



Northern Ireland
Assembly

Research and Library Service Bill Paper

January 2011

Planning Bill (4): Implementation, Performance and Decision making: Issues of Capacity, Delivery and Quality.

NIAR 14-11

This paper examines issues of capacity, delivery and quality in relation to the Planning Bill. It is one of four papers and follows a common format highlighting the key issues arising in the Bill; summarising the findings of the public consultation and the Government's response; reviewing comparable arrangements in comparable jurisdictions and highlighting potential contentious issues.

Paper 12/11

20 January 2011

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Key Points

- Planning within this Bill is not just about land use, but it transcends issues of housing and development to encompass broader social well-being.
- The integration of all components of planning will be central to the Bill's success and this relies on the institutional infrastructure or the governance arrangements.
- Buy-in from, and participation of key stakeholders is crucial to the legislation.
- Developing a new strategic vision requires leadership and cultural change.
- Currently, development planning in Northern Ireland is very land use based, overly technocratic, functional, legalistic and market-driven. A new form of planning would attempt to define the existing and potential distinctive quality of 'place'.
- Creating the new structures simply provides *circumstances* to encourage a new approach. Transformation of the planning system in Northern Ireland will be reliant on consistent and coherent interpretation of this primary legislation and the timing and form of any subordinate legislation and supplementary guidance that will follow (see also Paper 1).
- Many of the issues surrounding effective implementation and delivery are amorphous, have the potential to be overly complex and risk confusion.
- The Department will have powers to assume a central position in the delivery and evaluation of planning.
- Local government reform is under consultation. Opportunities to make statutory connections in relation to issues such as Community Planning or powers of well-being appear to have been missed.
- The new legislation will rely on capacity building across a diversity of stakeholders – professional/non-professional planners, community organisations and specific interest groups, etc.

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1 Introduction

This briefing paper is the final of four prepared for the Committee providing analysis of the provisions in the Planning Bill which sets out the draft legislative framework for new and revised planning procedures in Northern Ireland. The proposals in the Bill substantively replicate the instruments contained in the Planning and Compulsory Purchase Act 2004 which applies to England and Wales and the Planning (Scotland) Act 2006. These Acts effectively placed the new concept of 'spatial planning' on a statutory basis in these parts of the UK. Moreover, reform of the planning system in the Republic of Ireland is underway and it will also place spatial planning as a core principle in its planning system.

Spatial planning moved the emphasis away from planning as simply regulatory practice narrowly focused on land use to planning as an activity that is both integrated with other local government services and is focused on delivery. In this context the development plan becomes, what the Department of Communities and Local Government's Planning Green Paper 2001ⁱ described as, 'the land-use and development delivery mechanism for the objectives and policies set out in the Community Strategy'. This has been accompanied in other parts of the UK by reforming the way in which communities can engage with the planning system.

This Bill makes the initial statutory provision for spatial planning to be adopted in Northern Ireland, in the context of district councils taking over some of the planning responsibilities currently handled by the DoE (NI). The basic provisions of the proposed NI legislation will, it is assumed, be supported by a new Planning Policy Statement (PPS) which would explain the broad arrangements for spatial planning, including how local communities can become involved. Additional written guidance and support should also be forthcoming.

The shift to a new form of planning, primarily located within reformed local government structures in Northern Ireland will present significant challenges for all stakeholders including professionals, officials, politicians and communities. Undoubtedly the benefits of these reforms potentially far outweigh the costs of major changes in culture and practice.

This paper is the third of four papers produced in support of the Committee stage of the Planning Bill, which are:

- **Paper 1: Departmental Functions and Local Development Plans**
- **Paper 2: Development Management**
- **Paper 3: Community Involvement**
- **Paper 4: Implementation, Performance and Decision making: Issues of Capacity, Delivery and Quality**

In this paper, Section 1 identifies the key issues arising from the Bill in respect to Capacity, Delivery and Quality; Section 2 provides an analysis of the key themes; Section 3 reviews equivalent arrangements in comparable jurisdictions; and, Section 4 identifies contentious issues which may require further scrutiny.

