

# Public Document Pack

**Democratic Services Section  
Legal and Civic Services Department  
Belfast City Council  
City Hall  
Belfast  
BT1 5GS**

11<sup>th</sup> February, 2022

## **MEETING OF PLANNING COMMITTEE**

Dear Alderman/Councillor,

In addition to those matters previously notified to you, the following item(s) will also be considered at the meeting to be held at 5.00 pm on Tuesday, 15th February, 2022.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

## **AGENDA:**

### **8. Miscellaneous Items**

- (a) NI Audit Officer Report - Planning in Northern Ireland and DfI Report on the Review of the Implementation of the Planning Act (NI) 2011 (Pages 1 - 198)

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<b>Subject:</b>	NIAO Review of the NI Planning System and DfI Review of implementation of the Planning Act (Northern Ireland) 2011
<b>Date:</b>	15 February 2022
<b>Reporting Officer(s):</b>	Kate Bentley, Director of Planning and Building Control
<b>Contact Officer(s):</b>	Ed Baker, Planning Manager (Development Management) Keith Sutherland, Planning Manager (Plans and Policy)

<b>Restricted Reports</b>	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of Main Issues</b>
1.1	<p>This report relates to two separate reviews of the NI planning system, or aspects of it.</p> <ul style="list-style-type: none"> <li>Firstly, publication of the Northern Ireland Audit Office's report on its review of the wider NI planning system; and</li> <li>Secondly, the Department for Infrastructure's report on its review of the implementation of the Planning Act (Northern Ireland) 2011.</li> </ul>
1.2	<p>The main purpose of this report is to summarise the findings of these two reports. It provides an officer analysis of the issues raised and sets out next steps for dealing with the issues identified by the two reports. The report also takes opportunity to set out some of the current significant impacts that issues raised by the reports, alongside other factors, are having on the Council's operation of its Planning Service.</p>

<b>2.0</b>	<b>Recommendations</b>
2.1	The Planning Committee is asked to note this report.
<b>3.0</b>	<b>Background</b>
3.1	The current NI planning system has been operating for nearly seven following local government reform and the transfer of most planning powers to the 11 newly formed councils in April 2015. As mentioned in the summary, two separate reviews of the NI planning system, or aspects of it, have been carried out over the last 12 months. These reviews have resulted in the recent publication of two separate reports. The Department for Infrastructure (DfI) published its report on 27 January 2022 and the Northern Ireland Audit Office (NIAO) published its on 01 February 2022. These reviews are particularly timely given the criticisms levelled at the NI planning system that it is not delivering and is having an adverse impact on growth and investment.
3.2	The main purpose of this report is to summarise the findings of these two reports. It provides an officer analysis of the issues raised and sets out next steps for dealing with the issues identified by the two reports. The report also takes opportunity to set out some of the current significant impacts that issues raised by the reports, alongside other factors, are having on the Council's operation of its Planning Service.
<b>4.0</b>	<b>NIAO Review of the NI Planning System</b>
4.1	<p><u>Background</u></p> <p>Belfast City Council has been engaging with NIAO on its review of the NI planning system since first learning of the audit in 2020. The Planning Service initially met with NIAO in December 2020 then provided written feedback to NIAO in January 2021, also responding to an information request to all councils. NIAO shared its draft report with the 11 councils in December 2021 to which Belfast City Council provided comments. NIAO then published its final report on 01 February 2022. A copy of the full report is provided at <b>Appendix 1a</b>. For ease of reference, the report's recommendations are listed at <b>Appendix 1b</b>.</p> <p><u>Report's Key findings and recommendations</u></p>
4.2	<p>The overarching message of the NIAO report is that the NI planning system is not working efficiently and, in many aspects, is failing to deliver for the economy, communities or the environment. The report's key findings are summarised below.</p> <ul style="list-style-type: none"> <li>• The planning system has not met many of its main performance targets</li> <li>• The system is increasingly financially unsustainable</li> <li>• The system is inefficient and often hampered by poor quality applications</li> <li>• There is an urgent need for improved joined-up working between organisations delivering the planning system</li> <li>• Many statutory consultees are struggling to provide information in a timely manner</li> <li>• The system isn't meeting its plan-making objectives.</li> </ul>
4.3	The report goes on to make a series of recommendations as set out at <b>Appendix 1b</b> . These recommendations relate to Plan-making, improving performance on the most important applications, enforcement, delegation and committee matters, review of planning fees, leadership of the planning system, skills and environmental ammonia levels.
4.4	The NIAO report is especially critical of the disjointed approach to planning in NI:

	<p><i>'Our review has identified significant silo working within the planning system. We saw a number of instances where individual bodies – councils, the Department or statutory consultees – have prioritised their own role, budgets or resources, rather than the successful delivery of the planning service. Each organisation is accountable for its own performance, and whilst the Department monitors the performance of individual organisations against statutory targets, there is little accountability for the overall performance of the planning system.'</i> (par. 4.10)</p> <p><u>Officer commentary on the NIAO report</u></p>
4.5	Officers view the NIAO Report as excellent opportunity to highlight the shortcomings of the NI planning process, whether it relates to Plan-making, Development Management or the general administration of the planning process. In this regard, the report is welcomed.
4.6	In terms of the NIAO Report's recommendations, these are generally supported. Although the recommendations can perhaps be criticised for being too high level, not time bound and that there is no indication as to how those recommendations should be implemented. In some regards, the report does not go far enough and in previous feedback the Planning Service has called for an independent review of the NI planning system.
4.7	Despite the overall negative tone of the NIAO Report, Belfast City Council fairs reasonably well overall. Major planning application performance is strong in the context of the other councils (although clearly there is room for improvement); this is despite the Council dealing with around twice as many Major development projects as the next most prolific council. The Council enjoys healthy levels of delegation (96%) and low levels of officer recommendations overturned by the Committee (2% compared to 31% for the highest council). The NIAO Report also makes specific mention of the Council's <i>Application Checklist</i> , published in 2018 to improve the quality of planning applications on submission, with the Department encouraging other councils to follow suit.
	<i>LDP Process</i>
4.8	The NIAO recognises significant issues with the introduction and administration of the new Local Development Plan processes set out in the Planning Act 2011. The NIAO Report notes that the Department's unrealistic expectation was that <u>all</u> councils would have a fully adopted two-part LPD within 3.5 years of transfer contrasting this with the reality that after seven years no council has even an adopted first part Plan Strategy – with Belfast being at the most advanced stage. According to the latest projections, not all council areas will have an adopted plan until 2028 – some 13 years into new system when the life-cycle of a Plan is expected to be 15 years. The changes within the 2011 Act were intended to ensure NI has a plan-led system and it is imperative that all council areas have up to date plans to provide certainty, consistency and provide the foundation for investment. In emphasising the unrealistic expectations for the LDP processes the NIAO Report also recognise the underestimate for this part of the system from both a skills and resources perspective.
	<i>Development Management</i>
4.9	Officers advise that the NI planning system is structurally flawed. Whilst the objective of local government reform was to enable councils to make local planning decisions, the reality is that in a significant number of cases, this is not possible because local decisions cannot be made without input from central government departments through the statutory consultee process. Unlike planning authorities in England and Wales, councils do not have key areas of responsibility such as transport and regeneration. In addition, unlike in other areas of GB, advice on all Listed Building and archaeological matters comes from central government.

4.10	Councils are therefore largely dependent on central government to make decisions and there are substantial problems with the statutory consultee process in terms of poorly resourced consultees with often very slow response times, causing significant delays and uncertainty to the planning application process. In addition, statutory consultees are culturally desperate from councils with a lack of alignment in terms of overall objectives and service priorities. In these regards, the NIAO report accurately captures the “silo working” and lack of overall accountability of the NI planning system.
4.11	If Belfast is to truly maximise its potential for place-making and effectively compete with other regional cities in GB and ROI, <b>it must have unitary authority status</b> with additional core responsibilities enjoyed by other major cities.
4.12	The NIAO report rightly places emphasis on improving planning application performance but officers disagree with the focus being on the most important application. Each and every application is important to the customer and City to one degree or another, and there must be emphasis on improving the application system as a whole.  <i>Planning Committee</i>
4.13	The NIAO Report recommends greater transparency around Committee decision making in NI, particularly the recording of why some normally delegated applications are referred to Committee and minuting the reason/s why the Committee has overturned an officer recommendation. These are matters that the Council already addresses.
4.14	NIAO also recommends that the Committee regularly reviews a sample of its previous decisions to enable understanding real-world outcomes, impacts and the quality of completed projects. This recommendation is welcomed and offers propose to build this into the Committee’s continuous development programme. Other recommendations include the need for appropriate Member training with the Department ensuring regional consistency.  <i>Financial Unsustainability</i>
4.15	The NIAO report rightly highlights the financial unsustainability of the present system. In January 2021, the Council reported to NIAO that the net cost of its Planning Service is nearly £1.2m after fee income. Planning is far from cost neutral. NIAO’s recommendation that the NI planning system works towards financial sustainability is therefore welcomed.
4.16	It is understood that the Council remains the only planning service in NI to currently charge for PAD advice, which it has done since 2017. This has helped to fund additional staff to provide a better Planning Service overall. The Department is currently scoping a review of regional PAD guidance, including potentially encouraging more widespread charging.  <i>Departmental Oversight</i>
4.17	The NIAO Report remarks that there is a lack of accountability for the NI planning system. Whilst DFI has overall oversight of planning, there is no one taking overall responsibility. This is particularly challenging given how fragmented the system is with different central government Departments playing key roles alongside councils. Whilst the Department has an important leadership role, given the range of significant stakeholders in the system, it cannot have sole autonomy in addressing the substantial issues raised by the NIAO Report. Officers are very clear that the solutions can only be found by the various stakeholders working together with a common goal of significant improvement.

<b>5.0</b>	<b>Dfl Review of implementation of the Planning Act (Northern Ireland) 2011</b>
	<u>Background</u>
5.1	Section 228 of the Planning Act (Northern Ireland) 2011 (“the Act”) requires Dfl to undertake a review of the implementation of the Act. Members may recall that the Planning Committee considered its response to Dfl’s “call for evidence” in respect of this review in March 2021. A copy of the Council’s response is provided at <b>Appendix 2</b> . Further engagement with local government included a “workshop” Dfl to the Heads of Planning of the 11 councils in June 2021. Dfl recently published its report on the review on 27 January 2022. A copy of this report is provided at <b>Appendix 3a</b> . For ease of reference, the report’s recommendations are listed at <b>Appendix 3b</b> .
	<u>Scope of the Review</u>
5.2	In its report, Dfl confirms that it has not undertaken a “root and branch” review of the Act given that seven years in from transfer of most planning powers to councils, it is still ‘relatively early days’ in the delivery of the new planning system. The Department’s focus is on whether the original objectives of the Act have been met. They confirm that this will inform whether it is necessary to <b>retain, amend or repeal</b> any provisions of the Act.
5.3	The original objectives of the Act were: <ul style="list-style-type: none"> <li>• the continued formulation and co-ordination of planning policy by the Department;</li> <li>• councils preparing local development plans;</li> <li>• councils determining the majority of planning applications for development and additional planning related consents; and</li> <li>• councils taking appropriate enforcement action where a breach of planning control may have taken place.</li> </ul>
	<u>“Call for evidence”</u>
5.4	Dfl issued an 8-week “call for evidence” in February 2021. It attracted 55 responses. Almost two-thirds of the Act were not remarked on with the vast majority of comments relating to Local Development Plans (LDPs), development management (planning application process) and enforcement.
	<u>Report’s Key findings and recommendations</u>
5.5	The regulations require Dfl to report on the following: <ul style="list-style-type: none"> <li>• the objectives intended to be achieved by the Planning Act</li> <li>• to assess the extent to which those objectives have been achieved</li> <li>• to assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate.</li> </ul>
5.6	The Department’s review found that the vast majority of provisions within the Planning Act have been implemented and that the transfer of responsibility for the majority of planning functions to locally accountable councils has been achieved, together with the establishment of the two-tier planning system.
5.7	Dfl notes that councils are preparing local development plans for their areas, have published statements of community involvement and now determine the vast majority of planning applications. Changes to the decision-making process including pre-application community consultation and pre-determination hearings have further enhanced community

	engagement and have allowed greater public involvement and transparency in the determination of planning applications.
5.8	Councils are also exercising their planning enforcement duties, investigating alleged breaches of planning control and taking action as appropriate. The Department is determining applications for 'regionally significant development' under section 26, or applications 'called-in' under section 29 of the Planning Act.
5.9	Since the commencement of the Act, the Department has also published the Strategic Planning Policy Statement for Northern Ireland (SPPS) setting out the Department's regional planning policies in a shorter more focused document and has published extensive guidance by way of Practice Notes on the reformed planning system.
5.10	The review also found that 162 sections of the Act, or just under two-thirds of its provisions had not been remarked upon in the call for evidence and DfI has, therefore, drawn the conclusion that these should largely be retained as structured.
5.11	<p>DFI reports that key issues emerging from the responses to the call for evidence include:</p> <ul style="list-style-type: none"> <li>• the timeliness of councils bringing forward their <b>local development plans</b> and delays in <b>processing times for some planning applications</b>, particularly major applications; and</li> <li>• the need for potential <b>legislative changes</b> which might address perceived <b>obstacles</b> in the system.</li> </ul>
5.12	<p>In seeking to address the findings from the review, DfI has made 16 recommendations / actions covering aspects of the Planning Act governing, Plan-making, Development Management, planning enforcement and additional planning control. For ease of reference, these recommendations are provided at <b>Appendix 3b</b>.</p> <p><u>Officer commentary on DFI report</u></p>
5.13	In commenting on whether the objectives of the Act have been met, DfI observes that the vast majority of provisions within the Act have been commenced, resulting in its successful implementation. Officers take issue with the suggestion that the implementation has been 'successful'. The NIAO Report clearly confirms that the NI planning system is not working efficiently and, in many aspects, is failing to deliver for the economy, communities or the environment. Clearly, there is much further work to do to improve how the planning system operates in terms of the LDP process, Development Management and general administration of the system.
5.14	DFI acknowledges that the ' <i>...planning system, in some parts, hasn't achieved the level of performance envisaged.</i> ' It refers to indicative timetables for bringing forward LDPs not being achieved and whilst targets for processing Local applications have been met, targets for Major applications have not. The Department states that there are a number of factors that have contributed to this and that it is seeking to address these, albeit they are largely outside the scope of DfI's review.
5.15	The Department makes 16 recommendations (see <b>Appendix 3b</b> ). None of the recommendations are time bound and DfI states that legislative change around these recommendations will have to be brought forward under the next NI Assembly mandate. Officers have concerns about how long it will take to bring about much needed change.



	<i>Local Development Plans</i>
5.16	DFI acknowledges the calls for fundamental reform of the LDP process but does not consider that a fundamental review is required until a number of council LDPs have been adopted so as to better understand and evaluate the potential for change. The Department believes that the current process is appropriate and that issues can be addressed through better guidance and reviewing the statutory list of consultees.
5.17	Whilst it was recognised that there would be challenges arising from the introduction of a completely new process for the production of development plans this has been unnecessarily further complicated by the role the Department has adopted. The anticipated supportive and collaborative relationship between the Department, as the body responsible for strategic direction or oversight, and the councils as the new local plan making bodies, has not developed. The Department approach engagement and oversight has resulted in unnecessary delays as their role has become more interventionist than strategic oversight.
5.18	The new system sought to provide the flexibility for councils to respond to their unique challenges and circumstances through the introduction of plans and policies that reflect the aspirations of their Community Plans. However, the experience has not reflected this positive and innovative aspiration with a more controlling and directive position adopted by the Department in relation to both guidance and engagement with councils in the development of their LDPs.
	<i>Development Management</i>
5.19	DfI considers the existing framework of roles and responsibilities within the Development Management process remains appropriate. However, officers <b>fundamentally disagree</b> with this statement for the reasons set out previously, concurring with the NIAO Report's conclusions that the system is highly disjointed and involves far too much silo working. The long-term objective must be for Belfast to become a unitary authority with wider powers and increased responsibilities.
5.20	Responding to the Department's recommendations, officers welcome exploration of further digitisation of the planning process, over and above the implementation of the new regional Planning IT system, expected to "go live" late summer 2022. This would follow English and Scottish Governments publication of white papers on promoting innovation and improving digitisation of the Scottish and English planning systems.
5.21	DFI's commitment to bringing forward proposals for both online and in person engagement in the Pre-Application Community Consultation process is also sensible, with temporary regulations having been introduced to facilitate online engagement during the pandemic. This will also consider the emerging recommendations from the regional Planning Engagement Partnership, providing opportunity for improved engagement in the process.
5.22	The commitment to review direction call-in criteria is also welcomed but this should be extended to a fundamental overhaul of the notification process as there are considered to be far too many instances whereby the Council has to refer applications to the Department before it can make a decision, resulting in uncertainty and unnecessary delay.
5.23	Officers welcome the Department's commitment to bring forward legislation to improve the quality of applications on submission. This would in effect make the Council's own <i>Application Checklist</i> a statutory document. However, it should be pointed out that the Council first raised the need for legislative change in this area as far back as 2016. It is very disappointing that it has take over five years for a formal decision to be made on this.

5.24	The Department states that it will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultation responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes. The issues around consultees goes to the core of some of the major challenges the NI planning system faces. As previously stated, the long-term objective must be for Belfast to have unitary authority status so that it is not reliant on outside bodies to make local decisions. In any case, changes are essential to significantly improve the statutory consultation process now and make the system much more integrated and outcomes orientated. This must include ensuring that statutory consultees are effectively resourced. The Department has recently written to other government departments on foot of the NIAO Report, highlighting the need for significant improvement in these areas.
5.25	The recommendation to make Pre-Determination Hearings discretionary is considered to be very sensible as statutory PDHs are unnecessary and result in much uncertainty and delay for applicants.
5.26	The Department's recommendation to supplement existing section 59 provisions which would disallow the variation of a development proposal at appeal would be a good step forward. It would prevent appellants making changes (sometimes significant) at the appeal stage when the Council has not had proper opportunity to consider them. Moreover, it should focus applicants on improving the quality of the submissions when made to the Council. However, it is disappointing that DFI has not taken up the Council's request for legislative change that gives Planning Authorities discretion as to when they accept amended plans or additional information. This proposal was supported by a number of other councils and local government should continue to lobby on this issue, particularly in discussions about how to improve the quality of applications and overall performance.
5.27	In terms of enforcement, the Department's commitment to exploring use of Fixed Penalty Notices and multiple fees for retrospective applications is welcomed as deterrents to unauthorised activity.
5.28	Lastly, officers welcome the recommendation to undertake a general review of planning fees including an automatic annual inflationary uplift. The NIAO Report stresses the financial unsustainability of the current planning system. It will therefore be necessary to undertake a fundamental review of planning income, including a review of planning application fees, introducing charging for current no-fee applications (such as Discharge of Condition applications, Non Material Changes and PANs), and potentially allowing councils to set their own planning fees.
<b>6.0</b>	<b>Current operational challenges</b>
6.1	<u>Development Management</u> The Council's Planning Service remains under significant operational pressure, brought about by many of the issues that the NIAO Report identifies in particular. The Council currently has around 1,200 live applications, up from around 850 since before COVID-19. This 40% increase in live applications initially resulted from the impacts of the first lockdown between March and June 2020. The office was initially closed and applications could not be received or processed, some staff were furloughed, site visits were temporarily suspended for health and safety reasons which meant that assessments could not be completed, and new IT had to be rolled out to support remote working.
6.2	However, despite having been almost fully being operational since summer 2020, it has proven extremely difficult to reduce live application numbers back down to more manageable, pre-COVID numbers. This has been due to a range of factors including:

	<ul style="list-style-type: none"> <li>• Planning application numbers returning to normal pre-COVID-19 levels fairly quickly after the initial lockdowns. This has meant that whilst a healthy number of decisions are being made, this has been more or less matched by new incoming applications, meaning that it has not been possible to make meaningful inroads into reducing the total live number of planning applications.</li> <li>• In some areas there has actually been a rise in applications, most notably an increase in householder applications as people are trying to achieve more space in the light of the pandemic (this is a trend experienced throughout the UK). The Planning Service also continues to receive a high volume of Lawful Development Certificate applications for HMOs under the new HMO licensing requirements.</li> <li>• A marked deterioration in the quality of service provided by statutory consultees. In many cases there are very slow consultation responses, holding up applications and resulting in significant delays to applications decisions. This is a key issue identified by both the NIAO and DfI reviews.</li> <li>• Intermittent technical problems with the NI Planning Portal Public Access and back-office software (this was particularly an issue towards the end of 2020 and since January 2022).</li> </ul> <p><u>Planning Consultations</u></p>
6.3	<p>The most significant challenge – which is also outside the control of the Council – is the statutory consultation process. As mentioned, for many applications, the Council is reliant on advice from central government departments before it can make a planning decision. In many cases, there are significant delays in statutory consultees providing consultation responses, often borne of lack of resources. It is understood that DfI Rivers is only operating at 40% staff capacity. There are also staff shortages within DAERA. DfI Roads (the most prevalent consultee in terms of the number of consultation requests) continues to provide many of its consultation responses well outside the statutory consultee period.</p>
6.4	<p>Unverified data for Belfast indicates that around only 40% of statutory consultee responses are provided within time for Major development applications. This rises to approximately 65% within time for Local applications with 63% overall for all applications.</p>
6.5	<p>In terms of official data, for NI as a whole, the latest statutory consultee performance for 2021/22 Q2 indicates the following:</p> <ul style="list-style-type: none"> <li>• Total number of consultations issued was <b>7,195</b> (up 12% over the previous year)</li> <li>• Only <b>64%</b> of statutory consultations were received within time (down from 77% the previous year)</li> <li>• DfI Roads – <b>66%</b> consultations within time (77% previous year)</li> <li>• DAERA – <b>71%</b> (68%)</li> <li>• DfI Rivers – <b>29%</b> (64%)</li> <li>• NIW – <b>97%</b> (88%)</li> <li>• DfC/HED – <b>61%</b> (76%)</li> </ul>
6.6	<p>In some cases, it has taken consultees many months to provide a substantive consultation response. <b>These delays preclude officers from identifying and resolving issues with applicants much earlier in the process, and prevent officers making a decision or referring applications to the Committee.</b></p>
6.7	<p>Belfast City Council has called for more sophisticated reporting on statutory consultee performance by the Department including measurement of how long it is taking on average for specific consultees to respond and reporting by District Council area.</p>

6.8	Members will also be aware of the recent and widespread objections to applications by NIW, also a statutory consultee. Officers are continuing to work with NIW to try to resolve the wider strategic issues around these objections, but as it stands approximately 100 applications (about 10% of all applications) are stalled in the system because of this issue.
6.9	There are also some internal challenges with around 110 applications awaiting a consultation response from Environmental Health (the Council is planning to procure temporary external consultancy support to reduce the backlog of consultations and assist with consultations on new applications).
	<u>Impacts</u>
6.10	<p>The impacts of these operational challenges are:</p> <ul style="list-style-type: none"> <li>• Higher case numbers for individual case officers – this makes managing caseloads much more difficult, with a resulting negative impact on performance, less scope for feedback to customers and significant additional pressure on staff.</li> <li>• Poor performance overall with slower decision making (current performance for the year to December is average 38.2 weeks to determine Major applications against a target of 30 weeks; and average 16.8 weeks for Local applications against a target of 15 weeks. These statutory targets are not themselves especially stringent).</li> <li>• Significant reduced customer satisfaction with frequent frustration about the length of time to process planning applications.</li> <li>• Delays to, and potential withdrawal of, investment in the city.</li> <li>• Belfast is seen as a less attractive place to invest and do business.</li> </ul>
<b>7.0</b>	<b>Next Steps</b>
7.1	This is a pivotal time for the NI planning system and publication of the NIAO and DfI reports represents a significant opportunity for much needed change and improvement. It is also essential that the right decisions are taken now – both locally and regionally – to address the fundamental shortcomings that have been identified.
7.2	<p>Officers advise of the following next steps.</p> <ol style="list-style-type: none"> <li>A <b>Public Accounts Committee</b> at the NI Assembly on 'Planning in NI' is scheduled for 10 and 17 February 2022 on foot of the NIAO report. A small number of local government Chief Executives have been invited to give evidence and BCC has nominated itself to be part of this group.</li> <li>Mobilisation of the 11 councils as a cohesive unit through the <b>Heads of Planning group</b> to ensure a strong, united local government voice, with potential support from the Northern Ireland Local Government Association (NILGA).</li> <li>Formation of a <b>cross sector group</b> tasked with identifying solutions and addressing the fundamental issues identified by the reviews. It is essential that the core sectors of central and local government, development industry, elected members and communities are fairly and equally represented. There should also be an independent "outside voice" on this group to widen experience and scope for improvement. The Department and local government should have co-ownership of implementing the necessary changes.</li> <li>Engagement with the <b>RTPI</b> and <b>IPI</b> professional bodies</li> </ol>

7.3	<p>The aforementioned steps are regionally focused. At a local level, the Council's Planning Service will continue to bring forward the following actions.</p> <ul style="list-style-type: none"> <li>• Ongoing development and implementation of the Continuous Improvement Plan;</li> <li>• Implementation of the new regional Planning IT system in late summer 2022 (to replace the current NI Planning Portal and bring forward significant digital enhancements and improved working practices); and</li> <li>• Redesign of Development Management processes using lean systems principles to significantly improve the efficiency and quality of service.</li> </ul>
<b>8.0</b>	<b>Financial &amp; Resource Implications</b>
8.1	<p>The existing NI planning system is inefficient and underperforming and this inevitably means that it also costly and not value for money. The NIAO report rightly highlights the financial unsustainability of the present system. In January 2021, the Council reported to NIAO that the net cost of its Planning Service is nearly £1.2m after fee income. Planning is far from cost neutral. NIAO's recommendation that the NI planning system works towards financial sustainability is therefore welcomed.</p>
<b>9.0</b>	<b>Equality or Good Relations Implications / Rural Needs Assessment</b>
9.1	No adverse impacts identified.
<b>10.0</b>	<b>Appendices – Documents Attached</b>
	<p><b>Appendix 1a</b> – NIAO report on its review of the NI planning system (01 February 2022)</p> <p><b>Appendix 1b</b> – NIAO report Recommendations only</p> <p><b>Appendix 2</b> – BCC response to DfI's "call for evidence" in respect of its review of the implementation of the Planning Act (Northern Ireland) 2011</p> <p><b>Appendix 3a</b> – DfI report on its review of the implementation of the Planning Act (Northern Ireland) 2011 (27 January 2022)</p> <p><b>Appendix 3b</b> – DfI report Recommendations only</p>

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# Planning in Northern Ireland









Northern Ireland Audit Office

# Planning in Northern Ireland

Published 1 February 2022



This report has been prepared under Article 8 of the Audit (Northern Ireland) Order 1987 (for presentation to the Northern Ireland Assembly in accordance with Article 11 of the Order), and Article 26 (1) of the Local Government (Northern Ireland) Order 2005.

K J Donnelly CB  
Comptroller and Auditor General  
1 February 2022

Colette Kane  
Local Government Auditor  
1 February 2022

The Comptroller and Auditor General is the head of the Northern Ireland Audit Office. He, and the Northern Ireland Audit Office are totally independent of Government. He certifies the accounts of all Government Departments and a wide range of other public sector bodies; and he has statutory authority to report to the Assembly on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

The Local Government Auditor has statutory authority to undertake comparative and other studies designed to enable her to make recommendations for improving economy, efficiency and effectiveness in the provision of services by local government bodies and to publish her results and recommendations.

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# Contents

<b>Contents</b>		<b>5</b>
<b>Executive Summary</b>		<b>9</b>
	The planning system should positively and proactively facilitate development that contributes to a more socially, economically and environmentally sustainable Northern Ireland	10
	The way in which planning functions are delivered fundamentally changed in 2015	10
	The planning system has not met many of its main performance targets	10
	Despite the importance of planning, the system is increasingly financially unsustainable	11
	The system is inefficient and often hampered by poor quality applications	11
	There is an urgent need for improved joined-up working between organisations delivering the planning system	12
	Many statutory consultees are struggling to provide information in a timely manner	12
	The system isn't meeting its plan-making objectives	13
	The planning system faces challenges in effectively managing applications which have the potential to have a significant impact on the environment	13
	Value for money statement	14
<b>Part One:</b>	<b>Introduction</b>	<b>15</b>
	There are a large number of public bodies involved in delivering the planning system in Northern Ireland	16
	The planning system has not met many of its main performance targets in recent years	17
	Variances in decision-making processes across different council areas represent a risk to efficiency and effectiveness	18
	Councils' ability to perform effectively can be constrained by issues beyond their direct control	18
	Scope and structure	19
<b>Part Two:</b>	<b>Performance of the planning system</b>	<b>21</b>
	Plan-making	22
	Each council is responsible for the creation of a Local Development Plan	22
	Six years into the process, no council has an approved Plan Strategy	23

	The lack of LDPs means planning decisions are not guided by up-to-date plans	24
	Despite the lack of progress, councils report having invested significant time and resources on developing plans	25
	Decision-making	26
	Almost one-fifth of the most important planning applications aren't processed within three years	26
	Whilst comparison of planning performance across the UK is challenging, it appears that the planning system in Northern Ireland is slower than in other jurisdictions	28
	There is substantial variation in timeliness performance within Northern Ireland	29
	There is significant variation in how enforcement cases are resolved	31
<b>Part Three:</b>	<b>Variance in decision-making processes</b>	<b>35</b>
	Delegation arrangements are an essential part of an effective development management process	36
	Not all Schemes of Delegation ensure that decisions are taken at an appropriate level	37
	The type of applications being considered by committees are not always appropriate	38
	One in eight decisions made by planning committees in Northern Ireland goes against the recommendation of planning officials	39
	Decision-making processes are not always transparent	41
	Planning committees do not regularly assess the outcomes of their previous decisions	42
	Training for planning committee members is inconsistent	42
<b>Part Four:</b>	<b>Departmental oversight</b>	<b>45</b>
	Regionally Significant applications are the most complex applications and often take years to decide on	46
	The Department is currently undertaking a review of the implementation of the Planning Act	47
	The Department should provide leadership for the planning system	47
	The planning system is increasingly financially unsustainable	49
	Planning fees have not contributed to the financial sustainability of the system	50

	The way performance is monitored and measured does not provide a comprehensive overview of performance	51
	Performance management information has not been used to drive improvement	52
	Performance monitoring is currently more concerned with the speed and number of applications processed, than the quality of development delivered	52
	Guidance from professional planning bodies highlights the importance of measuring outcomes	53
<b>Part Five:</b>	<b>Issues affecting performance</b>	<b>55</b>
	Many councils have increased staff numbers to manage demand, contributing to increased costs	56
	There are skill shortages within some council planning teams	56
	Attempts at shared services have been constrained by a lack of funding	57
	The system does not always allow for the efficient delivery of services	58
	Front-loading the application process was consistently identified as a key means of improving performance	59
	Application checklists can speed up processing	59
	Pre-application discussions are used inconsistently	59
	Many statutory consultees are not providing timely responses	60
	The planning system faces increasing challenges in managing applications that have the potential to have a significant environmental impact	64
	The absence of up to date ammonia guidance from DAERA is causing considerable uncertainty for planners and applicants	65
	A new planning IT system has been procured but one council is not involved	67
<b>Appendices:</b>		<b>69</b>
	<b>Appendix One</b>	<b>70</b>
	Our audit approach	70
	Our evidence base	70
<b>NIAO Reports 2020 and 2021</b>		<b>71</b>

## Abbreviations

<b>BCC</b>	Belfast City Council
<b>DAERA</b>	Department of Agriculture Environment and Rural Affairs
<b>DfC</b>	Department for Communities
<b>DfI</b>	Department for Infrastructure
<b>EIA</b>	Environmental Impact Assessment
<b>EU</b>	European Union
<b>FTE</b>	Full-time equivalent
<b>IE</b>	Independent Examination
<b>LDP</b>	Local Development Plan
<b>LPP</b>	Local Policies Plan
<b>NI</b>	Northern Ireland
<b>NICS</b>	Northern Ireland Civil Service
<b>NIEA</b>	Northern Ireland Environment Agency
<b>PAC</b>	Planning Appeals Commission
<b>PAD</b>	Pre-application discussion
<b>PAN</b>	Planning Advice Note
<b>PPS</b>	Planning Policy Statement
<b>PS</b>	Plan Strategy
<b>RDS</b>	Regional Development Strategy
<b>RTPI</b>	Royal Town Planning Institute
<b>SES</b>	Shared Environmental Service
<b>SPPS</b>	Strategic Planning Policy Statement



# Executive Summary

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## Executive Summary

### **The planning system should positively and proactively facilitate development that contributes to a more socially, economically and environmentally sustainable Northern Ireland**

1. The planning system has the potential to make an important contribution to much needed development in Northern Ireland. When it works effectively, it can have a key role in encouraging investment and supporting the Northern Ireland economy, creating places that people want to work, live and invest in. The system also has the potential to act as a key enabler for the delivery of a number of draft Programme for Government outcomes.
2. Delivering an effective system provides potential investors with the confidence they need to propose development in Northern Ireland and ensure that it is sustainable and meets the needs of the community.
3. Despite the importance of the planning system to Northern Ireland, our review found that it is not operating effectively, not always providing the certainty that those involved wanted, and in many aspects not delivering for the economy, communities or the environment.

### **The way in which planning functions are delivered fundamentally changed in 2015**

4. The Planning Act (NI) 2011 (the Act) established the two-tier system for the delivery of planning functions in Northern Ireland. Under the Act, responsibility for delivering the main planning functions passed from a central government department to local councils in April 2015.
5. The Department for Infrastructure (the Department) has responsibility for preparing regional planning policy and legislation, monitoring and reporting on the performance of councils' delivery of planning functions and making planning decisions in respect of a small number of applications.

