absence of the consultation response.

Mr T Clarke:

What would the Department be likely to do if it did?

Ms I Kennedy:

That will be a decision of the council, so it will be the council's responsibility.

Mr T Clarke:

Will the Department have oversight of council decisions?

Ms I Kennedy:

Yes.

Mr T Clarke:

Invariably, the NIEA is slow. I suppose the councils are also slow, but that is in-house, so it is different. However, if the Environment Agency is slow to respond and the council makes a decision, what happens if the decision has been made in the absence of the Environment Agency? What then happens if the Environment Agency's response is negative?

Ms I Kennedy:

The council will have to take responsibility for its decision.

Mr T Clarke:

I do not like that, because if the consultee is asked to respond within 28 days and does not do so within that statutory time, the council should not be held responsible for the decision that it made as a result of the consultees not responding within the given time. The onus has to go back —

The Chairperson:

I totally agree. However, as we talked about with the Planning Appeals Commission, people are given a bite of the cherry to appeal within the given time. The consultees in this case are given 28 days to respond, and we need to ensure that they do so within that time. If the decision is made on the twenty-ninth day, that is fine. In the South, the council has to make the decision. It is as simple as that. Somebody else is accountable, therefore. I would say that that would happen in extreme cases. It should not be happening, and we are dealing with it now. However, Mr Clarke is saying that, if it happens on the odd occasion, we should look at what is built in to the legislation.

Mr T Clarke:

We do not want it to happen, but I am concerned that, as Irene said, councils will be held responsible for their decisions. Councils make decisions based on information that they have or have not been given. If a council has not been given information that is detrimental to an application, but it comes afterwards, the council should not be held responsible because an agency did not respond within the given time. Something has to be built in to the Bill to punish agencies.

The Chairperson:

If it is a matter of compensation, the agency would be responsible. For example, are we saying that the NIEA would be liable to pay compensation for decisions that were made as a result of its failure to respond within a specified time?

Ms I Kennedy:

I am not sure that that would be the case.

Mr T Clarke:

Why are we saying 28 days? Why not just say that people can have for ever? For example, we could give a consultee 28 days to respond, but they decide to respond after that time, say, 56 days later. The council may have issued its decision based on the fact that the consultee has not responded. In that situation, the council cannot then be held responsible, because it gave the consultees an opportunity to respond but they did not take that opportunity. If it takes consultees twice as long to come back, the council cannot be held responsible.

Mr McGlone:

From what I know, in the rest of Ireland, planners can say that a consultee has a certain length of time to respond, and, if they do not respond within that time, the planners make a determination. That system has focused attention on a lot of statutory consultees to get their act together. I know that some of them are under work pressures, but, in some cases, they are just codding about. How many times have any of us in this Room attended meetings where, all of a sudden, a file is hoked out from the bottom of a pile or it has been sitting on somebody's desk and was not being attended to, or somebody has been off sick and the matter has just been forgotten about? Therefore, we should build that in to sharpen the efficiency of planning and put a wee bit more focus on to agencies.

The Chairperson:

I will suggest that the decision cannot be overturned. Let us be serious about this, Peter. The days of people being given 30, 40, 50, or 60 days and of people being off sick and not being accountable are over. I propose that, if a council makes a decision based on information that it received within a specified time frame, that decision cannot be overturned, irrespective of who comes back. Would that be a fair way to deal with it?

Mr McGlone:

That would be the case as long as the emphasis on third-party appeals does not open up an opportunity for consultees to appeal the decision. I know that third-party appeals may not appear in the Bill, but it has been an issue as well. Technically speaking, if the third-party appeal mechanism were opened up, an agency could use it, and we could wind up in a crazy situation.

The Chairperson:

If a third-party appeal mechanism were introduced, it would be specific, and the people in question would be involved from the start.

Mr T Clarke:

In fact, they would not be a third party.

The Chairperson:

They would not be a third party. We can talk around the houses about this. Trevor Clarke made a valid point. We are saying 21 to 28 days. Therefore, if a council makes a decision without having the appropriate information, I would certainly support that decision, which, no matter what it is, should not be overturned.

Mr Mullaney:

Although I am open to correction, my understanding is that, in the Republic, there is what is commonly referred to as deemed approval. In other words, after a certain period of time, although I am not sure what that time is, if the planning authority does not make a decision, approval is deemed to have been granted. That obviously focuses people's minds, including those of consultees and the planning authority, to reach a determination within that time, otherwise it goes by default.

The Chairperson:

That is 100% correct.

Ms Smith:

On the relationship between councils and consultees, regulations to come will set out, first, who the consultees are and, secondly, the time periods in which they must respond. The time period for responding would be proportionate to the decision that has to be made on the application.

Mr T Clarke:

I do not mean this to be rude, although it will probably sound rude, but decisions would not take so long if the Planning Service were more robust in following up consultees. Councils are the

biggest offenders. For example, I was involved in a case recently when, after four months, environmental health had still not gone back to the Planning Service. However, if it were given 28 days to assess an application and was then responsible if a wrong decision were made, nothing would exercise its mind more than if it were put behind the eight ball.

The problem at the minute is that applicants are left in limbo, because environmental health, the Environment Agency, Roads Service, which is actually not the worst, and the Water Service do not respond. That means that applications are being held in the system with the Planning Service. We do not want that situation to occur when the powers go to local councils.

Ms Smith:

Everybody, including the Planning Service, is very aware of that problem. That is why we wanted to bring those organisations into the statutory framework. At the moment, most of them are not statutory consultees. They are consulted, but not within any statutory framework. That is why the Bill provides for regulations to be made, first, to list organisations and to establish that they have responsibilities in the planning system, and, secondly, to set out the time frame within which they must reply.

The time frame relates to the hierarchy of development that we talked about. At the local, lower end of the hierarchy, the period to reply will probably be around 21 to 28 days. However, once major applications come into play, especially regionally significant applications, it is clear that much bigger issues will be at stake. The aim in that is to make sure that the timetable for the statutory consultee to come back is laid down at beginning of the relationship on any particular application. That means that everyone will be clear from the beginning how the process will work.

Mr T Clarke:

That is fair, and there is no problem with it. However, the issue is the given time. The time will obviously be longer for a major application, and there is no problem with that. I was involved with a case recently of a farmer building a shed. The council had still not come back to him about it four months later. It had not got back to him four months into the project, and that was not even a major application.

Ms Smith:

You are absolutely right about making sure that there is a shorter and more predictable timescale. That is what the regulations will be designed to do.

Mr T Clarke:

Is there no penalty in the regulations?

Ms Smith:

Not at the moment. The intention is that the statutory consultees will have to publish performance records.

Mr T Clarke:

Irene's answer on this clause makes me nervous. If councils make the decision, and it turns out to be the wrong decision because the agency did not respond, we are saying that, by agreeing the clause as it is worded, the responsibility is on the council. The responsibility has to be on the agency. That would mean that, if a stage is reached where compensation has to be paid on the revocation of a planning application, it should be paid by the agency that did not respond within the given time frame. It should be paid not by a council or the Department, but by the agency that did not respond within the time.

Mr McGlone:

Trevor's point is very valid. The issue is not so much that the council is empowered to override a non-opinion, if you like, by a consultee; it is that a statutory consultee's non-opinion is deemed to be an approval. I can see them all of a sudden saying to people that they can go ahead. The Planning Service can do that at the minute anyway and make a determination if it disagrees with the consultee, be it environmental health or the NIEA. However, that then becomes a liability issue, and people accuse the Planning Service when it overrode a decision and approved planning on, for example, a flood plain. The question for us is that a non-response within a reasonable time is deemed to be an approval by that consultee. That is the issue that needs to be dealt with.

The Chairperson:

That is a fair point, and we will have to come back to it. Maggie, you are right about major planning applications and developments. However, a system is already in place for discussions, if nothing else. People should be involved from the very start.

I am concerned about the staff budget. I know that it will be transferred to local government, but I am using examples of what has already happened *[Inaudible due to mobile phone interference.]* Staff will possibly be moved from that Department. Councils will then have responsibility for the NIEA, which I am using just as an example.

You need to talk to the Minister about bringing back an amendment. The 28-day issue needs to be nailed down. A single application for the countryside normally has to have approval within 12 weeks. If a council agrees a time frame for a response, a deemed approval should be given if an organisation does not respond within that time, or compensation will be required. Will you talk to the Minister about that?

Ms Smith:

We will talk to the Minister and let you know about it as soon as possible.

The Chairperson:

That is only but fair. So, we will park clause 224.

Mr McGlone:

Maggie said that the time frame will be commensurate with the extent of development required and that the Department has already worked out a framework of deadlines.

Ms Smith:

Yes.

Mr McGlone:

It might be useful if we got a bit of a handle on those.

Ms Smith:

I will ask Angus Kerr to correct me if I am wrong, but the intention of the regulations is that the time frame for a local development will be around 21 to 28 days. However, it would be a set period in the regulations. The response time frame for major developments, particularly those of regional significance, will depend on the nature of the development, because some will be much more complicated than others. An agreement would then be made that is commensurate with the scale and complexity of the development.

The Chairperson:

We will park clause 224.

Clause 224 referred for further consideration.

Clause 225 agreed to.

Clause 226 (Local inquiries)

The Chairperson:

The Department stated that the Bill does not give councils the power to hold local inquiries. Do members have any comments to make about clause 226?

Mr McGlone:

There was an issue about apportioning costs.

The Chairperson:

There was indeed.

Mr McGlone:

For example, who would bear the cost of involving external agencies if a public inquiry is held?

The Chairperson:

Belfast City Council responded by saying that:

"the decision to hold public inquiries should be made in close consultation with local councils."

That is fine. The Department said that it would pay for any inquiry. However, the question was whether local councils would be able to hold an inquiry. Is that correct? I am content with the Department's response. Do members have any comments to make?