Members of the Assembly may find it useful to refer to the following documents in conjunction with this paper:

- The full Planning Bill (2010): http://www.planningni.gov.uk/index/about/planning_bill.pdf
- Draft Explanatory and Financial Memorandum: http://www.planningni.gov.uk/index/about/planning_bill_efm_-_as_introduced.pdf

- Government Response to the Planning Reform Public Consultation July - October 2009: http://www.planningni.gov.uk/index/about/government_response_final.pdf
- Final EQIA at a strategic level: http://www.planningni.gov.uk/index/about/final_eqia_at_strategic_level-2.pdf
- Independent Report from the Planning Reform Consultation Events 2009 Equality Statement: http://www.planningni.gov.uk/index/about/independent_report_from_the_planning_reform_consultation_events_2009_f.pdf
- England and Wales Planning and Compensations Act (2004): <http://www.legislation.gov.uk/ukpga/2004/5/contents>
- Republic of Ireland Planning and Development Act 2000: <http://www.irishstatutebook.ie/2000/en/act/pub/0030/index.html>
- Republic of Ireland Planning and Development (Amendment) Act 2010: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/3409/b34d09d.pdf>
- Planning (Scotland) Act (2006): <http://www.legislation.gov.uk/asp/2006/17/contents>
- England Localism and Decentralisation Bill (2010): <http://services.parliament.uk/bills/2010-11/localism/documents.html>

1 Overview of themes

A successful Bill will aspire to achieve impartiality along with appropriate standards of consistency, transparency and quality. However, the legitimacy of the Bill will rely on an understanding of the expanded meaning of planning that is evident within the new legislation as contrasting to land use planning (see papers 1 and 2). But of equal importance within this emerging policy landscape will be the associated delivery mechanisms, including institutional apparatus, skills of all stakeholders and suitable processes of performance monitoring and review.

Locally, the Planning Bill is set in the context of an ongoing Review of Public Administration. It provides for the transfer of many planning powers and functions to district councils, where locally elected politicians will assume a key function in the spatial planning process. Charged with development control functions and with the design of local plans, the role of local government is critical in the process. Through enhanced decision making processes and more extensive consultation obligations, the Bill intends to address a democratic deficit while improving the quality and legitimacy of public decision making. Specifically planning will become more locally accountable as elected representatives influence activities within their locality. This new framework of governance ought to create conditions that nurture experimentation and embrace diversity. However, implementing the institutional apparatus is no guarantee of success as innovation and change do not necessarily follow from administrative reform.

There are a number of potential barriers to effective delivery including the establishment of new organisational structures, relationships and collaborations; the adoption of the new functions and powers; expertise, personnel and technical aspects of planning. Finally pressure on the public purse, as evidenced through recent budget cuts, is likely to continue and will also have considerable influence as councils balance potential tensions such as the need for consultation while being expedient or achieving transparency as well as best value.

1. **Integration** - The integration of all components of planning will be central to the Bill's success and this relies on the institutional infrastructure or the governance arrangements and buy-in from key stakeholders. Morphet et alⁱⁱ. (2007) note that following reform in England, the role of planning has not been widely understood

among those working in the system and consequently that system has not transformed to reflect a more integrated approach.

- a. **Governance:** an evolving system of governance with the creation of new relationships internally and externally to local government and engagement with a breadth of stakeholders. A network or lattice of relationships among the relevant agencies and organizations will avoid a disjointed or 'silo' approach to planning matters. Significant opportunities appear to have been lost through a failure to make connections to emerging functions and activities within councils that are accompanying proposed local government reform in Northern Ireland. For instance the intended 'Partnership Panel' would have an advisory role to formalise relations between central and local government and to provide strategic direction. Meanwhile the planned 'power of well-being' would allow councils to take action to promote or improve the well-being of their district. It is not clear how such instruments will impact on the Bill.
 - b. **Leadership:** in other areas e.g. England and Scotland, a Chief Planning Officer provides a professional leadership role to complement administrative leadership provided through elected representatives and their departments. Indeed, it should be noted that the Bill provides for planning functions to lie with the Department and this will focus the leadership and accountability of this arrangement. From a legislative perspective, the Chief Medical Officer in NI could provide a precedent for replication within planning.
 - c. **Stakeholder involvement:** Many different stakeholders will have a legitimate interest in planning in NI. More than simply local authority planning staff, elected representatives, landowners and developers, this relates to a broad church of interested parties including local communities, businesses, interest groups and 'non-planning' departments within local authorities, to name but a few. Building the capacity and competency of these different actors to effectively engage with the planning process, while also achieving their compliance, will be a necessary activity. Cultural transformation is unlikely to occur in the absence of education and radical attempts to enlighten legitimate interest groups planning more integrated systems of working.
2. **Capacity and transparency** - The Department retains key functions and will lead the process of performance, management and audit. The power of the Department to intervene across many of the delegated functions and to oversee a monitoring and performance management role has been written into the legislation. While the Department has always intervened in the planning process, institutional reform will result in new operating arrangements.
- a. **Departmental intervention and direction:** the Department can direct the SCI (Statements of Community Involvement) if no agreement can be reached with the DC (District Council), indeed timetables for Statements of Community Involvement are to be agreed between councils and the Department. The Department has powers of intervention in the development planning process – this may relate to preparation, withdrawal, adoption and approval of local development plans (including joint plans) and their independent examination. It can also direct local councils to work together for the preparation of local