### **The planning system has not met many of its main performance targets**

6. Since the transfer of functions to local government, on a number of key metrics, the planning system in Northern Ireland has not delivered against many of its main targets. Around 12,500 planning applications have been processed each year in Northern Ireland since 2015. Despite their importance, processing the most important planning applications still takes too long.
7. Major planning applications can relate to development that has important economic, social or environmental implications. Despite a statutory target for each council to process major development planning applications within an average of 30 weeks<sup>1</sup>, the vast majority of Major planning applications take significantly longer. Around one-fifth of these applications take more than three years to process.

<sup>1</sup> The time taken to process a decision/withdrawal is calculated from the date on which an application is deemed valid to the date on which the decision is issued or the application is withdrawn

8. The Department told us that the period following the transfer of planning powers to local government in 2015 was dominated by a lack of a local Assembly and ministers for three years to January 2020, the implications of the Buick judgment<sup>2</sup> in 2018 for decision-making, followed by the significant impact of the Covid-19 pandemic and, as a consequence, there was an impact on the performance of the system.
9. Performance on Local applications is better. The target, that Local development planning applications will be processed within an average of 15 weeks, was achieved for Northern Ireland as a whole in both 2018-19 and 2019-20. Performance dipped in 2020-21, but this was likely caused by the impact of Covid-19.
10. Our analysis shows that the time taken to process Major applications varies substantially between councils. For Major planning applications processed between 2017-18 and 2019-20, the median processing time for the slowest council was more than three times that of the fastest council.

### **Despite the importance of planning, the system is increasingly financially unsustainable**

11. When planning responsibilities transferred to councils, it was on the basis that delivery of services should be cost neutral to local ratepayers at the point of transfer. However, the income generated from planning does not cover the full cost of service delivery. The fees councils charge for planning applications are decided by the Minister for Infrastructure and were initially set by the Department in 2015, with individual rates for different types of planning application. In the absence of a Minister from January 2017 to January 2020, the Department was able to raise fees once (by around 2 per cent, in line with inflation in 2019) following the enactment of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, which allowed the Department to take certain decisions normally reserved to the Minister.
12. As a result, there has been a need to supplement income with other public funding to deliver planning services. Our review of financial information provided by councils showed that the gap between income generated by planning activities and the cost of those activities increased significantly between 2015-16 and 2019-20. This is not sustainable in the longer term.

### **The system is inefficient and often hampered by poor quality applications**

13. There is a low bar for the quality of planning applications that are allowed to enter the system. Stakeholders consistently told us that the criteria set out in the 2011 Planning Act are too narrow, and do not require applicants to provide key supporting documentation. This means the Department and councils are often obligated to attempt to process poor quality and incomplete applications.

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2 In re Buick [2018] NICA 26, the Northern Ireland Court of Appeal held that the Department did not have the power to make the decision to grant planning permission for a major waste incinerator in the absence of a minister.

## Executive Summary

14. Whilst some councils have taken steps to improve application quality, such as the creation of application checklists, these have not been rolled out across the system. We highlighted the issue of poor quality applications in our previous report on Planning in 2009. The Department told us that it is proposing to take forward legislative changes to better manage the quality of applications and it has encouraged councils to roll out an administrative checklist in advance of any legislative change.

### **There is an urgent need for improved joined-up working between organisations delivering the planning system**

15. Our review has identified significant silo working within the planning system. We saw a number of instances where individual bodies – councils, the Department or statutory consultees – have prioritised their own role, budgets or resources, rather than the successful delivery of the planning service. Each organisation is accountable for its own performance, and whilst the Department monitors the performance of individual organisations against statutory targets, there is little accountability for the overall performance of the planning system. Whilst individual organisations stressed the challenges they faced, ultimately the frustration from service users was the poor performance of the system, not issues in individual bodies.
16. In our view, the ‘planning system’ in Northern Ireland is not currently operating as a single, joined-up system. Rather, there is a series of organisations that do not interact well, and therefore often aren’t delivering an effective service. This has the potential to create economic damage to Northern Ireland. Ultimately, as it currently operates, the system doesn’t deliver for customers, communities or the environment.
17. In our view, this silo mentality presents both a cultural and a practical challenge. The focus for all of those involved in the system must be the successful delivery of planning functions in Northern Ireland, not the impact on their own organisations. This will require strong, consistent leadership – in our view the Department is well placed to provide this and should continue to build on its work to date. It is crucial that all statutory bodies involved in the planning system play their part and fully commit to a shared and collaborative approach going forward.

### **Many statutory consultees are struggling to provide information in a timely manner**

18. Processing an individual planning application often requires technical or specialist knowledge that doesn’t exist within individual council planning teams. In these cases, statutory consultees provide officials with information they need to inform their decision. Whilst councils ultimately decide on planning applications, the fact that the majority of consultees sit outside local government adds another layer of complexity to an already fragmented system.

19. Statutory consultees are required to make a substantive response to planning authorities within 21 days or any other period as agreed in writing with a council. Performance is consistently poor, particularly in respect of Major planning applications. The poorest performance is by DfI Rivers, part of the Department for Infrastructure, which only responds in time to around forty per cent of all consultations. The Department told us that there has been a major increase in consultations received by statutory consultees. This, coupled with the increasing complexities of cases received and finite resources, has had significant implications in relation to performance. Nonetheless, there is room for improvement in the timeliness of responses from most statutory consultees.

### **The system isn't meeting its plan-making objectives**

20. Northern Ireland's planning system is intended to be "plan-led" and each council is preparing a Local Development Plan (LDP). The Department's expectation was that all councils would have a fully completed LDP within three and a half years of beginning the process. However, six years later, no council has managed to complete an LDP, with many still in the early stages of the process. The Department told us that this was an indicative timetable, which sought to provide an estimate under a new and as yet untested system. The legislation provides for amended timetables to be submitted.
21. Despite the slow progress, estimates provided to us on the total spend to date on development of LDPs ranged from £1.7 million to £2.8 million per council, figures that would be equivalent to the total annual cost of delivering planning functions within most councils.

### **The planning system faces challenges in effectively managing applications which have the potential to have a significant impact on the environment**

22. Preserving and improving the environment is one of the core principles of the planning system. However, a number of stakeholders highlighted the increasing challenges of assessing and managing the environmental impact of proposed development. Environmental assessments required for individual applications are often complex and time-consuming.
23. We heard concerns that the planning system is struggling to progress some complex planning applications which can include environmental impact assessments. In particular, there is a lack of certainty around how the system deals with applications for development that will produce ammonia emissions. The lack of clear environmental guidance in this area creates significant uncertainty for planning authorities, applicants and statutory consultees. The system urgently needs updated policy guidance from the Department of Agriculture, Environment and Rural Affairs.

## Executive Summary

### **Value for money statement**

In our view, the planning system is not operating efficiently. Crucially, in many aspects, the system doesn't deliver for the economy, communities or the environment. NIAO regularly receives concerns about planning decisions, implying a lack of confidence in the way the system operates. In addition, costs consistently exceed income, and the system itself is being subsidised by both central and local government. It is simply unsustainable to continue in this way.

# Part One:

## Introduction

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## Part One: Introduction

- 1.1 The objective of the planning system is to secure the orderly and consistent development of land whilst furthering sustainable development and improving wellbeing. By directing and controlling the type and volume of development that occurs, the system can support the sustainable creation of successful places in which people want to live, work and invest. As the planning system can be a key enabler for achieving many of the economic and social outcomes targeted within the draft Programme for Government outcome framework, it is vital it operates effectively.

### **There are a large number of public bodies involved in delivering the planning system in Northern Ireland**

- 1.2 The Planning Act (NI) 2011 (the Act) established a two-tier structure for the delivery of planning functions in Northern Ireland. The Department for Infrastructure (the Department) has a central role in the planning system in Northern Ireland. Alongside this, it has responsibility for preparing planning regional policy and legislation, and monitoring and reporting on the performance of councils' delivery of planning functions. In addition, the Department makes planning decisions in respect of a small number of Regionally Significant and called-in applications.
- 1.3 Under the Act, responsibility for delivering the majority of operational planning functions passed from a central government department to local councils in April 2015. This includes:
- development planning – creating a plan that sets out a vision of how the council area should look in the future, by deciding what type and scale of development should be encouraged and where it should be located;
  - development management – determining whether planning applications for particular development proposals should be approved or refused; and
  - planning enforcement – investigating alleged breaches of planning control and determining what action should be taken.
- 1.4 The ability of councils to deliver these functions often depends upon expert advice provided by a number of statutory consultee organisations. These are mainly central government organisations that provide specialist expertise to council planning officials on technical matters relating to individual planning applications, or on issues relating to development plans. The main organisations that councils consult with are Department for Infrastructure (DfI) Roads, Department for Agriculture Environment and Rural Affairs (DAERA), DfI Rivers, NI Water and the Historic Environment Division within the Department for Communities, but there are a number of others<sup>3</sup>.
- 1.5 In most cases, consultations are required to meet a statutory obligation. These consultations are referred to as statutory consultations. In addition, there are a large number of non-statutory consultations, which have increased in recent years.

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3 Other consultees used by councils include Health and Safety Executive NI, the Department for the Economy, Belfast International Airport, City of Derry Airport and the Planning Executive.



## The planning system has not met many of its main performance targets in recent years

- 1.6 Two of the main functions of the planning system are to establish plans that should control the volume and type of development that will occur, and then to efficiently process development applications, approving or refusing these. Since 2015, the planning system has not met many of its main performance targets.
- 1.7 Under the Act, each council was required to develop a Local Development Plan that would direct and control development in their area. The Department estimated that all councils would have such plans in place by 2019. The Department told us that this was an indicative timeframe that sought to provide an estimate for the preparation of a plan under the new, and as yet untested, system.
- 1.8 However, no council has been able to complete a plan. As a result, planning decisions made by planning authorities often refer to plans and policies that are old and do not reflect the current needs and priorities of the area. The Department told us that in such cases the weight to be afforded to an out-of-date plan is likely to be reduced and greater weight given in decision-making to other material considerations such as the contents of more recent national policies or guidance.
- 1.9 The planning system has also struggled to achieve efficient and timely processing of the Major development applications it receives. In particular, there has been a consistent failure to process the most important development applications in line with the timeliness targets set for these applications, with little evidence of improvement in performance forthcoming.
- 1.10 The Department told us that the period following the transfer to local government in 2015 was dominated by a lack of a local Assembly and ministers for three years to January 2020, the implications of the *Buick* judgement in 2018 for decision-making, followed by the significant impact of the Covid-19 pandemic and, as a consequence, there was an impact on the performance of the system.
- 1.11 An effective and efficient planning system can facilitate significant investment into Northern Ireland, which can have wider effects on the economy, including the creation of jobs and economic growth. A poorly performing planning system, however, can bring delays, costs and uncertainty which either postpone economic benefits or, in the worst circumstances, undermine proposed investment. The Department told us that timeliness is only one aspect of performance as it is important that the right decisions are made, supported by sufficient evidence and appropriate consultation.

## Part One:

### Introduction

#### **Variances in decision-making processes across different council areas represent a risk to efficiency and effectiveness**

- 1.12 The transfer of responsibilities under the Act granted councils a certain degree of flexibility in how they design their own arrangements for delivering planning functions. This flexibility was intended to give councils the power to design their processes in a way that best suited local needs, and to empower councils to shape how development occurred within their area, in line with the aspirations of the local community.
- 1.13 Prior to the transfer of planning to councils in 2015, the Department developed a best practice protocol for the operation of planning committees setting out a framework of principles and good practice that planning committees should adhere to. The Department told us that this protocol was not mandatory, but it recognised that there should be a degree of consistency across the eleven councils.
- 1.14 Our review of available data and engagement with various stakeholders has suggested that there are risks that all councils are not complying with best practice standards in respect of decision-making, and that approaches are characterised by a high level of variance, with no strong evidence that this variance is delivering additional value.

#### **Councils' ability to perform effectively can be constrained by issues beyond their direct control**

- 1.15 Whilst councils have primary responsibility for the operational delivery of most planning functions, there are a number of external constraints, often beyond the control of councils that have had a negative impact on their ability to deliver effectively. These include:
- that adequate resources were not provided to allow councils to deliver all the functions for which they are responsible;
  - that statutory consultees are able to provide timely responses to councils when requested to provide advice on issues relating to a particular application; and
  - that there are effective arrangements in place to monitor the overall performance of the planning system and to support the effective management of issues that are affecting the quality of the service delivered.
- 1.16 We found deficiencies within each of these areas that affect the quality of the service currently being delivered which, if not addressed, pose significant risks to the future delivery of services.

## Scope and structure

- 1.17 In this study we undertook a high level review of how effectively the planning system was operating, and how effectively it was being governed. We undertook a detailed analysis of available data covering the performance of the planning system in a variety of areas, and engaged with a broad range of stakeholders both inside and outside the system.
- 1.18 The remainder of this report considers:
- a summary of how the planning system has performed since 2015 in respect of its three main functions (**Part Two**);
  - concerns about how decisions are made within councils (**Part Three**);
  - how the Department exercises the functions assigned to it within the Planning Act (**Part Four**); and
  - some of the wider strategic issues that are having a significant impact upon the effectiveness of the planning system (**Part Five**).



## Part Two:

### Performance of the planning system

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## Part Two:

### Performance of the planning system

- 2.1 Northern Ireland's planning system is intended to be a "plan-led" system. Policies and priorities should be clearly set out in a framework of development plans that establish the volume and type of development that will be allowed. These plans will allow developers to assess the type of development proposals that will be accepted or refused, and provide a basis for transparent decision-making by planning authorities. The integrity of this system is protected by an enforcement system that ensures that all development is within the terms of the planning permission granted by planning authorities.

### Plan-making

#### Each council is responsible for the creation of a Local Development Plan

- 2.2 Under the 2011 Act, each council was made responsible for the preparation of a Local Development Plan (LDP) – a 15 year framework document that would direct and control the scale and type of development that would be undertaken within the council area. The vision and objectives of the LDP should reflect the spatial aspirations of the council's Community Plan. Each LDP should consist of two main documents:
- A **Plan Strategy (PS)** is the first stage of an LDP. It provides the strategic framework for key development decisions that will be made in the council area. The legislation provides that any determination made under the 2011 Act must be made in accordance with the plan, unless material considerations indicate otherwise. In preparing the LDP a council must take account of the Regional Development Strategy (RDS) and any policy or advice such as the Strategic Planning Policy Statement (SPPS).
  - The PS will be supplemented by a **Local Policies Plan (LPP)** setting out local policies and site specific proposals for development, designation and land use zonings to deliver the council's vision, objectives and strategic policies. The LPP is required by the legislation to be consistent with the Plan Strategy.
- 2.3 The process by which each document is prepared is prescribed by legislation. Under the Local Development Plan process, the Department has an oversight and scrutiny role. As part of this, a council is required to submit its LDP document to the Department to ensure that it is satisfactory. The Department will then cause an Independent Examination (IE) to be carried out by an independent examiner, usually the Planning Appeals Commission (PAC). Following the IE, the examiner will issue a non-binding report of its findings to the Department which will in turn consider this and issue a binding direction to a council. A council must incorporate any changes outlined in the direction and subsequently adopt the Plan Strategy.

## Six years into the process, no council has an approved Plan Strategy

- 2.4 The expectation was that all councils would have a fully completed LDP within three and a half years of beginning the process. However, six years later no council has managed to complete an LDP, with most still only having a draft Plan Strategy in place. The most recent projections provided by councils suggest that it will be 2028 before there is an LDP in place in each council area (see **Figure 1**). Some councils currently project that they will complete the LDP process over the next two to three years. However, a number of them are still in the early stages of the process, so these projections may be overly ambitious.
- 2.5 The Department told us that the indicative timeframe of three and a half years sought to provide an estimate for the preparation of a plan under a new, and as yet untested, system. The legislation, however, provides for amended timetables to be submitted and agreed by the Department and this reflects and acknowledges the reality that timetables could be subject to further change.

**Figure 1. It was originally anticipated that all councils would have adopted final Plan Strategies and Local Policy Plans within three and a half years**

INDICATIVE TIMETABLE:



Despite the expectation that all councils would have adopted final Plan Strategies within 2 years, it is currently the case that **no council has been able to complete this process some 6 years later.**

Current expectations are that instead of around 3 and a half years for all councils to complete the entire process it will take until 2024 for at least half of councils to have completed Plan Strategies and Local Policies Plans and 2028 before all councils complete the process.

*Source: Overview of Local Development Plan process summarises approach as outlined within the Strategic Planning Policy Statement for Northern Ireland.*

## Part Two:

### Performance of the planning system

2.6 Our discussions with councils highlighted a number of issues with the LDP process:

- The Department's indicative timetable set for completion was too ambitious, given the scale and complexity of the work required by councils.
- A number of council planning teams did not have staff members with experience of plan development or expertise in the specialist areas required to develop their plan.
- Resource pressures in many councils mean that staff are often removed temporarily from LDP development work to manage short term pressures in application processing.

These issues are all discussed in more detail in **Part Three** of the report.

### The lack of LDPs means planning decisions are not guided by up-to-date plans

2.7 Planning decisions must be made in accordance with the LDP unless material considerations indicate otherwise. In the absence of newly developed LDPs, councils must make planning decisions with reference to the existing local policies that are in place and all other material planning considerations. In some cases, the plans covering particular parts of a council area are over 30 years old, and do not reflect the current needs and priorities of the area.

2.8 The Department told us that in such cases the weight to be afforded to an out-of-date plan is likely to be reduced and greater weight given in decision-making to other material considerations such as the contents of more recent national policies or guidance. The weight to attach to material considerations in such circumstances is however a matter for the decision taker. Some stakeholders told us that older plans were potentially more open to interpretation than newer plans, increasing the risk that decision making is not consistent within or between councils, or that the rationale for the decisions is not clear to the public.

2.9 Where the existing plans do not provide adequate guidance, decision-makers must refer to other material planning considerations such as national policy set out in the Strategic Planning Policy Statement (SPPS) or Planning Policy Statements (PPSs). These PPSs were retained as a temporary measure as part of transitional arrangements to ensure continuity of policy for taking decisions until the adoption by councils of a Plan Strategy for their area. PPSs were initially developed by the former Department of the Environment and set out regional Northern Ireland-wide policy on particular aspects of land use and development. However, we have been told they are complex, disparate and, because they were never intended to be specific to local areas, it can be challenging to make specific local decisions based upon them, although all of this was also the case under the unitary system.



- 2.10 One of the objectives of developing LDPs was to translate this framework of regional policy into a more operational local policy framework tailored to local circumstances and based on local evidence. The Department told us that it prepared the SPPS which consolidates and retains relevant strategic policy within PPSs. In preparing LDPs councils must take account of the SPPS, the Regional Development Strategy and any other guidance issued by the Department. Councils told us that it was only after the introduction of the SPPS in September 2015 that councils became aware of the need to review and incorporate 23 regional policy documents at the draft plan strategy stage. Councils told us this required significant additional time and resources.

### **Despite the lack of progress, councils report having invested significant time and resources on developing plans**

- 2.11 During our engagement with council planning teams, there was a unanimous view that the amount of work required to prepare LDPs had been significantly underestimated by the Department's indicative timeframe of 40 months. The Department told us that this provided an estimate for the preparation of a plan under the new and as yet untested system. Developing a full plan requires each council to follow four key stages set out by the Department:

- initial Plan preparation, including producing a preferred options paper;
- preparation and adoption of plan strategy;
- preparation and adoption of local policies plan; and
- monitoring and review.

During this process councils are required to consult a variety of stakeholders and provide commentary on plans developed by neighbouring councils.

- 2.12 Estimates of the total spend to date incurred on the development of LDPs ranged from £1.7 million to £2.8 million per council – figures that would be equivalent to the total annual cost of delivering planning functions within most councils. Given the scale of the investment required to develop LDPs, it is critical that they are accepted by all stakeholders as providing value.
- 2.13 In our view, there is an opportunity for the Department to review the LDP process, learning from the challenges experienced to date, and consider whether the process is proportionate and will provide value for all stakeholders. Councils told us that the current LDP process is too slow to respond to rapidly evolving issues such as climate change, energy and public health and needs to be more agile to respond to these challenges.

## Part Two:

### Performance of the planning system

#### Recommendation

**We recommend that the Department and councils work in partnership to review the current LDP timetables to ensure they are realistic and achievable, and identify what support councils need to meet them.**

**The Department may wish to consider whether the remaining steps of the LDP process could be further streamlined to ensure plans are in place as soon as possible.**

### Decision-making

#### Almost one-fifth of the most important planning applications aren't processed within three years

- 2.14 Around 12,500 planning applications have been decided or withdrawn each year in Northern Ireland since 2015. These applications are classified according to the scale of the development proposed, and its impact on society. The most important applications, in terms of their ability to enhance the overall wellbeing in Northern Ireland, are 'Regionally Significant' and 'Major' planning applications. Regionally Significant applications are those applications which are considered to have a critical contribution to make to the economic and social success of Northern Ireland as a whole, or a substantial part of the region. These applications are submitted to, and processed by, the Department.
- 2.15 Major developments are those developments which have the potential to be of significance and interest to communities. They are likely to be developments that have important economic, social and environmental implications for a council area. Major developments which are considered Regionally Significant have the potential to make a significant contribution to the economic, societal and environmental success of Northern Ireland. They may also include developments which potentially have significant effects beyond Northern Ireland or involve a substantial departure from a LDP. In certain circumstances the Department may call-in a particular Major planning application, meaning that it assumes responsibility for making a decision on the application. There is a statutory target for councils to process Major development decisions within an average of 30 weeks of a valid application being received. Despite this, the vast majority of Regionally Significant and Major planning applications take significantly longer than 30 weeks to process, and there is a substantial subset of applications that take excessively long to process (see **Figure 2**). We found a similar trend in respect of the ages of outstanding Regionally Significant and Major applications at 31 March 2021. Over half (56 per cent) had been being processed for more than one year, with 19 per cent more than three years old. Factors impacting on the performance of the system are considered further in **Part Five**.

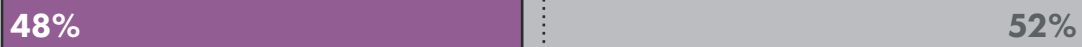
- 2.16 The Department told us that the absence of an Executive and a functioning Assembly has had an impact on its ability to make key changes and decisions. The 2018 Court ruling in *Buick* prevented planning decisions being made by the Department until legislation was enacted which allowed senior civil servants to take certain decisions. With the return of the Executive, the Department told us that the ruling has continued to have impacts on planning. In addition, whilst performance could be improved, poor quality planning applications entering the system and increased requirements under environmental regulations have also impacted the timeliness for processing Major and Regionally Significant applications.

**Figure 2. Just over one quarter of Regionally Significant and Major planning applications processed<sup>1</sup> between 2017-18 and 2019-20 were completed within 30 weeks**

**Proportion of applications processed within 30 weeks**



**Proportion of applications processed within one year**



**Proportion of applications processed in three years or more**



**NOTE**

<sup>1</sup> This illustrates the processing timeliness of 481 Regionally Significant and Major planning applications submitted to the Department and councils that were either decided by the relevant authority or withdrawn by the applicant between 2017-18 and 2019-20.

Source: NIAO analysis of Planning Activity Statistics Open Data tables

- 2.17 Applications that are not classified as Regionally Significant or Major are classified as Local. These are the vast majority of applications decided in a given year – typically 99 per cent. They are submitted to and determined by councils, with a statutory target to be processed within an average of 15 weeks from the date of a valid application.
- 2.18 Whilst councils hadn't achieved this standard in the first two years after powers were transferred, performance has been much stronger over the last three years and the target was achieved for Northern Ireland as a whole in both 2018-19 and 2019-20. Over the three year period 2017-18 to 2019-20, 52 per cent of local applications were processed within the 15 week target (see **Figure 3**). Performance dipped in 2020-21, but this may have been due to Covid-19 disruption.

## Part Two:

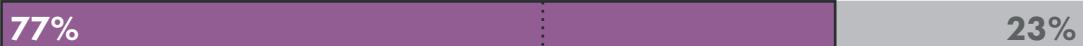
### Performance of the planning system

**Figure 3. Just over half of all Local planning applications processed<sup>1</sup> between 2017-18 and 2019-20 were completed within 15 weeks**

Proportion of applications processed **within 15 weeks**



Proportion of applications processed **within 30 weeks**



Proportion of applications processed in **more than one year**



#### NOTE

<sup>1</sup> This illustrates the processing timeliness of 37,544 Local planning applications that were either decided upon by the Department or councils, or withdrawn by the applicant, between 2017-18 and 2019-20.

Source: NIAO analysis of Planning Activity Statistics Open Data tables

### Whilst comparison of planning performance across the UK is challenging, it appears that the planning system in Northern Ireland is slower than in other jurisdictions

2.19 A direct comparison of performance data between planning systems in different countries is challenging because of the differences in the way different countries measure and report performance. However, the comparisons we were able to make highlighted that the planning system appears to be slower in dealing with Local applications in Northern Ireland than in other jurisdictions. For example:

- In England, over 60 per cent of non-major planning applications were processed within 8 weeks in 2018-19 and 2019-20, compared to less than 30 per cent of local applications in Northern Ireland over the same period.
- In Scotland, the average processing time for local planning applications was 10 weeks during 2018-19 and 2019-20, compared to 18 weeks in Northern Ireland over the same period.
- In Wales, 89 per cent of local planning applications were processed within 8 weeks, compared to 18 per cent in Northern Ireland in the same year.

2.20 The Department told us that there are significant differences in how each planning system works, how performance is measured and the political and administrative contexts in which they operate. It is, therefore, difficult to assess the functionality and performance of the planning

system in Northern Ireland against that of other jurisdictions. All jurisdictions have definitions of types of development that are permitted without the need for a planning application; an appeal system to review decisions on applications; and a system in place to enforce breaches of planning consent. Although the basic structures of the planning system in each jurisdiction are similar there are differences in the detail and in how each system works. For example; in terms of performance; KPIs are measured differently in jurisdictions. In some jurisdictions time extensions can be given to planning applications which in effect 'stops the clock'. This does not occur here. In England in the event minimum standards are not met, a local authority may be designated as underperforming with special measures applied that allow applicants for major development to apply for permission direct from the Planning Inspectorate, bypassing local decision-making. This does not occur here.

## **There is substantial variation in timeliness performance within Northern Ireland**

- 2.21 There is substantial variation in the performance of individual councils in processing applications. As service users must submit planning applications to the council responsible for the area in which the proposed development is located, there may be a risk that this leads to different qualities of service being offered.
- 2.22 However, a number of councils we spoke to highlighted their concerns that straightforward comparisons of processing times were unfair, and did not provide useful insight about relative performance levels. They stressed that differences in the mix of applications that each council receives has a material impact on processing times but is outside the control of councils. Major agricultural and residential development applications were typically highlighted as being particularly complex and requiring significant time to effectively assess. A further issue related to the impact of pre-2015 applications inherited by councils on transfer of functions. The Department told us that legacy cases had reduced significantly after the first two years post-transfer.
- 2.23 However, service users we spoke to stated that whilst they accepted there were factors beyond the control of councils, it was still the case that differences in processing time performance did to some degree reflect differences in process and approach between councils.
- 2.24 As part of our analysis, we applied a number of adjustments to the underlying data in an attempt to make timeliness comparisons between councils fairer<sup>4</sup>. Whilst we agree that there is evidence that major residential and agricultural proposals typically take longer than other types of planning application, we did not find that these were concentrated within certain council areas to the extent they would have a significant impact on median processing times.
- 2.25 Even after the adjustments we applied to the data, we found that there was substantial variation in respect of the time taken to process major applications between councils. For Major planning applications processed between 2017-18 and 2019-20, the median processing time

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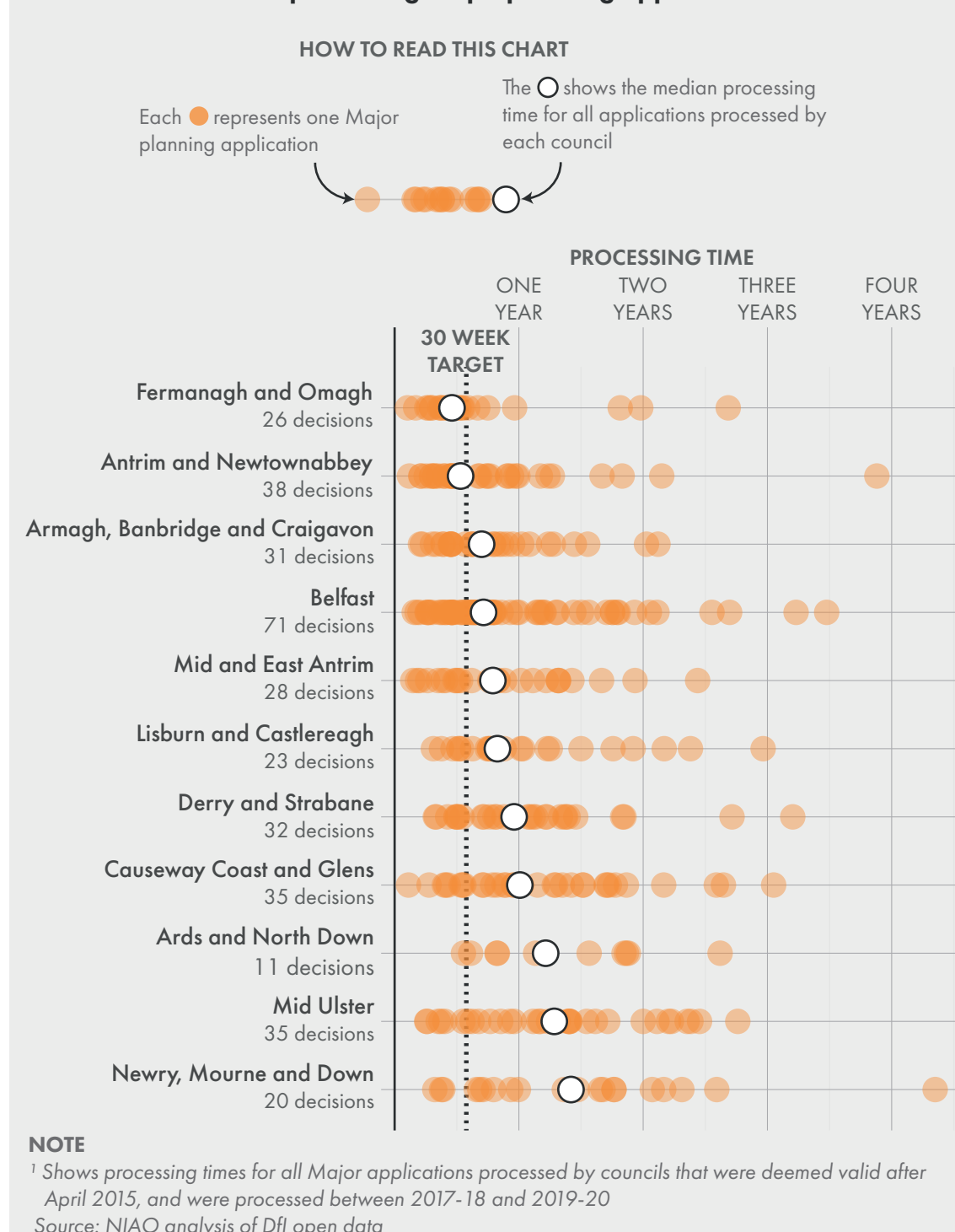
4 Full details of our methodology can be found at Appendix One.

## Part Two:

### Performance of the planning system

for the slowest council is more than three times the median processing time for the fastest council (see **Figure 4**).

**Figure 4. There is substantial variation in the timeliness performance of individual councils in processing Major planning applications**



- 2.26 Whilst the Department regularly reports on the performance of each council, we did not find evidence that this information is used in any meaningful way to improve performance or hold bodies accountable for poor performance. The lack of general buy-in to the current performance monitoring process amongst councils is also concerning and undermines the accountability that such information should provide. This is part of a wider issue in terms of performance measurement and reporting that is discussed in more detail at **paragraphs 4.23 to 4.35**.
- 2.27 The Department told us that it has worked with councils through various groups over the years, such as the Strategic Planning Group, Continuous Improvement Working Group and Planning Forum in order to improve performance.

#### **Recommendation**

**We recommend that the Department and councils continue to put an enhanced focus on improving the performance of the most important planning applications. This should include a fundamental analysis of the factors contributing to delays.**

### **There is significant variation in how enforcement cases are resolved**

- 2.28 Enforcement is the means by which planning authorities ensure that the development that occurs is in line with policies and within the terms of the planning application approved in respect of the project. Effective enforcement is critical for both ensuring that the planning system is able to control development, and that the credibility and integrity of the system are not undermined by unauthorised development.
- 2.29 Responsibility for undertaking enforcement activity rests primarily with councils. Each council is responsible for undertaking enforcement activity in its area, and there is a statutory target that 70 per cent of enforcement cases are taken to target conclusion within 39 weeks of the initial receipt of a complaint.
- 2.30 Despite a substantial increase in the volume of enforcement cases being opened, performance against the statutory target by councils has been good. The volume of cases increased by almost 50 per cent between 2015-16 and 2019-20 – from 2,900 to 4,300. Over this period, most councils have been able to meet the target in each year, with only a small number failing in a single year and one council consistently unable to meet the target.
- 2.31 However, during our engagement with council planning teams, a number told us that staffing resources were often diverted from enforcement to meet short-term pressures in processing planning applications or progressing LDPs. We also note that the Royal Town Planning Institute (RTPI) has referred to concerns about the severe underfunding of planning enforcement departments, and the potential for this to contribute to an inability to investigate all the cases that should be investigated or a lack of rigour in those investigations that do occur.