Mr McGlone:

I am unclear as to what those inquiries are for and their scope. A council can take on the costs of an inquiry if it wants. However, I am thinking specifically about the remit of the Planning Bill. An inquiry into a local development plan, for example, would be extensive and expansive and would involve barristers and such people floating about the place. In previous inquiries, barristers represented the Department, depending on the level of legal representation that was made for area or development plans.

So, I am conscious that we could be into big territory with considerations of defrayment of costs and of who bears them. The regional development strategy will be coming up shortly, and that could take us into local inquiries, depending on how it impacts on capped figures and suchlike. That is even before we get to the length of local development plans. We are getting into interesting territory about who defrays those costs.

The Chairperson:

I agree, but clause 226 states that:

"The Department may cause a public local inquiry to be held"

and the Department says that it will pay for it.

Ms I Kennedy:

Yes, that applies under that clause. I think that Mr McGlone is talking about the independent examination of a development plan. That would be held under —

The Chairperson:

We will come back to the issue of independent examination.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 226 agreed to.

Clauses 227 and 228 agreed to.

Clause 229 (Directions: Department of Justice)

The Chairperson:

The Examiner of Statutory Rules drew the Committee's attention to the proposal to give the functions under this clause to the Advocate General rather than to the Attorney General for NI. The Examiner of Statutory Rules also suggested that that was out of place. The Department stated that it would seek the Department of Justice's position on the clause. Do we have a verbal update on that?

Ms I Kennedy:

As of this morning, we have not had a response from the Department of Justice, but we are chasing that up.

The Chairperson:

So, we have to park this clause until Tuesday.

Ms I Kennedy:

I may be able to check over lunch.

Clause 229 referred for further consideration.

Clause 230 agreed to.

Clause 231 (Rights of entry)

The Chairperson:

The Committee did not raise any issues with this clause. However, the Department has advised that it will be making four textual amendments to the clause to ensure a consistent approach throughout the Bill. The draft amendments are in members' tabled papers.

Question, That the Committee is content with the clause, subject to the Department's proposed amendments, *put and agreed to.*

Clause 231 agreed to.

Clauses 232 to 236 agreed to.

Clause 237 (Planning register)

The Chairperson:

At the meeting on 3 February 2011, departmental officials agreed to report back to the Committee on the compatibility of council and departmental IT systems. The Department provided two responses on that issue. It indicates that planning systems conform to IT best practice and that they use Civil Service strategic tool sets. Those enable the exchange of information, as well as integration, with other IT systems. It also stated that the compatibility of departmental and council IT systems will be dealt with under the pilot projects with local councils.

The Department also noted that, under this clause, councils will be required to keep and make available a planning register. A development order may require the Department to populate the register of the relevant district council when an application is submitted directly to it or when it issues a notice under departmental reserve powers. Would you like to expand on that?

Ms I Kennedy:

They are just very simple amendments.

The Chairperson:

I was talking about the link between councils' IT systems. Concerns were raised about that.

Ms Smith:

I beg your pardon. The systems comply to the same standards, so there is an expectation that they will be compatible most of the time. Again, however, that will have to be looked at on a case-by-case basis, because it will be about the compatibility of a council's planning office with whatever platform it needs to share information. That will be looked at as councils increasingly work together through the pilot projects.

The Chairperson:

Let us be honest. The Committee went to Scotland and saw an IT programme that did not work too well. If the reports about e-PIC are anything to go by, we would need to ensure that we get this right.

Ms Smith:

Yes, absolutely. In fairness to e-PIC, it is early days for it.

The Chairperson:

Even though it has been going since 2006?

Ms Smith:

No; I am talking about its implementation.

The Chairperson:

Maggie, we will not go down that route.

Mr McGlone:

It is a costly baby.

The Chairperson:

We have been dealing with e-PIC for four years. Certainly, the plans should be possible with modern technology.

Ms Smith:

Yes, they should be.

The Chairperson:

Besides that, you are talking about pilot projects. We are relying a lot on pilot projects, so we need to make sure that we get it right.

Ms Smith:

Yes, and they are a very important part of making sure that the integration between the offices happens.

Mr McGlone:

I know that this is not your remit, Maggie, but that of the technical buffs who got e-PIC so wrong

at the start. However, they all knew four years ago and before then that the RPA was coming, yet here we are scratching ourselves. Even the existing programmes are not working properly, and websites have to be re-jigged to make them accessible to the public. I find it incredible that £16 million was spent on that and the guys involved did not even think about the RPA coming down the line or that a lot of computer systems out there might need to be looked at. It is incredible that we are still looking around for computer systems that could be available for councils.

The Chairperson:

We have every assurance that the pilot projects will crack that.

Mr McGlone:

The problem is that it will cost somebody somewhere a fortune to do that again. We saw that at the Public Accounts Committee, and we heard about it here from the people responsible. It is just incredibly bad management.

The Chairperson:

I want to maintain the quorum, gentlemen, just to quickly get through the last 10 clauses.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 237 agreed to.

Clause 238 agreed to.

Clause 239 (Time limit for certain summary offences under this Act)

The Chairperson:

The Department advised that it will be making a textual amendment to the clause to ensure a consistent approach throughout the Bill. I am happy enough and content with that.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 239 agreed to.

Clause 240 (Registration of matters in Statutory Charges Register)

The Chairperson:

There will be a textual amendment to the clause.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 240 agreed to.

Clauses 241 and 242 agreed to.

The Chairperson:

That concludes Part 14 of the Bill. We will now move to Part 15, which deals with supplementary issues.

Clause 243 (Interpretation)

The Chairperson:

The Department stated that the term "reserved matters" in relation to the clause would be defined in subordinate legislation. I am content with that.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 243 agreed to.

Clauses 244 to 246 agreed to.

Clause 247 (Commencement)

The Chairperson:

I propose to defer consideration of clause 247 until after lunch. We may have to look at a Committee amendment.

Clause 247 referred for further consideration.

Clause 248 agreed to.

Mr T Clarke:

What is the purpose of the amendment to clause 247?

The Chairperson:

We are going to talk about how the commencement of the Bill will not take place until governance arrangements and a code of conduct for councils is in place for local government reform. The Executive made a commitment about that. If you are happy to stay, we will discuss that now.

Mr T Clarke:

Go ahead, but you can pay my speeding ticket.

The Chairperson:

Do not record that, please. Mr Clarke will honour us with another bit of time.

Clause 247 (Commencement)

The Chairperson:

At the meeting on 3 February 2011, departmental officials agreed to report back to the Committee on discussions with the Office of the Legislative Counsel about how the commencement of the Bill is linked to local government reform. There does not appear to be a response from the Department on that. Before I continue, do we have a response, Maggie?

Ms Smith:

No. I am sorry, Chairperson. I understood that the Committee was going to —

The Chairperson:

You are leaving that to us. OK.

Ms Smith:

That the Committee was going to —

The Chairperson:

No, that is fine. I was just seeking clarification. We have been dealing with a lot.

A draft Committee amendment suggests that the commencement of Part 3, which deals with planning control, could be made subject to draft affirmative procedure.

The Clerk of Bills:

That is a revised version of the amendment that was tabled but was not acceptable. Some members, in particular Mr Weir, raised issues about linking the commencement of planning to boundary changes and elections. He made the point that perhaps governance arrangements might be agreed in advance of such boundary changes or elections. It was suggested that that be left open so that planning powers could be devolved once those governance arrangements were in place.

So, because we cannot refer specifically to such governance arrangements or to any particular relevant legislation, it was discussed that the Committee might delay some of the commencement orders on some of the key provisions and make those subject to draft affirmative procedure. In other words, the Bill will have to go back to the House before those powers can be transferred. The House would be left to decide when those provisions might be commenced.

Mr T Clarke:

OK.

Mr McGlone:

Was there any particular reason why we are dealing with social well-being, climate change and sustainable development?

The Chairperson:

We deferred some clauses, and we will be coming back to those this afternoon.

Mr McGlone:

I am sorry, I am reading this paper wrong. That is OK. Sorry, excuse me.

The Chairperson:

Are members content that the Committee amendment will deal with a requirement that councils cannot carry out planning control functions until an order has been laid before and approved by a resolution of the Assembly.

Question, That the Committee is content with the clause, subject to the Committee's proposed amendment, *put and agreed to.*

Clause 247 agreed to.

Schedules 1 to 4 agreed to.

Schedule 5 (The Historic Buildings Council)

The Chairperson:

At the meeting on 3 February 2011, the Department agreed to provide further clarification in the Bill on the role of the Historic Buildings Council. We discussed that under clause 196 and were content.

Question, That the Committee is content with the schedule, *put and agreed to.*

Schedule 5 agreed to.

Schedules 6 and 7 agreed to.

The Chairperson:

Thank you very much, gentlemen. We will now break for lunch.

Committee suspended.

On resuming —

Clause 1 (General functions of Department with respect to development of land)

The Chairperson:

At last Tuesday's meeting, the Committee was content with the proposed departmental amendment to clause 1(3) that would change the words "have regard to" to "take account of", making the clause consistent with clause 8(5). However, before agreeing the clause, the Committee agreed to ask the Department to consider including a reference to well-being and to reconsider strengthening the obligation to sustainable development. Members also requested that a draft Committee amendment covering those points be provided for discussion.

A departmental response indicates that the Minister is prepared to amend in clause 1(2)(b) the words:

"contributing to the achievement of sustainable development"

to “contribute to sustainable development”. However, the Department says that it is not possible to refer to well-being in the Bill.

We will discuss the sustainability issue first, and I will let the Department speak a wee bit on that. I will then go to the Committee amendment. What exactly would the departmental amendment do?

Ms Smith:

We spoke at the previous meeting about how sustainable development is a wide-ranging responsibility to which many organisations, including all Government Departments, contribute. The idea behind the amendment is to reflect the fact that the Department contributes to sustainable development. Departments and councils have a responsibility to contribute to sustainable development, and, within that framework is the planning system. Therefore, it is about contributing to sustainable development.