plans. In England and Wales Joint Planning Committees are recognised as statutory planning authorities, no similar provision exists here.

- b. **Performance management** has relevance within the Department and at local government level. Planning Service was established as an Executive Agency in 1996 with the aim of improving its management, efficiency and financial performance. The Department recently announced the “deagentisation” of the Planning Service as part of the transition to the newly reformed planning system. A change to this will provide both opportunities and potential drawbacks. The new structure will include the transference of core planning functions (i.e. development plan and management; and strategic operations) to the Department by April 2011. Meanwhile existing Divisional Planning Offices will be reduced to five, mirroring new local government structures. They will continue to provide a service to the local councils as the planning authority of that area. No longer operating as an Executive Agency, the Divisional Offices will have a separate legal entity to the Department. As an independent entity it will not be subject to the same governance arrangements, thus raising questions of accountability, transparency and delivery.

The Department will carry out a statutory audit function on council performance and decision making regarding *general and particular* functions under the Bill (Section 10, para. 203).

This raises issues of expertise, capacity and breadth of performance management. Section 10 provides ample detail on matters of council performance and decision making in relation to development control. However, it does give equal clarity or direction to other issues that relate to spatial planning, a process underpinning the Bill. For instance sustainable development (para. 5) receives passing attention and is dealt with in a way that suggests a one-off activity (for instance para. 9(7) requires councils to prepare a sustainability appraisal and report on this to the Department). But as Morphetⁱⁱⁱ (2011) points out, even though a Sustainability Audit is required by EU Directive, it is not a one off process, but should operate in parallel with the local plan. Similarly the way in which community is defined and involved remains unclear in the legislation.

- c. **Subordinate legislation:** Many of the details of new provisions are to be provided in supplementary and subordinate guidance or legislation.
- d. **Expertise and technical changes** will impact on the capacity of planning agents to deliver. This has a bearing on planning departments and planning professionals, but crucially, it also relates to the wider planning bailiwick. During the reform of the planning system in England and Wales it was recognised that there was a significant differential in the performance of local planning authorities. To overcome this, a Planning Delivery grant was introduced to incentivise performance and support capacity where needed. Focused on delivery and outcomes, among the measures funded were bursary and mentoring schemes. Another aspect of the reform in England and Wales are the powers to award grants to organisations such as Planning Aid that provide assistance and advice on all aspects of planning (2004 sect 115, para 304A). Meanwhile the Bill takes a very limited approach. It provides for

research and education grants, along with grants for planning activities related to specific proposals for land use.