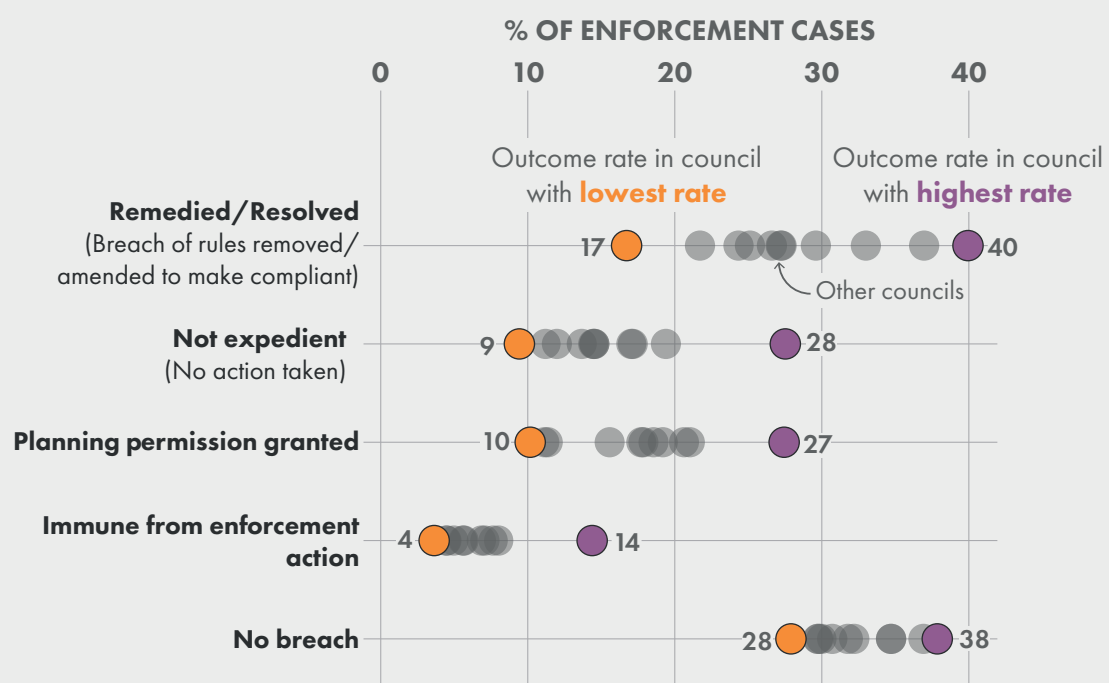
## Part Two:

### Performance of the planning system

- 2.32 As part of our analysis, we reviewed trends in enforcement case outcomes, and found substantial variation in respect of outcome types across councils. In some cases, a particular outcome type could be around three times more common in one council than another (see **Figure 5**). For example, in one council, around one in four enforcement cases (28 per cent) were deemed not expedient to pursue, compared to a rate of 9 per cent in another council.

**Figure 5. There is substantial variation in the outcome of enforcement cases dealt with by council planning teams**

OUTCOME OF ALL ENFORCEMENT CASES 2015-16 TO 2019-20



Source: NIAO analysis of Department for Infrastructure Planning Activity Statistics

- 2.33 Given this context, there is a risk that significant variations in outcome types may indicate that certain outcomes are prioritised for their operational efficiency rather than being the most appropriate outcome. This risk seems relevant to the significant differences in the proportion of enforcement cases where councils have deemed it not expedient to take further action, have granted planning permission or where it is determined the issue has been remedied or resolved, (i.e. the breach of planning rules has been removed or amended to make compliant with rules). This may result in uneven enforcement of planning rules, meaning unauthorised development may be allowed to occur.
- 2.34 Councils told us that the enforcement system in Northern Ireland is a discretionary power of the planning authority, and what may be considered as not expedient in one council, possibly due



to the volume of work or lack of resource, may be pursued by another council. Actions taken are also often based on case law, PAC decisions and likelihood of success.

- 2.35 We did not find evidence of any substantive review of these trends to determine whether the significant variations that were evident were reasonable or natural. In our view, there is a risk of inconsistency in enforcement which may have a negative impact on how fairly the system is operating.

**Recommendation**

**To ensure credibility within the system, we recommend that the Department and councils investigate differences in enforcement case outcomes, to ensure cases are being processed consistently across Northern Ireland.**



## Part Three:

Variance in decision-making processes

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## Part Three:

### Variance in decision-making processes

- 3.1 Councils are responsible for processing the vast majority of planning applications submitted in Northern Ireland. While decision-making responsibilities within each council are split between the planning committee – a body made up of between 12 and 16 elected representatives – and professional planning officials employed by the council, it is ultimately the council who is responsible for the planning function.

#### **Delegation arrangements are an essential part of an effective development management process**

- 3.2 Given that councillors are not typically professional planners, the sharing of decision-making roles and responsibilities between planning committee members and officials can make a critical contribution to the efficiency and effectiveness of decision-making processes within an individual council.
- 3.3 There are a small number of application types that must be decided by the planning committee in all councils:
- all Major planning applications;
  - applications made by the council or an elected member; and
  - applications that relate to land in which the council has an estate.
- 3.4 For all other Local application types, each council must operate a Scheme of Delegation. A Scheme delegates planning decision making authority from a planning committee to planning officials in a council for chosen classes of local development applications and any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a local development. These aspects of a Scheme are subject to the approval of the Department. However, there are many other types of applications that are not local developments that can form part of a Scheme which are not subject to the Department's approval such as listed building consent, conservation area consent applications and tree preservation orders.
- 3.5 Whilst councils have been granted some flexibility in tailoring their specific arrangements to best meet local needs, Schemes of Delegation should ensure that decisions are taken at an appropriate level – only the most significant or controversial applications should be considered by committee. Furthermore, councils should ensure that their delegation processes are clear, transparent and efficient. The Department also intended that, despite local variation, there is at least some degree of consistency, to ensure that applicants across Northern Ireland are not confronted by a variety of different processes across different council areas.

## Not all Schemes of Delegation ensure that decisions are taken at an appropriate level

- 3.6 Departmental guidance, published in 2015, recommended that over time councils should aim to have between 90 and 95 per cent of applications dealt with under a scheme of delegation, however this is not a statutory target<sup>5</sup>. At the time we carried out our fieldwork, data was available showing delegation rates for each council for the 2018-19 and 2019-20 years. During these two years, the overall delegation rate across all councils was 91 per cent. In eight councils, delegation rates fell within the 90 to 95 per cent range in both years, but in three councils, rates fell below the range in both years<sup>6</sup>.
- 3.7 The Scheme of Delegation in all three councils which fell below the target range required all applications refused by officials to be referred to the planning committee, regardless of nature or scale. This inevitably resulted in a higher proportion of applications being considered at committee level.
- 3.8 It is not clear that limiting delegation in this way contributes to better quality decision-making. Departmental guidance is clear that regardless of local arrangements, and allowing for individual applications to be referred to committee upon the request of planning committee members, councils should ensure that applications are not unnecessarily referred to the planning committee, as this will contribute to inefficiency and delay. Councils told us that whilst they acknowledge that this may impact timeliness, it is the prerogative of committee members to use this mechanism.
- 3.9 The current processes in the councils referred to in **paragraph 3.7** appear contrary to Departmental guidance and the policy objectives that committees should invest their time and energy only in the most significant or controversial applications. Such processes are likely to contribute to additional costs within these council areas. A benchmarking exercise carried out in England in 2012 highlighted that there are significantly higher administrative demands and costs associated with applications heard by committee as opposed to those decided by officials<sup>7</sup>.

### Recommendation

**We recommend that in instances where delegation rates fall below 90 per cent, councils should review their processes to ensure that they represent the best use of council resources.**

5 *Best practice protocol for the operation of planning committees*, Department of the Environment, January 2015.

6 Antrim and Newtownabbey, Mid Ulster and Derry and Strabane.

7 *Benchmarking of planning services in 65 England local authorities*, PAS/CIPFA, November 2012.

## Part Three:

### Variance in decision-making processes

#### The type of applications being considered by committees are not always appropriate

- 3.10 Our analysis of available data and information from stakeholders suggests that there are widespread concerns that the specific applications coming to committee, either under the normal Scheme of Delegation arrangements or by referral, are not always the most significant and complex applications. In particular, some council planning committees appear to be excessively involved in decisions around the development of new single homes in the countryside.
- 3.11 We analysed planning applications processed in 2018-19 and 2019-20. During this period, across Northern Ireland, planning applications for single rural dwellings accounted for around 16 per cent of all applications processed. Despite often being relatively straightforward applications, they accounted for 18 per cent of all planning committee decisions in the same period. Within these overall figures, there are wide divergences at council level (see **Figure 6**).

**Figure 6. There appears to be a wide range of approaches adopted by councils to process applications for new single homes in the country**

COUNCIL	NEW SINGLE RURAL DWELLINGS AS % OF...		DIFFERENCE
	ALL DECISIONS	COMMITTEE DECISIONS	
Fermanagh and Omagh	16	29	+13
Lisburn and Castlereagh	17	27	+10
Newry, Mourne and Down	20	27	+7
Antrim and Newtownabbey	16	19	+3
Causeway Coast and Glens	15	18	+3
Mid Ulster	31	31	-
Belfast	1	0	-1
Derry and Strabane	13	10	-3
Ards and North Down	9	5	-4
Armagh, Banbridge and Craigavon	21	11	-10
Mid and East Antrim	15	1	-14

Source: NIAO analysis of Planning Activity Statistics Open Data tables and Department for Infrastructure management information

- 3.12 Given that planning applications for single rural dwellings are rarely the most complex, we would expect them to account for a lower proportion of committee decisions than of overall decisions. This is not always the case, highlighting a disproportionate use of committee time and focus on these applications.
- 3.13 In August 2021, the Department issued a 'Planning Advice Note' (PAN) on development in the countryside to local councils. The Department told us that the purpose of this PAN was to re-emphasise fundamental aspects of existing strategic planning policy on development in the countryside, as contained in the SPPS; and, clarify certain extant provisions of it. The Department told us that it is clear that the PAN did not add to or change existing planning policy. Councils told us that they were confident the PAN did introduce new policy.
- 3.14 Following concerns from councils and other stakeholders, the Department advised that "rather than bringing certainty and clarity, as was its intention, the PAN...seems to have created confusion and uncertainty" and this guidance was withdrawn. The Department has advised that it will now take stock of the concerns raised and undertake further engagement and analysis on strategic planning policy on development in the countryside which will include consideration of current and emerging issues, such as climate change legislation and our green recovery from this pandemic.

### **One in eight decisions made by planning committees in Northern Ireland goes against the recommendation of planning officials**












- 3.15 Departmental guidance for planning committees makes it clear that committees are not always expected to agree with decisions recommended by planning officials. Divergences of opinion between committees and officials are to be expected where planning issues are finely balanced, and a committee may place a different interpretation on, or give a different weight to, particular arguments or planning considerations. However, decisions against officer recommendations must always be supported by clear planning reasons.
- 3.16 Our review of data covering 2018-19 and 2019-20 shows that just under one in eight applications decided by committee was made contrary to official advice. Whilst the rate varies between councils, in the council with the highest rate, almost one in three decisions taken by the planning committee overturned the recommendation of professional planners (see **Figure 7**).

## Part Three:

### Variance in decision-making processes

**Figure 7. There are significant differences in the rates of council planning committees making decisions contrary to official advice**

Total number of decisions made by planning committee and number of decisions made against official's recommendation (2018-19 and 2019-20)

COUNCIL	TOTAL DECISIONS	AGAINST OFFICIALS ADVICE	OVERTURN RATE (%)
Fermanagh and Omagh	147	45	<b>31</b> 
Newry, Mourne and Down	260	65	<b>25</b> 
Causeway Coast and Glens	183	42	<b>23</b> 
Derry and Strabane	222	37	<b>17</b> 
Lisburn and Castlereagh	143	15	<b>10</b> 
Antrim and Newtownabbey	188	17	<b>9</b> 
Armagh, Banbridge and Craigavon	101	7	<b>7</b> 
Mid and East Antrim	78	5	<b>6</b> 
Ards and North Down	120	5	<b>4</b> 
Belfast	257	6	<b>2</b> 
Mid Ulster	445	8	<b>2</b> 

Source: NIAO analysis of Department for Infrastructure management information

- 3.17 In the two year period, planning committees overturned 252 decisions recommended by officials. Of these 228, (90 per cent) were cases where the committee granted planning permission against official advice, thus favouring the applicant and unlikely to be challenged.
- 3.18 Almost 40 per cent of the decisions made against officer advice related to single houses in the countryside. In all of these instances, the officer recommendation to refuse planning permission was overturned and approved by planning committee, contrary to advice.
- 3.19 In Northern Ireland, if a planning committee refuses a planning application, then the applicant has a right of appeal. In cases where the planning committee grants an application contrary to official advice, there is no third party right of appeal. The variance in overturn rate across councils, the scale of the overturn rate and the fact that 90 per cent of these overturns were approvals which are unlikely to be challenged, raises considerable risks for the system. These include regional planning policy not being adhered to, a risk of irregularity and possible fraudulent activity. We have concerns that this is an area which has limited transparency.



- 3.20 In making planning decisions it is recognised that planning committees can come to a different decision than its planning officers, however, in doing so they are required to maintain adequate, coherent and intelligible reasons for decisions made. The Department told us that it has previously written through its Chief Planner's letters to highlight this to councils.

### Recommendation

**We consider that some of the overturn rates are so high, that they require immediate action both from councils and the Department to ensure that the system is operating fairly and appropriately.**

## Decision-making processes are not always transparent

- 3.21 Given the flexibilities that are allowed under current arrangements, and the potential inconsistencies that can arise, it is critical that the process is as transparent as possible. A recent survey by Queen's University found that the public has low levels of trust in the planning system, and there is a perception that it is not transparent.<sup>8</sup> This survey, for example, noted that only three per cent of citizens felt their views on planning are always or generally considered.
- 3.22 We found similar concerns in two main areas: in respect of the process by which applications are referred to the committee by elected members, and in respect of those occasions where planning committees make decisions that are contrary to the advice provided by officials.
- 3.23 A variety of mechanisms is in place to document referrals to planning committees, such as assessment panels or dedicated email addresses. However, not all councils have such mechanisms, they are not available to the public and they do not effectively support greater transparency.
- 3.24 As part of our fieldwork we reviewed a sample of planning committee minutes. These did not provide a rationale for particular applications being referred to the committee. Some minutes did not distinguish between applications that were being considered under regular Scheme of Delegation operation, and those being considered as a result of a referral.
- 3.25 The lack of transparency around the overruling of officials' advice by committees was a key issue identified within the research carried out by Queen's University. Our review of planning committee minutes showed that reasons for deciding contrary to the recommendation made by officials were not consistently recorded, and minutes often did not contain explicit reference to the applicable planning policy. It was therefore difficult to understand the policy issues underlying the disagreement and committee's decision. We found no evidence that there was any system in place to monitor such decisions, and ensure that the decisions being made were compliant with overall planning policy.

8 This survey was based on 1,050 responses, 444 of which were from Northern Ireland.

## Part Three:

### Variance in decision-making processes

#### Recommendation

**There is a need for full transparency around decision-making. We recommend that planning committees should ensure that minutes of meetings include details of the applications that are brought to committee as a result of a referral, who brought it to committee and outline the planning reasons why the application has been referred.**

**We recommend that where a planning committee makes a decision contrary to planning officials' advice, the official minutes of the meeting should contain details of the planning considerations that have driven the decision.**

### Planning committees do not regularly assess the outcomes of their previous decisions

- 3.26 The Department's guidance for planning committees indicates that they should undertake an annual monitoring exercise to review the impact of planning decisions they have made in the past. It suggests that a committee could inspect a sample of previously determined applications to allow them to reflect on the real-world outcomes. This would enable committees to highlight good and bad decision-making and inform future decisions. We did not find any evidence of a formal review of decisions at any council we spoke to. In our view, this is an important aspect of the quality assurance process which is being overlooked.

#### Recommendation

**Planning committees should ensure that they regularly review a sample of their previously determined applications, to allow them to understand the real-world outcomes, impacts and quality of the completed project. Councils should ensure that they review a range of applications, to ensure that it is not only focused on those applications that tell a good news story about how the system is working. Lessons learned from this process should be shared across all councils.**

### Training for planning committee members is inconsistent

- 3.27 Councillors who sit on planning committees have a demanding role. Planning can be a complex policy area, and planning committee members are elected officials who have decision-making powers over planning matters, rather than experts in planning policy and legislation. Consistent and ongoing training on planning matters is therefore an essential feature of a well-functioning planning committee. Whilst the exact level of training necessary can vary, a report by the Royal Town Planners Institute (RTPI) in Wales<sup>9</sup> suggested a minimum level of continuing professional development for all committee members of 10 hours per year.

- 3.28 From September 2014 to January 2015, the then Department of the Environment held capacity building and training events for elected representatives in preparation for the transfer of planning functions to the councils. This included a full day session on propriety, ethics and outcomes. Whilst there was a focus on providing core training when planning functions transferred in 2015, subsequent training requirements for planning committee members have varied from council to council, and appear to have been completed on a more ad hoc basis. Whilst most councils have mandatory induction training and training for committee Chairs, ongoing training is not always compulsory for elected members. The Department has liaised with the Northern Ireland Local Government Association since 2015 to assist in their development of training programmes for elected members.
- 3.29 In our view, there is the potential to centralise training for committee members, which would also reduce the administrative burden on planning services which are already under resourced and struggling with workload. This would also ensure that those making decisions have all had the same training, making the process fairer for people submitting planning applications.

#### **Recommendation**

**Councils should consider the introduction of compulsory training for members of planning committees, including procedures where training requirements have not been met.**

**The Department should ensure that training provided to planning committee members is consistent across all councils and sufficient to allow elected members to fulfil their duties.**



## Part Four:

### Departmental oversight

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## Part Four:

### Departmental oversight

- 4.1 The Department has a number of responsibilities in relation to planning. These include:
- oversight of the planning system in Northern Ireland;
  - preparing planning policy and legislation;
  - monitoring and reporting on the performance of councils' delivery of planning functions; and
  - making planning decisions in respect of a small number of Regionally Significant and called-in applications.

### **Regionally Significant applications are the most complex applications and often take years to decide on**

- 4.2 Regionally Significant development applications are those considered to have the potential to make a critical contribution to the economic and social success of Northern Ireland as a whole, or a substantial part of the region. They may have significant effects beyond Northern Ireland, or involve a substantial departure from a Local Development Plan.
- 4.3 These applications are submitted to, and processed by, the Department. There are typically very few of these applications decided in a given year, with only seven processed between 2016-17 and 2020-21. Whilst there is no statutory processing time target, there is a Departmental target to process regionally significant planning applications from date valid to a Ministerial recommendation or withdrawal within an average of 30 weeks. Only one of the seven applications processed between 2016-17 and 2020-21 was decided within 30 weeks, with four taking more than three years to process. Of the three Regionally Significant applications pending at 31 March 2021, two had been in the system for more than three years. Given the economic significance of these projects, any delay is likely to have a negative impact on potential investment.
- 4.4 The Department told us that the absence of the Assembly from January 2017 to January 2020 impacted on its ability to take planning decisions and in particular, the 2018 Court ruling in *Buick* prevented planning decisions being made by the Department until legislation was enacted which allowed senior civil servants to take certain decisions. With the return of the Executive, the ruling has continued to have impacts on planning. In addition, whilst performance can be improved, poor quality planning applications entering the system and increased requirements under environmental regulations have also impacted the timeliness for processing major and regionally significant applications.
- 4.5 The Department is also responsible for determining a number of Major and Local applications each year. These also typically take a long time to process. Of the 28 Major applications

processed by the Department between 2016-17 and 2020-21 only three were processed within 30 weeks, and 19 took more than three years. Of the twenty live Major applications being determined at 31 March 2021, 18 were more than one year old with nine of those being more than three years old.

- 4.6 Of the 29 Local applications processed by the Department between 2016-17 and 2020-21, 17 took longer than 30 weeks – twice the 15 week target – and 14 of those took more than one year to process. All of the ten Local applications being processed by the Department at 31 March 2021 were more than one year old.

### **The Department is currently undertaking a review of the implementation of the Planning Act**

- 4.7 The Planning Act contains a provision that requires the Department to review and report on the implementation of the Act. The review will:
- consider the objectives intended to be achieved by the Planning Act;
  - assess the extent to which those objectives have been achieved; and
  - assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.
- 4.8 The review will also provide an opportunity to consider any improvements or ‘fixes’ which may be required to the way in which the Planning Act was commenced and implemented in subordinate legislation.
- 4.9 The Department has stated that the review is not envisaged as a fundamental root and branch review of the overall two-tier planning system or the principles behind the provisions as, in its view, it is still relatively early days in the delivery of the new system. In our view, this is an important opportunity to make improvements across the whole system.

### **The Department should provide leadership for the planning system**

- 4.10 Our review has identified significant silo working in the planning system. We have seen a number of instances where individual bodies – either councils, the Department or consultees – have prioritised their own role, budgets or resources rather than the successful delivery of the planning service. The Department told us that these and other diseconomies of scale caused by decentralising the planning system were recognised at the time of transfer but were considered to be offset by the advantages of bringing local planning functions closer to local politicians and communities.

## Part Four:

### Departmental oversight

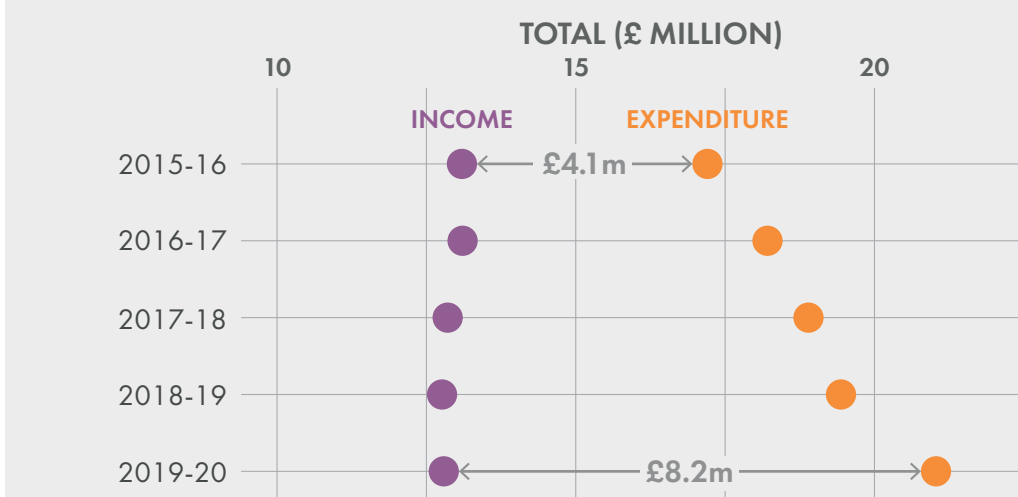
- 4.11 Each organisation is accountable for its own performance, and whilst the Department monitors the performance of individual organisations against statutory targets, there is little accountability for the overall performance of the planning system. Whilst individual organisations within the system stressed the challenges they faced; ultimately the frustration from service users was the poor performance of the system, not issues in individual bodies.
- 4.12 In our view, the 'planning system' in Northern Ireland is not currently operating as a single, joined-up system. Rather, there is a series of organisations that do not interact well, and therefore often aren't delivering an effective service. This has the potential to create economic damage to Northern Ireland. Ultimately, as it currently operates, the system isn't delivering for customers, communities or the environment.
- 4.13 In our view, this silo mentality presents both a cultural and a practical challenge. The focus for all of those involved in the system must be the successful delivery of planning functions in Northern Ireland, not the impact on their own organisations. This will require significant leadership of the system – in our view the Department is well placed to provide this leadership. However, it is crucial that all statutory bodies involved in the planning system play their part in this and fully commit to a shared and collaborative approach going forward.
- 4.14 The Department has made initial steps, but more will have to be done. Leadership of the system must encompass a number of areas:
- the long term sustainability of the system;
  - ensuring those involved have access to the necessary skills and experience;
  - enhancing transparency and ethical standards;
  - encouraging positive performance across the system; and
  - the promotion of the value and importance of planning across government as a whole.
- 4.15 The Department told us that it has committed significant energy and resources to leading and fostering a collaborative and shared approach to improving the planning system here. Since March 2015 the Department has led and interacted with councils and other stakeholders across a wide range of meetings, such as the Strategic Planning Group, the Planning Forum, the Environmental Working Group, the Continuous Planning Improvement working group, and the Development Management Working group. However, the Department told us that it is committed to ensuring transparency and ethical standards, but that lead responsibility for these lies with both the councils and the Department for Communities, through the Code of Conduct for Councillors.



## The planning system is increasingly financially unsustainable

- 4.16 When planning responsibilities transferred to councils, it was on the basis that the delivery of services should be cost neutral to local ratepayers at the point of transfer. However, as was the case in the years preceding transfer, the income generated from planning does not cover the full cost of service delivery. This has meant that historically there has been a need to supplement income with other public funding to deliver planning services. Our review of financial information provided by councils has shown that the overall gap between the income generated from planning activities by councils and the cost of those activities increased significantly between 2015-16 and 2019-20 (see **Figure 8**).

**Figure 8. The gap between the cost of delivering planning services and the income generated from them has increased significantly since 2015-16**



**NOTE**

Based upon financial information provided by nine councils

All figures restated in real terms using HMT GDP Deflators at market prices and money GDP, September 2021

Source: NIAO analysis of financial information provided by council planning teams.

- 4.17 It was intended that the gap between income and expenditure at individual council level would be met by a grant paid by central government to councils. This grant was intended to provide funding for a number of service areas, of which planning is one. Whilst there have been requests from councils for the Department for Communities to review the level of funding, no review has been undertaken.
- 4.18 In our view, the Department appears to have given little consideration to the long-term sustainability of the planning system, despite the increasing gap between income and expenditure. The Department told us that it is responsible for setting planning fees (once agreed by the Minister), but not for the long-term funding of councils.

## Part Four:

### Departmental oversight

#### Planning fees have not contributed to the financial sustainability of the system

- 4.19 Planning decisions increasingly are more complex and require more interaction with those who have specialist knowledge or skills. This requires more work for many applications. In contrast to these increasing demands, planning fees, the main source of income for the planning system, have not been adjusted year on year to keep pace with inflation and the increasing complexity being asked of decision-makers. The result is that less income is being generated in real terms year on year, despite increasing amounts of work being undertaken by planning teams.
- 4.20 The fees that councils charge for planning applications were initially set in 2015, with individual rates set for different types of development application. Since then, these have been increased on one occasion. Changes to planning fees require legislation to be brought through the Assembly. The absence of a functioning Assembly and Minister placed constraints on the Department's ability to bring forward fee increases. However the Department told us that it was able to raise fees once (by around 2 per cent, in line with inflation in 2019) following the enactment of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, which allowed the Department to take certain decisions normally reserved to the Minister. The Department told us that further increases have been placed on hold due to the pandemic. Fees are currently around 12 per cent lower than they would be had the prices set in 2015-16 been increased in line with inflation each year<sup>10</sup>. This is unsustainable in the longer term.
- 4.21 During our discussions with stakeholders, we were told on a number of occasions that small increases in fees were unlikely to have a significant impact on the number of development proposals being made. Typically, the planning fee cost is a very small element of the total cost of a development, and a small increase is not likely to be material to the overall financial appraisal underlying a proposal. However, developers we spoke to asserted that if fees were to increase, they would expect service levels to improve.
- 4.22 A number of councils also told us that due to the increasing complexity of cases, many fees no longer reflect the costs incurred. Whilst determining the true costs of providing planning services will be challenging, fees that more accurately reflect the true cost will ultimately ensure a more sustainable system. The Department recognises that this is ultimately a policy decision for the Minister.

#### Recommendation

**We recommend that the Department and councils work in partnership to ensure that the planning system is financially sustainable in the longer term.**

10 Calculated using GDP deflators at market prices and money GDP September 2021, HMT.

## The way performance is monitored and measured does not provide a comprehensive overview of performance

- 4.23 The Department has taken a number of steps in oversight of the performance of the system. Its ability to perform this function is dependent upon adequate performance measurement and reporting arrangements. Ensuring that these are in place is a key tool in maintaining accountability for performance within the system – between the various organisations spanning local and central government involved in delivering the system – and wider accountability to the Assembly and public for overall performance of the system as whole.
- 4.24 There have been efforts to improve the quality of performance information that is available about the planning system. Since 2018-19, the Department has supplemented its reporting on performance against the three time-based targets with a set of measures reporting various trends in council decision-making processes – the Planning Monitoring Framework. This represented an effort by the Department and councils to develop a more comprehensive approach to reporting on planning system performance than that provided by measuring performance against the statutory time-based targets. However, not all proposed indicators were agreed by councils at the time.
- 4.25 The Department has also been gathering, reporting and more recently publishing in more detail the performance of statutory consultees. This is a welcome development, given the critical role that statutory consultees play within the process and the performance issues within this part of the planning system.
- 4.26 However, in our view more work is required to establish an effective system of performance measurement and reporting which goes beyond volume of activities, proportions and timeliness. Oversight requires measures that are accepted by all stakeholders as providing meaningful information about performance and identifying issues that need to be addressed. Being able to compare performance between councils and consultees, over time, and against established standards or targets, is what makes information meaningful and can drive accountability and action.
- 4.27 One of the key deficiencies is the lack of information about the input cost of the various activities being undertaken and reported on. Such information is critical for understanding the full cost of the planning system, measuring the efficiency of the system, identifying areas where there may be inefficiency, and for developing an appreciation of the financial pressures that planning authorities face and the impact these have on performance.

## Part Four:

### Departmental oversight

#### **Performance management information has not been used to drive improvement**

- 4.28 The Department told us that since 2019 it has been working with statutory consultees and local government through the Planning Forum to improve performance of the planning system. This work is particularly focused on improving the performance of major planning applications. Prior to that the Department established and led the Continuous Improvement Working Group. We have not seen any evidence of self-review within councils or learning from experience, for example, reviewing the results of past decisions made in terms of built development, job creation or contribution to the local economy.
- 4.29 In the short term, it is important that the Department and other organisations put appropriate measurement and reporting systems in place. Over the medium and longer term, they must consider how performance measurement can provide the basis for improving performance and delivering quality outcomes.

#### **Performance monitoring is currently more concerned with the speed and number of applications processed, than the quality of development delivered**

- 4.30 Since 2016, the Executive has been committed to delivering an outcomes-based Programme for Government across the public sector, placing wellbeing at the core of public policy and decision-making. Organisations are required to ask themselves three key questions: "How much did we do?", "How well did we do it?", and "Is anyone better off?"
- 4.31 Despite the Executive's commitment to outcomes-based accountability, performance measurement within the planning system is predominantly concerned with the speed and quantity of decisions, rather than quality of outcomes. Whilst the Department sought to introduce more qualitative indicators through the Planning Monitoring Framework, there is no publically available information demonstrating how planning decisions have translated into built development, improved or enhanced the built or natural environment, benefitted communities or contributed to the economy.
- 4.32 The lack of outcomes-based accountability measures within the planning system has a number of potential consequences:
- Broader, long-term impacts are not routinely captured and demonstrated, and so the value of the planning system is underestimated.
  - The cumulative effect of planning on communities, towns and regions is not being measured.
  - Negative outcomes which may have a subsequent impact on the public purse, for example poorer health outcomes leading to higher healthcare costs, crime, and unemployment, are allowed to continue unchecked.

A more holistic approach, which considers the long-term impact of planning decisions, is required. We acknowledge this will be challenging and will require collaboration and effective partnership working across all of government.

## Guidance from professional planning bodies highlights the importance of measuring outcomes

- 4.33 The Royal Town Planning Institute (RTPI) conducted research in 2020<sup>11</sup> on measuring the outcomes of planning. Their research identified the need to go beyond simple metrics such as the speed of processing applications and number of housing units delivered, and towards assessing planning in terms of place-making aspirations and social, economic and environmental value, in order to track and improve the impact of planning. The research team developed a series of toolkits which it suggested could be adapted by local planning authorities across the UK and Ireland to improve their outcomes measurement.
- 4.34 Whilst the RTPI research discussed the potential of planning as a facilitator of health, social, economic and environmental outcomes by providing open spaces, active travel routes and quality housing, it also recognised the difficulties of attributing specific outcomes to any one public sector organisation.
- 4.35 As part of our review, we examined planning monitoring and performance frameworks in other jurisdictions. We note that both Wales and Scotland have made initial steps in producing a more holistic set of indicators which include some assessment of outcomes. The Department also sought in 2016-17 to work with councils to introduce a more holistic suite of indicators, but this was not agreed by all councils at that time. Whilst we accept that attributing outcomes to specific organisations or decisions is difficult, it will be an important step in demonstrating the planning system's importance to Northern Ireland.

### Recommendation

**The Department has a key role to play in the improvement of the planning system in Northern Ireland. We are concerned that the Department has been too slow to respond to the challenges facing the planning system and to provide leadership and support for the system as a whole. In our view, all those involved in the planning system need to act now to engender trust.**

11 *Measuring What Matters: Planning Outcomes Research*, Royal Town Planning Institute, November 2020.



## Part Five:

### Issues affecting performance

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## Part Five:

### Issues affecting performance

- 5.1 The delivery of the planning system in Northern Ireland involves a large number of organisations. Whilst councils are the decision-makers for the majority of planning applications, their ability to do so is affected by a number of issues, some of which are outside of their direct control, which can have a significant impact upon how effectively the overall planning system performs for service users.