The Chairperson:

Basically, you would remove the word “achievement”. The Committee wanted strongly to get this issue tied down. You are correct to say that the responsibility is cross departmental and that everybody has to play their part. However, this is primary legislation, and we need to try secure something stronger if we are to adhere to sustainability. You raised that issue, Mr Clarke.

Mr W Clarke:

I agree with you, and I will not rehearse what was said. As you said, this is a big piece of primary legislation, and, in my opinion, every other Department will feed off it. This Bill will be the central plank, so it is important that we make it as strong as possible.

The Committee wanted the words “the securing of sustainable development” to be added to the clause, but I understand that the Bill Office had problems with that wording. The Committee amendment would remove the words “contributing to the achievement of” and would insert the word “furthering”. I would be happy enough with that amendment.

The Chairperson:

I will ask the Clerk of Bills to go through that.

Mr Weir:

Would that then read "contribute to furthering sustainable development"?

The Chairperson:

We have two proposed amendments —

Mr W Clarke:

The word "contributing" would be removed, because it is weaker.

Mr Weir:

I am just trying to clarify what Mr Clarke said.

The Chairperson:

I propose that the Clerk of Bills take us through the first amendment, because the Committee may bring its own amendment.

The Clerk of Bills:

The draft Committee amendment would leave out line 11 in its entirety. It would leave out the words:

"contributing to the achievement of sustainable development"

and replace them with the words "furthering sustainable development". Although the Bill Office cannot offer a cast iron guarantee on statutory interpretation, that seems not to preclude the notion of co-operating or to suggest in any way that the Department was entirely or solely responsible for sustainable development. However, it appears to me to be somewhat stronger than "contributing to".

Mr W Clarke:

I propose that amendment.

The Clerk of Bills:

Do you want me to address social well-being?

The Chairperson:

How would the Committee amendments read in the Bill?

The Clerk of Bills:

The clause would read:

"The Department must —

(a) ensure that any such policy is in general conformity with the regional development strategy and

(b) exercise its functions under subsection (1) with the objective of furthering sustainable development and (2) promoting or improving social well-being."

The Chairperson:

There are two amendments there.

Mr Weir:

Those are two separate issues: sustainable development and well-being.

The Chairperson:

So, the first amendment would add the words "the objective of furthering sustainable development" and remove the words "contributing to the achievement of". Did every member hear that?

Ms Smith:

We would need to go back and ask the Minister whether he would adopt the words "furthering sustainable development".

Mr W Clarke:

We could table our amendment, and the Minister could then come back to us.

The Chairperson:

Yes, OK.

Ms Smith:

Yes, that is fine.

The Chairperson:

The second part of the amendment aims to promote or improve social well-being. How does the Committee feel about that?

Mr Weir:

I do not have a major problem with the broad concept behind that. However, is the issue not that the term "well-being" is not defined anywhere? The amendment may be meaningless if that term is not defined. That is my only concern.

The Clerk of Bills:

The Committee would be at liberty to request that I go off and bring back an appropriate definition. However, I understand that the definition of social well-being was aired and is to be addressed as part of other related legislation. Therefore, the Committee may wish to leave that for the moment. If the amendment were made, it would then be open for the Department or Minister to come back with a definition that was consistent with what is in either progress or planning for the other related bits of legislation. It would be sufficient to make clear the Committee's intention or desire.

The Chairperson:

Would you like to take those thoughts away with you and see what the Minister will not say?

Ms Smith:

Yes.

The Chairperson:

Obviously, he indicated what he thinks about the well-being issue.

Ms Smith:

The well-being issue comes back to what we talked about when we discussed governance

arrangements and ethical standards. Well-being does not exist in statute at the moment, but it is in the consultation document that is leading up to the next local government Bill. That is our issue with well-being.

We can certainly ask the Minister about furthering sustainable development. We can also ask him again about well-being, but our position on that is as I stated.

The Clerk of Bills:

The other wee point to note about well-being is that if it goes into clause 1, it will impact on the way that the Department exercises its general duty under clause 1(1), which is that:

"The Department must formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development."

The Committee would, in effect, be asking the Department to take on some responsibility to consider social well-being as part of the development of its policies and general duty under clause 1(1). I understand that any time that social well-being has been discussed in the past, it has generally been in connection with the next level of government down. Any such discussions have been about local government considering social well-being by identifying local populations and quality-of-life issues in their areas. That means that the concept would be used in a very different context in the Bill.

Mr Weir:

I would not die in a ditch about this, but would it not make sense if social well-being came under the duties of a council rather than the Department, especially if it is more about looking at a community holistically? Leaving aside the comments that we made about definition, it may be better to make some reference to well-being. It may be more appropriate for it to be dealt with at the local government rather than the departmental level.

Ms Smith:

The power of well-being will go to the councils. It will not really lie at departmental level. The power of well-being is also about the purpose of the planning system and what it is there to do. The planning system, as clause 1 states, is about:

"the orderly and consistent development of land".

So, it is about the land, rather than social well-being. Social well-being is about the state of the people, which is a different matter.

Mr W Clarke:

It is my opinion that we are moving away from a land-based to a spatial planning system, and fundamental to spatial planning is citizens' well-being. So, I think that well-being very much fits in with that. It also fits in with other elements of the Bill, such as those on councils and so forth. However, it has to be at the start of the Bill and listed with the general functions, so that the Department's role would be to consider the well-being of the community and its citizens.

Mr Weir:

I think that the responsibility for well-being is more appropriate for councils, because they have to be more focused on citizens in how they interpret planning matters. However, if the term "well-being" were clearly defined, it would have to lie with the Department and with councils. The complication is that, if the same responsibility were given to two groups, there is a danger that neither, rather than both, would consider well-being.

I would feel more comfortable if there were a reference to social well-being in the development side of councils' duties. It would also fit in with councils' responsibilities to consult with the community and community involvement. Well-being fits more naturally there, rather than on a high, esoteric level with the Department.

The Chairperson:

How do we nail down well-being in statute, if it is not in the Bill? Where do we put it?

Ms Smith:

If we are talking about the slightly different term of social well-being, that would take us back to community planning and councils' responsibilities for plans. The community plan goes much wider than the development plan and is concerned with all sorts of areas of life in a council area. The development plan is the spatial aspect of the community plan. We are now talking about

what councils would do through their community plans and other polices that Government Departments bring forward. In our context, however, we are talking about the community plan.

The Chairperson:

That is fine, Maggie, but how do we put that in statute? Where do we go with legislation?

Ms Smith:

Community planning is out for consultation in the local government reform consultation. That will come in along with governance, ethical standards and the power of well-being. All that goes together.

The Chairperson:

I agree. That would be fine, if we were talking about local government reform. If well-being is not going into the Planning Bill but into community planning, members may or may not be happy to go down that route. However, we need assurance from the Department that that will happen.

Mr W Clarke:

That is not good enough. We should table the amendment, and, if it is competent, it can go forward and be debated in the Chamber.

Mr Weir:

The Committee will agree the amendment or Mr Clarke will table it. I can see the general concept, but this is not the right place to put the amendment. Therefore, I would oppose it in a Committee vote.

Mr W Clarke:

We should vote on it.

Mr Weir:

The Planning Bill may not even be the right legislation for it, to be perfectly honest.

The Chairperson:

Do you have any other views, gentlemen? I am just looking at the possibility of different clauses

for it. Is there an opportunity to put social well-being in PPS 1?

Ms Smith:

We can certainly think about it in that context. The Bill is really about the planning system. If we start to talk about social well-being, we go way into all sorts of other responsibilities that the Bill is not designed to meet.

The Chairperson:

Could you consider putting it into PPS 1?

Ms Smith:

Yes, we could.

Mr Angus Kerr (Department of the Environment):

PPS 1 would be an appropriate place for it.

The Chairperson:

Could it be included under guiding principles? I am trying to be reasonable about what exactly we are looking at in primary legislation and at what fits in the Bill.

Mr W Clarke:

That is fair enough, Chairperson. If you do not want to take that route, do not take it.

The Chairperson:

No, I am opening up the issue for discussion. I am only saying.

Mr W Clarke:

We will be talking in circles all day. I am proposing the amendment, so we either put it to a vote or we do not.

The Chairperson:

I asked whether any other members had a comment to make. We have a Committee amendment, and I can put it to a vote.

Mr Weir:

I know that we are trying to get all the outstanding issues resolved, but we can have a final bite at this on Tuesday.

The Chairperson:

I was just going to say that we will have to park this clause again.

Mr Weir:

Perhaps the Department can come back with something in writing about the suggested PPS 1 route. That might inform any decision that we make on the matter on Tuesday.

The Chairperson:

We will come back to that, and you and I will debate it, Willie.

Mr W Clarke:

We will go back to the same scenario.

Clause 1 referred for further consideration.

The Chairperson:

Moving on to —

Mr W Clarke:

What about the issue in clause 1 on sustainable development?

The Chairperson:

Yes, I am sorry; we will come back to that again on Tuesday.

Mr W Clarke:

We do not need to come back to it.

Mr Weir:

I do not think that there is a major issue from a Committee point of view with the words "furthering sustainable development".

The Chairperson:

The problem is that we cannot agree the clause in part.

Mr W Clarke:

We could agree that element of it.

Mr Weir:

Presumably we could agree at least that part.

The Chairperson:

Excuse me, gentlemen, I will tell you what we will do. We will come back to the clause on Tuesday.

Mr McGlone:

Will we do the whole clause then?

The Chairperson:

Yes. There is no point trying to agree the clause in part and then adding another part to it. We will agree or disagree the clause, whatever the case may be.

Clause 3 (Survey of district)

The Chairperson:

Members deferred this clause until they had an opportunity to consider a Committee amendment that would require climate change to be in the survey of a district. A draft Committee amendment is in members' tabled papers. I will get the Clerk of Bills to go through the amendment. You are overwhelmed, Maggie, and cannot wait to put that in the Bill. Would you like to comment?