- e. **Probity:** There is enhanced responsibility for local councils and individual officers across the implementation of the Bill. Individual officers will have a role in reviewing proposals under the scheme of delegation (para. 31) and scrutiny will occur through the governance arrangements that are currently under consultation under Reform of Local Government. Guidance will be provided from the Departments of Environment and of Regional Development as well as OFMDFM. However, the planning process has the potential to be a critical element in the viability of a commercial property scheme and in other jurisdictions it has been vulnerable to some acts of corruption. More than many others areas of public policy, it is necessary to ensure that all decisions are made in a transparent way while upholding the most stringent standards of probity. For these reasons this transcends issues of scrutiny that are part of good governance within local councils as currently under consultation.
3. **Quality of the built environment:** while issues relating to efficiency and effectiveness are central considerations in the overall planning reform process, it must also be remembered that the public increasingly judge planning outcomes in terms of the quality of the environment they have to live and work in. A more qualitative approach to planning needs to permeate all aspects of the system, including: the different stages of development planning; master-planning; area-action planning; planning policy and, of course, development management. This is absolutely essential if we want to create a structure and system that delivers higher quality, workable environments that communities are proud to live and work in. This might be captured in follow-on policy/guidance and through creating multidisciplinary teams within the councils. However, it is important to have legislative endorsement for such an approach. Very significantly, in this regard, 'Sustainable development' has now been redefined in English Planning law to include 'good design'. S.39 of the Planning and Compulsory Purchase Act 2004 was amended so that, in contributing to the achievement of sustainable development, the planning body 'must (in particular) have regard to the desirability of achieving good design.'

3 Consultation responses

There was a mixed response to many of the issues raised during the consultation and a detailed report of the consultation is available^{iv}. Many of these issues are to be accommodated in subsidiary legislation and supplementary guidance. This highlights the fact that the Bill is part of a more comprehensive programme of reform and underlines the import of subsequent policies and documentation that are both timely and sufficiently detailed. Specifically the consultation responses that have not fully been dealt with by the Bill that the Committee may wish to consider in relation to capacity, performance and quality include:

- The timing and practicality of the transition from the old to new system and of the ongoing implementation of the RPA and more specifically of the subsequent reform of local government.
- Challenges of governance and the creation of power imbalances and undue control from the department as the centralised planning department.

- Accountability, scrutiny and probity of local councils and their officers; many of the issues of quality standards remain ill-defined.
- Achieving a balance between locally-led plans and strategic frameworks, while also ensuring a consistent and quality approach.
- Adequacy of resources and expertise to implement the Bill.

4 Comparisons and lessons from elsewhere

Other jurisdictions have embraced the spatial planning concept, indeed harmonisation of regulation as part of the European project has been evident following the Single European Act (1987). Local government reform across the globe has meant that top-down agenda setting and decision-making processes have been replaced by a range of different partnerships involving government and interest groups including local communities. Aiming to achieve greater efficiency and accountability, these reforms also intend to ensure citizen involvement at the local level. The availability and quality of information flowing between government and citizens should therefore become more useful and meaningful.

England and Wales:

Spatial planning emerged in England in the early 2000s (Planning and Compulsory Purchase Act 2004) and many of the lessons and experiences have particular resonance for this Bill. At the same time as planning legislation placed a statutory obligation on local government in England to prepare community strategies, reform of local government was also occurring. The publication of specific guidance (*Participation and policy integration in spatial planning 2008*) supports the general reform of local planning and more particularly the implementation of local development frameworks. It thus provides direction on issues of governance and good practice by focusing on policy integration, local government collaboration and wider stakeholder engagement. By focusing on matters of delivery, integration and performance management, reform in England and Wales has both encouraged and guaranteed transformation of the system. For instance legislating for the creation of Joint Planning Committees (PCPA 2004 para 29) created a sound framework of governance so that through joint working, local authorities are *constituted* as the statutory planning authority for a particular area. That legislation makes explicit links to the Local Government Act (1972).

As a result of these overarching transformations, cultural change within the planning profession has been necessary to ensure that planning is a proactive and integrated process, rather than a regulatory tool. One of the single greatest challenges that arose as a result of this was that planners in England and Wales failed to appreciate the sea change necessary for reform. Attention was paid to planning practice, expertise and performance which, although crucial elements of the reform process, do not complete the requirements of change. This narrow focus failed to acknowledge the importance of culture, values and knowledge. Thus challenges arose in different areas including achieving meaningful stakeholder involvement; ensuring flexibility and expediency; and avoiding complexity and bureaucracy. Subsequent subordinate legislation and performance management have helped define the approaches underpinning this paradigm shift. For example the test of 'deliverability' (under PPS 12 in England) requires LDFs to be supported by evidence of need.