#### **Many councils have increased staff numbers to manage demand, contributing to increased costs**

- 5.2 The transfer of planning responsibilities from central to local government meant that planning officials were also transferred from central to local government. This transfer process assessed how many staff would need to remain within the Department to deliver its retained functions and how many posts would be required in each council planning team to manage their projected workloads.
- 5.3 As discussed at **paragraph 2.4**, councils are unanimous that there was a significant underestimation of the level of resources and staff time that would be required to complete Local Development Plans. We have noted above how councils have often found it necessary to cut back work on LDPs and enforcement, and move staff to other areas where short-term pressures have emerged.
- 5.4 The staffing pressures many councils have experienced have led to a significant increase in the total number of planning officials working within councils. The total number of full-time equivalents (FTEs) employed across all councils has increased by 20 per cent since the transfer of functions (from 331 to 407 FTEs). Given that salary costs are the main expense within the system, this has been a key driver of increased expenditure levels across the planning system since 2015-16.

#### **There are skill shortages within some council planning teams**

- 5.5 When the planning function transferred to local government in 2015, it was expected that each council would be capable of delivering on all of its responsibilities. However, we understand that both councils' and the Department's planning teams have often lacked particular skills in specialist areas. A number of stakeholders have told us that they are concerned about specific skills gaps across the system.
- 5.6 The transfer of planning staff and responsibilities in 2015 coincided with the Voluntary Exit Scheme which saw many experienced staff leave the system. The allocation of remaining staff to councils was done on the basis of personal preference, not according to the skills of staff and likely development profile that new councils would have.



- 5.7 The skills gaps experienced by councils have had an impact on the processing of certain types of complex development applications, and have also impacted the development of LDPs. We have been told that under previous arrangements, the Department was able to maintain specialist teams who could manage particular types of application that proved to be highly complex and challenging – for example, applications related to large retail developments or mineral extraction. The ability to establish such specialist teams is not feasible for individual councils, despite their need to access these skills.

### **Attempts at shared services have been constrained by a lack of funding**

- 5.8 To date, only one shared service has been established to address a specific skills gap. The Shared Environmental Service (SES) is a shared service between all 11 councils, set up in 2015 to support councils in carrying out Habitats Regulations Assessments required for certain planning applications. The service is hosted by Mid and East Antrim Borough Council, and was initially staffed from the Northern Ireland Environment Agency (NIEA) and funded by the Department for Communities (DfC). SES does not have decision-making powers, but rather provides support and guidance to councils on specific environmental assessments. SES is not a statutory consultee.
- 5.9 In recent years, SES has experienced significant resourcing challenges, which have had an impact on its ability to provide timely support to councils. Initially, staff were allocated to SES on the basis of a caseload of 750 consultations per year. By 2020, around 2,000 consultations per year were being received.<sup>12</sup> As a result, SES did not have sufficient resources to meet this threefold increase in demand, and backlogs began to build. SES requested an increase in the grant from DfC, however this was rejected. It then approached the Department with a case for more funding; this was also turned down. The Department told us that in line with normal shared service models, an increase in funding was a matter for those that used the service, in this case councils. Finally, SES appealed directly to each council, asking for an additional £8,500 per year for two years, which was approved. This has allowed SES to employ two additional temporary members of staff and increase their capacity.
- 5.10 However, as the additional funding is time limited, it is unclear what the long-term solution to SES's resourcing issues is. As councils' demand for SES's services has increased, more funding has been required. This is an additional financial burden on already over stretched councils, who were told that planning functions would be cost neutral at the point of transfer.

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12 SES evidence to Committee for Agriculture, Environment and Rural Affairs, 22 April 2021.

## Part Five:

### Issues affecting performance

#### Recommendation

**We recommend that the Department should coordinate an assessment of the key skills and experience gaps across the planning system.**

**Where a common skills gap across multiple councils is identified, a plan should be developed to ensure that all councils have access to the skills they need to operate effectively. This plan should include assessments of different provision options.**

### The system does not always allow for the efficient delivery of services

- 5.11 During our audit work, we encountered a strong consensus that the way that the planning application process is set up does not support efficient processing. In particular, stakeholders consistently spoke about the “low bar” set for the information required to make a legally valid planning application in Northern Ireland.
- 5.12 There is a view that the criteria set out in the 2011 Planning Act are too narrowly prescribed and do not require that key supporting documentation – such as flood risk assessments, environmental statements and transport assessments, are provided with applications. This means that incomplete applications must be accepted – and the clock starts ticking in respect of the statutory processing time target, despite the fact that councils do not receive all the information they need to begin determining the application. The Department told us that it recognises this issue and has already commenced work to address this through the Review of the implementation of the Planning Act (NI) 2011 and the Planning Forum.
- 5.13 This contributes to inefficiency and poor processing times in a number of ways:
- Statutory consultees told us that they are often expected to provide a substantive response to a planning application where essential supporting information is missing, and that this leads to significant delays in their responses.
  - Consultees are spending time on poor quality or incomplete applications, and often have to be consulted multiple times on the same application as information is fed through. This can create an additional burden on consultees who are already struggling to meet their targets.
  - Applications which arrive at the planning committee for a decision often have to be deferred to allow supporting information to be provided.
  - If the system continues to accept poor quality applications, this creates a culture of speculative application, whereby the planning system is being used to effectively “MOT” projects and determine the assessments required. This is not an effective use of planning officers’ time.

## Front-loading the application process was consistently identified as a key means of improving performance

- 5.14 Councils told us that a key means of improving application quality and speeding up the planning process was to front-load the process. There are two main means of doing this:
- ensuring that all applications are submitted with the necessary supporting documentation; and
  - providing pre-application discussions (PADs).

## Application checklists can speed up processing

- 5.15 In November 2018, Belfast City Council (BCC) introduced an Application Checklist setting out the information required with each type of planning application. When supporting information is missing, the applicant is given 14 days to provide it, otherwise the application and fee are returned and the applicant is advised to resubmit once they are able to provide a complete set of information. In these cases, the decision-making timeframe does not start until the new application is submitted.
- 5.16 When the application checklist was used for Major applications, BCC's own review showed that it contributed to improved performance against statutory targets. BCC's internal data showed that more than two-thirds of Major applications were incomplete at the point of submission in 2019-20. After requesting additional information in line with the checklist process, this improved to over one-third within 14 days of receipt. Performance against the statutory target for Major applications improved by almost ten per cent from 2018-19 to 2019-20, the council's best ever performance.
- 5.17 We highlighted the issue of poor quality applications in our previous report on Planning in 2009. The Department told us that it intends to take forward legislative changes to better manage application validation through the Planning Forum and the Review of the Implementation of the Planning Act. In the meantime, the Department has written to councils encouraging them to follow BCC's example in advance of any legislative changes. We understand that to date not all councils have introduced this approach. In the absence of legislative provision, there is no way of compelling applicants to use this checklist.

## Pre-application discussions are used inconsistently

- 5.18 Pre-application discussions (PADs) are one element of front-loading. They provide an opportunity for council officials and developers to meet and consider the important issues that may affect an application's likelihood of success. They should provide developers with a sound understanding of all the documentation required, and highlight any issues with the proposal that may need to be rethought prior to the submission of a full application.

## Part Five:

### Issues affecting performance

- 5.19 Whilst there is a system in place in Northern Ireland for PADs to occur, their use across councils varies, with some using them for most Major projects and charging a fee, while others rarely use them. Most stakeholders we spoke to highlighted that the process was not working as effectively as it should.
- 5.20 A significant deficiency in the current approach is the inconsistent involvement of statutory consultees within these discussions. Even where it is clear that a particular consultee will be required to provide information on an application during its processing, statutory consultees are not obliged to attend PADs. Stakeholders told us this means that developers do not get the information they need to ensure that their applications provide all the information that will be needed, nor do they get a good sense of potentially significant issues that may arise and result in the application being refused. The Department told us that it recognises the importance of the PAD process for the efficiency of the planning system and is currently undertaking a review of the process through the Planning Forum. It should however, be recognised that statutory consultees have a finite resource to carry out all of their legislative functions required in the planning process.
- 5.21 This issue is a further example of the difficulties arising from the fragmentation of the planning system in Northern Ireland – councils are offering these discussions as a means to improve the quality of applications, but cannot compel other bodies, who are vital to the decision-making process, to attend.
- 5.22 More consistent use of PADs, with better involvement from statutory consultees, has the potential to address some of the issues around quality and completeness of planning applications, which in turn could improve the speed of the decision-making process and improve the quality of the final scheme.







### Many statutory consultees are not providing timely responses

- 5.23 Processing an individual planning application often requires technical or specialist knowledge that is not possessed by individual council planning teams, or the planning officials within the Department processing Regionally Significant and called-in applications. In such instances, statutory consultees provide officials with the information they need to make a decision on whether to approve an application or not. Whilst councils ultimately decide on planning applications, the majority of consultees sit outside local government.
- 5.24 In order to support efficient decision-making by planning authorities, there is a statutory requirement for statutory consultees to make a substantive response to planning authorities within 21 calendar days or any other such period as agreed in writing between the consultee and the council. However, performance has been consistently poor, particularly in respect of Major planning applications (see **Figure 9**). The consultees receiving the largest volume of consultations, DfI Roads and DAERA, respond within 21 days to around half of Major







applications and three-quarters of Local applications on which they are consulted. The poorest performance is by DfI Rivers, a part of the Department for Infrastructure, who only respond in time to around forty per cent of consultations, across both Major and Local applications, on which they are engaged.

**Figure 9. All consultees struggle to provide responses within 21 days to all applications**

#### CONSULTATIONS RELATING TO MAJOR APPLICATIONS

STATUTORY CONSULTEE	NUMBER OF STATUTORY CONSULTATIONS RECEIVED <sup>1</sup>	% RESPONDED TO WITHIN 21 DAYS
DfI Roads	1,440	55 
DAERA	1,112	60 
DfI Rivers	809	44 
NI Water	509	51 
DfC Historic Environment Division	417	74 
Other Consultees <sup>2</sup>	148	66 

#### CONSULTATIONS RELATING TO LOCAL APPLICATIONS

STATUTORY CONSULTEE	NUMBER OF STATUTORY CONSULTATIONS RECEIVED <sup>1</sup>	% RESPONDED TO WITHIN 21 DAYS
DfI Roads	33,148	74 
DAERA	12,533	78 
NI Water	9,439	85 
DfC Historic Environment Division	8,499	76 
DfI Rivers	5,736	40 
Other Consultees <sup>2</sup>	926	80 

#### NOTES

<sup>1</sup> Performance measured against the response times for all statutory consultations issued to consultees by planning authorities between 1 April 2017 and 31 March 2020

<sup>2</sup> Other consultees includes Health and Safety Executive Northern Ireland, Department for the Economy, Belfast International Airport, Belfast City Airport, City of Derry Airport and Northern Ireland Housing Executive.

Source: NIAO analysis of Department for Infrastructure management information








## Part Five:

### Issues affecting performance

- 5.25 The Department told us that there has been a major increase in consultations received by statutory consultees. This, coupled with the increasing complexities of cases received and finite resources, has had significant implications in relation to performance. In addition, the Rivers staff structure has been significantly compromised by vacant posts that have not yet been filled, mainly due to the impact of the pandemic on recruitment processes. Nonetheless there is room for improvement in the timeliness of responses for most statutory consultees.
- 5.26 Analysis by the Department of all live applications it was processing at August 2020 found that consultation delays and the revision of plans were common issues affecting the vast majority of applications (see **Figure 10**).

#### **Figure 10. Main causes of delay in planning applications being processed by Strategic Planning Division**

In August 2020 the Department prepared a paper analysing the issues contributing to delay in 44 ongoing planning applications being processed by Strategic Planning Division at that time.

CAUSE OF DELAY	NUMBER OF CASES AFFECTED	
Consultation delays	42	
Amended plans	40	
Further environmental information required	16	
Environmental Statement submitted	16	
Legal issues	14	
PAC hearing or public inquiry	13	
Significant/Complex issues arising from consultation	9	

Source: Department for Infrastructure

- 5.27 A number of the issues that contribute to poor statutory consultee performance are similar to the general issues affecting council planning teams – they have experienced significant pressures in terms of resources, staffing headcount and skills and are often constrained by the incomplete information submitted with an application. These pressures have had to be managed at a time when the total number of statutory consultations they are required to respond to has been increasing, from 20,000 in 2015-16 to 26,000 in 2018-19. In addition to these statutory consultations, consultees have had to respond to around 7,000 non-statutory consultations each year.
- 5.28 The impact of slow consultation responses can be compounded by the fact that an individual application can be subject to multiple consultations across multiple consultees during its processing. We reviewed a sample of Major planning applications that had taken longer than 30 weeks to process, testing the number of consultations issued within each. We found that, on average, these cases were subject to a total of 12 statutory consultations, issued across five different statutory consultees. This highlights the extent to which consultation is a key part

of processing applications, and the extent to which timeliness depends on the consultation system working well. The Department told us that it also indicates the volume of work required by statutory consultees within the planning process and is an area of work which the Planning Forum has attempted to address.

- 5.29 In recent years, the Department and other planning authorities have been working to try and address the problems affecting the consultation process. In April 2019, the Department commissioned a discussion paper examining the role of statutory consultees in the planning process. The report contained four key conclusions and identified thirteen areas for further consideration:
- The establishment of a cross-departmental Planning Forum to build capacity and capability in the system and deliver and oversee continuous improvement in the development management aspects of the planning system.
  - The need to recognise the value of planning at the highest level within NICS, in particular in the Outcomes Delivery Plan and any future Programme for Government.
  - Departments should review resourcing requirements associated with the statutory consultee role and identify need for additional resources.
  - Consideration of proportionate legislative change to address poor quality applications and enhance responsiveness by planning authorities.
- 5.30 Since that report, the Department has established a Planning Forum which brings together key statutory consultees and representatives from local government. A number of initiatives have emerged from this Forum, which are at varying stages of implementation. We have provided a sample list of some of the initiatives at **Figure 11**.

## Part Five:

### Issues affecting performance

#### Figure 11. List of key actions initiated by the Planning Forum

- The development of quarterly and annual monitoring reports to measure statutory consultee performance.
- The development of a best practice document, including Principles of the Management of Statutory Consultation.
- All key consultees have commenced a review of their resource requirements.
- A review of the existing PAD process to identify and implement improvements in practice
- Increasing capacity and capability within the planning system through targeted training, and also rolling out DfI training on environmental compliance to the wider stakeholder community.
- The proposed introduction, subject to Ministerial approval, of legislation to introduce statutory local validation checklists for planning applications.

Source: Department for Infrastructure

### The planning system faces increasing challenges in managing applications that have the potential to have a significant environmental impact

- 5.31 The planning system has a key role to play in preserving and improving the built and natural environment. However, a number of stakeholders highlighted the increasing challenges associated with assessing and managing the environmental impacts of proposed developments. Environmental assessments related to individual applications are typically complex and time consuming. Applications involving an Environmental Impact Assessment (EIA) typically take much longer than other types of application: 125 weeks compared to 45.8 weeks where an EIA was not required<sup>13</sup>.
- 5.32 Responsibility for environmental assessments lies with a range of public sector bodies. Councils, as planning authorities, are deemed to be competent authorities under the Environmental Impact Assessment (EIA) Regulations, and should therefore have the capacity and capability to screen and manage complex environmental issues within the planning process. SES, referred to above at **paragraph 5.8**, was established in 2015 to ensure councils could manage their environmental responsibilities. Its core function is to carry out Habitats Regulation Assessments associated with planning applications, on behalf of councils. Councils must also consult with DAERA, a statutory consultee, on both Environmental Impact Assessments and Habitats Regulation Assessments.

13 Discussion Paper Examining the Role of Statutory Consultees in the Planning Process in Northern Ireland, Department for Infrastructure, September 2019.



- 5.33 The complexity of environmental regulations, the number and fragmentation of organisations involved, the issues noted with resourcing, the growing volume of consultation requests and rising legal challenges increases the potential for delays and the risk of getting the planning decision wrong. It is crucial that the standard of environmental assessment is robust and that staff have sufficient experience and expertise to deal with complex planning applications. The Department told us that it has implemented a programme to build EIA capacity within councils and departmental planning staff and that the programme has now been expanded to deliver EIA training to key statutory consultees in order to enhance capacity and support their important consultative role in the EIA process. Feedback from councils has been positive, however, without a long-term commitment to resourcing, it is not clear how much of an impact this will have on processing times.

### **The absence of up to date ammonia guidance from DAERA is causing considerable uncertainty for planners and applicants**

- 5.34 Concerns have been raised that the planning system is struggling to progress some complex planning applications which can include environmental impact assessments. There is a lack of certainty on how the planning system deals with applications for developments that will produce ammonia emissions when the site is operational (see **Figure 12**). Under the EU Habitats Directive, as a statutory consultee, DAERA is legally obliged to consider the impact that ammonia emissions from a proposed development would have on the environment. Planning applications within the vicinity of a protected site are subject to screening assessments to confirm if there is likely to be an adverse impact on that site.

#### **Figure 12. Ammonia**

Ammonia is an air pollutant largely emitted from agriculture and has a damaging impact on biodiversity, including sensitive habitats, as well as human health. It is produced by many common farming activities, such as the housing of livestock, the storage and spreading of manure and slurries, and the application of fertiliser. Ammonia emitted into the air is deposited as nitrogen on land and water surfaces.

Most areas of Northern Ireland, including designated sites and other priority habitats, are affected by high levels of nitrogen being deposited on land and into water surfaces. The levels in most areas are significantly above what is considered their "critical load", the concentration of nitrogen at which significant ecological damage occurs.

Northern Ireland is responsible for 12 per cent of UK ammonia emissions, despite only having three per cent of its population and six per cent of its land area, and Northern Ireland is the only region of the UK where ammonia levels have not been decreasing.

Failure to address the increasing level of ammonia emissions also has the potential to contribute to serious, long-term harm to the environment and human health.

## Part Five:

### Issues affecting performance

- 5.35 DAERA's current policy is to consider ammonia emissions from any potential development to be insignificant if they are less than one per cent of the site's critical load, and to screen them out of the full assessment process. This policy was developed from guidelines for other UK environment agencies. However, as ammonia levels are generally lower in the rest of the UK than in Northern Ireland, it is not clear if applying the same threshold will prevent development that has the potential to cause environmental damage. The Department told us that this places planning authorities in a difficult position, given their statutory obligation to make sound and legally robust planning decisions.
- 5.36 In response to these concerns SES, which carries out Habitats Regulations Assessments on behalf of councils, implemented new internal guidance in July 2019, reducing the level at which it deemed ammonia emissions insignificant to 0.1 per cent, meaning that more applications would be subject to environmental assessment. Following a legal challenge in October 2019, SES's internal guidance was withdrawn in March 2020 however it was stated that cases with emissions under 1 per cent would continue to be assessed on a case by case basis.
- 5.37 Environmental groups have submitted evidence to the Assembly stating that the current one per cent screening threshold is inappropriate, does not take into account the cumulative effect of development and is not based on objective scientific evidence. Departmental officials have also stated that the decisions made using the current policy are potentially vulnerable to legal challenge and EU infringement procedures.
- 5.38 The lack of clear environmental and ammonia guidance from DAERA creates significant uncertainty for planning authorities, applicants and other stakeholders in the planning system. Pending an updated ammonia policy from DAERA, SES is progressing assessments on a case by case basis. Where it concludes, contrary to the DAERA advice, that development is unacceptable SES recommends councils consult NIEA Natural Environment Division. Over 20 such consultations have been issued to NIEA by councils since April 2020, however it has not responded to any. The majority of these applications remain undetermined.
- 5.39 DAERA is currently reviewing its ammonia policy in light of case law, legal advice and expert opinion. We understand that an ammonia reduction strategy has been in draft since July 2020.

#### Recommendation

**We recommend that the Department and councils seek urgent clarification from DAERA on the appropriateness of ammonia thresholds in making planning decisions.**

## **A new planning IT system has been procured but one council is not involved**

- 5.40 The current Planning Portal is an integrated suite of applications which aids planning authorities in the delivery of their planning functions. This includes Public Access, an online service that allows the public to view information on planning applications and to track and submit comments on live applications. It does not, however, allow for applications to be submitted electronically, a significant weakness in the system that imposes administrative costs and contributes to more inefficient application processing.
- 5.41 The Department and councils have been in the process of procuring a new Planning IT system for a number of years. There were difficulties in getting all 11 councils to agree a preferred replacement system, including how it was to be funded. An Outline Business Case was agreed by the 11 councils and the Department in June 2019 for a new regional solution. The preferred option was an off-the shelf solution for all 12 planning authorities. Following an open procurement process a Final Business Case was agreed in June 2020 and a contract awarded for a new Regional Solution for 10 councils and the Department. The new system will cost £30.5 million over 20 years and is planned to be operational in summer 2022.
- 5.42 It is also concerning that one council, Mid Ulster, has decided not to continue with the joint collaborative exercise and instead procure their own system. Mid Ulster told us that their supplier offered best value in relation to cost and customer service and that is satisfied it will meet the council's needs. This means that there will be two separate Planning IT Systems in Northern Ireland. It is unclear how Mid Ulster's separate IT system will interface with the system used by all other councils and the Department, which will be critical given the need to improve performance measurement and reporting.



# Appendices:

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# Appendix One

## Our audit approach

This reported examined the effectiveness of the planning system in Northern Ireland. It identified a range of issues affecting the performance of the system, and the service delivered to users. We have looked at both performance information and issues within councils, who have primary responsibility for the operational delivery of most planning functions, as well as issues beyond the control of council planning teams that impact on performance.

We assessed:

- The issues that have contributed to the failure of councils to deliver Local Development Plans that are integral to ensuring the planning system is a 'plan led system'.
- The performance of the system against the three statutory performance targets.
- Significant regional variation in performance and processes between councils.
- Wider structural issues that impact upon the ability of councils to deliver an effective service.

## Our evidence base

We performed in-depth analysis of performance data covering a number of different aspects of the planning system. This included:

- We reviewed the published Planning Activity Statistics covering from 2015-16 to 2020-21, including detailed analysis of the supporting Open Data tables.
- We reviewed the published Planning Monitoring Framework statistics covering the 2019-20 to 2020-21 period.
- We reviewed internal management information compiled by the Department relating to decisions made by council planning committees and statutory consultee performance.
- We reviewed a sample of publicly available planning committee minutes.
- We reviewed planning system performance information available for other regions of the UK.
- We met with officials from each council planning team, and reviewed internal management information provided by each council.
- We consulted with a range of stakeholders and interested parties.
- We engaged a reference partner who had expertise in planning systems across the UK.

The Department told us that, in instances where NIAO has performed further analysis of planning statistics, it had been unable to check the accuracy of related figures within the report. Relevant figures are Figures 2 to 8.

# NIAO Reports 2020 and 2021

Title	Date Published
<b>2020</b>	
Reducing costs in the PSNI	28 April 2020
The National Fraud Initiative: Northern Ireland	11 June 2020
The LandWeb Project: An Update	16 June 2020
Raising Concerns: A Good Practice Guide for the Northern Ireland Public Sector	25 June 2020
Addiction Services in Northern Ireland	30 June 2020
Workforce planning for nurses and midwives	31 July 2020
Overview of the Northern Ireland Executive's Response to the COVID-19 Pandemic	02 September 2020
Impact Review of Special Educational Needs	29 September 2020
Generating electricity from renewable energy	13 October 2020
Capacity and Capability in the Northern Ireland Civil Service	17 November 2020
Managing Attendance in Central and Local Government	23 November 2020
Managing Children who Offend: Follow-up Review	01 December 2020
<b>2021</b>	
Management and Delivery of the Personal Independence Payment Contract in Northern Ireland	23 March 2021
Closing the Gap - Social Deprivation and links to Educational Attainment	05 May 2021
Second Report – Overview of the Northern Ireland Executive's Response to the COVID-19 Pandemic	08 June 2021
Broadband Investment in Northern Ireland	17 June 2021
Sports Sustainability Fund	22 June 2021
The NI Budget Process	29 June 2021
Continuous improvement arrangements in policing	12 October 2021
A Strategic Approach to the Use of Public Sector Assets	21 October 2021
Grant Fraud Risks	28 October 2021
Design and Administration of the Northern Ireland Small Business Support Grant Scheme	08 December 2021
Contract award and management of Project Stratum	14 December 2021









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## **APPENDIX 2b**

### **NIAO Report – Recommendations**

#### **Recommendation 1**

We recommend that the Department and councils work in partnership to review the current LDP timetables to ensure they are realistic and achievable, and identify what support councils need to meet them.

The Department may wish to consider whether the remaining steps of the LDP process could be further streamlined to ensure plans are in place as soon as possible.

#### **Recommendation 2**

We recommend that the Department and councils continue to put an enhanced focus on improving the performance of the most important planning applications. This should include a fundamental analysis of the factors contributing to delays.

#### **Recommendation 3**

To ensure credibility within the system, we recommend that the Department and councils investigate differences in enforcement case outcomes, to ensure cases are being processed consistently across Northern Ireland.

#### **Recommendation 4**

We recommend that in instances where delegation rates fall below 90 per cent, councils should review their processes to ensure that they represent the best use of council resources.

#### **Recommendation 5**

We consider that some of the overturn rates are so high, that they require immediate action both from councils and the Department to ensure that the system is operating fairly and appropriately.

#### **Recommendation 6**

There is a need for full transparency around decision-making. We recommend that planning committees should ensure that minutes of meetings include details of the applications that are brought to committee as a result of a referral, who brought it to committee and outline the planning reasons why the application has been referred.

We recommend that where a planning committee makes a decision contrary to planning officials' advice, the official minutes of the meeting should contain details of the planning considerations that have driven the decision.

### **Recommendation 7**

Planning committees should ensure that they regularly review a sample of their previously determined applications, to allow them to understand the real-world outcomes, impacts and quality of the completed project. Councils should ensure that they review a range of applications, to ensure that it is not only focused on those applications that tell a good news story about how the system is working. Lessons learned from this process should be shared across all councils.

#### **Recommendation**

Councils should consider the introduction of compulsory training for members of planning committees, including procedures where training requirements have not been met.

The Department should ensure that training provided to planning committee members is consistent across all councils and sufficient to allow elected members to fulfil their duties.

### **Recommendation 8**

We recommend that the Department and councils work in partnership to ensure that the planning system is financially sustainable in the longer term.

### **Recommendation 9**

The Department has a key role to play in the improvement of the planning system in Northern Ireland. We are concerned that the Department has been too slow to respond to the challenges facing the planning system and to provide leadership and support for the system as a whole. In our view, all those involved in the planning system need to act now to engender trust.

### **Recommendation 10**

We recommend that the Department should coordinate an assessment of the key skills and experience gaps across the planning system.

Where a common skills gap across multiple councils is identified, a plan should be developed to ensure that all councils have access to the skills they need to operate effectively. This plan should include assessments of different provision options.

### **Recommendation 11**

We recommend that the Department and councils seek urgent clarification from DAERA on the appropriateness of ammonia thresholds in making planning decisions.

## ANNEX

# CALL FOR EVIDENCE REVIEW OF THE IMPLEMENTATION OF THE PLANNING ACT (NI) 2011.

## RESPONSE FORM

### YOUR DETAILS

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## YOUR COMMENTS

Please provide us with your comments below. Please be as concise as possible and where appropriate provide evidence to support your comment.

### Local Development Plans

**Q.1.** Do you believe there is a need to retain, amend or repeal any provisions of Part 2 of the Act or associated subordinate legislation with regard to the delivery of Local Development Plans?

#### Detail relevant provisions:

The following changes to the legislation should be made or considered. The relevant section of the Planning Act (NI) 2011 ('the 2011 Act') has been provided where relevant, as has any specific Regulation where possible. The response has been grouped under general headings to assist the Department.

#### LDP Preparation

The LDP statutory process should provide the scope to allow councils to respond to the consultation submissions and consider changes during the plan development stage, prior to its formal submission for Independent Examination (IE). Whilst it is acknowledged that DPPN10 now seeks to remedy this, further clarity (and a clear statutory basis) for this approach should be embodied in the relevant primary and secondary legislation. Given the long timescales involved in the current LDP process and given the desire to take into account any submissions received, it is important that councils have an opportunity to amend or fine tune the development plan document before its submission for IE, including for minor matters that seek to clarify or improve the document that do not change the overall policy direction and objectives. Where a more substantial change is desirable, then a further public consultation process on the proposed changes only would be appropriate. This approach requires a clear legal basis.

The current role of the Department of Infrastructure ('the Department') is not clear in relation to the preparation/adoption of development plan documents (DPDs) – at both the DPS and LPP stages. It is unclear as to the purpose of submitting the draft DPDs to the Department, rather than to the PAC directly. In addition, following the IE, the ability of the Department, having already taken part in the IE process, to veto the report and findings of the PAC is undemocratic and conflicts with the Department's other roles in terms of its service departments. The PAC should report directly to the councils following the IE and council elected members should then decide to adopt or modify the DPD in light of any recommendations. This does not, of course, remove the power of the Department or Minister to intervene at any stage in the process up to adoption.

Planning legislation should set out the scope and procedural requirements of any guidance prepared by the Department that relates to the preparation of LDPs and the policies therein. There should be a clear time bar for considering new guidance issued (either as draft or finalised guidance) in the relevant DPD as a clear point in time has to be set for practical reasons. Departmental guidance should also be subject to proper process, including stakeholder

consultation and any relevant impact assessment that may be required prior to its finalisation and publication.

In reviewing the planning legislation, the opportunity should be taken to consider whether the two-stage process in NI, which is unlike the processes in GB and RoI, is effective and beneficial. Whilst it is accepted that the overall development plan should comprise, inter alia, a core strategy, operational policies, local policies, site requirements and land allocations/designations, these may be best considered contemporaneously rather than having a significant time period, inevitably at least 1-2 years, between the DPS and LPP stages. It was evident at our recent IE hearings that the 2-stage process is causing a degree of frustration with some parties and it is not evident that there is any significant benefit in separating the DPS and the LPP in terms of process and time.

### **LDP Consultation**

The consultation arrangements, timescales and use of appropriate media for both stages of new LDPs need to be reviewed and simplified across the provisions in the 2011 Act and The Planning (Local Development Plan) Regulations (Northern Ireland) 2015. In particular, clarity, consistency and simplification across the different requirements in respect of the consultation process, including statutory adverts. In the latter regard, it is suggested that the public consultation periods for each relevant stage in the LDP process should be statutory period of 8 weeks minimum (as opposed to maximum) and the statutory dates for accepting submissions should be clarified in relation to the current requirement for public notices during two consecutive weeks. Indeed, it is suggested that this two consecutive week requirement is omitted as a statutory requirement and that councils' Statements of Community Involvement specify the intended public notification at each stage, subject to any statutory minimum requirement.

The current definition of statutory consultation bodies set out at Regulation 2 of the LDP Regulations 2015 results in an unduly onerous and unnecessary notification of a long list of utility providers and licencees under Reg 2 (1) (f, g and h). The current reliance on UK lists for such providers, in the absence of a bespoke list for NI, has resulted in the issuing of statutory notices to many operators that are irrelevant to NI. The Department should take responsibility for managing a local list reflecting those operating in NI or, alternatively, the consultee body should be named as the relevant umbrella regulator body, such as the Utility Regulator and Ofcom.

The opportunity should also be taken for a more up to date and clear approach in relation to the use of digital media and websites for the use of different media for the purposes of consultation and advertisement.

### **LDP Adoption and Independent Examination Process**

The 2011 Act only refers to whether a plan is "sound" in Section 10 para 6 (b). The main issues lie with the tests transposed by the Department and set out in DPPN06 which, whilst "based" on practice elsewhere, fails to take account of the important differences in the NI system. In particular, the tests include elements over which councils have little control due to the particularities of the NI LDP process and the role of the Department. This clearly includes the LDP Timetable which, naturally accepted as good practice and a useful guide for all participants in the process, is inevitably subjected to significant changes as the many stages in the process are advanced. Whilst it is also accepted that the Department has indicated some flexibility (up to

6 months due to Covid, for example), the strict adherence to a proposed timetable should not be a matter of soundness.

### **Tree Preservation Order Matters**

Section 124 of the 2011 Act affords the Department the power to, inter alia, vary or revoke a TPO. This power is not afforded to councils in Sections 122-123 of the 2011 Act. Whilst Regulation 8 of The Planning (Trees) Regulations (Northern Ireland) 2015 refers to the revocation of TPOs by councils, the primary legislation does not align with this. The power for councils to vary or revoke TPOs, including those made by the Department and its predecessors, should be expressly included in the primary legislation.

### **Built Heritage/Conservation Matters**

Section 104 of the 2011 Act allows the authority that originally made a conservation area designation to vary or cancel the designation. Therefore, this power does not afford councils the power to vary or cancel a conservation area designated by the Department and its predecessors. The primary legislation should be amended to afford councils such powers.

The Planning (General Permitted Development) Order (Northern Ireland) 2015 and The Planning (Fees) Regulations (Northern Ireland) 2015 should be amended to allow councils to set aside fees or charges where the application fee arises as a result of a decision to remove the permitted development rights under the Article 4 procedure.

In addition, in terms of the Article 4 process, the general procedure as set out in the current Regulations should be reviewed in relation to the degree of the process undertaken by the Department and the level of oversight.

Section 81 of the 2011 Act affords councils the power to serve a Buildings Preservation Notice. However, unlike other statutory notices, including those that take immediate effect in particular circumstances, such power was not also retained by the relevant government department (HED in this case). This oversight should be corrected to provide the Department with the ability to take proactive and urgent action in relation to buildings that it considers could have value that would merit statutory listing.

### **Other Matters**

Whilst not directly related to planning legislation, it is important that the Department addresses the ongoing review of the existing planning policy statements – i.e. Countryside, Renewables and Minerals - as councils are still awaiting the outcome of these reviews and they may have an impact on future local policy development. In addition, the Department is still to publish guidance on the assessment elements of new LDPs, including for EQIA and HRA. We also acknowledge that the Department undertook to review the SPPS within five years and this timeframe has clearly passed.