Ms Smith:

I have to apologise for what I said earlier when we were talking about well-being. I was getting

mixed up between the two clauses. What we are saying about well-being for the survey is that well-being does not exist in statute. It is also off the subject of the Bill.

The Chairperson:

Are there any issues about climate change?

Ms Smith:

We explained before the previous meeting that there are international UN standards for the collection of climate change data and that that is done at a UK level.

The Chairperson:

I will ask the Clerk of Bills to take us through the Committee amendment to clause 3.

The Clerk of Bills:

Clause 3 is broken into subsections. Clause 3(2) concerns matters by which a council would derive factual information about the district. Clause 3(3) refers to:

> "any changes which the council thinks may occur".

I suggest that councils consider any potential impact of climate change as one of those changes that might occur. So, there would be a new subsection (a) after 3(3) that would read:

> "The matters also include the potential impact of climate change".

The Chairperson:

Are there any comments on that?

Mr W Clarke:

I propose the amendment.

Mr Weir:

The councils are not going to be recording the information. How can they assess the potential impact and take account of it if it is recorded on a national basis?

Mr W Clarke:

You are getting into constitutional stuff when you talk about a "national basis".

Mr Weir:

Leaving aside broader constitutional issues, whatever way you look at it, the recording of the data is done on a national basis.

The Clerk of Bills:

That is why the amendment is drafted to say that councils have to take into account the potential impact; it is not asking them to collect data, assess it or adapt it.

Mr Weir:

If you are looking at a local plan but the information is collected at a national level, councils will be trying to apply national information locally. I am not questioning the competence of the amendment; I am questioning its appropriateness.

Mr McGlone:

Sure you are not going to have local information on climate change.

Mr Weir:

That is exactly my point. How can you assess the potential impact of something at a local level if you do not have any local information?

Mr McGlone:

You have to do it in the global sense with the information that you have got. That is the nature of climate change.

Mr W Clarke:

As Mr McGlone said, the councils will be taking account of worldwide best practice on climate change and configuring it into their plans for flood defence and planning zones for the lifetime of a local plan. Obviously, councils will have to take in factors such as that. For example, if they got information that sea levels were going to rise by a metre in a year, they would have to take it

on board.

Mr Weir:

If sea level rises by a metre in the space of a year, the Four Horsemen of the Apocalypse will be going past. *[Laughter.]*

Mr W Clarke:

You are saying that the councils would ignore that information. We are saying that it should be put in so that councils are aware of it.

Question, That the Committee is content with the clause, subject to a Committee amendment to incorporate climate change, *put and agreed to.*

Clause 3 agreed to.

Clause 5 (Sustainable development)

The Chairperson:

Last Tuesday, we deferred this clause, pending the decision on the reference to sustainable development in clause 1. Will the Department confirm that its amendment to clause 1 will also apply to clause 5?

Ms Smith:

Yes.

The Chairperson:

To confirm, the amendment is on "furthering sustainable development".

Question, That the Committee is content with the clause, subject to a Committee amendment to further sustainable development, *put and agreed to.*

Clause 5 agreed to.

Clause 10 (Independent examination)

The Chairperson:

At Tuesday's meeting, we sought clarification on who would pay in the event of an independent examiner being appointed. At that meeting, the Department confirmed that it would amend the Bill so that it:

"cannot appoint an independent examiner unless, under clause 10(4)(b), it considers it expedient to do so having first considered the Council's timetable for preparing the plan."

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, *put and agreed to.*

Clause 10 agreed to.

Clause 33 (Simplified planning zones)

The Chairperson:

The Committee agreed to defer a decision on clauses 33 to 38, pending a note of the meeting with Professor Lloyd being made available and further information being provided from the Assembly Research and Library Service. The Committee also asked the Department to consider an amendment that removes those clauses.

Professor Lloyd suggested that risks associated with simplified planning zones include confining them to a set period, reducing the number of planning policy statements, introducing a threshold and requiring a sound business case. The Department's response indicates that the Minister will not consider such an amendment. A research paper has also been provided.

Ms Smith:

You asked us to consider an amendment to basically remove simplified planning zones. The Minister thinks that simplified planning zones are a useful tool that councils may want to use, so he is leaving the provision in the Bill.

The Chairperson:

Gentlemen, any issues? Mr McGlone, you brought up the issue of simplified planning zones at the last meeting.

Mr McGlone:

I see from the papers that there are a number of grounds on which it can be introduced, including a planning policy statement. However, I am not at all convinced that it is a useful tool. Other than the Department's wish for it to be in there, any evidence that we have heard has been to the contrary. I do not know whether the Committee can propose an amendment to remove the provision. I seriously do not see any merit in it being there other than to say that it is there.

The Chairperson:

I raised the issue of whether or not we need simplified planning zones at the last meeting. Can the departmental officials clarify things for us? We are talking about a plan-led system. Will you give us an example of where this would be of benefit?

Mr Kerr:

It will be an option open to councils, over and above the local development plan, to pick out a particular area, usually an industrial area or an area that has been earmarked for economic development, do some work in the preparation of the scheme and bring about a situation where the uses that that it sees as being appropriate and important can come forward without the need to put in planning applications. The idea is that it can foster rapid economic development and take away the need for developers to put in applications. Therefore, you get faster development and do not get bogged down in bureaucracy.

Mr McGlone:

I am listening very carefully, Angus, to try to get my head around this concept. I have not got my head around it yet, but maybe I am just slow on the uptake. You give the example of an area that is zoned for industrial development within the boundary of a village or a town, wherever it might be. There would be a presumption in favour of development there anyway. Are you saying that somebody could be deemed to have planning approval without submitting a planning application? How can that work?

Mr Kerr:

When you prepare a simplified planning zone, it does not necessarily have to be on industrially zoned land, it could be that the council has decided that it is important that an area be developed

quickly.

Mr McGlone:

I was just taking your example.

Mr Kerr:

There is quite a lot of work involved in building the scheme itself, because you are assessing what is acceptable on that land. *[Interruption.]*

The Chairperson:

I remind all members to switch off their mobile phones.

Mr Weir:

It is not necessarily the members for once.

Mr McGlone:

For once it is not me. *[Laughter.]*

Mr Weir:

For once, we have an alibi.

The Chairperson:

It is OK. Hansard will come back the next day, and we will do the recording all over again.

Mr McGlone:

Rewind there, Chairperson. What did you say?

Maybe I will rewind a bit. We will stick with the example of an industrial proposal. There is a presumption in favour of development anyway; at the minute a developer has to put in a planning application. Earlier, we were trying to resolve whether someone could receive planning approval in circumstances where the consultees had not replied within a certain period of time. Their consultation would be deemed to be positive.

In a simplified planning zone, there is no consultation with environmental health officers, no consultation with Rivers Agency, no consultation with Roads Service and no consultation with NIEA. If it is deemed to not require planning permission because it is that simple to get it, I would be interested to hear about the other examples to see how complicated they could quickly become, rather than being simplified.

Mr Kerr:

The idea of a simplified planning zone is that the planning authority does all of that work up front. That could be in an area where a council wants to see certain types of development coming forward quickly. It might be high-tech communications development or something like that. The planning authority will consult all of the relevant bodies, almost as if it is an application, and clear the way for the uses that are specified in the simplified planning zone scheme. In other words, there would already be full consultation for particular uses to make sure that they are acceptable and to identify any conditions, so a developer could look at a scheme and know that he or she does not need to submit a planning application for a certain use under a certain condition.

Mr McGlone:

Forgive me if I go with this. I do not want to make something that is termed "simplified" any more complicated than it is. You could have a simplified planning zone with all of the boxes ticked by the statutory consultees, but six months later, depending on the nature of development that is around it and on the nature of the proposal that is being suggested, the nature of the consultation itself could be completely different. For example, there is a big difference between an architect's office and an engineering works. The consultations on the potential for noise nuisance, or, say, a sawmill or whatever it might be, would be entirely different in those two. One might get through and the other might not.

Maybe I am wrong, but from sitting through discussions on many planning applications and stuff, I have learnt that no two are precisely the same, although you can have certain precedents that read across. I do not see how anything could be that simple and not be further complicated by a change in the type of application or in the circumstances in and around a site. You have been there and know that much better than I do.

Mr Kerr:

What I am telling you is based on looking at other schemes that have come forward in the other jurisdictions. We have not —

Mr McGlone:

That is part of the problem. The information and the evidence that we are getting from the experts in the field is that this does not work and creates more problems than it has attempted to resolve. When somebody like Greg Lloyd says to me, based on his experience and academic expertise, that this is problematic and refers to it as a Pandora's box, it leads me to think that they are peculiar. Simplified planning zones are not as simple as their title would lead you to believe. They are probably fraught with a lot of difficulty.

Mr W Clarke:

I am trying to get my head around this. If I am hearing you right, it allows a council the opportunity to send in business where other areas have — no, I will correct that. My understanding is that if a council decides that it wants to zone an area for activity tourism, for example, there will be strict criteria set and the consultation has already been carried out and you will get the go-ahead with regard to that. However, there will be strict criteria from the council that a developer has to meet.

The same will apply to the zoning of an area for renewable energy businesses; all of the boxes in the criteria set by the council will have to be ticked. Similarly, if a council zoned the land beside a hospital and wanted health businesses to be located there to create a one-stop shop, it could do that. That makes sense and will provide good opportunities for a council. Is that correct? Am I reading that right? They can do that?

Ms Smith:

Yes. It is important that the zone is specific to particular types of development. The work is done by the council — all of the consultations, all of the assessments and examinations — in order to set the zone up. Once the line is drawn, it is only in the context of those assessments and those consultations. Only applications that fit the very precise criteria set by the council will be

allowed. That is why the individual applications do not need planning permission.

The whole process that you would normally go through with a planning application will have been done beforehand by the council. It is almost like an area for which the council has processed the application. That is the arrangement that allows those types of development.

Mr W Clarke:

That is worthwhile and is a very useful tool for councils. It will create jobs for a start and will bring in investment. If somebody has a particular idea, they can slot neatly into a council's zoned area.