Associated schemes such as the Pathfinder Initiative (<http://www.sqw.co.uk/nme/about.htm>) as implemented by the former Neighbourhood Renewal Unit in the Office of the Deputy Prime Minister show how integration with other departments and functions can influence spatial planning. By demonstrating leadership and allowing freedoms and flexibilities on the

part of local authorities, the scheme sought to allow local communities to be more responsive to specific economic, social and environmental issues that they were facing. Inevitably these activities affect planning. Such schemes emphasise the need for innovative approaches and a movement from tried and tested approaches to ensure that planning is appropriate to local conditions.

Continuing emphasis on flexibility and innovation; along with promoting locally based approaches and solutions to community planning is evident through council powers of well-being and also within emerging policy and rhetoric of the current UK Coalition government. Advancing its concept of the *Big Society* and shift from *Big Government* is the *Decentralisation and Localism Bill* published in December 2010. It seeks to empower local people and provides greater autonomy and responsibilities to local councils. Not only are Community Infrastructure Levies being used to ensure spending at a local level, but pioneering place-based or community budgets are being tested across 16 areas with a view to full implementation by 2013. By incentivising local communities with control over local budgets, community planning becomes a meaningful and attractive prospect. Meanwhile Community Right to Challenge provides local communities with the ability to scrutinise the performance of local councils ensuring transparency and efficacy in public service delivery.

The Republic of Ireland:

The planning system of the Republic of Ireland is broadly similar to that of Northern Ireland, with a key difference being the right for third parties to initiate a planning appeal as well as applicants. This acts as a key way in which individuals and communities engage with planning decisions and as a consequence, other opportunities for participation are not as extensive as currently available in Northern Ireland. The main planning law is the Planning and Development Act 2000, which has been subject to a number of amendments, most recently through the Planning and Development (Amendment) Act 2010.

General lessons

Creating a forum for debate and dialogue outside of the planning process and beyond government is often an effective way to achieve change. The National Planning Forum represents a cross-sectoral voice on planning issues in England and is involved in a range of activities including networking, promotion of good practice and influencing policymaking. Here we see membership drawn from local government, government agencies, but also from a range of non-governmental organisations. No such body exists within Northern Ireland, but this would provide an opportunity to embed planning as a process that is about more than land use.

The role of professional organisations such as the Royal Town Planning Institute or the Royal Institute of Chartered Surveyors, or of non-governmental organisations should not be overlooked as planning reform is implemented. Their function in supporting the profession specifically in technical and professional areas or in the promotion and exchange of good practice has been important in the past. Their utility has been demonstrated recently within the ongoing reform programme in England and Wales.

5 Contentious Areas

While many of the issues associated with implementation, performance and decision making are dealt with through development planning and management process (see papers 1-3); there are a number of additional areas that are likely to raise further questions:

1. **Collaboration and policy integration:** Creating place is not just about land use, concern with space involves wider issues of well-being, such as health, education and wider social care. Pivotal to this will be the establishment of effective working relations with different interest groups to deliver locally based solutions.
2. **Budgets and resources:** this has relevance across the implementation of the Bill. A reduction in public expenditure has created a relatively austere financial environment that is likely to impact on the capacity of local government to deliver.

Finally, while the spirit of the Bill is about the transfer of powers, the reality remains that local areas are fairly limited in terms of directly influencing budgets.

3. **Delivery and equality:** This Bill has ambitious aspirations of inclusion and participation. However, given the history of community relations in Northern Ireland and of increased ethnic diversity and incidences of conflict associated with these relatively new and emerging communities, community relations is likely to remain a challenging and contested area. Although legislation such as Section 75 of the NI Act (1998) or the Race Relations (NI) Order (1997) provide the framework for equality of opportunity and positive community relations, widespread participation and engagement does not necessarily follow.

ⁱ Department of Communities and Local Government, (2001) Planning: Delivering a Fundamental Change.

ⁱⁱ Morphet, J., Gallent, N., Tewdwr-Jones, M., Hall, B., Spry, M. and Howard, R. (2007) Shaping and delivering tomorrow's places: Effective practice in spatial planning (EPiSP), London: RTPi, CLG, GLA and JRF.

ⁱⁱⁱ Morphet, J. (2011) Effective practice in spatial planning. Oxford: Routledge.

^{iv} Independent Report from the Planning Reform Consultation Events 2009 Equality Statement: http://www.planningni.gov.uk/index/about/independent_report_from_the_planning_reform_consultation_events_2009_f.pdf