In view of the change to LDPs and the SPPS as the primary focus for policy and the abandonment of PPS guidance, the opportunity should be taken to give greater clarity in relation to transitional provisions, including the materiality and weight to be given to extant development plans and previously progressed draft development plans.



**Supporting Comments:**

See above.

**Q.2** Do you believe there are any improvements which may be made to the way in which local development plans are implemented?

**Supporting Comments:**

No comments on the implementation of LDPs at present as this is post-adoption and, thus far, the Belfast LDP is still at the independent examination stage.

Currently, at this pre-adoption stage, we are generally satisfied with our obligations in terms of the statutory requirements around annual monitoring and periodic review of LDPs.

**Planning Control and Additional Planning Control**

**Q.3** Do you believe there is a need to retain, amend or repeal any provisions of Part 3 or Part 4 of the Act or associated subordinate legislation with regard to the Planning and Additional Planning Control?

**Detail relevant provisions:**

The following changes to the legislation should be made. The relevant section of the 2011 Act has been provided below but the Department should cross reference with the related parts of subordinate legislation (such as the Planning (Development Management) Regulations (Northern Ireland) 2015 and Planning (General Development Procedure) Order (Northern Ireland) 2015).

Part 3**Hierarchy of Development**

S25 – consideration should be given to the creation of a third “Minor” category of development to be more representative of the range of applications. These would include minor application types such as “Householder” applications, Advertisement Consents and applications for Listed Building Consent. At the moment the spectrum of Local applications ranges from a domestic porch to a large residential scheme comprising 49 units – this is far too wide for any meaningful measurement and analysis of Local applications.

Furthermore, consideration should be given to mirroring the categorisation of planning applications in GB (Major, Minor and Other) to aid comparison with neighbouring jurisdictions in areas such as performance and efficiency.

### **Call in of applications to the Department**

S29 – The Department has retained far too many checks and balances in the planning application process when planning powers were transferred to councils. This has led to an unnecessarily bureaucratic process which disempowers councils and undermines local decision making. Furthermore, it increases uncertainty and risk for developers and investors, extends determination times and has a detrimental impact on performance. It is essential to eliminate bureaucracy and significantly improve the efficiency and effectiveness of the NI planning system in order that Belfast and wider region can be economically competitive.

The requirement for councils to notify the Department where it intends to approve permission for Major development and there has been a significant objection from a statutory consultee should be removed. Despite numerous notifications to the Department, no such applications have been 'called in', which demonstrates that the rationale for such decisions by the Council have been sound. There is no reasonable justification for retaining this provision, particularly given the free standing ability of the Department to call in an application at any time. If another statutory agency is sufficiently concerned about the proposed decision they can contact the Department directly to request that the decision be 'called in'. Examples of unacceptable delays include Major planning applications at Academy Street (LA04/2017/2811/F – the notification process took 4 months), Tribeca (LA04/2017/2341/O – 4 months) and Bedford Yard (LA04/2020/0659/F – 3 months).

The requirement to notify the Department of a council's intention to approve Conservation Area Consent should be removed for these same reasons.

The Department should issue clear and explicit guidance on retained notification and call-in processes to aid transparency.

### **Pre-Determination Hearings**

S30 – the requirement for councils to hold mandatory Pre-Determination Hearings should be removed. This requirement is unnecessary administration which adds further delay, confusion and uncertainty to the planning application process; increases risk for developers and investors; hinders performance against the statutory targets; and increases costs for both councils and applicants. The removal of the mandatory requirement would not preclude councils from holding discretionary Pre-Determination Hearings either of its own motion or following consideration of a request from an interested party. Councils already provide public speaking rights at their Planning Committees and so interested parties would already have had opportunity to appear before and be heard by Elected Members. Mandatory Pre-Determination Hearings unnecessarily repeat the process and have no meaningful purpose. Notwithstanding that position the legislation in relation to this issue is complicated and confusing so the wording should be reviewed.

### **Schemes of Delegation**

S31 – Schemes of Delegation – and how councils apportion delegated powers to officers and Elected Members through their respective Planning Committees – is entirely a matter for those individual councils and local decision making. The requirement for the Department to approve

council Schemes of Delegation must be removed as it is unnecessary interference and bureaucracy adding unnecessary delay and costs.

### **Form and content of planning applications**

S40 (and Article 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015) – the bar for a valid planning application in Northern Ireland is plainly far too low. Applications are invariably not submitted with all the information required by planning policy and good practice, and necessary for councils to make a positive determination at the first time of asking. This results in excessive delays to the application process as the council waits for the outstanding information, significantly contributing to under-performance against the statutory targets for determining Major and Local applications. It adds considerable costs to councils and wastes time for already over-stretched statutory consultees who are asked to comment on information deficient applications.

The Council published its *Application Checklist* in 2018, which provides guidance to customers on which information they should submit with planning applications in order to front-load the process, speed up the determination process and improve the chances of permission being granted. However, the Application Checklist carries no statutory weight and is essentially a “work-around” of the legislation. The Council recently carried out a review of its Application Checklist which demonstrated that it has had a marked positive impact on performance and efficiency, and has been well received by applicants, statutory consultees and staff. A copy of the review has already been provided to the Department and is sent again alongside this response. The review should form part of the evidence base for much needed legislative change to improve information requirements at validation. The Council would therefore welcome an express statutory provision permitting councils to require applications to be accompanied by such additional information and/or documentation as the council specifies by general notice. This would mirror the current process in GB where planning authorities publish a “Local Validation List”, setting out minimum information requirements for applications. The Council would also request that such a provision should include the power to refuse an application for failure to provide the information within a certain timeframe (as may be determined by the council) unless the council has expressly agreed to extend that period.

### **Notice etc. of applications for planning permission and appeals**

Article 8 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 – Planning Authorities should have the option of erecting a site notice as an alternative to direct neighbour notification. That is the current approach in GB and works well as it gives Planning Authorities flexibility in tailoring public notification to best meet the particular circumstances of the application. Site notices can often be more cost effective (for example where it is an alternative to neighbour notifying a whole residential apartment block with hundreds of residents – a particular issue in dense built-up areas such as Belfast City Centre). Site notices also publicise applications to a much greater audience than neighbour notification as they can be widely seen from public vantage points close to the site.

The requirement to publicise planning application in the press is outdated and very costly for councils. Belfast City Council’s current advertising budget is £50,000. The legislative requirement to publicise applications should be removed in its entirety and substituted by a combination of electronic consultation, neighbour notification and site notices as set out above. At the very least,

the extent to which applications must be advertised must be reduced significantly to only certain types of applications which have the potential for greater impacts, as in GB. This would be limited to applications for Major development, development affecting a Listed Building, development in a Conservation Area and EIA development.

### **Determination of applications**

S40 – a council should only be obliged to determine the application as made (cross reference with Article 3 of the GDPO 2015). A council may accept additional information and amended plans once the application has been made only at its discretion. At the moment many planning applications are generally of poor quality either because information is incomplete or the scheme is obviously deficient in some way. This means that far too many “bad” applications enter the system, wasting council and statutory consultee resources, and significantly contributing to underperformance. Some agents have admitted that they sometimes submit applications in a very basic form “just to get it on the books”. Far too often the planning application process is used by customers as an “MOT check” with councils having to identify numerous areas where applications need to be improved.

Indeed, agents/applications often expect to be able to improve their planning application once submitted, notwithstanding the fact that the application process is far from the correct forum for negotiating significant changes to a proposal once in the system. This adds considerable delay and burden on councils, statutory and non-statutory consultees and is fundamentally a disservice to their clients who are often paying significant fees. It is plainly good practice for councils to advise customers as soon as they know that there is a problem with their planning application. However, where those issues are significant and go to the heart of the proposal, the ability to submit amended plans and/or additional information in response to those substantial concerns must be removed. Instead amended plans and/or additional information should only be permitted where they are of a more minor nature and at the discretion of a council. This will improve efficiency, timeliness of decisions and performance. It will also significantly reduce costs for applicants, councils and statutory consultees.

Planning Authorities should be able to “agree an extension” of time for individual planning applications, like in GB. This would take pressure off Planning Authorities having to make a determination in line with the statutory target and enable more modest changes to be made to a planning application by mutual agreement between the Council and applicant. This would result in less conflict in the process, better respond to the requirements of customers, result in more positive decision making and, very importantly, support better quality outcomes on the ground. This new provision would require statutory targets to be redefined to the percentage of decisions achieved within the statutory target rather than average processing time (as in GB).

### **Matters which may be raised in an appeal**

S59 – Belfast City Council considers that this provision should be revised to reflect what the Council considers was intended by its insertion, namely to prevent new information being routinely introduced at appeal. The Planning Appeals Commission continues to accept amendments to proposals and/or new information subsequent to the council’s original refusal decision. The rationale for this is that the Council is represented at the appeal and therefore is not prejudiced by the introduction of the new information. This is fundamentally at odds with the way in which planning decisions are now made as part of a democratic process and

administratively unfair. Firstly, it encourages the submission of poor applications as applicants know they have a “second bite of the cherry” to modify their proposal at appeal following refusal of permission by the council. It also means that the appeal is decided on a proposal which was never before the council, had not been considered by its Elected Members in accordance with the relevant Scheme of Delegation, and was not subject to consultation with local people and communities. Section 59 of the 2011 Act should be amended to ensure that appeals can only be determined on the basis of the application as original refused by the council, as in GB. No amendments or new information should be permitted or considered unless of an extremely minor nature.

S76 – in appropriate circumstances, developers should be able to submit a Unilateral Undertaking as a substitute to a Bi or Multi Party planning agreement under Section 76. Unilateral Undertakings can be quicker to arrange and more cost effective, thereby speeding up the planning application process, particularly for Major applications.

The Council is also of the view that Section 76 (15) (a) should be removed as it is unnecessary. This provision requires the Department to be a signature to a Planning Agreement where the application has been made to a council, and the council has an estate in the land to which the proposed agreement relates. There is no such equivalent provision in either GB or the Republic of Ireland.

#### Part 4

#### **Control of demolition in Conservation Areas**

S105 – the requirement for councils to refer an application for Conservation Area Consent to the Department, where it intends to grant permission, is completely heavy handed, disproportionate and unnecessary administrative burden. Demolition in a Conservation Area invariably present only local and not regional issues. The legislative requirement to notify these applications to the Department must be removed.

#### Other

The Planning (General Development Procedure) Order (Northern Ireland) 2016 must be amended to allow a council to procure its own in-house expertise in areas such as Listed Building; transport and road safety; and local ecological issues, in place of consulting the relevant Government Department and statutory consultee. The existing structure with local government being legally reliant on central government to make planning decisions is exceptionally disjointed, contributes significantly to underperformance and makes the planning system in Northern Ireland highly ineffective. The Department should have transferred greater powers to the new councils in 2015 including responsibility for transport, the majority of Listed Buildings, consideration of ecological issues and regeneration. The recommendations of the “John Irvine report” (2019 review of the effectiveness of the planning system in Northern Ireland, commissioned by the Department) are welcomed, however, they essentially only “paper over the cracks” and fail to address the core systemic issues. Belfast City Council must be a unitary authority with increased planning powers if it is to compete with other cities in these Islands and internationally.

Pre Application Discussions (PADs) are of fundamental importance to front-loading the planning application process, especially for Major and complex Local applications. Statutory consultees

are already overburdened and over-stretched and unable to effectively support statutory consultation on planning applications. They therefore frequently struggle to properly engage in the PAD process due to lack of resources. Legislative change is necessary to enable statutory consultees to charge their own PAD fees with the income ring-fenced to improve capacity. Belfast City Council's experience is that that developers would be willing to pay statutory consultees for PAD advice if it would improve the quality of their applications and significantly improve processing times.

Article 4 of the Planning (General Permitted Development) Order (Northern Ireland) 2015 should be amended to make it clear which matters may be "reserved" i.e. layout, scale, design, access and landscaping.

**Supporting Comments:**

See above

**Q.4.** Do you believe there are any improvements which may be made to the way in which planning control is implemented?

**Supporting Comments:**

See above

## **Enforcement**

**Q.5** Do you believe there is a need to retain, amend or repeal any provisions of Part 5 of the Act or associated subordinate legislation with regard to the Enforcement?

### **Detail relevant provisions:**

#### **Issue of enforcement notices by Councils**

S38 – Planning Authorities should be able to issue Enforcement Notices, Planning Contravention Notices and other formal notices by electronic means (such as email) as a more efficient and cost effective alternative to issuing such notices by post or in person.

### **Supporting Comments:**

See above

**Q.6.** Do you believe there are any improvements which may be made to the way in which planning enforcement is implemented?

### **Supporting Comments:**

See above

## **COVID-19 Recovery**

**Q.7** Do you believe there are any changes to planning procedures in general which could safeguard the system against potential future adverse impacts associated with emergency situations, such as that currently being experienced as a result of COVID-19 pandemic?

### **Detail relevant procedures:**

#### **Planning register**

S242 – during the COVID-19 pandemic, Planning Authorities have had restricted access to their offices meaning that planning registers have been unable to be viewed in person by the public. Legislative change is required to suspend these requirements during emergency situations.

### **Supporting Comments:**

See above

## **Other Parts of the 2011 Planning Act**

**Q.8** Do you believe there is a need to retain, amend or repeal any provisions of other parts of the 2011 Planning Act, or associated subordinate legislation?

### **Detail relevant provisions:**

#### **Correction of errors in decision documents**

S219 – this provision should be enacted to give Planning Authorities the ability to address correctable errors in decision notices.

#### **Fees and charges**

S223 – the Planning (Fees) (Amendments) Regulations (Northern Ireland) 2019 must be fundamentally reviewed. The net cost of the Belfast City Council's Planning Service is £1.2m – planning fee income falls well short of the service being cost neutral. This means that rate payers are unfairly subsidising the Council's delivery of its Planning Service. We have raised this specific concern with the Northern Ireland Audit Office who are currently conducting an audit of the NI planning system.

In addition, charging must be introduced for current non-fee paying applications such as Discharges of Condition; Non Material Changes; Proposal of Application Notices and Listed



Building Consent (where there is no accompanying planning application). These applications represent a significant proportion of the Council's overall workload yet there is no charge for these services. Work has previously been carried out by the SAO Group at the behest of the Strategic Planning Group to quantify the significant levels of non-fee playing application work undertaken by Planning Authorities. Belfast City Council estimates that approximately 25% of applications attract no fee.

### **Measurement of statutory performance**

The way in which planning application performance is measured should be reviewed. The approach in GB of measuring the percentage of applications determined within the statutory target should be adopted. This would facilitate the introduction of the provision allowing Planning Authorities to agree an extension of the determination with the applicant. Combined with the re-categorisation of planning applications in line with the GB model, this would allow direct comparisons to be made with GB, aiding assessment of performance and efficiency.

Withdrawn applications should be removed from the statutory measures since they are not decision made by the council but by the applicant. It is manifestly unfair to measure the performance of councils on decisions which are out of their hands.

### **Final disposal of an application**

Article 40(13) (a) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 allows Planning Authorities to "Finally Dispose" of applications where an application had not been determined and the statutory time limit for lodging an appeal has expired. At the moment, councils have no ability to remove an application from the system if it has stalled indefinitely and in a state of flux. Final disposal effectively allows a council to "withdraw" an application itself without the additional cost of having to process it to completion.

### **Supporting Comments:**

See above

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# **Review of the Implementation of the Planning Act (NI) 2011**

Report  
January 2022

**This review of the implementation of the Planning Act (Northern Ireland) 2011 (the Planning Act) has been carried out in accordance with section 228 of the Act.**

**It deals with the implementation of the Act and is not a detailed examination of the operation or performance of the overall new two-tier planning system. A separate Planning Monitoring Framework has been developed in conjunction with councils which includes a series of indicators to provide a more comprehensive assessment of the planning system.**

## Contents

<b>Executive Summary .....</b>	<b>1-2</b>
<b>Background .....</b>	<b>3</b>
The objectives underpinning the Planning Act .....	4
<b>Introduction .....</b>	<b>5</b>
Review of the implementation of the Planning Act .....	5
The Planning (Review of Act) Regulations (Northern Ireland) 2020.....	5
Report, Purpose and Scope.....	5-6
Call for Evidence.....	6-8
<b>Part I.....</b>	<b>9</b>
<b>The legislative implementation of the Planning Act .....</b>	<b>9</b>
Commencement of the Planning Act.....	9
Review of Old Minerals Permissions.....	10
Correction of Errors.....	10
Deemed Permission under the Electricity (NI) Order 1992.....	11
Subordinate Legislation.....	11
Legislative Directions .....	12
Other Legislation .....	12
Legislative Implementation .....	12
<b>Functions of the Department for Infrastructure.....</b>	<b>13</b>
Planning Policy .....	13
The Strategic Planning Policy Statement .....	13
Departmental Guidance .....	13
Department's Statement of Community Involvement.....	13
Department's oversight and intervention powers .....	14
<b>Local Development Plans .....</b>	<b>15</b>
Councils Statement of Community Involvement .....	15
Preparation of Local Development Plans .....	165
Local development plan progress by the councils .....	16
<b>Planning Control .....</b>	<b>177</b>
Determination of planning applications by councils.....	177
Determination of planning consent applications by councils .....	188
Access to Planning Statistics .....	188
Department's development management functions .....	188
Determination of regionally significant planning applications by the Department .....	188-19
Determination of called in applications by the Department.....	199
<b>Enhanced Community Involvement.....</b>	<b>20</b>
Pre-application community consultation .....	20
Pre-determination hearings .....	20
<b>Planning Enforcement.....</b>	<b>21</b>
<b>Planning Appeals .....</b>	<b>21</b>
Award of Costs .....	22
<b>Assessment of the extent to which the objectives of the planning Act have been achieved .....</b>	<b>23-24</b>

<b>Part II .....</b>	<b>25</b>
<b>Assessment of whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act .....</b>	<b>25</b>
The Planning Act.....	25
Amendments made or currently being made to Subordinate Legislation.....	25
Call for Evidence - Key Messages .....	26
Key Recommendations / Actions .....	27-30
Conclusions / Next Steps.....	31
Annex A .....	32-83

## **EXECUTIVE SUMMARY**

The enactment of the Planning Act (NI) 2011 provided the legislative basis for the most significant reforms of the Northern Ireland planning system in a generation. These reforms impacted on every aspect of planning, including how development plans are drawn up, how development proposals and applications are managed and the way in which these functions are delivered. The key reforms set out to deliver the complete overhaul and redesign of the development plan and development management systems with the aim of improving efficiency and effectiveness. Significant changes were also made in relation to planning appeals and enforcement.

Overall, the aim of the Act is to create a planning system which is quicker, clearer and more accessible, with resources better matched to priorities. The Act also gives effect to local government reform changes which transferred the majority of planning functions and decision making responsibilities for local development plans, development management plus planning enforcement to locally accountable councils. This provides a framework for locally elected politicians to shape the areas within which they are elected based on an enhanced understanding of the needs and aspirations of local communities.

The majority of the Act came into operation for departments and councils in April 2015 and it was supported by a significant and comprehensive programme of subordinate legislation and guidance.

Section 228 of the Act requires the Department to review and issue a report on its implementation 3 years after the commencement of Part 3 and once in every five years thereafter. The requirement to review and publish a report on its implementation is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented, and in a timely fashion.

The Terms of Reference for the review are set out in The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020<sup>1</sup> which specify that it must consider: the objectives intended to be achieved by the Planning Act; assess the extent to which those objectives have been achieved; and assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.

To assist the review and to better understand stakeholders views on how the Act has been implemented, the Department issued a Call for Evidence (CfE) in February 2021, which ran for over an 8 week period. The CfE was part of the process of gathering additional information to help inform the preparation of the review report and the evidence submitted aided the Department's understanding of the outworking of the Act and associated subordinate legislation.

The review found that the vast majority of provisions within the Planning Act have been implemented and that the transfer of responsibility for the majority of

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<sup>1</sup> <https://www.legislation.gov.uk/nisr/2020/218/made>

planning functions to locally accountable councils has been achieved, together with the establishment of the two-tier planning system. A small number of provisions have yet to be commenced including the Review of Mineral Planning Permissions, the Correction of Errors, and section 63(1)(d) with regard to permission deemed to be granted under the Electricity (NI) Order 1992.

Councils are preparing local development plans for their areas, have published statements of community involvement and now determine the vast majority of planning applications. Changes to the decision making process including pre-application community consultation and pre-determination hearings have further enhanced community engagement and have allowed greater public involvement and transparency in the determination of planning applications. Councils are also exercising their planning enforcement duties, investigating alleged breaches of planning control and taking action as appropriate.

The Department is determining applications for 'regionally significant development' under section 26, or applications 'called-in' under section 29 of the Planning Act. Since the commencement of the Act, the Department has also published the Strategic Planning Policy Statement for Northern Ireland setting out the Department's regional planning policies in a shorter more focused document, and has published extensive guidance by way of Practice Notes on the reformed planning system.

The review also found that 162 sections of the Act, or just under two-thirds of its provisions had not been remarked upon in the CfE and the Department has, therefore, drawn the conclusion that these should largely be retained as structured. Key issues emerging from the responses to the CfE included the timeliness of councils bringing forward their local development plans and delays in processing times for some planning applications, particularly major applications. Many respondents pointed to potential legislative changes which might address perceived obstacles in the system.

In seeking to address the findings from the review the Department has made 16 recommendations / actions covering aspects of the Planning Act governing, development planning, development management, planning enforcement and additional planning control. These include recommendations, on reviewing the consultation requirements in plan-making, on improving the quality of planning applications submitted, increasing the use of digital technology in the planning system, reviewing: categories of development; Departmental Directions and the Department's approach to call in notifications; and aspects of the appeals system around restricting new material at appeal and the variation of proposals at appeal. A summary list of the actions/recommendations is provided at paragraphs 12.12 of this report.



## **Background**

1. In 2007 the then Minister of the Environment, Arlene Foster MLA, announced a programme to reform the Northern Ireland planning system. Following extensive stakeholder engagement, the Department of the Environment consulted in 2009 on a wide range of proposals to ensure a modern, efficient and effective planning system to support the Northern Ireland Executive in delivering on its key priorities. The consultation also outlined the changes required to implement the decisions taken under local government reform which would see responsibility for the majority of planning functions returning to local government. Taken together the proposals would represent the most fundamental change to the planning system in Northern Ireland in over 30 years.
  - 1.1. The Planning Act paved the way for implementing the reforms. In parallel with local government reform, many of the provisions of the Act came into operation on 1 April 2015 when responsibilities for the majority of planning functions transferred to the newly formed councils.
  - 1.2. In addition, in May 2016 The Departments Act (Northern Ireland) 2016, reduced the number of government departments from 12 to 9. This was the culmination of discussion going back a number of years on the shape and size of the Northern Ireland Executive.
  - 1.3. As part of this restructuring, the majority of departmental planning functions of the former Department of the Environment were transferred to the Department for Infrastructure, while responsibility for the Planning Appeals Commission under Part 9 of the 2011 Act was transferred from the Office of the First and deputy First Ministers to the Department of Justice. In addition a number of historical built environment functions of the 2011 Act were transferred to the Department for Communities. These included the:
    - power to list buildings under sections 80 to 84;
    - power to designate conservation areas under section 104; and
    - listed building enforcement powers under sections 158 to 161.
  - 1.4. While the Planning Act received Royal Assent in May 2011, the operation of the vast majority its provisions did not commence until 2015, in parallel with the reform of local government and transfer of planning functions. This occurred via the following orders:
    - The Planning (2011 Act) (Commencement No.1) Order (NI) 2011;
    - The Planning (2011 Act) (Commencement No.2) Order (NI) 2015; and
    - The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order (NI) 2015 (as amended).

## **The aim / objectives underpinning the Planning Act**

2. The key aims of the reform of the planning system were to:-

- deliver Northern Ireland Executive decisions to transfer the majority of planning functions to the newly formed councils thus creating a two tier planning system; and
- bring forward short, medium and long term process improvements to modernise the system.

2.1. The main objectives were:-

- the continued formulation and co-ordination of planning policy by the Department;
- councils preparing local development plans;
- councils determining the majority of planning applications for development and additional planning related consents; and
- councils taking appropriate enforcement action where a breach of planning control may have taken place.

2.2. The main reform objectives were further underpinned by actions to:-

- further sustainable development;
- enhance community involvement in the planning process;
- make more timely decisions in ways which are transparent and demonstrably fair;
- allow higher fines for planning offences; and
- bring forward reforms to the planning appeals system.

## **Introduction**

### **Review of the Implementation of the Planning Act**

3. Section 228 of the Planning Act (Northern Ireland) 2011 (the Planning Act) requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the Act, and at least once in every 5 years after that. Part 3 commenced on the date of transfer of planning functions to district councils on 1 April 2015. The Department is required to make regulations setting out the terms of the review.
- 3.1. The delay in meeting the initial timeframe set out in the Act for making the regulations and publication of the associated report, stems from decisions (not to proceed) made under the NI (Executive Formation & Exercise of Functions) Act 2018. These decisions determined that in the absence of a Minister or functioning Assembly, it would not be appropriate to make the regulations, and to publish the subsequent report on the implementation of the Planning Act. The Regulations were, however, subsequently made in October 2020.

### **The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020**

- 3.2. The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020<sup>2</sup> specify that the review must:-
  - consider the objectives intended to be achieved by the Planning Act;
  - assess the extent to which those objectives have been achieved; and
  - assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.

### **Purpose and Scope**

- 3.3. The requirement to review and publish a report on the implementation of the Act is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented and in a timely fashion.
- 3.4. The focus of the review is, therefore, on the implementation of the legislative provisions of the Act itself and the extent to which the original objectives of the Act have been achieved. This will then inform whether there is a need to **retain, amend or repeal** any provisions of the Act. The review also provides an opportunity to consider any improvements or 'fixes' which may be required to the way in which the Planning Act has been commenced and implemented in subordinate legislation. Issues with the planning system that have surfaced as a result of the Coronavirus pandemic will also be examined as part of this review.

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<sup>2</sup> <https://www.legislation.gov.uk/nisr/2020/218/made>

- 3.5. It is important, however, to highlight that the review is not envisaged as a fundamental root and branch review of the overall two-tier planning system or the principles behind the provisions. It is still relatively early days in the delivery of the new system, compared with other jurisdictions. The review will look at how the provisions of the Act are working in practice and whether there are any changes that could be implemented to further improve the system for all stakeholders – including councils, developers, and the wider public. The focus is not just on planning decisions, but also on the delivery of new local development plans which will provide certainty for the longer term. Changes and ‘fixes’ may not always require legislative change.
- 3.6. The Review Report is structured in two parts:
- **Part I** deals with the technical and legislative implementation of the Planning Act, and its supporting subordinate legislation and directions against the stated aim / objectives to determine if what was intended to be achieved, has indeed been accomplished; and
  - **Part II** examines and assesses the outworking of the Act, and its supporting subordinate legislation and directions, to determine whether, in considering the objectives, it is appropriate **to retain, amend or repeal** any of the provisions of the Act to better achieve those objectives. This includes examination of potential amendments or ‘fixes’ to various elements of the planning system.

### Call for Evidence

- 3.7. To assist the review and to better understand stakeholders views on how the Act has been implemented, the Department issued a Call for Evidence (CfE) in February 2021. The CfE formed part of the process of gathering additional information which helped to inform the preparation of the review report, particularly the assessment under **Part II**. The evidence submitted improved the Department’s understanding of where there may be a need to retain, amend or repeal particular parts or sections of the Act, or associated subordinate legislation. The questions in the CfE were structured within the context of the terms of the review set out in the associated Review Regulations.
- 3.8. The CfE sought to target and engage with key stakeholders in the planning system including, councils, statutory consultees, professional bodies, community, business and environmental interests, however, it was open to anyone to respond. It was undertaken over an 8 week period ending 16 April 2021 and attracted 55 responses. While comments were principally sought on those parts of the Act covering local development plans, development management and enforcement, the Department was happy to receive comments on any element of the Act, or associated subordinate legislation.

3.9. In summary, almost two-thirds of the Act (162 sections) were not remarked upon. As had been anticipated, the vast majority of comments focused on sections with regard to Local Development Plans (LDPs), development management and planning enforcement. Comments were also received with regard to the functioning of the planning system within the context of the COVID 19 pandemic and post pandemic recovery. Following analysis of responses, the broad themes to emerge included calls:

- for the planning system as a whole, to take account of other strategies on for example: climate, environment, renewable energy;
- to streamline, and address perceived obstacles / inefficiencies in local development plan-making;
- for greater clarity in the role of the Department in plan-making, development management / decision-taking, and planning enforcement;
- for quicker and more streamlined decision-taking on planning applications and to address perceived obstacles at various stages including, pre-application consultation, and pre-determination hearings;
- to better utilize digitization across the planning system, including a review of planning application and advertising requirements;
- to uplift and broaden the scope of planning fees to better match costs;
- for greater and more regular use of powers to assess a council's performance;
- to future-proof planning against potential emergencies, for example: extending extant planning permissions, and suspending in-person engagement;
- for greater powers to councils in relation to conservation areas and trees;
- to commence the Review of mineral planning permissions;
- to prioritise 'green infrastructure' projects in post-COVID 19 recovery.

3.10. While the above comments provide a broad summary of the responses received to the individual CfE consultation questions, a more detailed consideration of individual proposals, from respondents is set out at Part II of this report. It aims to address the primary issues raised and proposed actions where appropriate, while recognising more detailed consideration of the issues raised will be necessary as policy responses are considered and developed. While we have made every effort to reflect the broad range of opinion, the analysis of evidence gathered from the CfE is not intended to be a comprehensive examination on every single comment received; rather it aims to provide a broad indication of the level and diversity of representations made.

- 3.11. In some instances contributors in their responses to the CfE made comparisons between the planning systems here with those in other jurisdictions. While there are similarities across the various jurisdictions, there are also significant differences in how each planning system works, how performance is measured, and the political and administrative contexts. It is, therefore, difficult to assess the functionality and performance of the planning system in the North against that of other parts of this island or in GB.
- 3.12. It is important to mention however that the performance of the system has been impacted by the COVID 19 pandemic. Nevertheless, the Department has continued to bring forward a number of work streams to address process improvements. A Planning Forum has been established, the key focus of which is to oversee the implementation of recommendations made in an independent report on the role of statutory consultees in the planning process. This work has a particular focus on improving processes and timeframes for major and economically significant planning applications. Statutory consultees have a legislative requirement to respond to planning consultation requests within 21 calendar days and the latest annual statistics show that they responded to 76% of all planning application requests in 2020-21 within 21 days, which was an improvement of 7% over the previous year, despite the impacts of the pandemic.
- 3.13. Furthermore, the Minister convened a Planning Engagement Partnership (PEP) whose purpose is to look at enhancing the quality and depth of community engagement in the planning process at both regional and local planning authority levels. The Partnership is currently preparing its report with recommendations for improvement, which is due to be published early in 2022.
- 3.14. Officials also regularly meet council heads of planning to discuss matters of policy and practice which may be affecting performance in various areas of the planning system. In addition, the Department and 10 councils are working together to take forward a new regional Planning IT system to provide a more modern planning service to the public, consultees and staff, including the ability for the public to submit planning applications on-line. This is expected to be operational in late summer 2022.

## **PART I**

### **The Legislative Implementation of the Planning Act**

4. The Planning Act, which received Royal Assent on 4 May 2011, is the primary legislative vehicle for the modernisation and reform of the planning system. It made the necessary provision for the transfer of responsibility for the majority of planning functions from central government to the newly formed district councils on 1 April 2015. The Act and the Explanatory Notes are available on the government's legislation website ([www.legislation.gov.uk](http://www.legislation.gov.uk)).

### **Commencement of the Planning Act**

- 4.1. The Act consists of 15 Parts, 255 sections and seven schedules. Amendments to timeframes for taking enforcement action and also a number of increased penalties were introduced from 1 December 2011, however, as previously indicated, the majority of provisions came into operation on 1 April 2015. The provisions of the Act which have been implemented are:
  - Part 1 Functions of the Department for Infrastructure with respect to the development of land
  - Part 2 Local development plans
  - Part 3 Planning control
  - Part 4 Additional planning control (except Chapter 4)
  - Part 5 Enforcement
  - Part 6 Compensation
  - Part 7 Purchase of estates in certain land affected by planning decisions
  - Part 8 Further provisions as to historic buildings
  - Part 9 The Planning Appeals Commission
  - Part 10 Assessment of council's performance or decision making
  - Part 11 Application of Act to crown land
  - Part 13 Financial provisions
  - Part 14 Miscellaneous and general provisions
  - Part 15 Supplementary
  - Schedule 1 Simplified planning zones
  - Schedule 4 Amendments to the Land Development Values (Compensation Act (Northern Ireland
  - Schedule 5 The Historic Buildings Council
  - Schedule 6 Minor and consequential amendments
  - Schedule 7 Repeals

4.2. A small number of the provisions of the 2011 Act have not yet been commenced, these are:

- Part 4 – Chapter 4 Review of Mineral Planning Permissions;
  - Schedule 2 – Review of old mineral planning permission;
  - Schedule 3 – Periodic review of mineral planning permissions;
- Part 12 – Correction of Errors; and
- Section 63(1)(d) – permission deemed to be granted under paragraph 3(1) of Schedule 8 to the Electricity (NI) Order 1992<sup>3</sup>.

### **Review of Old Minerals Permissions**

4.3. Whilst the introduction of the legislation relating to the Review of Minerals Permissions (ROMPs) in Northern Ireland has not been commenced, no decision has been taken not to implement ROMPs. Officials are continuing to examine a number of options in relation to the commencement of ROMPs legislation. The Minister intends to consider options on the way forward early in 2022. In the meantime, councils have a broad range of enforcement powers available under the Planning Act where they believe a developer is operating outside the terms of a permission. Councils remain best placed to investigate such planning matters and have a responsibility to do so. The planning system together with other environmental and pollution control legislation will continue to facilitate improvements in the operational requirements of mineral facilities as well as limiting potential adverse environmental effects.