Mr Buchanan:

It makes good economic sense to have something like this tied into the Planning Bill.

Mr Weir:

Mr Clarke has teased it out quite well. One of the things that we are sometimes told, particularly when various Ministers go off in terms of investment bits, is that particular companies say that if they were in the United States they could set up their operations in six weeks. The scale of land is very different there, but here, even if the proposal is a no-brainer and everybody is in favour of it, with the amount of hurdles that have to be overcome, boxes that have to be ticked and the time delays, you can be waiting 18 months to get the thing.

Creating a zoned area for high-tech business or environmental business — whatever it happens to be — getting block planning permission at an early stage and then allowing flexibility is something that makes sense. The only issue is that there have clearly been teething problems in other jurisdictions. The key thing is ensuring from an implementation point of view that it is done correctly. I agree with Mr Clarke that this is an opportunity to embrace something that can be of benefit, in terms of jobs or whatever, and has got proper criteria.

Mr B Wilson:

The old enterprise zones did not have much success. My concern is that each council, instead of creating new jobs, could end up displacing jobs from other council areas. Is there any experience

of that sort of thing?

Ms Smith:

The zones will be tools that councils can use; this is not an exhortation to councils. Not only will all the planning work have to be done before the zones are set up, but the councils will also need to look very carefully at the economic implications, because the whole thing has to be based on a very sound business case. It is something that has to be looked at broadly, and you are absolutely right that the impact on jobs, both positive and negative, needs to be taken into account in the business case.

The Chairperson:

You have hit it on the head. We need to make sure that a sound business case is one of the criteria. At the last meeting, I mentioned producing a planning policy statement in relation to this. I suppose that that would defeat the purpose, or would it set out proper guidelines?

Mr Kerr:

Guidance would be essential.

The Chairperson:

There is talk about thresholds, and there was a good discussion the other day about having a set period or a time frame to keep a hold on the piece and what you are trying to achieve. You would not go down the line of a planning policy statement, but you will look at guidelines, is that right?

Mr Kerr:

Yes.

The Chairperson:

How would that stand up to challenge? Planning is all about interpretation.

Mr Kerr:

Obviously, anything that a planning authority does is open to challenge. In that sense, a simplified planning zone will be no different from a local development plan or any planning

decision. The councils will be working very hard with their planners and officers to carry out whatever task they are doing correctly and in line with both the guidance and legislation, but you can never rule out the possibility of challenge.

The Chairperson:

I am in and out with respect to this. I can see both advantages and disadvantages. I want to park it until Tuesday. Can you bring some examples of how you would nail the guidance down and ensure that it is properly adhered to and that the zones are beneficial to the local authorities? I want to know that there will be proper control and certain criteria, such as a sound business case. Will you bring something to the table in respect of that? We will look at it again on Tuesday.

Mr W Clarke:

You mentioned disadvantages, but I do not see any disadvantages. Clause 34 talks about a council being able to alter a zone at any time. A lot of that is covered. I am happy enough to wait until Tuesday, though.

The Chairperson:

I am only looking for examples. It is not about individuals; it is about the system itself.

Mr W Clarke:

There will be a great deal of community involvement. A council is not going to decide overnight to do something.

The Chairperson:

I agree, but I have to stop you there. We are going through a plan-led process for councils, and communities are involved from the start. Let us be open and honest. The system is front-loaded. I could very well argue that we should get the plan right from the start and be done with it. Land should be zoned in a certain way with the community's involvement and aspirations and be based on need. A plan should be based on need when it comes to housing and allowing for business and economic development.

I could argue that there is no call for this. I can see merit in it, but the enterprise zones have

not worked in other areas. If we are going to introduce something like that, we have to make sure that it is beneficial for local communities. That is all that I am saying. So, there are criteria that we need to look at.

Clause 33 referred for further consideration.

Clauses 34-38 referred for further consideration.

Clause 41 (Notice, etc., of applications for planning permission)

The Chairperson:

The Committee deferred its decision on this clause and on clause 42, pending a response from the Department on neighbourhood notification and site notices. The response indicates that the Minister has agreed to bring forward —

Ms Smith:

Yes, he has agreed to make regulations for neighbourhood notifications and site signs.

The Chairperson:

I am absolutely delighted. To clarify, are we saying that in some instances it will be the developer and in others it will be the local authority, or will it always be down to the developer?

Ms Smith:

We need to look carefully at the best way to do it, but the agreement is there.

The Chairperson:

Obviously we will need to consult on those regulations.

Ms Smith:

Yes. The regulations will be subject to the normal process. There will be research done and proposals produced, the proposals will go out for consultation, and the report will come to the Committee. The full process will be gone through.

The Chairperson:

Mr Willie Clarke noticed the issues of neighbourhood notification and site notices, and the Committee was in favour of it.

Question, That the Committee is content with the clause, *put and agreed to.*

Clause 41 agreed to.

Clause 42 agreed to.

Clause 44 referred for further consideration.

The Chairperson:

There are other issues that we need to consider, which are relevant but are not covered in the Bill. The first one is the small matter of resources, capacity building and training. I remind members that this was the single biggest area of concern that was brought to the Committee's attention. No respondents felt that the process should be considered to be cost neutral by the Department.

Ms Smith:

We will start with capacity. We are very conscious of the whole issue of capacity building. We are aware of capacity building in terms of the people who work in the Department, council employees and councillors.

It is something that councils, councillors and the professional organisations have been raising with us. That is one of the very important reasons behind the Minister's announcement that there will be pilot projects.

The specification for the pilot projects is being drawn up. Central to that is how the Department and the councils will work together in each area, and central again to that is the issue of capacity building, what can be learned on both sides and what needs to be learned so that a smooth transition can take place. That is capacity building in a general sense.

We are also talking to NILGA, the Environmental and Planning Law Association for Northern Ireland (EPLANI), the Royal Town Planning Institute (RTPI) and the Royal Institution of Chartered Surveyors (RICS) about more specific training, because particular issues are involved with councils taking on the responsibilities. That means that specific, formal training will be

brought forward in conjunction with those organisations.

The Chairperson:

Do members have any questions to ask on capacity before we move on to resources?

Mr W Clarke:

Would it not be useful to specify a date, for example, just after the next local elections, for training programme on planning for councillors and council staff to begin?

Ms Smith:

Do you mean the election in May?

Mr W Clarke:

Yes.

Ms Smith:

Our aim is that the first of the pilot projects will be starting around April or May, so effectively the training will be starting from that point. The first step is to get a couple of pilots in place, after which the programme will be rolled out. We are talking with the organisations that I mentioned about the specific content of the formal training, which will then be put in place.

Mr W Clarke:

I am saying that a tailor-made training programme should be set up almost immediately after the elections for councillors to attend. I am not talking about a NILGA conference that will last one day; I am talking about a properly resourced training programme that lasts a couple of years. I am not talking about sitting and waiting for a couple of pilot schemes to be rolled out, while everybody else is in the dark about what is happening. We need to start the training now. From reading all this material, I know that I will need plenty of training. I should have declared an interest as a councillor.

The Chairperson:

We should bear in mind that we do not know who will be on the councils come May.

Mr W Clarke:

That is why I said that it should happen straight after the council elections.

The Chairperson:

Maggie, you mentioned all the other groups that you have been talking to, and you said that there is a role for them to play. There is no doubt about that.

Ms Smith:

There is; absolutely.

Mr Buchanan:

Following on from what Councillor Clarke said, I want to add my concerns about rolling out a pilot scheme. Pilot schemes are all very well in their own place, but if one is rolled out, a few councils and a few councillors will get involved, but many will get left behind. The pilot scheme could run for 12 months. If people are not happy with the scheme, they will turn to something else. How long will that go on? If that happens, people will be sitting on councils with these powers coming to them, yet they will have no training and will know absolutely nothing about them.

Ms Smith:

Perhaps I can clarify the term "pilot". Every council will eventually be involved in the pilots that we are talking about. What was said about the pilots is absolutely right. However, we will start with a couple of councils. It will be the councils' responsibility to make sure that they have their arrangements in place so that the powers can be transferred very smoothly. Therefore, a couple of councils will be involved in the pilots to start with.

That will happen at the beginning of the financial year. By March 2012, every council will be involved, and they will be working with the planners in their own areas to start to put in place the arrangements for transition. By the time that we have the transition of powers, councillors will really understand their roles, and the planning staff and other council staff will be working together and will also fully understand their roles.

We want to be able to give people the opportunity to rehearse the new system. Effectively, therefore, they will be playing the roles that they will be playing after transition, even though the councils will not yet have the powers. Although council staff will not be able to make the planning decisions, they will be able to go through the process for themselves and will come to understand, not just through formal training but through practice, what is required when the powers transfer. That means that when the powers transfer, we will have a very confident and competent cadre of councillors ready to take them up.

Mr Buchanan:

You hope.

Mr W Clarke:

Councillors will still need tailor-made training over a number of years on community plans, well-being, climate change and development plans. *[Laughter.]*

The Chairperson:

I do not think that they will need training on that last one.

Mr W Clarke:

They will also need professional training on spatial planning that will last over a number of years, not just over 18 months.

The Chairperson:

I totally agree. I am saying that there is a role for the advisory groups, which Maggie mentioned, and we need to look at that.

Our two-year review is the key to all this, and that includes the pilots. All you have to do is say yes, Maggie. I believe that, even with the best intentions in the world, there will be serious problems, given all the training and the capacity building that is needed. Having said that, depending on who will be on the councils, there is a lot of experience in councils.

Mr Weir:

That is a good argument for keeping double-jobbing.

The Chairperson:

Yes. We will talk about the two-year review before you leave today.

Ms Smith:

I can deal with it now.

The Chairperson:

If you say yes, we are going to do a two-year review.

Ms Smith:

You asked us whether the Minister was willing to mention a review in the legislation. Our reply to you, which is on its way, will say that it is not necessary to put it in the Bill, because the legislation can be reviewed at any time.

The Chairperson:

So, it is not going in the Bill, but it will be done.

Ms Smith:

I am not in a position to say whether it will.

The Chairperson:

OK, but you will have that answer for me on Tuesday.

Mr Savage has been waiting patiently to ask a question.

Mr Savage:

I have been listening very carefully to the conversation that has been going on for the past half an hour. Obviously, the whole system will be more streamlined.

Ms Smith:

Yes.

Mr Savage:

Will the planners hold on to their identity, or will they become council employees?

Ms Smith:

When the planning powers transfer to councils, the planners will become council employees. That means that, on the day of the transfer, responsibility for each area office will move from the Department to the relevant council, and the staff will become council employees.

Mr Savage:

That is fine.

Mr Weir:

I appreciate that I came in midway through this session. That point may be clarified on Tuesday, but it strikes me that there may be things that we can recommend in our report. Issues connected to training are vital. They may not be legislative, but they are things that we can include in our report.

Mr McGlone:

This may be discussed later, but George touched on an important matter, which is about getting clarity on the distinction between the development control staff and those charged with policy development or whatever else. We have not had any clarity on what the charge for that will be; however, that clarity may be coming. In other words, who will have responsibility for those who may be involved in other aspects of planning, such as policy development? I mean those such as your legal people and the likes. How will that merge, not merge, co-exist or whatever with the new authorities? That again takes us down the route of resources, charges and costs for planning applications and fees. I raised that issue here previously . Some clarity may be coming on that, but it is clearly something that councils, let alone ratepayers, would need to know about.

Ms Smith:

The powers that will go to councils include the development management and the development plan functions. Staff who are working on those functions in local areas will transfer to councils, and their resources will go with them. The fee will also transfer. Fees, which at the moment come to the Department, will go to the council in the same way. In preparation for the transfer of functions, we are looking carefully at the fees and the structures. As you know, we have been out to consultation on proposals for a new fee structure. We are finalising our report on that to the Committee, and it should be with members in the next few days.

We aim to ensure that the fees cover the costs, because, at the moment, they do not. Therefore, we have planning applications that take a huge amount of work to process and for which we charge only a very small proportion of the cost in fees. That part of the service has been running very much at a loss. We propose to make the fees much more realistic and fairer by raising the maximum fees. At present, for a developer who puts in a planning application for housing, for example, the maximum fee payable will be less than £12,000, no matter how many houses are to be built. That is the equivalent to the fee for 49 houses. Therefore, the builder of a development of more than 49 houses basically gets each additional house for free. That work is simply not being paid for.

The proposal is to extend that maximum up to £250,000, within which there would be a realistic sliding scale. Therefore, the system that we will pass over will be much better resourced from fees, and that will reflect the work that is involved in planning applications.

Mr McGlone:

For £250,000, most of us could probably get an awful lot of work done for an awful lot of people. I do not know how many planning applications would get through quickly in the private sector. However, that discussion is for another day.

Ms Smith:

I will just clarify that point. I suspect that we will never see a housing application for which the fee is £250,000, because that would take us up to a couple of thousand houses. Therefore, that process illustrates that we are building flexibility into the system for the Department in the short-

term and, in the longer-term, the council, to charge the fee for the job.

Mr McGlone:

I appreciate that, and I sort of sidetracked us into that issue. However, I am conscious that, maybe unintentionally, I am hearing that, the higher the fee, the more responsibility there will be for a council. Yet, to my mind, that does not follow sequentially, because some responsibilities are currently paid for as part of the planning process, but the planning fees would not provide enough work at council level for one of the individuals involved.

Other aspects of the planning process that dip in and out of our policy development are needed once in a blue moon, whether they are legal services or whatever. A council may need them sporadically here or there, maybe once every six months or so, depending on what issue arises. I am trying to get it clear in my mind that, regardless of the fees' issue, there will be clear demarcation of the responsibilities that need to be transferred. That demarcation will be between those functions that can be devolved and those that it will be totally impracticable to devolve, such as each council having a legal officer associated with planning issues. That would be the equivalent to the Departmental Solicitor's Office (DSO). I am trying to get my head round the collective responsibilities that sit with the Planning Service and with the Department so that I can establish how many functions will transfer and what others cannot be transferred or do not need to be transferred because they are so big. Those would be of a regional, as opposed to a council, nature.

Ms Smith:

Most of the Bill is about what will transfer to councils. We are talking about the development plan system and the determination of the majority of planning applications in a council area. The applications that will stay with the Department are those that are of regional significance and that are, therefore, very big. However, the council will also advise on development management and development plans.

Mr McGlone:

The council?

Ms Smith:

I am sorry; I meant the Department. Planning policy will stay with the Department, because that is a function of it and the Minister. When it comes in, responsibility for marine planning will stay with the Department, which will also provide advice on landscape and design.

The Planning Service does not have its own lawyers; it buys in its legal expertise. We routinely use lawyers in DSO who are experts in planning matters. If we need one, a barrister is hired through DSO for a particular case on the basis of their expertise and experience.

Mr McGlone:

Does the Planning Service or the Department pay the DSO?

Ms Smith:

No, I do not think that we do.

Mr McGlone:

Responses to my Assembly questions state that there is some sort of a fee-type structure, or the cost is factored in. If it is factored in there, it would be factored in elsewhere. There are some loose ends, if you like, and I would like to get them tied up to make sure that the ratepayer does not end up paying.

The Chairperson:

I have a wee simple question for you. The answer may not be simple, but it is a simple question. Fees will cover those planning applications. Development plans are paid for out of the central government block. Will that funding be transferred to councils?

Ms Smith:

I will have to refer you to the discussion that you had with my permanent secretary about that. I understand that he made it clear that our aim is to ensure that the resources transfer with the functions.

The Chairperson:

That is all we need to hear.

Mr McGlone made a good point about legal services. I know that councils have their own legal services, but proper legal expertise would be needed for the planning system. I am not sure whether the legal expertise in councils would be able to manage planning

Mr McGlone:

They could not handle it.

The Chairperson:

Are we saying that resources will go towards that as well?

Ms Smith:

Our aim is to make sure that the councils get the resources that they need to carry out the function.

The Chairperson:

I understand that 100%. However, I need clarity on this point. If the Planning Service seeks legal advice for any reason, you said that that expertise was not in-house.

Ms Smith:

That is right.

The Chairperson:

Do you pay for it, or is a facility available in the Department? Is departmental legal advice given if it is required? What happens?

Ms Smith:

I have to express ignorance here, because there are different arrangements with DSO for different parts of the Department. I will check whether we pay hard cash for DSO advice, because I genuinely do not know.

The Chairperson:

No problem. I was trying to tease that out, because those questions have been asked. I know that all councils have legal advice.

Mr McGlone:

That is an important issue, because an Assembly question about legal costs would uncover what I found, which is that, although not exclusive to the Department of the Environment, an amount is factored in to be paid to the DSO for bookkeeping or whatever. That figure is a cost that is associated with the Department or whatever agency is involved. Secondly, and getting to the nub of the issue, the permanent secretary appeared before the Committee a few weeks ago, and he said that he was not able to give an assurance that the transition would be cost neutral. That sent shockwaves through the representatives from the body corporate, local government — you name it — who were at that meeting.

The clarification was given that there could be no guarantee that the transition would be cost neutral. On top of the fee structure that will be introduced, all that makes the argument that the fees should be bumped up unreasonably. I am a bit fearful that what might have been cost neutral four years ago is not cost neutral now. There will be the same number of staff to pay and so forth. The only consequence will be that fees will be bumped up unreasonably.

The Chairperson:

I know, and we can certainly look at that, Patsy. However, I have to be honest; the fees structure over the past five, six or 10 years has been absolutely ridiculous. Fees should have risen with inflation every year, as opposed to being left. We are now faced with going from one extreme to the other. Maggie mentioned that someone could have submitted a planning application for 500 houses for less than £12,000, despite the work that is involved in processing such a plan. Is that not why there are problems in your bringing forward that workforce financial model for me? I know that it is difficult and that we have to be reasonable. There are two elements to consider. I am glad that you confirmed that resources will follow functions and that fees will go to local government.

Ms Smith:

I gave you the same line that the permanent secretary gave.

The Chairperson:

That is 100%. That is fine, and I take that on board. It is OK; it is recorded in the report.

Ms Smith:

I am giving you the same line that the permanent secretary gave you. So, our aim is —

The Chairperson:

Are you asking me to get the permanent secretary back in just to clarify that? It is OK. Let us be serious about this; the fees will cover the ordinary applications, the area plans and everything else, and the resources need to go down to councils. If, in years to come, it is a case of looking at the issue of generating rates, which you mentioned, that will be a different matter to be considered in time.

Ms Smith:

Can I clarify a couple of points, the first of which is Mr McGlone's about the temptation to bump up fees "unreasonably"? There is very strict guidance on what fees can and cannot cover. All that a fee can charge for is what is called full cost recovery. Unless it is for something that is part of processing the planning application, it cannot be paid for out of fees. The fee has to relate to the amount of work that is involved.

Mr McGlone:

Again, for the record, the permanent secretary specifically said that he could not guarantee that the transition would be cost neutral. Full cost recovery now, with, as you know, what is probably an excess number of staff, and full cost recovery four years ago, when there was an adequate complement of staff, could be presented in two different ways. I do not need to be an accountant to talk about that. A big concern of local government is that, without proper management of the transition of staff, one of the major issues facing it will be a need to look at the number of staff. There will be a transition of a planning body, and the first thing that a council will say is that it has far too many people. So, that is another issue to consider. Therefore, I realise that the costs,

the issues, full cost recovery and all those sorts of things can be well presented in a way that looks hunky-dory, although the underlying associated issues may be far from that.