### **Correction of Errors**

4.4. Part 12 of the Planning Act is intended to allow a council to correct minor miscellaneous and typographical errors in certain planning decision documents that it has issued. For example, where the name of the applicant has been misspelt. Correctable errors are errors which do not form part of any reason given for the decision and cannot change the decision. The Department did not commence Part 12 because of an anomaly at section 221, where the effect of a correctable error would change the original date of the decision document to the date of the correction. If commenced in its current form, this would be problematic in that it would affect the date on which planning permission was granted or refused and would have an effect on the duration of the planning permission or the time within which an appeal may be made to the Planning Appeals Commission. The Department proposes to make a minor technical amendment at an appropriate legislative opportunity to remove this anomaly and subsequently commence Part 12.

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<sup>3</sup> <https://www.legislation.gov.uk/nisr/2015/25/article/3/made>



- 4.5. However, in the meantime as in other jurisdictions, a council can correct minor errors administratively providing there is a clear and recorded audit trail of that correction.

### **Deemed Permission under the Electricity (NI) Order 1992**

- 4.6. Section 63(1)(d) of the Planning Act has not yet been commenced because the provision to which it relates, namely, paragraph 3(1) of Schedule 8 to the Electricity (NI) Order 1992 has itself not yet been commenced.
- 4.7. Paragraph 3(1) of Schedule 8 to the 1992 Order was inserted by Article 2 of the Electricity Consents (Planning) (NI) Order 2006. This Order amends the Electricity (Northern Ireland) Order 1992 to enable the Department for the Economy (DfE) to grant deemed planning permission and deemed hazardous substances consent on an application for its consent under Schedule 8 to that Order. Article 2 of the 2006 Order is to be commenced on such day as is appointed by DfE. No such day has been appointed by DfE, and as such the Department does not consider it appropriate to commence a provision that does not have any effect.
- 4.8. Once a policy decision is taken by DfE to commence the relevant provisions of the 2006 Order this Department will make a further order under the Planning Act to commence this section.

### **Subordinate Legislation**

- 4.9. The Department initially made 22 statutory rules and four directions under the Planning Act to facilitate the transfer of planning powers and the introduction of the two-tier planning system in 2015. This subordinate legislation was the subject of two public consultations during 2014 and may be viewed on the [Planning Portal](#). It underpins the Planning Act and sets out the detailed statutory requirements for key processes such as the preparation of local development plans and the submission of planning applications. These ensure certain statutory functions are carried out and provide a level of conformity throughout the NI planning system. There are currently almost 40 statutory rules in place.

### **Legislative Directions**

- 4.10. The Department currently has six [Legislative Directions](#) in place which are a means of modifying the detailed application of the legislation. For example The Planning (Notification of Applications) Direction 2017 requires councils to notify the Department of certain applications which allows the Department to consider if the application should be called-in for the Department's determination.

## **Other Legislation**

4.11. The planning system is also supported by a substantial amount of extant legislation relating to matters such as planning blight, compensation, etc.

## **Legislative Implementation**

4.12. The vast majority of provisions within the Planning Act have been commenced and are being implemented, resulting in the successful introduction and operation of the reformed two-tier planning system, in parallel with local government reform.

4.13. The following sections of this review, will report on how the transfer and reform objectives are being delivered in the key areas of formulating policy, preparation of local development plans and in the exercise of development management.

## **Functions of the Department for Infrastructure**

### **Planning Policy**

5. Part 1 of the Planning Act sets out the Department's functions with respect to the development of land. In anticipation of the two-tier planning system the reforms proposed that Departmental planning policy should move away from providing detailed operational guidance and advice and concentrate on providing strategic direction and regional policy advice to be interpreted locally in the preparation, by councils, of local development plans and in decision-taking. The aim was to move to shorter, more focused documents prepared in a shorter timescale. Under section 1 of the Planning Act the Department must carry out its policy formulation functions with the objective of furthering sustainable development and promoting or improving well-being.

### **The Strategic Planning Policy Statement**

- 5.1. In September 2015 the Department of the Environment published The Strategic Planning Policy Statement, prepared under section 1 of the Act. This sets out the Department's regional planning policies for securing the orderly and consistent development of land in Northern Ireland under the reformed two-tier planning system. The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of local development plans and are material to all decisions on individual planning applications and appeals. The Department keeps the SPPS under review and brings forward updated policy as required. It is currently taking forward a review of strategic planning policy for renewable and low carbon energy and a separate review in relation to oil and gas development.

### **Departmental Guidance**

- 5.2. As well as developing policy the Department provides additional advice and guidance to assist the effective and efficient operation of the planning system as appropriate. This includes DFI Rivers Guidance, DFI Roads Guidance, Chief Planner's letters as well as Planning Practice Notes (PPN) for councils and the public. The PPNs relate to advice and guidance post-April 2015. They are designed to guide planning officers and relevant users, including the community, through the drafting of a Local Development Plan, the legislation and procedures associated with development management and planning enforcement. To date a series of PPNs have been produced and published which can be added to or amended as and when required. The PPNs can be viewed at the links below.

- [local development plans;](#)
- [development management; and](#)
- [planning enforcement.](#)

## **Department's Statement of Community involvement**

- 5.3. The objective of enhancing community involvement in the planning system has seen significant gains since the transfer of planning powers. Section 2 of the Act required the Department to prepare and publish a Statement of Community Involvement (SCI) setting out its policy as to the involvement of the community in the Department's planning functions under Part 3: Planning Control. The Department first published its SCI on the [Planning Portal](#) in March 2016 with a revision in 2021.
- 5.4. The publication of Departmental and council SCIs fully enables the community to understand how they can become involved in the planning system. Commentary on council SCIs is included at paragraph's 6.2-6.3.

## **Department's oversight and intervention powers**

- 5.5. As is the case in GB, the Department has a number of powers to oversee and intervene in the planning system if, for example, it believes a council is failing or omitting to carry out its planning functions. These include powers to intervene in the preparation of development plans, the determination of planning applications, exercising other planning controls and assessing council's performance or decision making. The Department has consistently indicated that it intends to use the powers only in exceptional circumstances and this has been the position to date.

## **Local Development Plans**

6. Part 2 of the Act transferred development planning to councils and aims to provide an effective, up to date development plan system. The Planning Act sets the framework for a new development plan system with provisions to:
- speed up the development plan preparation process (programme management);
  - ensure more effective participation from the community and other key stakeholders early in plan preparation (statements of community involvement, Preferred Options Paper);
  - create a faster more effective approach to examining plans at independent examination moving away from objection based examination to testing the soundness of the plan; and
  - create a more flexible approach that is responsive to change and capable of faster review (sustainability appraisal, annual monitoring and review).
- 6.1. This is intended to provide more clarity and predictability for developers, the public and other stakeholders. In conjunction with community planning it will also assist the new 11 district councils to target action to tackle social need and promote social inclusion.

## **Councils Statements of Community Involvement**

- 6.2. Under section 4 each council is required to prepare and publish a statement of community involvement (SCI). The council SCI is a statement of the council's policy for involving interested parties in matters relating to development in its district. The statement applies to both the preparation and revision of a development plan and to the exercise of a council's functions in relation to planning control. A council must prepare its local development plan in accordance with its SCI.
- 6.3. All 11 councils have published their SCIs in accordance with section 4 of the 2011 Act. The SCIs can be viewed on the council websites through the links below.
- [Antrim and Newtownabbey](#)
  - [Ards and North Down](#)
  - [Armagh, Banbridge and Craigavon](#)
  - [Belfast](#)
  - [Causeway Coast and Glens](#)
  - [Derry City and Strabane District](#)
  - [Fermanagh and Omagh](#)
  - [Lisburn and Castlereagh City Council](#)
  - [Mid and East Antrim](#)
  - [Mid Ulster](#)
  - [Newry, Mourne and Down](#)

## **Preparation of Local Development Plans**

- 6.4. Each council is required to prepare and adopt a local development plan (LDP) for its district. The LDP is made up of two development plan documents (DPD), the Plan Strategy and the Local Policies Plan. When adopted these DPDs will replace the extant development plans adopted by the Department under the Planning (Northern Ireland) Order 1991.
- 6.5. The preparation of a LDP consists of three main processes:
- publication and public consultation of a Preferred Options Paper;
  - publication, public consultation, independent examination and adoption of the Plan Strategy; and
  - publication, public consultation, independent examination and adoption of the Local Policies Plan.
- 6.6. The Department's Development Plan Practice Notes for LDPs are available on the [Planning Portal](#).

## **Local development plan progress by the councils**

- 6.7. Each council's progress with its LDP can be viewed on its website (web links are provided below). Each council must also publish the following documentation on its website:
- LDP timetable for the preparation and adoption of the LDP;
  - the Preferred Options Paper;
  - the DPDs;
  - copies of valid representations received during the public consultations;
  - details of the independent examination;
  - the report of the independent examiner; and
  - the Department's Direction to adopt the DPD.
- 6.8. All 11 councils are advancing new local development plans and the Department has oversight of the LDP programme. As of the date of this report, 7 councils have now published and consulted upon their draft Plan Strategies which is the first formal stage of the LDP preparation process. Draft Plan Strategies will be subject to Independent Examination (IE) before the PAC (or independent examiner) prior to being adopted.
- 6.9. The PAC forwarded the IE Report of Belfast City Council's Draft Plan Strategy to the Department on 29<sup>th</sup> September 2021. Officials are in the final stages of considering the recommendations. Fermanagh and Omagh District Council draft Plan Strategy is now with the PAC for IE, and hearing sessions commenced on 18<sup>th</sup> January 2022 for 2 weeks, with further sessions scheduled for February and March 2022. The Department has also caused the IE's for Antrim and Newtownabbey Borough Council, Mid and East Antrim Borough Council and Lisburn and Castlereagh City Council. It is anticipated hearing sessions for these three Councils will be conducted by the PAC during 2022, and Commissioners for all have now been appointed. The Department are currently in receipt of the Mid Ulster draft Plan Strategy submission, and it is anticipated Derry City and Strabane District Council will

submit a draft Plan Strategy for Independent Examination in line with the Council's agreed timetable in February 2022.

6.10. Current progress on each of the councils' LDPs can be viewed via their respective website provided at the following links:

- [Antrim and Newtownabbey](#)
- [Ards and North Down](#)
- [Armagh, Banbridge and Craigavon](#)
- [Belfast](#)
- [Causeway Coast and Glens](#)
- [Derry City and Strabane District](#)
- [Fermanagh and Omagh](#)
- [Lisburn and Castlereagh City Council](#)
- [Mid and East Antrim](#)
- [Mid Ulster](#)
- [Newry, Mourne and Down](#)

6.11. Part 2 of the Planning Act also contains a number of departmental oversight and scrutiny powers as well as powers for the Department to intervene in the plan making process, if necessary. The preparation of the new local development plans by all councils is progressing and the Department has established a team to liaise with councils at various stages to review and where appropriate agree key documents such as plan timetables and, progression of development plan documents. Discussions have also been ongoing with the PAC as preparations move towards independent examinations.

## **Planning Control**

7. Parts 3, 4 and 5 of the Planning Act set out a range of powers from processing planning and other consent applications through to enforcement against potential breaches of planning control. They also include powers for the Department to intervene, if appropriate.

### **Determination of planning applications by councils**

7.1. As was the intended objective, councils now determine local and major planning applications, which represent the vast majority of all planning applications, while the Department determines a small number of regionally significant development proposals (RSD) and other 'call-in' applications. The thresholds for the three categories of development are set out in [the Planning \(Development Management\) Regulations \(Northern Ireland\) 2015](#). Performance targets for the determination of planning applications are set out in [The Local Government \(Performance Indicators and Standards\) Order \(Northern Ireland\) 2015](#).

7.2. The following table sets out the number of all planning applications, local, major and regionally significant determined each year from April 2015.

(Web-links to all planning statistics are available at paragraph 7.4 of this report):

#### **Planning Applications Received and Decided<sup>4</sup>**

<b>2015/16</b>	12,220	11,034	10,341	93.7%
<b>2016/17</b>	13,037	12,957	12,180	94.0%
<b>2017/18</b>	12,933	12,314	11,548	93.8%
<b>2018/19</b>	12,541	12,156	11,330	93.2%
<b>2019/20</b>	12,207	11,747	11,044	94.0%
<b>2020/21</b>	12,833	10,483	10,029	95.7%
<b>Total</b>	<b>75,771</b>	<b>70,691</b>	<b>66,472</b>	<b>94.0%</b>

### **Determination of planning consent applications by councils**

- 7.3. In addition to the determination of applications for planning permission, councils are also responsible for determining applications for listed building consent, conservation area consent, hazardous substances consent, display of advertisement consent and applications for works to trees protected by tree preservation orders.

### **Access to Planning Statistics**

- 7.4. The quarterly and annual planning statistics may be viewed on the Department's website at [Planning Statistics](#).

### **Department's Development Management Functions**

#### **Determination of regionally significant planning applications by the Department**

- 7.5. Under [section 26](#) of the Planning Act the Department is responsible for determining regionally significant development (RSD) applications. RSD is development which if carried out would:
- (a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or
  - (b) involve a substantial departure from the local development plan for the area to which it relates.
- 7.6. If a developer proposes to carry out development which may fall into the RSD category then the developer must, before submitting an application, enter into discussions with the Department to determine if that proposed development is RSD. If the Department considers that the proposed development is RSD the application must be submitted to the Department, but if the Department considers that the proposed development is not RSD then the application should be submitted to the relevant council.

<sup>4</sup> <https://www.infrastructure-ni.gov.uk/articles/planning-activity-statistics>



### Determination of called in applications by the Department

- 7.7. Under Section 29 of the Planning Act the Department may call in planning applications for its own determination. Councils are required to notify the Department of certain applications in accordance with the Department's three notification directions. Once notified the Department will consider whether or not to call in the application for its own determination or allow the council to continue and determine the application itself.
- 7.8. The notification directions<sup>5</sup> apply to applications where a council is of the opinion to grant planning permission, in the following cases:
- a government department or statutory consultee has raised a significant objection to a major development application;
  - a major development application which would significantly prejudice the implementation of the local development plan's objectives and policies;
  - a major development application which would not be in accordance with any appropriate marine plan adopted under the Marine Act (Northern Ireland) 2013;
  - planning applications for both major and local development in which the council has an interest and the proposal would be significantly contrary to the development plan for its district; or
  - where a council proposes to grant planning permission for petroleum development.
- 7.9. The Department may also receive requests from other interested parties that an application is called in. A small number of planning applications relative to the total number of applications have been called in by the Department since April 2015. The following table sets out the number of call-in applications, together with those for regionally significant development received and decided by the Department each year, since April 2015. [These figures do not include legacy applications retained by the Department at the point of transfer, details of which are available at the web-link provided at paragraph 7.4].

#### Departmental Planning Applications Received and Decided<sup>6</sup>

<b>2015/16</b>	6	8	14	0	0
<b>2016/17</b>	2	13	15	11	11
<b>2017/18</b>	2	5	7	4	4
<b>2018/19</b>	0	4	4	2	2
<b>2019/20</b>	0	5	5	2	2
<b>2020/21</b>	1	2	3	5	4
<b>Total</b>	<b>11</b>	<b>37</b>	<b>48</b>	<b>24</b>	<b>23</b>

<sup>5</sup> <https://www.infrastructure-ni.gov.uk/publications/planning-legislative-directions>

<sup>6</sup> <https://www.infrastructure-ni.gov.uk/articles/planning-activity-statistics>

## **Enhanced Community Involvement**

### **Pre-application community consultation**

8. Section 27 of the Act places an obligation on the developer to consult the community in advance of submitting an application if the development falls within the major development category. This includes those major developments which the Department will determine because they are of regional significance.
- 8.1. Where developers engage in meaningful pre-application consultation, local communities can be better informed about development proposals and have an opportunity to contribute their views before a formal planning application is submitted. In so doing, it is hoped this will subsequently improve the quality of planning applications received; mitigate negative impacts where possible; address community issues or misunderstandings; and provide for smoother and more effective decision making. The developer must submit a pre-application community consultation report with the application. The purpose of the report is to confirm that pre-application community consultation has taken place in line with the statutory minimum requirements. The report should contain details of the steps that have been taken to comply with the requirements for consultation. Developers are required to demonstrate how they have considered any representations made during the consultation and any steps they have taken to address any issues raised in the representations.
- 8.2. Pre-application community consultation (where required) is now an established part of the planning process. The Department's guidance on pre-application community consultation is available on the [Planning Portal](#).

### **Pre-determination hearings**

- 8.3. The introduction of pre-determination hearings (PDH) has also allowed the community the opportunity of appearing before and being heard by the council's planning committee before the committee makes its determination on the application. Section 30 of the Act and Regulation 7 of the Planning (Development Management) Regulations (Northern Ireland) 2015 requires councils to hold a PDH where the Department has decided not to call-in an application that was notified to it by the council. The council also has the discretion to carry out a PDH for any application that it determines.
- 8.4. The council must give the developer and those who submitted representations on the application an opportunity of appearing before and being heard by the planning committee. The format and attendance at the hearing is left to the council's discretion. The council also has discretion to consider if they require further representation from statutory consultees. Councils have published their own guidance on their policies for PDH which are now an established part of the planning system.

## **Planning Enforcement**

9. Under Part 5 of the Planning Act councils have primary responsibility for planning enforcement in their administrative areas. It is the responsibility of a council to investigate all alleged breaches of planning control.
- 9.1. As well as transferring enforcement powers and amending time limits within which action may be taken in respect of planning control, the Act contains provisions for the imposition of potential fines which were increased from £20,000 to £100,000 on summary conviction for a range of offences:
  - the unauthorised works to a listed building;
  - the unauthorised demolition of a building in a conservation area;
  - the contravention of a hazardous substances consent; and
  - the breach of a stop notice.
- 9.2. Whilst the fines have been increased it is a matter for the courts to decide the amount of the fine levied on the offender in any particular case.
- 9.3. The performance targets for enforcement cases are set out in The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015.
- 9.4. The Department's enforcement powers are only intended to be exercised in exceptional circumstances. An overview of enforcement responsibilities is set out in the advice document ["Overview of Planning Enforcement Responsibilities"](#)

## **Planning Appeals**

10. Planning appeals are determined by the Planning Appeals Commission (PAC). The PAC is an independent and appellant body, it is not part of any Government Department. It receives financial and administrative support from its sponsor body, the Northern Ireland Courts & Tribunals Service. Information on appeals and Inquiries/Hearings for RSD and called-in applications may be viewed by visiting [Digest | Planning Appeals Commission](#).
- 10.1. In relation to appeals, the Planning Act reduced the time limit for submitting appeals from six months to four months, extends the non-determination period for major development applications; aims to restrict the introduction of new material at appeal; and provides for the award of costs. The following tables set out figures for the number of appeals received and decided from 2016/17 (by appeal type).

#### Appeals received, by appeal type<sup>7</sup>

Appeal Type	2016/17	2017/18	2018/19	2019/20	2020/21
Refusal or conditional grant of planning permission	221	207	204	215	139
Non determination of planning application	4	4	9	9	7
Enforcement Related	53	53	67	69	56
Other *advertisements, roads, listed buildings consent	22	45	43	34	7
<b>Total</b>	<b>300</b>	<b>309</b>	<b>323</b>	<b>327</b>	<b>209</b>

#### Appeals decided, by appeal type<sup>8</sup>

Appeal Type	2016/17	2017/18	2018/19	2019/20	2020/21
Refusal or conditional grant of planning permission	221	198	179	175	126
Non determination of planning application	11	7	1	11	5
Enforcement Related	36	44	56	51	35
Other *advertisements, roads, listed buildings consent	28	27	42	40	17
<b>Total</b>	<b>296</b>	<b>276</b>	<b>278</b>	<b>277</b>	<b>183</b>

### Award of Costs

10.2. The power to award costs was a significant reform aimed at improving the behaviour of all parties in the appeal process. The PAC now has the power to make an order requiring the costs of one party to be paid where another party's unreasonable behaviour has put it to unnecessary expense. The following table set out a brief overview of the number of costs awards from 2016/17. Further details as to the PAC's guidance on the award of costs is available on their website [Award of Costs](#).

#### Costs Awards<sup>9</sup>

Type of Decision	2016/17	2017/18	2018/19	2019/20	2020/21
No Award	40	29	20	34	11
Partial Award	4	2	7	6	1
Full Award	1	10	8	8	1
<b>Total</b>	<b>45</b>	<b>41</b>	<b>35</b>	<b>48</b>	<b>13</b>

<sup>7</sup> [https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21\\_2.pdf](https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf)

<sup>8</sup> [https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21\\_2.pdf](https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf)

<sup>9</sup> [https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21\\_2.pdf](https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf)

## **Assessment of the extent to which the objectives of planning reform and the Planning Act have been achieved.**

11. The Planning Act 2011 (Review) Regulations 2020 require the Department to: consider the objectives intended to be achieved by the Planning Act; and assess the extent to which those objectives have been achieved. Within this context the review is not a detailed examination of the operation, effectiveness or performance of the overall new two-tier planning system.
  - 11.1. The main objectives to the introduction of the Act were: the continued formulation and co-ordination of planning policy by the Department; the preparation of local development plans, and determination of most planning applications by councils, together with responsibility for taking enforcement action where deemed appropriate.
  - 11.2. As has been evidenced, the vast majority of provisions within the Planning Act have been commenced, resulting in its successful implementation. The transfer of responsibility for the majority of planning functions to locally accountable councils has been achieved, together with the establishment of the two-tier planning system. The Act has also been supported by around 40 pieces of subordinate legislation and 6 Directions which provide the detailed legislative framework for the overall operation of the planning system.
  - 11.3. Significant progress has also been made in implementing certain reforms. In September 2015 the Department published the [Strategic Planning Policy Statement](#) setting out the Department's regional planning policies for securing the orderly and consistent development of land in Northern Ireland in a shorter more focused document. Extensive guidance including by way of Practice Notes on the new system has also been provided<sup>10</sup>.
  - 11.4. Councils are preparing local development plans for their areas and have published statements setting out how they will involve the community in delivering their planning functions. Councils now determine the vast majority of planning applications with only a very small number determined by the Department including regionally significant development or those called-in by the Department. Changes to the decision making process including pre-application community consultation and pre-determination hearings further enhance community engagement and have allowed greater public involvement and transparency in the determination of planning applications. Councils are also investigating alleged breaches of planning control and taking action as appropriate. Throughout, the Department has maintained its position to only intervene in the system in exceptional circumstances.
  - 11.5. Reforms have also been made to the planning appeals system and a Planning Monitoring Framework has been developed. This Framework and other evidence will be used to ascertain if the objectives of reform and

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<sup>10</sup> <https://www.infrastructure-ni.gov.uk/articles/planning-practice-notes>

transfer are being achieved and how the planning system is evolving over time.

### **Conclusion**

- 11.6. Within the context set out above and overall, the Department is satisfied that the stated objectives of the implementation of the Planning Act have been achieved.

## PART II

### **Assessment of whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act.**

#### **The Planning Act**

12. The Planning Act 2011 (Review) Regulations 2020 further require the Department, in considering the objectives intended to be achieved under the Act, to assess whether it is appropriate **to retain, amend or repeal** any of the provisions of the Act or subordinate legislation made under it to achieve those objectives.

#### **Amendments made or currently being made to Subordinate Legislation.**

- 12.1. As with any legislative framework changes can be made to subordinate legislation to refine its detailed operation, or in response to changed circumstances. The Department has made a number of amendments to subordinate planning legislation since the transfer of planning functions. These include the:

- Planning (Hazardous Substances) Regulations (Northern Ireland) 2015;
- Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015;
- Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (which brought forward changes to reflect relevant EU Directives);
- The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2019;
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020;
- The Planning (General Permitted Development) (Amendment) Order (Northern Ireland) 2020;

- 12.2. Other minor technical amendments were made through the:

- The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) (Amendment) Order (Northern Ireland) 2016;
- The Planning (Listed Buildings) (Amendment) Regulations (Northern Ireland) 2016;
- The Planning (Local Development Plan) (Amendment) Regulations (Northern Ireland) 2016;
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment) Regulations (Northern Ireland) 2020
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment) Regulations (Northern Ireland) 2021
- Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment No.2) Regulations (Northern Ireland) 2021;
- The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018; and

- The Planning (Environmental Assessments and Technical Miscellaneous Amendments) (EU Exit) Regulations (Northern Ireland) 2020.

## Call for Evidence – Key Messages

12.3. The broad themes to emerge from the call for evidence are set out at paragraphs 3.7-3.9 of this report which form the basis of the Department's considerations of respondent's calls for legislative, or other change. Conversely, a resounding message to emerge was that almost two-thirds of the Act (162 sections) drew little or no comment and the Department considers these provisions should be retained as structured. In particular, no substantive comments were made in relation to the following:

- Part 7 – Purchase of Estates in Certain Land Affected by Planning Decisions;
- Part 8 – Further Provisions as to Historic Buildings;
- Part 9 – The Planning Appeals Commission; (Department of Justice)
- Part 11 – Application of Act to Crown Land; and
- Part 15 – Supplementary.

12.4. As had been anticipated, the vast majority of comments and suggested improvements focused on the following parts of the Act and associated subordinate legislation:

- Part 2 – Local Development Plans;
  - The Planning (Local Development Plan) Regulations (NI) 2015
- Part 3 – Planning Control;
  - The Planning (Development Management) Regulations (NI) 2015
  - The Planning (General Permitted Development) Order (NI) 2015
  - The Planning (General Development Procedure) Order (NI) 2015
  - The Planning (Fees) Regulations (NI) 2015
- Part 4 – Additional Planning Control; and
- Part 5 – Enforcement.

12.5. To a lesser degree, further additional comments and suggestions were made in relation to:

- Part 1 – Functions of the Department
- Part 6 – Compensation;
- Part 10 – Assessment of a Council's Performance or Decision Making;
- Part 12 – Correction of Errors;
- Part 13 – Financial Provisions; and
- Part 14 – Miscellaneous and General Provisions

12.6. The tables at **Annex A** to this report set out the Department's detailed consideration of proposals for changes to existing legislation and guidance which have been informed by the call for evidence. This includes a series of recommendations/actions which the Department believes could assist towards better achieving the objectives of the Planning Act.



## **Key recommendations**

- 12.7. Under Part I of this report the Department concluded that the stated objectives of the implementation of the Planning Act have been achieved.
- 12.8. The Department recognises that the planning system, in some parts, hasn't achieved the level of performance envisaged. For instance, indicative timeframes for bringing forward LDPs have not been achieved and while targets have largely been met for processing local planning applications, targets for processing major planning applications have not. There are various factors which have contributed to this and the Department is seeking to address these through a range of measures, which are largely outside the scope of this review. Nevertheless, the Department has considered whether amendments to legislation have the potential to make the system more efficient and in turn, bring forward performance improvements.

## **Local Development Plans**

- 12.9. While the Department estimated all councils would have LDPs in place by 2019 this was an indicative timeframe which sought to provide an estimate for the preparation of an untested system. Legislation does provide for amended timetables to be submitted and agreed by the Department reflecting and acknowledging that timeframes may be subject to change.
- 12.10. While there have been some calls for a fundamental review of the LDP system, the Department is of the view that any fundamental review of the current approach is best undertaken following adoption of a number of LDPs to evaluate and better understand 'perceived' obstacles in plan-making. The Department is of the view that the current approach remains appropriate, but considers some practical measures may assist the process. The Department intends to add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs. The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to reduce unnecessary consultation. In addition, the Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online / digital means of communication in plan-making to improve accessibility for citizens.

## **Development Management**

- 12.11. In relation to development management, while the Department considers the existing framework of roles and responsibilities remains appropriate, there are a number of areas which merit further review and potential legislative change. This includes a review of existing thresholds and categories of development to determine if they remain fit for purpose. The Department will bring forward proposals to provide for both in-person and on-line/electronic pre-application community consultation (PACC) public engagement. This will include consideration of any recommendations to

emerge from the work of the Planning Engagement Partnership. The Department will also review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward. The Department also intends to bring forward proposals to improve the information requirements / quality of planning applications entering the system through statutory “validation check-lists”. Notwithstanding current work-streams aimed at improving statutory consultee response times, the Department will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes. The Department will also bring forward proposals to make pre-determination hearings discretionary for councils. In terms of appeals, the Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal. In addition, the Department will undertake a general review of current Departmental Directions and will undertake a general review of planning fees including proposals for an automatic annual inflationary uplift, and multiple fees for retrospective applications. Further recommendations are made in relation to additional planning controls and enforcement (fixed penalty notices).

12.12. The following table summarises these key recommendations. (The issue references correlate with those in the Annex).

**Table of Recommendations/Actions**

<b>Part 2 - Local Development Plans</b>	
<b>Issue Ref</b>	<b>Action</b>
<b>PT2-2</b>	<p><b><u>Local Development Plan Guidance</u></b></p> <p>The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.</p>
<b>PT2-4</b>	<p><b><u>Consultation Bodies in Plan-Making</u></b></p> <p>The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to local planning authorities.</p>
<b>PT2-6</b> <b>PT3-17</b> <b>PT5-2</b>	<p><b><u>Digitization in the Planning System</u></b></p> <p>The Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online / digital means of communication in plan-making, development management, and in the planning system generally to improve accessibility for citizens.</p>

<b>Part 3 - Planning Control</b>	
<b>Issue Ref</b>	<b>Action</b>
<b>PT3-1</b>	<p><b><u>Categories of Development</u></b></p> <p>The Department will review existing thresholds and categories of development to determine the need for revisions.</p>
<b>PT3-3</b>	<p><b><u>Pre-Application Community Consultation (PACC) and Notice</u></b></p> <p>The Department will bring forward proposals to provide for both in-person and on-line/electronic PACC public engagement. This will include consideration of any recommendations to emerge from the work of the Planning Engagement Partnership. Clarity on the PAN process could be provided in expanded guidance if appropriate.</p>
<b>PT3-4</b>	<p><b><u>Call-In Applications</u></b></p> <p>The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.</p>
<b>PT3-5</b>	<p><b><u>Incomplete Applications and Validation Check-Lists</u></b></p> <p>The Department will bring forward proposals to introduce statutory 'validation check-lists' and will seek to advance policy development at the earliest opportunity.</p>
<b>PT3-7</b>	<p><b><u>Time period for consultation responses</u></b></p> <p>The Department will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.</p>
<b>PT3-10</b>	<p><b><u>Pre-Determination Hearings (PDH)</u></b></p> <p>The Department will bring forward proposals to make PDH discretionary for councils in the exercise of their functions.</p>
<b>PT3-14</b>	<p><b><u>Matters Raised at Appeal</u></b></p> <p>The Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal.</p>
<b>PT3-19</b>	<p><b><u>DFI Directions</u></b></p> <p>The Department will undertake a general review of current departmental directions.</p>

<b>PT3-20</b>	<p><b><u>Commencement of Development</u></b></p> <p>The Department will review this provision to establish if any technical amendments are appropriate.</p>
<b>Part 4 – Additional Planning Control</b>	
<b>Issue Ref</b>	<b>Action</b>
<b>PT4-3</b>	<p><b><u>Tree Preservation Orders (TPO)</u></b></p> <p>The Department will review current requirements around TPOs with a view to bringing forward proposals to permit councils to vary or revoke TPOs. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions.</p>
<b>PT4-4</b>	<p><b><u>Review of Old Mineral Permissions (ROMPs)</u></b></p> <p>The Minister is to consider options on the way forward with regards to ROMPs early in 2022.</p>
<b>Part 5 – Planning Enforcement</b>	
<b>Issue Ref</b>	<b>Action</b>
<b>PT5-3</b>	<p><b><u>Fixed Penalty Notices (FPN)</u></b></p> <p>The Department will explore the possibility of applying FPNs to advertisement control.</p>
<b>Part 13 – Financial Provisions</b>	
<b>Issue Ref</b>	<b>Action</b>
<b>PT13-1</b>	<p><b><u>Planning Fees</u></b></p> <p>The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees.</p>

Any proposed change to legislation will require further policy development, public consultation on potential amendments to primary and/or subordinate legislation, Assembly scrutiny and preparation of associated guidance, as necessary. Amendments are likely to be proposed to:-

- The Planning Act (Northern Ireland) 2011
- The Planning (Local Development Plan) Regulations (Northern Ireland) 2015.
- The Planning (Development Management) Regulations (Northern Ireland) 2015
- The Planning (General Development Procedure) Order (Northern Ireland) 2015

- Planning (Fees) Regulations (Northern Ireland) 2015
- Conclusions and Next Steps**

- 12.13. As a reminder, the purpose and scope of the review is to consider: the objectives intended to be achieved by the Planning Act; assess the extent to which those objectives have been achieved; and assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.
- 12.14. The Department would conclude that the vast majority of the Act is to be retained as currently structured and that there is no case, in this first review report, to recommend the repeal of any of its provisions in order to achieve the objectives of the Act.
- 12.15. The report has, however, identified certain provisions / areas of the Act and subordinate legislation which, if amended or supplemented, could assist in improving the planning system and, therefore, better achieve the objectives of the Act.
- 12.16. The Department will, therefore, seek to develop these policy proposals with a view to bringing forward proposals for public consultation at the earliest opportunity. Actions which require amendment to current primary legislation will be taken forward through the NI Assembly Bill Process.<sup>11</sup> Actions which require secondary / subordinate legislation will also be undertaken in accordance with best practise, in conjunction with the Committee for Infrastructure and Assembly where appropriate. Other actions may be addressed through new or revised guidance. Actions falling to the next mandate will be subject to the views of an incoming Minister.