The Chairperson:

I understand, but, to be fair, we will be making a case about the fees structure, the receipts being down and the number of staff that are there at the minute. The only issue that I have with that is that when things were good and the fees were coming in, not all of them went into the Planning Service for employment and everything else. Some of those moneys went back to the block. That is the problem, but once we guarantee that the fees will go to local councils, the responsibilities will lie with them. Obviously, councils have an underlying fear that they will have to look at the planning structures as they roll out and at the number of people who are involved.

Maggie, you dealt with the issues with resources, capacity building and training. Did you say that that you will have it rolling out from next Monday? No, I know that it will start in May. We all understand that this is a major and serious transformation.

You have dealt with those issues, so we will move on to the award of costs. The Minister indicated he will bring forward an amendment through a new clause allowing costs to be awarded where a party has been put to unnecessary expense and where PAC has established that the other party has acted unreasonably. I think that we are content with that.

Marine spatial planning has not been mentioned.

Ms Smith:

Marine spatial planning is not in the Bill. It will be dealt with in separate legislation. The Executive agreed the policy memorandum before Christmas, so the next stage is for a Bill to be drafted. It was always intended to introduce legislation on that in the next Assembly mandate, rather than in this one. We can look forward to that in the next session.

The Chairperson:

If we are looking at the development of land, community planning and everything else, marine spatial planning certainly needs to be included. What legislation is coming?

Ms Smith:

A marine Bill is due to come forward in the next Assembly session. Having said that, I should also say that that is the bit of the legislation that we will make. A lot of work has already been done. A UK-wide Bill that was enacted in 2009 was the first step in the process of introducing marine planning. Part of what we will be doing in marine planning is in that Act, because it deals with reserved and excepted matters. Following on from the Marine and Coastal Access Act 2009, which is the UK legislation, there is also a UK-wide marine policy statement. That is doing the rounds at the moment, and we expect that that will be laid in this parliamentary session and in the Assembly. The third step will be the Northern Ireland marine Bill. As I said, the Executive have agreed the policy for that, which is intended for introduction early in the next session. That Bill will give Northern Ireland its first marine plan, which should be available in 2014.

Mr McGlone:

Can we not do it next week?

The Chairperson:

There is no point in saying that we are transferring powers and giving local government the authority to develop plans without the knowledge base for marine planning issues. Are you saying that the marine plan will not be available until 2014?

Ms Smith:

The plan will be ready in 2014.

The Chairperson:

What is in place? By the time that we have looked at the process, 2014 will not be that far off. Is there something in marine planning that local government can refer to? Some of the councils in coastal areas could develop their plans, for example, for wind power, in the context of economic regeneration. Although we are talking about land use, that element should be considered.

Ms Smith:

You are absolutely right. There will be one marine plan for the whole of Northern Ireland. The responsibility for marine planning will stay with the Department, and we are preparing now for the development of the marine plan. Although the legislation has not been introduced and DOE is not yet the planning authority for the inshore area, we are starting the work to look forward to the marine plan. It will be interesting to see the overlap between the marine plan for the high tide area and the terrestrial plans, which go out to the low tide area. Therefore, there will be no gap, and arrangements will be put in place for the management of that overlap.

The Chairperson:

The North has slipped up with some of the renewable energy projects that could have been in place up to now. However, that is a separate matter.

Mr Savage:

I want to follow up on what you were saying. The powers that are going to the new councils will mean that councillors will be taking on greater responsibilities that will take up quite a bit more of their time. Do you feel that they are prepared for that? Anyone who is involved in councils now knows that it is a full-time job. Will councillors be remunerated for taking on that extra responsibility?

Ms Smith:

I am sorry, Chairperson; I am not in a position to comment on that.

Mr Savage:

They will be taking on a big responsibility.

Ms Smith:

I cannot answer that.

The Chairperson:

I know. Be careful what you wish for.

Mr Weir:

Councils will have added responsibility, but at the end of the day, although the council will be the judge and jury in making final decisions, I presume that, each time, planning officers will still provide a schedule with a suggested route. It is not as though councillors will be poking around each house to see what is there.

On one level, while there is added responsibility, there is also a slight shift as well because, under the ethical standards side of it, councillors will not be able to hear representations from developers, applicants or objectors. So, that side of it will be taken out a little bit. They will be barred from taking decisions if they are involved with any of them. So, there is a wee bit of swings and roundabouts —

Mr McGlone:

That would be some culture change.

Mr Weir:

Absolutely; it would be some culture change.

The Chairperson:

You will be sitting at home watching the football when the decisions are being made.

Mr Savage:

I will have to leave very soon. All the planners in Craigavon do not get credit for the work that they do. I really mean that. A lot of the planners in Marlborough House do not know where their future is, and they have been redeployed in various places. That is why I asked the first question. Will they be under the control of councils or still under the control of the DOE? I do not want those people to be bumped about from pillar to post, because they have played a big part in Northern Ireland. I want them treated with respect.

The Chairperson:

That is a fair parting shot, Mr Savage. There are very good staff in Newry and Mourne and Armagh council areas. Marlborough House is very good.

Ms Smith:

I will reflect that back.

The Chairperson:

You can reflect that back. We have dealt with that issue. We will try to move the marine planning Bill forward from 2014 to 2012 or 2013.

Ms Smith:

The aim is that it should be introduced early in the next Assembly mandate, but that is, clearly, a matter for the Assembly.

The Chairperson:

That is OK. Is there any word on completion notices? Has that been mentioned?

Ms I Kennedy:

Completion notices are in the Bill. We spoke about the other tool, notices of completion, at a previous session. We had consulted, through the policy consultation, about introducing them. They are notices where developers, at different stages in the process, provide a notice to the council to say that they have commenced the development or, perhaps, have got to a certain phase. They then provide a notice that the development is complete. The policy decision of the Minister and the Executive was to not take those forward at this time. So, notices of initiation and completion of development are not in the Bill.

The Chairperson:

That was not too hard, Irene, was it? We should look at something in relation to completion notices. Are there any other comments on that? It is an issue that was raised here, gentlemen.

Ms I Kennedy:

It adds quite a lot of bureaucracy to the process if developers have to inform the council when they are initiating development and at the various stages. We have to be mindful of functions transferring to councils, the functions that the councils already have in the building control

process and the various stages at which developers will be notifying the council. One of the options was to look at this in the future when those functions are together in the councils.

The Chairperson:

There does not seem to be any appetite within the Committee for it. Could it be part of the role of building control officers?

Ms I Kennedy:

That is one of the options. Certainly, with the family of building control and planning functions together, there may be ways of looking at it. We were mindful of that.

The Chairperson:

Would the Committee like to make a recommendation in the report? It is not just that role but other roles for building control.

Members indicated assent.

The Chairperson:

Are there any comments on the community infrastructure levy?

Ms Smith:

As we explained, clause 75 includes the provision to transfer money, as part of a planning agreement, from a developer to a council or to a Northern Ireland Department.

The Chairperson:

No problem. I know that we have talked enough about it. What are members' views?

Mr McGlone:

I raised the issue, and we have talked a lot about it, but I am still not clear in my mind. You can make provision for it in the Bill, but I am not clear about the distinction between the community levy and the developer contribution. As we have just heard, they are both apparently coming from the developer. I know that the whole concept or idea of developer contributions has been

talked about at the Executive backwards and forwards. In the times that are in it, I do not want people to be hit with a double whammy. I have already made the point that I would rather one be done well than two done poorly.

The Chairperson:

We talked to Professor Greg Lloyd about this, and other people have raised the issue. There is a clear distinction between the developer contribution and the community levy. That is not in the Bill. What is in the Bill is an opportunity, under clause 75 —

Ms Smith:

What is in the Bill is transfer within a planning agreement. Planning agreements go much wider than financial transfers; they can also be things that are built or developed as part of the application. The community infrastructure levy does not exist in Northern Ireland at the moment. Effectively, it is a levy or a form of taxation.

Mr McGlone:

I do not have any difficulty with a community infrastructure levy if it ticks the boxes and achieves everything that it is supposed to do. However, I have a difficulty with double levies.

The Chairperson:

But there is no double levy.

Mr McGlone:

Sorry, I know that that is not in the Bill.

The Chairperson:

Even at that, there would not be. In my knowledge and experience, the developer contribution has been for putting in a road or a connection to a main road. There have not been too many. The community levy would be for the benefit of the community. However, the Bill does not state a community levy one way or the other. You can be assured of one thing, community levy or not: the community will pay for it. If it is in a private development and people want to get some community benefit out of it, it will be put on the price of the houses. People will be paying one

way or another, whether it is a store or something else. It will be paid in one way from the community and it will be taken back out again. At the end of the day, just like the ratepayer, the community will pay for it. We should not be under any illusion. It is not as though a developer will have to give some money to the levy or be levied on a development; he will probably just put £500 or £1,000 on to the price of each house. Let us not say that it is down to the developer having to hand back more money or being levied twice, because that is generally what happens. Even with developer contributions, the business plan is geared to that in the first place.

Mr McGlone:

I know that it is beyond the scope of the Planning Bill and all that sort of stuff, but we have given a fair bit of time to it. Is there any update from the Executive on where the developer contribution is?

Ms Smith:

PPS 22.

Mr McGlone:

Leading on from that, are there any PPSs coming up that have either the intention or the potential to introduce a community infrastructure levy?

Ms Smith:

Yes, for developer contributions. PPS 22 is geared towards helping to provide funding for social housing. The community infrastructure levy is way beyond the planning system and the PPS. It would be a whole new levy, which would require legislation. It is a big issue that would need to be dealt with in the appropriate way. It would not be a DOE issue; it would be more a Department of Finance and Personnel (DFP) issue. It is not about planning, although it uses the planning system. It is really about taxation and paying for infrastructure, so it is a finance issue.

The Chairperson:

Taxation of the people, Maggie. Do not ever forget that.