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[https://education.niassembly.gov.uk/post\\_16/the\\_work\\_of\\_the\\_assembly/making\\_legislation/bill\\_act](https://education.niassembly.gov.uk/post_16/the_work_of_the_assembly/making_legislation/bill_act)

## Consideration of Proposals for Change

Table 1

Part 1 Functions of the Department	Assessment
<p><b>(PT1-1) Matters for the Department to take account of in the exercise of its functions.</b></p> <p><b>You said:</b> - A small number of respondents, principally NGOs and some individuals, proposed that Departmental functions under Part 1 should be updated to include specific reference to other strategies e.g. climate change, net zero emissions, ecological protection and ecological restoration.</p>	<p><b>Our response:</b> The objective of the planning system, consistent with Part 1 of the Act, is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being. This means the planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. In furthering sustainable development and improving well-being, the planning system supports the Executive's Programme for Government commitments and priorities as well as the aims and objectives of the Regional Development Strategy 2035 (RDS) which is its overarching spatial strategy for Northern Ireland.</p> <p>Section 1(3)(b) of the Planning Act gives latitude to the Department, in the formulation and co-ordination of policy to secure the orderly and consistent development of land, to take account of, "any other matter which appears to it to be relevant". Such other strategies will normally be relevant in the exercise of these functions. In light of this and given the current and ever increasing number of strategies aimed at assisting in improving the environment, economy and climate etc, it would not be pragmatic, nor necessary to explicitly cite all such strategies in the Act, or planning legislation in general. To do so would involve continually amending the Planning Act as other strategies come forward.</p>

	<b>Proposed Action: The Department will, in the exercise of its functions, continue to keep under review other strategies/policy/guidance to determine their relevance in the formulation and co-ordination of planning policy and is not persuaded of the need to amend legislation.</b>
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Table 2

<b>Part 2 Local Development Plans (LDP)</b>	<b>Assessment</b>
<p><b>(PT2-1) The two document approach to LDP preparation</b></p> <p><b>You said</b> – A cross-section of respondents including local government, business, some individuals and political parties put forward various suggestions to reform the current approach to include: a single LDP document; greater number of smaller plan documents; parallel preparation of development plan documents, a review within the context of retained Planning Policy Statements set out in the Strategic Planning Policy Statement.</p>	<p><b>Our response</b> - Calls for a change to the overarching framework for preparing LDPs are considered premature within the context of current LDPs under preparation by councils.</p> <p>A move away from the current two document approach would likely cause significant disruption and greater delay to current efforts in developing draft plans, and would represent a fundamental change requiring extensive policy development and public consultation. The Department is of the view that any fundamental review of the current approach is better undertaken following adoption of a number of LDPs to evaluate and better understand ‘perceived’ obstacles in plan-making. The Department is of the view that the current approach remains appropriate.</p> <p><b>Proposed Action: The Department will, in conjunction with councils and key stakeholders, monitor and review current processes following adoption of a number of LDPs.</b></p>
<p><b>(PT2-2) Local Development Plan Guidance</b></p> <p><b>You said</b> – A small cross-section of respondents including some local government, business and NGOs suggested that</p>	<p><b>Our response</b> – Existing guidance on local development plan making processes is set out in the SPPS and other Departmental Development Plan Practice Notes (DPPN), and includes</p>

<p>the Department further clarifies in guidance its overall role in the plan-making process, including: the agreement of timetables, submission of documents for independent examination (IE), adoption and revision of an LDP etc. A small cross-section of councils, representative bodies and some business interests questioned the need for an LDP to be submitted to the Department for IE and suggested that councils should be permitted to submit plans directly to the examination body, saving time, cost and unnecessary burden.</p>	<p>clarification on the role of the Department at various stages. These are available on the DfI website: <a href="https://www.infrastructure-ni.gov.uk/publications/development-plan-practice-notes">https://www.infrastructure-ni.gov.uk/publications/development-plan-practice-notes</a></p> <p>Extant practice notes will be reviewed as part of an overall review following adoption of a number of LDPs, to determine if guidance would benefit from further clarification. The Department is of the view that any review of the current approach to LDP preparation, including its own role in the overall process is better undertaken following adoption of a number of LDPs to evaluate and better understand 'perceived' obstacles in plan-making. The Department is of the view that the current legislative approach remains appropriate.</p> <p><b>Proposed Action: The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.</b></p>
<p><b>(PT2-3) Matters to <u>take account of</u> in furthering sustainable development, and preparation of LDPs</b></p> <p><b>You said</b> – A cross-section of respondents including renewables and business groups put forward the suggestion that the matters to take account of should be broadened to include the Programme for Government, and other NI Executive and Departmental strategies e.g. Environment, Energy / Renewables, Investment, Climate, Minerals, commitments to Net Zero emissions etc; and more robust connectivity with Local Community Plans; some also consider that the statutory requirement to <b>'take account of'</b></p>	<p><b>Our response</b> - The objective of the planning system, consistent with Part 2 of the Act, is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being. This means the planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. In furthering sustainable development and improving well-being, the planning system supports the Executive's Programme for Government commitments and priorities as well as the aims and objectives of the Regional Development Strategy 2035 (RDS) which is its overarching spatial strategy for Northern Ireland.</p>



<p>such strategic guidance documents in legislation is too flexible, while a few considered it to be too rigid.</p>	<p>In light of this and given the current and ever increasing number of strategies aimed at assisting in improving the environment, economy, climate etc it would not be pragmatic to explicitly list in planning legislation those which must be taken into account by councils in the preparation of local development plans. The SPSP sets out additional policy/guidance on the matters to be taken into account of in the plan-making process. Also, the Local Government Act (NI) 2014 inserted into s.8 &amp; 9 of the Planning Act, the requirement to also take account of a “council’s current community plan”. In furthering sustainable development, s.5(2)(b) of the Planning Act gives latitude to authorities exercising any function under Part 2, to take account of “any other matter which appears to that person to be relevant”, in addition to other policy and guidance issued by other Departments.</p> <p><b>Proposed Action: The Department is not persuaded of the need to amend legislation on matters to <u>take account of</u> in the preparation of LDPs.</b></p>
<p><b>(PT2-4) Consultation Bodies in plan-making</b></p> <p><b>You said –</b> A majority of councils and other public bodies consider that the scope of consultation bodies is too wide ranging and laborious for a Council to consult at every stage. Those respondents were of the view that it may be better left to the discretion of a Council to filter / tailor the plan-making consultation lists, and to only maintain contact with those it considers, or those which have specifically asked to be consulted, to have a continuing interest in the Council’s plan preparations.</p>	<p><b>Our response -</b> The consultation bodies for the purposes of preparing a LDP are set out at regulation 2 of the Planning (Local Development Plan) Regulations (NI) 2015. This is an established list of relevant consultees, taken forward from previous plan-making under the unitary planning system. The list of consultees includes all NI government departments, neighbouring councils, the Civil Aviation Authority, NIHE, water &amp; sewerage undertakers, any person to whom the electronic communication code applies, and any person to whom a licence has been granted under either the Electricity (NI) Order 1992, or Gas (NI) Order 1996. The Department understands that this issue pertains principally with respect to those consultees listed at regulation 2(1)(f-h), which can</p>

	<p>be quite numerous and include some which do not wholly operate within NI.</p> <p><b>Proposed Action: The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to local planning authorities. Changes to the consultee list arising from this review will require amendment of the Development Plan Regulations.</b></p>
<p><b>(PT2-5) Approach to LDP Timetabling</b></p> <p><b>You said –</b> A cross-section of a number of councils and businesses are of the view that the LDP process spans too long a period of time and the timetables require continual updating, and suggest separate timetables for each stage. A cross-section of other respondents including NGOs, Renewables and business sectors suggested potential fines for failure to adhere to LDP timetables, including possible introduction of a maximum time period for adoption of a plan.</p>	<p><b>Our response -</b> While the requirement to prepare and keep under review a timetable for the preparation of an LDP is a statutory duty, the dates a council indicates are indicative and estimated on the basis of the information available at that time. The duty to keep the timetable under review is to afford councils the opportunity to amend / adjust the timetable in the face of unforeseen delays. It would not be practicable to hold councils to strict adherence to an LDP timetable particularly when unforeseen events beyond their control may cause programme slippage. The Department anticipates that as councils work through their LDP processes, that future plan preparations including plan adjustments, should become more focused and efficient.</p> <p><b>Proposed Action: The Department is not persuaded of the need to amend current LDP timetabling requirements at this time. The Department will however consider this issue as part of a wider review of LDP processes.</b></p>
<p><b>(PT2-6) Digitization in the Planning System -</b></p>	<p><b>Our response -</b> Calls to better utilise digital / online means of consultation and communication in plan-making, and development management featured strongly in the responses to the call for</p>

<p><b>You said</b> – Overall, a broad cross-section of respondents proposed the planning system should enhance the use of online / digital availability of documents for inspection and comment in plan-making. Generally, most councils suggested that the need for advertisements in the local press and Belfast Gazette which is viewed as costly and ineffective, should be removed.</p>	<p>evidence. Regulation 4 of the LDP regulations, and Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in plan-making and development management. Removing the requirement for advertisement in the printed press and Belfast Gazette would need careful consideration particularly around its potential effects on some s.75 groups.</p> <p><b>Proposed Action: The Department will undertake a review of the publicity and advertisement requirements associated with plan-making to determine whether there are ways to enhance online / digital means of communication in plan-making specifically to approve accessibility for citizens. This will include consideration of any recommendations which may emerge from the work of the Planning Engagement Partnership.</b></p>
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Table 3

Part 3 Planning Control	Assessment
<p><b>(PT3-1) Categories of Development</b></p> <p><b>You said</b> - Overall, a broad cross-section of respondents including most councils, business and renewables sectors called for a review of the current hierarchy of development, and thresholds for major and RSD development, to also include consideration of the introduction a third <b>'Intermediate / Minor'</b> category of development mirroring that in GB (Major, Minor and Other).</p>	<p><b>Our response</b> - Section 25 of the Planning Act classifies development into two categories: 'major' and 'local', with section 26 providing for major development of regional significance (RSD) which is to be dealt with by the Department. The associated thresholds for major and RSD development, are set out in the Planning (Development Management) Regulations (NI) 2015. Any development below the major category threshold is classed as 'local', which represent the vast majority of planning applications received and determined by councils.</p>

	<p>Performance of a council's planning functions is principally measured against processing of major and local applications. The suggestion to introduce a third 'intermediate/minor' category is intended to sub-divide the current 'local' category which can currently range from, for example, a domestic porch to a large residential scheme comprising 49 units. Consequently, the processing requirements to determine these types of application can also vary within this category of development.</p> <p>The thresholds for regionally significant applications are tailored to meet regional needs and circumstances and particular planning pressures in Northern Ireland in comparison to other jurisdictions. The thresholds in each jurisdiction are also specifically designed to suit the respective political, administrative and legislative context of each of the administrations. Even in the event of changes to the thresholds, the Department is required to make a determination as to whether a proposed development is considered to be one of regional significance. Where the thresholds are met or exceeded it does not automatically equate that the application is to be dealt with by the Department.</p> <p>Equally, calls to review the major and RSD thresholds could examine the need to introduce new/revised categories of development including for example, energy storage and generation facilities. Such revisions could result in more or fewer applications categorised as major or RSD, also affecting the need for pre-application community consultation.</p>
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	<b>Proposed Action: The Department will review existing thresholds and categories of development to determine the need for revisions.</b>
<p><b>(PT3-2) Pre-Application Discussions (PADs)-</b></p> <p><b>You said</b> - A broad cross-section of respondents including some councils, NGOs, business and representative bodies suggested that PADs should be moved to a legislative footing particularly for major and RSDs proposals, with statutory consultees enabled to charge their own PAD fees with the income ring-fenced to improve capacity. Some developers suggested they would be willing to pay statutory consultees for PAD advice if it would improve the quality of their applications and significantly improve processing time. Some suggested Councils can take different approaches to pre-application discussions and this may benefit from a more standardised, formalised approach in subordinate legislation.</p>	<p><b>Our response</b> - The PAD process is not a statutory requirement and is therefore optional. PADs are a separate activity from statutory pre-application consultation with communities, although they can inform the planning process and scope of the statutory consultation activity. Such consultation may also support the applicant's preparation of the statutory design and access statement. DM Practice Note 10 sets out the current guidance on PACC and PADs, and indicates that the PADs process will take a different form in each instance, and should be proportionate to the nature, scale and benefits of the application. The suggestion to move PADs to a legislative fee-based footing for major and RSD applications (in addition to PACC), could serve to add another layer of bureaucracy, and potentially put further pressure on the limited resources of statutory consultees. It is considered more effective to retain the current discretion planning authorities have to undertake proportionate PADs as appropriate. The Planning Forum is currently reviewing the regional approach to PADs to improve their effectiveness and efficiency.</p> <p><b>Proposed Action: The Department is not persuaded of the case for, or benefits of moving PADs to a legislative footing. However, the Planning Forum will continue to review the regional approach to PADs to improve effectiveness and efficiency.</b></p>

<p><b>(PT3-3) Pre-Application Community Consultation (PACC) and Notice –</b></p> <p><b>You said</b> - A broad cross-section of respondents including some councils, NGOs, business and representative bodies suggested that provision should be made to allow for a 'blended' in person and online approach to PACC within the context of digital availability and COVID 19 restrictions. Meaningful engagement and a central register for PACC third parties to receive regular updates was also suggested as was a requirement for applicants to demonstrate how they have altered their proposals in light of issues raised during pre-application process. Some suggested reducing the 12 week period to 6 or 8 weeks. Others sought clarity on PAN process and timeframe for submission of a subsequent application.</p>	<p><b>Our response</b> - Guidance on current PACC and PAN processes is set out in Development Management Practice Note 10.</p> <p>In response to the COVID 19 emergency, The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020 temporarily removed the requirement for a public event (and its associated advertising) as part of the pre-application community consultation process associated with planning applications for major development. This applied where a proposal of application notice (PAN), which triggers the pre-application community consultation process, is given to a council / the Department before, or during, the defined emergency period (1 May 2020 to 30 September 2020). The regulations were subsequently amended (on several occasions) to suspend the PACC requirement, firstly to 31 March 2021, then 30 September 2021, and again to 31 March 2022.</p> <p>The Department will keep the latter date under review, taking account of any changes to the public health advice, to consider if an extension or reduction to the emergency period would be appropriate. It will also continue to encourage potential applicants to undertake alternative arrangements to engage with the community as set out in guidance which will be updated. It should also be noted that this does not prohibit developers, if they considered it appropriate and beneficial, to voluntarily hold a public event as part of the pre-application community consultation, provided they comply with the health regulations.</p> <p>The PACC process helps to underpin the front loading of an application by seeking to identify and address local community concerns prior to submission of an application. Any proposed reduction to the current 12 week period could negatively impact on</p>
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	<p>pre-application community participation and may be viewed as an attempt to limit / curtail meaningful community engagement.</p> <p>The associated PACC report (s.28), prepared by the applicant, can outline any amendment(s) to a proposal arising from community consultation. While the legislation does not specify a period within which a planning application must be submitted (following service of a PAN), further evidence would be required to quantify this matter before recommending amendment to both primary and subordinate legislation.</p> <p>Calls to better utilise digital / online means of consultation and communication in plan-making, and development management featured strongly in the responses to the call for evidence. Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in the PACC process.</p> <p>A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and 10 councils when it goes operational, which may help to address these issues. It will also deliver new services to the public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational in summer 2022.</p> <p><b>Proposed Action: The Department will bring forward proposals to provide for both in-person and on-line/electronic PACC public engagement. This will include consideration of any recommendation to emerge from the work of the Planning Engagement Partnership. Clarity on the PAN process could be provided in expanded guidance if appropriate.</b></p>
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<p><b>(PT3-4) Call-In Applications</b></p> <p><b>You said</b> – A small cross-section of respondents suggested the Department clarify and simplify the call-in process and publish criteria and clarity on how this power will be exercised by the Department. Some are of the view that where a proposal which a council considers acceptable but is called-in, this only serves to elongate the time taken to determine the application.</p>	<p><b>Our response</b> - Guidance on the call-in process is set out in Development Management Practice Note 13.</p> <p>Section 29 (1) of the 2011 Act allows the Department to direct that an individual application or applications be referred to the Department instead of being dealt with by a council. This provision allows the Department to call in any planning application for determination. The Department's direction may be given under Section 29(2)(a) to an individual council or to councils in general and, under Section 29(2) (b), may relate to either a particular application or a specific use class. There are currently several Departmental Directions in this regard, including: The Planning (Notification Of Councils' Own Applications) Direction 2015; and The Planning (Notification Of Applications) Direction 2017. These are important checks and balances in the planning system.</p> <p>Applications will be called in by <b>exception</b>, as the Department recognises the important role of councils in decision making on the future development of their areas.</p> <p>Furthermore, there may be circumstances where a proposed development raises issues of such importance that they could be considered to have a significant regional impact, regardless of falling below the threshold for regionally significant development, or it may be considered the Department is a more appropriate authority to determine the application. As there have been calls for clarity around the call-in process and there have been some delays in the process, the Department considers there is merit in reviewing the process.</p> <p><b>Proposed Action: The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.</b></p>
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<p><b>(PT3-5) Incomplete Applications and Validation Check-Lists</b></p> <p><b>You said</b> – A broad cross-section of respondents including most councils, some in the business sector and several political parties proposed that the efficiency and effectiveness of the planning system can be improved if the quality of applications coming into the system is improved. Most councils suggested the Department make statutory provision to permit councils to issue application ‘check-lists’ setting out all the necessary information needed to accompany various types of planning application when they are submitted.</p>	<p><b>Our response</b> - Guidance on the different types of planning applications, including other additional supporting information which may be required is set out in Development Management Practice Note 04.</p> <p>The format of an application for planning permission is provided for by section 40 of the 2011 Act. The form and content of a planning application is specified in Article 3 of the GDPO.</p> <p>Validation requirements set out what information or evidence must be submitted with a planning application before it can be considered by the planning authority, and therefore deemed to be ‘valid’. Whenever a planning application becomes ‘valid’ the timeframe for processing a planning application commences. It is against this timeframe that a council’s performance is measured, and also for the purposes for appeals against ‘non-determination’ of an application. However, many applications when submitted do not contain all the information needed to determine them. This can result in further requests to the applicant and delays in processing.</p> <p>The move to a ‘validation check-list’ would permit a council to prepare and publish, against various types of planning applications and development, the additional information which must accompany applications (over and above the minimum requirements) which it considers as necessary to properly determine the application. Such provision is available in England and Wales and some councils in NI have already put similar arrangements in place on an administrative basis.</p>

	<p>In addition, a 2019 review into the efficiency and effectiveness of the planning system in NI with a particular focus on the role of statutory consultees concluded that “...<i>the efficiency and effectiveness of the planning system can be improved if the quality of applications coming into the system is improved.</i>” Evidence on the use of validation check lists on an administrative basis suggest there may be benefits on placing these on a statutory footing.</p> <p><b>Proposed Action: The Department will bring forward proposals to introduce ‘validation check-lists’ and will seek to advance policy development at the earliest opportunity.</b></p>
<p><b>(PT3-6) Advertisement / Notification of Applications</b></p> <p><b>You said</b> - A small cross-section of respondents including several councils suggested that the requirement to publicise applications in the printed press should be removed in its entirety and substituted with a combination of electronic consultation, neighbour notification and site notices. Some respondents were of the view that a specified date for receipt of representations made in response to notifications should be imposed.</p>	<p><b>Our response</b> - Guidance on publicity and neighbour notification requirements in planning is set out in Development Management Practice Note 14.</p> <p>Current advertisement, notification and inspection requirements for planning applications (and appeals) are set out at Article 8 of the GDPO 2015, (in exercise of powers conferred by s.41 &amp; 42) which includes notice being placed in the printed press (locally), neighbour notification(s) and advertisement of a council's website, date for receipt of representations, but <b>not site notices</b>. These requirements would need to be repeated where a proposed scheme has materially changed before a planning application can be determined.</p> <p>Planning applications are publicised in the local press in order to bring the details of development proposals to the attention of the public. The statutory requirements placed upon councils or the Department to advertise planning applications and certain types of consents within local newspapers, and to carry out neighbour notification of ‘identified occupiers’ provides interested parties with an opportunity to consider and comment on development</p>

	<p>proposals. Publication of planning applications in the local press allows authorities to engage with a much broader range of interested parties or groups than simply through neighbour notification alone.</p> <p>There is also a requirement for developers to undertake pre-application community consultation before submitting an application for a major development, and as part of this process a developer must publish in a local newspaper a notice containing details of the proposed development and the arrangements for a community consultation event.</p> <p>Site notices are used in some other jurisdictions, in conjunction with (and not in substitution for) other on-line notification measures, and depending on the type of development may also require newspaper advertisement.</p> <p>While the Department can appreciate the views of respondents, particularly councils with regards to the costs associated with advertisement in the printed press, it is not persuaded that it can adequately be substituted with the proposals suggested. Any proposal to remove the requirement to advertise in the local printed press would also need added scrutiny given the potential impacts on certain s.75 groups etc. In addition, while the date for submission of a representation is not to be earlier than 14 days after the date on which a notice is sent, the consideration of any representation will depend on its substance and materiality to planning considerations. However, there is scope to examine the potential to use online/digital methods to improve the process.</p> <p><b>Proposed Action: The Department will undertake a review of the publicity and advertisement requirements associated with planning applications to determine whether there are ways to</b></p>
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	<b>enhance online / digital means of communication. This will include consideration of recommendations to emerge from the work of the Planning Engagement Partnership.</b>
<p><b>(PT3-7) Time period for consultation responses</b></p> <p><b>You said</b> - A broad cross-section of respondents including renewables, business, representative groups and some public interest bodies suggested that the statutory timeframes for consultations responses should be reviewed, with consideration given to introducing penalties for late responses. Some respondents also suggested that 'deemed consent' should apply where no consultation response is received within 21 days, and greater clarity given as to how councils can proceed if statutory consultees do not respond within the required timeframes.</p>	<p><b>Our response</b> - Current requirements to consult and duty to respond are set out at s.229, and prescribed at Articles 13-16 of the GDPO 2015. These specify, amongst other things, that a consultee is to provide a substantive response within 21 days of it receiving notice, and that the application is not to be determined before 21 days (or 28 days for EIA development). A different (longer) period may be <b>agreed in writing with the consultee</b>.</p> <p>The 2019 review on the <a href="#">Role of Statutory Consultees in the Planning Process in NI</a>, stated that: "Statutory consultees play an essential role in the planning process as planning authorities may not have the necessary expertise in-house to assess the technical and specialist issues of an application's merits. The consultation process is an important element of an open, transparent and democratic planning system where, ultimately, elected politicians oversee final decisions on planning applications."</p> <p>Where a consultee fails to respond within the timescale the planning authority is not obliged to await a response. However, it will wish to consider the potential impact of proceeding without the views of a consultee. Within this context the Department is not persuaded that 'deemed consent' would be appropriate in the absence of a substantive consultation reply, which may ultimately be critical to the proper determination of an application.</p> <p>It is recognised that there are many factors causing delays in the processing of planning applications, not just statutory consultees. These include the increased complexity of the system and regulatory requirements, risk of legal challenges, wider resourcing</p>

	<p>issues, case management issues, the culture of working with applicants to 'fix' poor quality applications etc.</p> <p>The issue of resources has also been raised by Minister Mallon with the Finance Minister. This was identified as one of the 'key conclusions' from the review on the role of consultees (see above) which states "...from a statutory consultee perspective, I have concluded that access to adequate resources is crucial to a more efficient and responsive system. I have, therefore, recommended that relevant departments review the resourcing requirements associated with their statutory consultee role against workloads and determine the need for any additional resource to ensure efficient and timely responses to planning consultations."</p> <p>It has also long been recognised that poor quality planning applications impact not only the performance of statutory consultees but also the performance of the entire planning system. To this end, the potential introduction of statutory 'validation check-lists' setting out the detailed information requirements to accompany planning application for most types of development, will assist towards an enhanced front-loaded planning system.</p> <p>The cross-government Planning Forum is also working on improving processes and timeframes for processing major and economically significant applications. The Forum is focusing on a number of areas including: statutory consultees reviewing existing practices, procedures and the resourcing requirements associated with their statutory consultee role against workloads, to ensure efficient and timely responses to planning consultations.</p> <p>The Forum recently developed and issued an advice note (see link below) on the key operating principles for planning consultations.</p>
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	<p>The purpose of this is to encourage best practice around the consultation process to make it more efficient and effective for all.</p> <p><a href="https://www.infrastructure-ni.gov.uk/publications/consultations-planning-application-process-operating-principles-planning-authorities-and-consultees">https://www.infrastructure-ni.gov.uk/publications/consultations-planning-application-process-operating-principles-planning-authorities-and-consultees</a></p> <p>The Department monitors and publishes quarterly and annual statistical reports on the performance of statutory consultees across the planning system (See link below to the latest annual report).</p> <p><a href="https://www.infrastructure-ni.gov.uk/publications/ni-statutory-planning-consultations-annual-performance-report-202021">https://www.infrastructure-ni.gov.uk/publications/ni-statutory-planning-consultations-annual-performance-report-202021</a></p> <p>Notwithstanding the context set out above, the Department considers there may be some merit in reviewing the legislative requirements around statutory consultations, including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.</p> <p><b>Proposed Action: While the Department is not persuaded of the case for the introduction of ‘deemed consent’ where a statutory consultee fails to respond in time, it will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.</b></p>
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<p><b>(PT3-8) Determination of applications</b></p> <p><b>You said</b> – Some councils consider that additional information and/or amended plans (particularly at Committee stage) should only be accepted at their discretion, and that they should have the power to pause processing of applications / agree an extension of time to process. Some councils and the business sector are of the view that councils should also be able to decline representations which are made late in the planning process. <i>(See also PT3-9 below).</i></p>	<p><b>Our response</b> - Guidance on the different types of planning applications, including the additional supporting information which may be required to determine an application, is set out in Development Management Practice Note 04.</p> <p>The suggested proposals, including the ‘pausing’ of processing (of an application when awaiting additional information), could be addressed in part with the front-loading of planning applications through the introduction of ‘validation check-lists’ (see PT3-5 above). Such a provision would negate time lost awaiting additional information from applicants, or the need to pause processing. In addition, while the time period for decisions (See PT3-9 below) is set out at regulations 20(2)(a) and (b) of the GDPO 2015 for major and local development respectively, regulation 20(2)(c) allows for an extension to the specified periods where this is agreed in writing between the council and the applicant.</p> <p>The ability of an applicant to seek to amend/alter a development proposal before an application is submitted (pre-application community consultation), or during processing to overcome potential objections and reason(s) for refusal is an established part of planning practice and procedure. A planning authority can however, refuse any application where it determines that a proposal, even if amended, would be contrary to planning policy / development plan or other material planning considerations. An applicant does retain a right to appeal such decisions. (The issue of new material and variation of applications at appeal is considered at PT3-14 below).</p>

	<p>The issue of ‘late representations’ (which in the view of some respondents, are framed to frustrate the determination of a planning application) could be difficult to legislate against, and importantly, may interfere with a person’s (third party) right to be heard. This is not a straightforward matter as the issue of whether a representation to an application raises issues which are material to its determination must be considered and not just the time in which it is submitted to the planning authority. Similar considerations apply to amended plans / additional information from applicants. We are not aware of a relevant legislative approach in other jurisdictions, however it may be the policy / practice of planning authorities elsewhere not to accept amended schemes immediately prior to a decision.</p> <p><b>Proposed Action: The Department is not persuaded of the need to disallow the introduction of new information or pause, or amend a development proposal during the processing of an application. These matters could be significantly addressed with the front-loading of information accompanying planning applications via the introduction of validation check-lists and the issue could be revisited after that (See PT3-5 above).</b></p>
<p><b>(PT3-9) Statutory timeframes for determining applications</b></p> <p><b>You said –</b> A cross-section of respondents including businesses and industry called for the Department to set more ambitious targets that are comparable to GB for RSD and major applications. Other respondents suggested the inclusion of statutory time periods for other determinations</p>	<p><b>Our response -</b> Currently Article 20 of the GDPO sets out the statutory time periods for decisions, for the purposes of making an appeal under Section 60 of the 2011 Planning Act (non-determination appeal). The periods are: 16 weeks for a major development; and 8 weeks for any other case (local development). However, there is no right of appeal under Section 58 or Section 60 for decisions on applications made to the Department under Section 26, or called-in by the Department under Section 29.</p>



<p>including; s.54 applications, Discharge of Conditions; CLUDs; Non-Material Changes.</p> <p>At a technical level, some respondents considered there was currently ambiguity around the timeframes within which extensions to the decision making process on a planning application should be sought and agreed with a Council, and therefore, when a non-determination appeal could be sought.</p>	<p>There are currently 3 statutory planning indicators, one of which relates to major applications processed by councils – <i>‘to process major planning applications from the date valid to decision issued or withdrawal date within an average of 30 weeks’</i>. The Department monitors these indicators on a quarterly and annual basis. In addition to the 3 statutory planning indicators, the Department published the first planning monitoring framework in September 2019, which includes a number of non-statutory indicators. The second Planning Monitoring Framework was published in December 2020. It is envisaged that this framework will continue to evolve over time and will assist in ensuring we continuously improve the planning system going forward.</p> <p>The Department accepts that improvements to processing times must be made. However, it is also important that due process is followed when determining a planning application to avoid poor decisions being taken in order to meet mandatory targets. It is considered that focusing on the work of the Planning Forum, particularly in relation to the performance of statutory consultees is the most appropriate way of improving performance.</p> <p>With regard to non-determination appeals, the Department holds the view that the entitlement to appeal against non-determination arises "at once" upon the expiry of the determination period. In other words, if the applicant and planning authority do not agree to extend the determination period <b>before it expires</b> and then attempt to do so some time later the right of appeal against non-determination will expire at the end of the initial determination period. There must be no break in extending the determination period from the initial one if the right of appeal against non-determination is to be retained.</p>
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	<b>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will monitor and keep this issue under review.</b>
<p><b>(PT3-10) Pre-Determination Hearings (PDH)</b></p> <p><b>You said</b> – Most councils and some business and professional bodies suggested that PDHs should be a solely discretionary function for councils to decide where, in their view, they would add value to the decision making process. There were also calls for the Department to issue guidance and direct councils regarding PDHs for greater consistency across councils.</p>	<p><b>Our response</b> - Guidance on PDH processes is already set out in Development Management Practice Note 17.</p> <p>Section 30 sets out the process for PDHs. Generally PDHs are at the discretion of Councils and Sections 30(2) and (3) allow a council to choose the appropriate method for the hearing and who, in addition to the applicant or specified persons can also participate.</p> <p>There is, however, a <b>mandatory</b> requirement for a PDH in certain limited circumstances where a major application has been subject to a call-in notification and returned to the council for processing. Often in these major application cases a PDH will already have taken place before it has been notified to the Department and, therefore, a second PDH may not be necessary or appropriate. Consequently, a mandatory PDH in these circumstances could potentially add some delay and uncertainty to the planning process, hindering a Council's performance against statutory targets, with increasing costs for both applicants and councils. On this basis the Department believes there is merit in amending this provision so that all pre-determination hearings are wholly at the discretion of councils.</p> <p><b>Proposed Action: The Department will bring forward proposals to make all PDH discretionary for councils in the exercise of their functions. This will require amendments to subordinate legislation.</b></p>

<p><b>(PT3-11) Duration of Planning Permission</b></p> <p><b>You said</b> – A small number in the renewables sector and other businesses interests suggested that extant planning permissions should be extended in emergency situations, for example, extending permissions for 10+ years for more complex approvals and regionally significant development.</p>	<p><b>Our response</b> - Section 61 of the Act stipulates that every planning permission granted or deemed to be granted, will be subject to the condition that the development must begin within 5 years of the date on which permission is granted (<u>or such other period as considered appropriate</u> by the Department or council which granted the permission). In relation to outline permissions, section 62 states that unless provided otherwise reserved matters must be submitted for approval within 3 years of the grant of outline planning permission and development must be begun within 5 years of the grant of outline permission or 2 years from the final approval of reserved matters.</p> <p>Councils or the Department already have latitude under s.61 when granting permission, to allow for a period of more than 5 years within which development is to be commenced.</p> <p>The issue of extending permissions during emergency situations was raised several times to the Department, by various sectors during the current pandemic, and on foot of similar extensions provided in other jurisdictions. However, permissions in England and Scotland are granted to commence within 3 years, while those in NI and Wales are granted with a 5 year commencement condition, making the issue less acute in NI and Wales. Events such as the current COVID 19 emergency are very uncommon and the case for legislative change is not strong enough to proceed with such a proposal, especially given the various alternative options, including: commencement of development (See PT3-20); or making an application for renewal of permission, as was advised in Chief Planner's Updates issued during the pandemic.</p>
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	<p><b>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will monitor and keep this issue under review.</b></p>
<p><b>(PT3-12) Notices of Opinion</b></p> <p><b>You said –</b> Some within the business and industry sectors are of the view that there should be a presumption against the use of Notices of Opinion for regionally significant development applications (or applications to amend such schemes), and that the process could be streamlined with such applications sent directly to the Planning Appeals Commission (PAC) or other independent body for independent consideration / determination.</p> <p>Furthermore the Planning Appeals Commission would wish to see greater use of online arrangements for hearings or public local inquiries</p>	<p><b>Our response -</b> Applications under Section 26 and Section 29 are dealt with and processed by the Department which is the relevant planning authority. Where a public local inquiry is not held, the Department must serve a notice of opinion (NOP) on the applicant and the Council indicating the decision it proposes to make. Upon receipt of the notice, the applicant or the Council can request a hearing before the PAC or other Examiner. The PAC is not bound by the NOP in preparing its report and the Department must take the PAC report into account in finally determining the application. Not every application requires a Public Local Inquiry (PLI) and equally not every NOP results in a hearing at the PAC. It should also be noted that going to PLI adds at least a year onto a timescale for processing more complex applications and, therefore, a planning application should only be taken to PLI when deemed necessary to consider particular matters. This should remain a matter for professional planning judgement. Where an applicant wishes to contest a NOP, they have a right to a hearing before the PAC. In terms of the PAC role, the recommendation to send all RSD and called-in applications directly to the PAC or other independent body would be a fundamental reordering of the Department's and PAC's roles. At present, under the Act the PAC is a statutory and independent appellate body set up and resourced to hear and determine appeals and conduct PLI/hearings, not to process and determine planning applications in the first instance. There is no clear evidence that moving this function from DfI Planning to the PAC or other independent body would result in significant process efficiencies. Indeed, such a move may cause further delay and</p>