Mr W Clarke:

I agree that developers will not be doing this out of their kindness; it will be the people who buy the homes. The way I see the community levy, or call it what you may, rolling out, if it is included in the Bill, is what we touched on in relation to the very first clause: well-being. On a development of a certain size, a levy is placed to provide community infrastructure, be it a community hall or a crèche. At the beginning of our discussions on the Bill, I was trying to tease that out. The spatial planning aspect, which is at the heart of the Bill and driving it, is going to improve the well-being of citizens. That is where I see this dovetailing in. Something needs to there so that, in a development of a certain scale, so much will be paid towards community infrastructure. It is not about roads. If a developer were to build 200 or 300 houses, they would, through developer contributions, put in the road infrastructure for that. The community levy is different. It is primarily for the well-being of the community. It would be useful if a clause or an amendment were included for that.

Ms Smith:

The things that Mr Clarke is talking about — roads, something which is going to develop the community that is being built — can be negotiated through the existing planning agreement arrangements, which are covered in clause 75. That will be very useful to the councils, because, through their development plan system and that whole process, they will have a clear idea of what the needs of a particular area might be. Through planning agreements, they will have the flexibility to achieve the sorts of things that are being talked about.

Mr W Clarke:

Do you not see that needing to be strengthened? I am saying that, with a development of a certain scale, that levy needs to be made. There is an agreement, but maybe an amendment is needed to say that a levy has to be made, and a schedule could set out a sliding scale of development. A development of 200 homes or 150 homes should not take place without any community infrastructure. I include the Housing Executive and housing associations in that, not just private developments. Without community infrastructure, a large housing area with new families living in it is a recipe for disaster at times.

Ms Smith:

Just to clarify the term "agreement", the agreement is something that is negotiated, and it is legally binding. It is negotiated before planning permission is given, so it is a strong agreement between the developer and the planners.

Mr W Clarke:

Maybe some guidance on that would suffice.

Ms Smith:

There should already be guidance. We will send that over.

Mr W Clarke:

On the particular stuff that we are talking about?

Ms Smith:

Yes, on planning agreements.

Mr W Clarke:

I have not seen it.

Ms Smith:

They are what we call article 40s, at the moment.

Mr McGlone:

With regard to the sort of developments that take place and the community well-being aspects of them, I suppose that we are talking about existing policies on green areas and how they can be expanded and adapted to take into account the well-being concept in an area. However, based on the policy, we have the agreement, and that agreement, as you rightly said, is a legally binding document.

Unfortunately, a lot of those have fallen down recently when developers have gone belly up. The only recourse for Planning Service, Roads Service, NI Water or whoever it might be is the

use of the bonds. The big, number one question is: is the bond that is held to ensure that that is done big enough to ensure that the work is carried out and to be used for carrying out the work, be that the installation of property and sewers, the adoption of roads or street lighting or whatever? Secondly, there is an awfully elongated process before we get possession of the money that is held as a bond, so that we get the work done and get it rolled out, if, for example, the contractor on the site has gone belly up, which is, unfortunately, increasingly seen in society. We see it in our constituencies more and more often.

I am probably saying that, if you look at the agreement, there is probably a need for a bigger financial bond to be required, but, secondly, the process of reinstating or leaving those estates at a proper spec should be much quicker and more efficient. Now, that may well be to do with legal process and stuff that I do not know. However, I find it interminably slow to get to the point where people who bought their houses in good faith are able to drive in and out of their homes over a proper footpath, with proper street lighting and sewerage systems.

The Chairperson:

I totally agree. We have all dealt with cases. I am dealing with one at the minute. There is a wee letter on its way at this very moment. However, it is a valid point. The aim is to ensure that the developer does the job. The problem is that, in the case of the levies, it is a different matter. Can we insert a provision in the Bill, bar that in clause 75, to introduce a community infrastructure levy at some point again?

Ms Smith:

That is beyond the scope of the Bill, because it is not really about planning. It is really about taxation and infrastructure.

The Chairperson:

Is it in any other legislation?

Mr W Clarke:

Chairperson, it is about well-being.

The Chairperson:

I know that. Class ingenuity to bring that back round again by accident. Look at other legislation. You say to me that it is not in other legislation. We looked at other legislation here and there to see what best practice was. Is it in any other legislation? If I were to look at the Scottish legislation, would there be a facility in it? I am only saying.

Ms Smith:

It is in England.

The Chairperson:

There you go. So, it is in England. OK. Although, that may not be a good thing to say. All that I am saying is that you have heard the Committee's views, and what if the facility was there to use? I can see it coming up again on Tuesday. It is something that we can talk about outside.

Mr McGlone:

What of the ability to enforce the agreements more efficiently, whatever about the community infrastructure levy? Even if we cannot introduce that, what is being done at the moment is not being done effectively.

The Chairperson:

It is down to enforcement again.

Mr McGlone:

It is slightly more than that.

The Chairperson:

I know where you are coming from. Whether it is a private developer whom you might meet down the street on a Friday night, or a housing association or anything else, there needs to be something there to ensure that, at each step in the development process, that should move on. It is not happening.

Mr McGlone:

It is not being done efficiently at the moment. I do not know how that happens or in what way, but people have been left for years in limbo. That is not good enough. You could argue that their solicitor should have advised them not to buy until it was done, but then you are in different territory. It is about getting done what has not been done much more efficiently, and that is the issue that I have at the moment, irrespective of whether we move to DFP with the infrastructure levy or not.

Ms Smith:

It is an enforcement matter.

The Chairperson:

It is an enforcement issue. We can put a recommendation in the report.

Mr McGlone:

It may well be more than an enforcement matter.

The Chairperson:

It certainly is, Mr McGlone. When a developer is given planning approval, it is up to the developer to undertake that development. Unless you put a time frame, as we were saying about a completion notice, that person, whoever it is, has to complete the development up to standard. The bond ensures that the work is done properly.

Mr McGlone:

That is correct, but the bond does not cover that at the moment in some cases.

The Chairperson:

Maybe not, but the only other way to do it is by enforcement. I am saying that there may be a role for a building control officer, not just to issue stop notices but to ensure that the completions are carried out, perhaps at each phase. I do not know —

Mr McGlone:

Maybe I am not making myself clear enough. I am speaking from a point of ignorance. I do not know what the control of the bonds is, nor do I know whether it is fixed as a percentage of the projected cost of the scheme. I do not know whether it is a realistic figure based on what it would cost to properly reinstate the roads, the pathways, the sewers or whatever. I do not know whether that is fixed somewhere so that someone can say that, for example, where a project costs £2 million, 10% must be taken as a bond. I do not know whether we can establish that.

The Chairperson:

To my knowledge, the bond is paid at the start, but at the time of completion, for example, the road or footpath in question must be surfaced properly. That is generally what the bond is. If you do not complete that, the bond will not be surrendered. That is the basic principle. That may or may not be dealt with in this Bill, but we may look at a future role for someone in a local council to ensure that. We are not going down the road of completion notices, so we need to look at things in another way.

Mr Mullaney:

The road bond that you are referring to is included in related legislation: the Private Streets (Northern Ireland) Order 1980. It is a determination by Roads Service.

The Chairperson:

Who is on the Committee for Regional Development? Do not even mention it. Do members wish to make any other points in relation to that matter?

Mr W Clarke:

Are we coming back to the community infrastructure levy?

The Chairperson:

Yes, we will come back to that on Tuesday.

Mr W Clarke:

Maybe we can look at some sort of amendment.

The Chairperson:

We are starting at 6.00 am on Tuesday and hopefully we should be out by noon. I am only joking, Peter.

Mr Weir:

You can be here at 6.00 am if you want, but I will not be here. *[Laughter.]*

The Chairperson:

We will move on to land use strategy.

Mr Kerr:

Clause 1 allows DOE to create a land use strategy. Obviously, the regional development strategy is already in place, which was prepared by the Department for Regional Development, and that will continue. However, under clause 1, DOE will still be able to prepare PPSs, but also a land use strategy for the region.

The Chairperson:

It all ties back in to the simplified planning zones and how this is rolled out in general. We are supposed to conform to the regional development strategy, and you are trying to balance that up with giving local councils an opportunity to develop economically as well. How do we ensure that that is consistent in decision-making and giving the local councils opportunities?

Mr Kerr:

Whatever particular direction a council wants to go in with their local development plan, it has to do it within the parameters of the regional development strategy. When it comes to the independent examination, that, along with all the other aspects of the plan, is taken into account and considered to make sure that that alignment that you are talking about in a sense between the local level and the regional level is achieved.

The Chairperson:

What about the call-in application process? One example that was in the news a couple of years

ago was the golf course in Scotland. Was it Donald Trump?

Mr W Clarke:

Do you want one?

The Chairperson:

No, I am only using the example of that whole process.

Mr Kerr:

As we have discussed before, there is the opportunity for the Department to call in regionally significant applications, which that example, presumably, would have been in Scotland. If there were a similar proposal here, there is the possibility for that to happen within those thresholds.

The Chairperson:

It is about the basis on which something is called in. The Department could call something in, but it has to strike a balance between the proper use of land — that is not a good term to use — but giving local councils opportunities to develop while protecting the land as well in the regional development strategy, the area plans and the planning policy statements. On what basis will the call-in work?

Mr Kerr:

As we have discussed, there are safeguards and oversight provisions throughout the Bill in respect of the applications and the policies that will come through a plan so that there is the opportunity for regional government to ensure that there is that level of consistency and compliance with the direction that is being set centrally.

The Chairperson:

To be honest, Angus, we are asking for a review to make sure that we get it right. It is about consistency. People have interpreted planning policy all along in different ways. Generally, the broad majority has been fine, but not the interpretation in divisional offices. Some members are keen on simplified planning zones, which is fine for economic growth. However, if it was an area that backed on to a residential area or something, there would be problems. We need to be very

careful in that respect. Do members have any questions?

There is only one other question in this session, which is about the chief planner.

Ms Smith:

When the powers move to councils, they can, if they wish, designate the person who is in charge of planning as a chief planner. It is not something that needs to be put in to legislation; they can do that within their own arrangements. They can have a chief planning officer if they want, or they can give that post a different title.

The Chairperson:

Any questions? I think that that is it.