	<p>confusion as arrangements would still need to be made to allow the Minister to determine such applications. It would also raise the question of how to facilitate the ability of councils or applicant to avail of a PL/hearing if they did not agree with the PAC decision. Finally, much work would be required to set up and resource the PAC as a first instance planning authority.</p> <p>The Department recognises the success throughout the pandemic in using online hearings and the associated efficiencies for the overall planning process.</p> <p><b>Proposed Action: The Department is not persuaded of the need to amend existing provisions with regard to notices of opinion or making the Commission or other independent body responsible for RSD applications but will monitor and keep the issue under review. The Department will explore further options to facilitate online / virtual hearings or public local inquiries (See 3-17).</b></p>
<p><b>(PT3-13) Retrospective Permissions</b></p> <p><b>You said –</b> A small number of individual respondents, political parties and community groups voiced their opposition to provisions which permit applications which seek permission for development already carried out (retrospective permission). This opposition included calls to introduce fines and increased planning fees for such applications.</p>	<p><b>Our response -</b> Section 55 of the 2011 Act allows for retrospective planning applications to be made i.e. where development has already been carried out without permission, and for applications for planning permission to authorise development which has been carried out without complying with a planning condition(s) to which it was subject. Such applications must seek full planning permission only.</p> <p>Currently, the fee for an application which relates to development carried out without planning permission, is calculated in accordance with the provisions of Part 2 of the Fees regulations as if the application were one for permission to carry out that development. Section 223(2) does allow for the charge of a fee for</p>

	<p>retrospective permission to be a multiple of the usual fee, however, this is not currently provided for in Part 2 of the Fees Regulations.</p> <p>Applications made to regularise permission for development already carried out is an established part of planning practice. Introducing fines or, increasing the planning fees for applications seeking retrospective permission, would need careful consideration and could be viewed as punitive as it often, but not always, relates to householder type development such as extensions.</p> <p>Councils do have discretionary powers to proceed with enforcement action against unauthorised development, which if not remedied, can result in the imposition of fines, or the alteration or removal of buildings as a remedy.</p> <p><b>Proposed Action: The Department will consider introducing multiple fees for retrospective applications as part of a wider review of planning fees (see PT13-1). The Department is not persuaded of the need to amend current provisions with regard to retrospective planning permission.</b></p>
<p><b>(PT3-14) Matters which may be raised at appeal</b></p> <p><b>You said</b> - A majority of councils, and a small number of other respondents have sought clarity around section 59 of the Act to ensure that the legislative tests are fit for purpose. Respondents have further suggested that the wording of the legislation should be revisited and, if necessary, amended or guidance published to clarify the approach, for instance, section 59 should be amended to ensure that appeals can</p>	<p><b>Our response</b> - Currently a party to the proceedings of a planning appeal will not be able to raise any matter that was not in front of a council or the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the PAC, that the matter could not have been raised before that time or that it's not being raised was due to exceptional circumstances.</p> <p>While the NI approach is modelled on that in other jurisdiction, it does not go as far as in Scotland for example, where an appellant</p>

<p>only be determined on the basis of the application as originally refused by the council.</p>	<p>cannot change the terms of the proposed development – it must be the same as the proposal that was considered previously by the council, using the same plans<sup>12</sup>. Such a measure, if introduced here, may encourage applicants to alter their development proposals where a council is minded to refuse permission on the basis of the application as made, knowing that it cannot be varied thereafter via an appeal mechanism.</p> <p><b>Proposed Action: The Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal. This will require public consultation, and amendments to primary and/or subordinate legislation.</b></p>
<p><b>(PT3-15) Third Party Right of Appeal</b></p> <p><b>You said</b> – Most individual respondents, together with a broad cross-section of community and political representatives, NGO and some councils suggested the Department introduce a new appeals mechanism or provide for third party planning appeals / challenges.</p>	<p><b>Our response:</b> The legislative and structural changes to the planning system which came into effect with the new two-tier system in 2015 are designed to deliver an inclusive, front-loaded system with stronger third party engagement and local democratic accountability. Concerns with the introduction of third party rights of appeal at the end of the development management process could undermine an applicant's commitment to community engagement at the start of a front-loaded system, and risks reducing certainty and the effectiveness and efficiency of the planning system at a time when it needs to be responsive to sustainable recovery from the pandemic.</p> <p><b>Proposed Action: The Department is not persuaded of the need to amend current provisions with regard to planning</b></p>

<sup>12</sup> <https://www.legislation.gov.uk/ukpga/1997/8/section/32A>

	<p><b>appeals but will continue to keep this matter under review. This will include consideration of recommendations to emerge from the work of the Planning Engagement Partnership.</b></p>
<p><b>(PT3-16) Non / Minor-material changes</b></p> <p><b>You said –</b> A broad cross-section of respondents including some councils, professional bodies, business and renewables sectors suggested the Department consider introducing a proportionate approach to <b>minor material</b> changes, in addition to non-material changes, and that the Department should retain authority for such changes with regards to permissions it has granted.</p>	<p><b>Our response -</b> Guidance on the non-material change mechanism and procedures as well as good practice is set out in Development Management Practice Note 25.</p> <p>The 2011 Act has introduced a mechanism by which a council will have a formal method of dealing with small changes ('non-material') to approved schemes (s.67 and Regulation 7 GDPO). The introduction of the non-material change procedure under the 2011 Act replaced the otherwise informal process previously used to respond to requests for minor amendments. In deciding whether a change is material, a council will have regard to the effect of the change, together with previous changes on the original permission. This provision allows a council to impose new conditions, or remove or alter existing conditions. Whether or not the proposed amendment(s) are considered to be 'non-material' (rather than 'material') will depend on the specific details of the existing planning permission. A change which may be considered 'non-material' in one case could be 'material' in another.</p> <p>There is no statutory definition of 'non-material', it is down to the Local Planning Authority to be satisfied that any amendment(s) sought are 'non-material' in order to be eligible for this type of application.</p>



	<p>Some respondents are of the view that there is value in introducing a legislative provision allowing an applicant to make a <b>'minor-material'</b> modification to a current extant permission. The basis being that it would assist in cases where numerous acceptable changes are made to a core permission over time but resulting in multiple layers of individual permissions arising. In addition, minor amendments to planning permissions can require a new application, (possibly including full PACC and PAN), which in the view of some respondents, is rather onerous and has an impact on delivery.</p> <p>There is no statutory definition of 'minor-material', however other jurisdictions suggest that <b>'minor material'</b> amendments are likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved (and recommends that pre-application discussions should be used to determine whether an amendment is a 'minor material amendment' before an application is submitted).</p> <p>Some amendments may, if appropriate, be taken forward under Section 54 of the Act, allowing conditions associated with the existing permission to be varied. A local planning authority can use its discretion to decide who should be consulted about such an application and the approach that should be taken to notification.</p> <p>In relation to the point that the Department should retain authority for changes to permissions it has granted, the approach here mirrors that in other jurisdictions, where the local planning authority has principal responsibility for the vast majority of planning functions, including subsequent applications and changes to those previously granted by the Department.</p>
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	<b>Proposed Action: The Department is not persuaded of the need to amend current provisions with regard to non-material or, minor-material amendments, but will continue to keep these matters under review.</b>
<b>(PT3-17) Digitization in the Planning System</b>  <b>You said –</b> Overall, a broad cross-section of respondents proposed the planning system should allow for the electronic submission of planning applications, fees and inspection of other documents.	<p><b>Our response -</b> Calls to better utilise digital / online means of consultation and communication in plan-making, and development management and enforcement featured strongly in the responses to the call for evidence. Regulation 4 of the LDP regulations, and Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in plan-making and development management. Removing the requirement for advertisement in the printed press and Belfast Gazette would need careful consideration particularly around its potential effects on some s.75 groups.</p> <p>A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and the 10 councils when it goes operational. It will also deliver new services to the public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational next summer.</p> <p><b>Proposed Action: The Department will work with stakeholders to determine whether there are ways in which to better utilise online / digital means of communication in plan-making, and the planning system overall (See also PT2-6 and PT3-6). This may require public consultation, and amendments to primary and/or subordinate legislation</b></p>
<b>(PT3-18) Permitted Development</b>	<b>Our response -</b> Certain elements of The Planning (General Permitted Development) Order (NI) 2015 have been reviewed and

<p><b>You said</b> – A majority of councils and a cross-section of other NGOs, individuals and industry suggested that the department undertakes a review of current permitted development rights in a number of areas, particularly in relation to: minerals, utilities, agriculture, forestry, and householder development. Some councils also requested the introduction of permitted development rights specific to the use of land for COVID 19 related purposes such as test centres.</p>	<p>amended since its introduction. Changes include provisions in relation to minerals, telecommunications, electric vehicle charging points, and shops, financial and professional services. A more comprehensive review covering other matters raised by respondents such as agriculture, forestry, and householder development would be a significant and resource intensive undertaking, and not achievable in the short or medium term.</p> <p><b>Proposed Action: The Department will continue to keep permitted development rights under review and will bring forward amendments to extant PD provisions as and when appropriate in line with Ministerial priorities and Departmental resources.</b></p>
<p><b>(PT3-19) DFI Directions</b></p> <p><b>You said</b> – A small cross-section of respondents including some councils and industry are of the view that existing Notification Directions should be amended or repealed, particularly The Planning (Notification Of Applications) Direction 2017. Some respondents also consider the Department consider the introduction of a new Direction to deal with applications for electricity transmission lines.</p>	<p><b>Our response</b> – Councils are required to notify the Department, either through certain Notification Directions or requirements of the Planning Act, of certain specified matters with regard to major development, listed building consent, councils own planning applications, and control of demolition in Conservation Areas. A council cannot proceed to determine such applications or grant consent until such time as the Department has had opportunity to consider the application. The Department has 28 days to consider the matter, or may issue a holding direction pending a decision whether or not, to call-in the application.</p> <p>Given that departmental directions have been in place for several years now, the Department considers there is merit in undertaking a general review of their operation to determine if they remain appropriate going forward.</p>

	<p><b>Proposed Action: The Department will undertake a general review of current departmental directions. This may require public consultation, and amendments to primary and/or subordinate legislation.</b></p>
<p><b>(PT3-20) Commencement of Development</b></p> <p><b>You said –</b> A small cross-section of respondents including some councils, business and private sector suggested that further guidance is needed on what constitutes a lawful start to development, and that s.63(2) should make specific reference to ‘laying out or constructing a road’ &amp; ‘demolition’ to avoid applicants losing their permissions.</p>	<p><b>Our response -</b> Section 61 of the Act imposes a statutory condition on the grant of planning permission that development must be begun within 5 years of the date on which permission is granted or such other period as the council or the Department considers appropriate.</p> <p>Additionally, where outline planning permission is granted, development must be begun within 5 years of the date on which the permission is granted or within 2 years of the final approval of the reserved matters.</p> <p>Commencing development means undertaking some limited works on site to commence a planning permission and thus keep it alive.</p> <p>A material operation can include any works of construction, demolition, digging foundations, laying out or constructing a road and a material change in the use of the land. The works must be done within the time period expressed on the permission.</p> <p>In order to lawfully commence development it is necessary to satisfy the legal requirements in section 63(2) of the Act. This says that <i>“development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out.”</i> Section 63(2) specifies the operations which can constitute the start of development. The meaning of ‘development’ is set out at section 23 of the Act, as too is the meaning of ‘building operations’, and includes demolition, and rebuilding.</p>

	<p><b>Proposed Action: The Department will review this provision to establish if any technical amendments are appropriate.</b></p>
<p><b>(PT3-21) Planning Agreements</b></p> <p><b>You said –</b> A cross-section of respondents including some councils, business, NGOs and private sector interests suggested that further guidance / clarification could be provided on the circumstances in which section 76 planning agreements will be implemented including the use of conditions and covenants to secure developer contributions and other benefits. Some considered that legal fees associated with formulating planning agreements should be inclusive of the planning application fee, and that any variation to planning conditions should not result in the need for a Deed of Variation to a Section 76 agreement. Some also suggested that developers should be able to submit a 'Unilateral Undertaking' as a substitute to a Bi or Multi Party planning agreement under Section 76.</p>	<p><b>Our response –</b> Section 76 of the Planning Act (NI) 2011 enables any person who has an estate in land to enter into a planning agreement with either a council or the Department (whichever is the relevant authority).</p> <p>A planning agreement may facilitate or restrict the development or use of the land in any specified way, require operations or activities to be carried out, or require the land to be used in any specified way. An agreement may also require a sum or sums to be paid to the relevant authority or to a Northern Ireland department on a specified date(s) or periodically.</p> <p>The relevant authority has the power to enforce a planning agreement by entering the land and carrying out the operations itself. Any expenses incurred in doing so are recoverable from the person or persons against whom the agreement is enforceable. A planning agreement may not be modified or discharged except by agreement between the relevant authority and the person or persons against whom the agreement is enforceable.</p> <p>A planning agreement can play a meaningful role in the development management process as a valuable mechanism for securing planning matters arising from a development proposal. An agreement may mean that development can be permitted whilst potentially negative impacts on land use, the environment and infrastructure could be reduced, eliminated or mitigated.</p> <p>Most of the comments and suggestions in relation to planning agreements revolve around their use and practice or seeking</p>

	<p>clarification on technical aspects of them. The matter of recoverable costs associated with planning agreements under the Act, is similar to that in other jurisdictions, e.g. for planning obligations in Scotland, under section 75 of the Town and Country Planning (Scotland) Act 1997. These are matters that can and should be addressed by planning authorities adopting best practice approaches and do not require legislative change.</p> <p><b>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will continue to engage with Councils on practice through the normal mechanisms.</b></p>
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Table 4

Part 4 Additional Planning Control	
<p><b>(PT4-1) Temporary Listing / Building Preservation Notice (BPN)</b></p> <p><b>You said</b> – Some councils and professional bodies are of the view that the Department for Communities (DfC) should retain powers to enforce / issue a BPN and be liable for compensation (not a council). These respondents have also requested that consideration be given to providing DfC with a power to issue a BPN, including liability for compensation.</p>	<p><b>Our response</b> - Responsibility for certain functions under the Planning Act with respect to Listed Buildings and Conservation Areas transferred from the Department of Environment to the Department for Communities in 2016<sup>13</sup>. Councils however are responsible for the issuing of BPNs, (temporary listing where considered necessary), to be confirmed (or not) by DfC. Councils are currently liable for compensation (s.186) where a BPN ceases to have effect without the building having been listed by DfC.</p> <p><b>Proposed Action: As these functions are the responsibility of another department, DfI will continue to liaise with DfC on these matters.</b></p>

<sup>13</sup> <https://www.legislation.gov.uk/nisr/2016/76/contents/made>

<p><b>(PT4-2) Conservation Areas (CA)</b></p> <p><b>You said</b> – A number of councils, together with other professional bodies and a political party, propose that councils be given the authority to vary / repeal a CA designated by the Department, and that The Planning (Northern Ireland) Act 2011 Planning (Control Of Demolition In Conservation Areas) Direction 2015 should be rescinded.</p> <p>Respondents also contend that the requirement for councils to refer an application for Conservation Area Consent to the Department, where it intends to grant permission, is completely heavy handed, disproportionate and an unnecessary administrative burden.</p>	<p><b>Our Response</b> - Responsibility for certain functions under the Planning Act with respect to Listed Buildings and Conservation Areas transferred from the Department of Environment to the Department for Communities in 2016. Councils and DfC can designate CAs, however such designation can only be varied or cancelled by the authority which made the designation. In effect, councils are currently unable to vary or cancel a CA designated by the Department prior to the transfer of planning functions in 2015.</p> <p><b>Proposed Action: Given these functions are the responsibility of another department, DfI will continue to liaise with DfC on these matters.</b></p> <p><b>The Department intends to review the Conservation Area consent notification requirements (See also comments at PT3-19)</b></p>
<p><b>(PT4-3) Tree Preservation Orders (TPO)</b></p> <p><b>You said</b> – A number of councils and political representatives have requested that the Department provides the power for councils to vary or revoke TPOs, including those made by the Department and its predecessors, and to also clarify the meaning of 'amenity' and 'abatement of a nuisance' within guidance. Some further contend that such protections should be extended in other designated areas such as ATCs.</p>	<p><b>Our response</b> - Planning powers with respect to Trees are set out at sections 121-128, Chapter 3, Part 4 of the Planning Act (NI) 2011 and are primarily the responsibility of local councils. The Department has a power to make, amend or revoke a tree preservation order (TPO) under section 124, in consultation with the local council. In effect, should a council wish to amend or revoke a TPO, it currently must make a request that DfI do so on its behalf. In addition, while trees in a CA are offered protection under section 127 of the Act, those in other designated areas such as ATCs are not. ATC's are, however, identified and designated through the LDP process which does not currently provide statutory protection of trees.</p>

	<b>Proposed Action: The Department will review current requirements around TPOs with a view to bringing forward proposals to permit councils to vary or revoke TPOs in their areas. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions.</b>
<b>(PT4-4) Review of Old Mineral Permissions (ROMPs)</b>  <b>You said –</b> A broad cross-section of respondents including councils, NGOs, individuals, political parties and some business interests requested that the Department commence legislation around ROMPs and that the Department provide the necessary resources to allow implementation.	<b>Our response -</b> Officials are continuing to examine a number of options in relation to the commencement of legislation for the review of old mineral permissions (ROMPs).  Councils do, however, have a broad range of other enforcement powers available under the Planning Act (NI) 2011 where they believe a developer is operating outside the terms of a permission. Councils remain best placed to investigate such planning matters and have a responsibility to do so.  <b>Proposed Action: The Minister is to consider options on the way forward with regards to ROMPs early in 2022.</b>

Table 5

<b>Part 5 Enforcement</b>	<b>Assessment</b>
<b>(PT5-1) Relevant authority for Enforcement</b>  <b>You said –</b> A cross-section of councils, business and academia are of the view that planning enforcement should rest with the authority which granted the relevant approval, while several individuals contend that enforcement should not be a discretionary function, nor where it is only expedient to do so. Some also believe that cost recovery	<b>Our response –</b> Guidance on planning enforcement is set out in Enforcement Practice Notes 1-4.  The vast majority of planning functions, including that for planning enforcement rests with local councils. The Department has parallel powers with regards to certain functions, including issuing of enforcement notices (section 139). The Department's parallel enforcement powers can be used where it is considered expedient



<p>could further incentivise appropriate action by planning authorities.</p> <p>Councils have suggested that the Department should take responsibility for enforcement action where necessary (extending to applications for Reserved Matters approval, and discharge of conditions) where it was the determining authority, and these should not rest with councils.</p>	<p>in circumstances where, for example, a council has failed to issue enforcement or stop notices (and not before consulting the appropriate council).</p> <p>The potential need for the enforcement of matters connected to decisions previously issued by the Department, is a discretionary function of councils, taking account of the merits of the case, and other relevant planning matters, and is only likely to extend to a small number of cases.</p> <p>The approach to planning enforcement here is modelled on that in other jurisdictions, where planning enforcement is exercised as a discretionary function. Planning authorities will, in deciding to take appropriate action, be guided by the key enforcement objectives, as set out in the SPPS<sup>14</sup>, and will do so having regard to the provisions of the Local Development Plan and any other material considerations.</p> <p>In its considerations, a council may include matters such as: whether the breach of planning control would be clearly contrary to planning policy or unacceptably affect public amenity (including road safety and nature conservation issues) or the existing use of land and buildings meriting protection in the public interest; the extent of the breach; the willingness of the offender(s) to remedy the breach of control voluntarily or through negotiations; and the statutory time limits for taking enforcement.</p> <p>Enforcement action against a breach of planning control may be taken when a council regards it as <b>expedient</b> to do so. Whilst not formally defined, expediency is taken as a test of whether an unauthorised development or activity is causing unacceptable harm</p>
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<sup>14</sup> These key objectives are as stated in paragraph 5.57 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) September 2015

	<p>to the environment and / or public amenity, having regard to the provisions of the local development plan and to any other material considerations. It would be appropriate for councils, in determining what (if any) enforcement action is to be taken, to give priority to those breaches where in a council's opinion the greatest harm is being caused. It is considered good planning practice that any action taken against a breach of planning control shall be proportionate to the breach.<sup>11</sup></p> <p><b>Proposed Action: The Department is not persuaded of the need to change the approaches to planning enforcement but will keep these matters under review.</b></p>
<p><b>(PT5-2) Digitization in the Planning System</b></p> <p><b>You said</b> – Some councils and academia suggested that legislation should permit the electronic service of enforcement and other similar notices.</p>	<p><b>Our response</b> - Calls to better utilise digital / online means of consultation and communication in the planning system overall featured strongly in the responses to the call for evidence.</p> <p>Section 239 of the Act provides for the service of notices and documents by means of electronic communications however this currently <b>excludes</b> enforcement notices, stop notices, planning contravention notices etc (see section 239(3)).</p> <p>This matter could be considered within the context of a broader examination of enhanced digitization in the planning system. Such a proposal if taken forward would require policy development, public consultation and amendment to primary and/or subordinate legislation and guidance.</p> <p>A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and the 10 councils when it goes operational. It will deliver new services to the</p>

	<p>public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational summer 2022.</p> <p><b>Proposed Action: The Department will work with stakeholders to determine the potential use of online / digital communication in planning enforcement. This can be undertaken within the context of a broader examination of enhanced digitization in the planning system.</b></p>
<p><b>(PT5-3) Fixed Penalty Notices (FPN)</b></p> <p><b>You said –</b> A majority of councils and some individuals suggested that FPNs are punitive only, and would be better applied to unauthorised signage/advertisements.</p>	<p><b>Our response -</b> Sections 153 and 154 enable a council to issue a fixed penalty notice for the offences of failure to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court.</p> <p>FPNs are intended to provide planning authorities with an alternative process, in addition to the current option to seek a prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice (EN) or a breach of condition notice (BCN).The majority of ENs and BCNs issued by planning authorities are complied with; however there are occasions where they are not.</p> <p>By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not however discharge the obligation to comply with the terms of the EN or BCN and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person.</p>

	<p>This approach to FPN mirrors that in other jurisdictions and provides councils with an alternative means of remedy.</p> <p><b>Advertisements</b></p> <p><b>Section 175</b> of the 2011 Act allows a council to deal with enforcement of advertisement control. On conviction for display of an advertisement contravening regulations made under <b>section 130</b> (i.e. control of advertisements), a person is liable to a fine not exceed level 4 of the standard scale (£2500). In the case of a continuing offence, the fine will not exceed one tenth of level 4 (£25) for each day during which the offence continues after conviction. Within this context, respondents are of the view that the application of FPN to advertisement controls would be a proportionate response to potentially better address the issue.</p> <p><b>Proposed Action: The Department will explore the possibility of applying FPNs to advertisement control. Any changes, if taken forward will require amendment to primary and/or subordinate legislation.</b></p>
<p><b>PT5-4 Unadopted Roads / Private Streets Determinations (PSD)</b></p> <p><b>You said –</b> Some councils suggested the introduction of a mechanism so councils can take enforcement action to deal with un-adopted roads. Alternatively, the planning process should not be used to deal with matters that are for other regulatory regimes.</p>	<p><b>Our response:</b> - The Department would <b>not</b> be in favour of removing the PSD from the planning process. The Private Streets (NI) Order 1980 is inter-linked to the Planning Act, and separating the two would create a two stage approval process. While doing so <b>may</b> shorten the process time for relevant planning applications, it would likely lengthen the overall time required by developers to subsequently obtain the requisite PSD approval and begin development. There is also a risk that some developers may not submit a Private Streets Determination post-planning, meaning an agreement and road bond cannot be put in place. On balance it is considered that maintaining the existing link between the planning and PSD process is best for the efficiency of the end to end</p>

	<p>development process, and in terms of ensuring that road layouts are completed in a timely manner.</p> <p><b>Proposed Action: The Department is not persuaded of the need to amend existing provisions however, it will continue to explore ways of improving the PSD aspect of the process.</b></p>
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Table 6

Part 6 Compensation	Assessment
<p><b>(PT6-1) Liability as to Compensation</b></p> <p><b>You said</b> – A small number of councils consider that they should not be held liable for compensation for any actions or decisions taken by the Department e.g. if the Department decides to revoke or modify a planning permission then councils should not be liable for any costs.</p>	<p><b>Our response:</b> The approaches to planning enforcement, including modification, revocation, and compensation here follow those in other jurisdictions, for example: In England, the local planning authority has the power to revoke planning permissions under section 97 of the 1990 Planning Act, but this has to be confirmed by the Secretary of State. In England and Wales the Secretary of State also has the power to revoke planning permission under section 100 of the 1990 Planning Act, and where this is done the liability to pay compensation still falls on the local planning authority, as though it had made the revocation order. Also, the revocation or modification of an unimplemented planning permission is not a routine or common exercise, and a planning authority can take into account the matter of compensation payable should it seek to proceed with such an order.<sup>15</sup></p> <p><b>Proposed Action: The Department is not persuaded of the need to change the approaches to compensation.</b></p>

<sup>15</sup> Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent) [2012] UKSC 34, 18 July 2012

Table 7

<b>Part 7 Purchase of Estates in Certain Land Affected by Planning Decisions</b>	<b>Assessment</b>
<b>You said –</b> No comments.	

Table 8

<b>Part 8 Further Provisions as to Historic Buildings</b>	<b>Assessment</b>
<b>You said –</b> No comments.	

Table 9

<b>Part 9 The Planning Appeals Commission</b>	<b>Assessment</b>
<b>You said –</b> No comments.	

Table 10

Part 10 Assessment of a Council's Performance	Assessment
<p><b>(PT10-1) Exercise of powers</b></p> <p><b>You said –</b> A small cross-section of respondents including NGOs, business, housing, and other professional bodies requested the Department exercise greater and more regular use of its powers to undertake regular reviews of a council's performance, which in their view would allow shortcomings to be identified and recommendations for improvements to be made. Others, including some councils suggested that the way in which councils planning performance is measured should be reviewed with an emphasis on quality decisions rather than the speed at which an application can be moved through the process.</p>	<p><b>Our response:</b> Part 10, sections 207- 209 of the Act enables the Department to conduct an assessment of a council's performance or decision making, including an assessment of how a council deals with applications for planning permission and the basis on which determinations have been made. Since the transfer of the Planning function to councils in 2015 the Department has not carried out any assessments under Sections 207-209, however it does monitor the performance of councils through a number of mechanisms including 3 statutory planning performance indicators, which are reported upon quarterly and annually and also a number of non-statutory planning indicators, contained within the Planning Monitoring Framework, which is published annually. All information relating to these indicators is published on the DfI website (see attached links).</p> <p><a href="https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-2019-march-2020">https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-2019-march-2020</a></p> <p><a href="https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2020">https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2020</a></p> <p>The Department continuously works in collaboration with Councils and other planning stakeholders across a range of planning issues to discuss and bring forward improvements to the efficiency and effectiveness of the planning system. The issue raised by respondents is about the exercise of these powers and not the structure of powers themselves. The use of powers available to the Department will however, be kept under review as a means to deliver improvements, if appropriate.</p>

	<b>Proposed Action:</b> The Department is not persuaded of the need to change the approaches to the assessment of a council's performance, but will keep this matter under review in the exercise of its functions.
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Table 11

<b>Part 11 Application of Act to Crown Land</b>	<b>Assessment</b>
<b>You said</b> – No comments.	

Table 12

<b>Part 12 Correction of Errors</b>	<b>Assessment</b>
<b>(PT12-1) Correction of Errors</b>  <b>You said</b> – Most councils together with a small cross-section of other respondents suggested that Part 12 should be commenced, to include additional provisions to correct errors in conditions.	<b>Our response:</b> See paragraphs 4.5 – 4.6 of this report.  <b>Proposed Action:</b> The Department proposes to make a minor amendment at an appropriate legislatively opportunity to remove this anomaly and subsequently commence Part 12

Table 13

<b>Part 13 Financial Provisions</b>	<b>Assessment</b>
<b>(PT13-1) Planning Fees</b>	<b>Our response:</b>



<p><b>You said</b> – Councils were unanimous in their call for a review of existing fees structure, to include an automatic uplift of fees annually and that they should have the power to apply fees for the discharge of conditions, non-material changes, PADs and other similar consents/applications.</p>	<p>The Department considers there is merit in reviewing planning fee categories and the fees themselves to establish if they remain fit for purpose and cover the costs of processing applications in line with the requirements of Managing Public Money (NI). Such a review would consider the introduction of new fees with regard to applications to discharge conditions, PADs, non-material changes, retrospective permission etc and would require amendment to the Fees Regulations.</p> <p><b>Proposed Action: The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees.</b></p>
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Table 14

Part 14 Miscellaneous and General Provisions	
<p><b>(PT14-1) Duty to respond to consultation</b></p> <p><b>You said</b> – A small number of respondents consider that the consultation process continues to remain open ended and is impacting on the ability of councils to meet their statutory targets.</p>	<p><b>Our response:</b> Refer to commentary at Table 3 (PT3-7) – ‘Time period for consultations’.</p> <p><b>Proposed Action: In conjunction with the recommendation at issue PT3-7 above, the Department will keep under review any consequential changes to this duty.</b></p>
<p><b>(PT14-2) Planning Register</b></p>	<p><b>Our response:</b> Section 45 of the Planning Act (NI) 2011 (“the 2011 Act”) sets a requirement on the Department and councils to</p>

<p><b>You said</b> – A small number of respondents including some councils suggested the introduction of provisions similar to Article 40(13) (a) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 with regards to Finally Disposed of Applications which allows planning authorities to “Finally Dispose” of applications where it has not been determined and the statutory time limit for lodging an appeal has expired.</p>	<p>determine an application for planning permission. Article 20 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (“the GDPO”) sets out the periods for determination of council planning applications [16 weeks for ‘major’ applications and 8 weeks for ‘local’ applications]. If a determination has not been made within that period then under sections 58 and 60 (2011 Act) the applicant may appeal to the Planning Appeals Commission.</p> <p>Whilst a council or Department can issue a decision notice to refuse a development proposal on the basis of insufficient information to determine the development proposal, it does not have any legislative framework in place to dispose of ‘old’ applications where both the statutory timeframe and appeal timeframe have passed without a determination being made.</p> <p>As of September 2021, less than half of all councils are dealing with a small number of live, legacy planning applications which over time, will continue to diminish. On the basis of the evidence, the Department is not persuaded of the need for any change to existing legislative provisions.</p> <p><b>Proposed Action: The Department is not persuaded of the need to amend these provisions.</b></p>
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Table 15

Part 15 Supplementary	Assessment
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<b>You said –</b> No comments.	
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Table 16

Other Matters	Assessment
<p><b>(OM-01) Resources / Training</b></p> <p><b>You said –</b> A broad cross-section of respondents including some councils, NGOs, business and renewables sectors have suggested that the Department ensures that adequate resources and training are made available for statutory consultees, PAC, councillors etc, to help in the exercise of their planning functions, to include resources for specialist and shared services with regard to minerals and waste, urban design, habitats assessments, EIA etc.</p>	<p><b>Our response:</b> The issue of resources and training for consultees and others, is out-with the scope of this review. At the time of transfer of planning functions and the reform of local government necessary resources were made available together with appropriate training with regards to the exercise of planning functions by councils and associated committees. Councils are responsible for resourcing, training and operational performance. Furthermore, the PAC is resourced through the Department of Justice.</p>
<p><b>(OM-02) Biodiversity Net Gain principles, Net Zero, and Nature Recovery Networks</b></p> <p><b>You said –</b> A small number of respondents including NGOs business and renewables sectors have suggested that the Department look to develop additional bespoke environmental legislation, such as is proposed within the Environment and Nature Restoration Private Members Bill including Biodiversity net gain.</p>	<p><b>Our response:</b> While the Department is of the view that this matter is out-with the scope of this review, furthering sustainable development is at the heart of the planning system and regional planning policy. The Department is committed to ensuring that the planning system plays its part in responding to the climate crisis and that resources are actively focused on measures and actions to support a green recovery from the pandemic.</p> <p>The Planning Act (NI) 2011 and existing regional planning policy and guidance already provide councils with the flexibility to bring forward bespoke local policies for the development of their areas, where appropriate. The matter of additional bespoke environmental legislation is however out-with the scope of this review.</p>

<p><b>(OM-03) Review extant planning policy</b></p> <p><b>You said –</b> A small cross-section of councils, renewables, and professional bodies have suggested that the Department should review the Regional Development Strategy (RDS), Strategic Planning Policy Statement (SPPS) and address the ongoing review of existing planning policy statements (PPSs), on the countryside, minerals etc, as these may have an impact on future local policy development / LDP preparation. Consider allowing the retention of PPSs until such time as a Local Policy Plan is adopted.</p>	<p><b>Our response:</b> The Department is of the view that this matter is out-with the scope of this review.</p> <p>The RDS is prepared under the Strategic Planning (Northern Ireland) Order 1999. Under that Order the Department is responsible for formulating “in consultation with other Northern Ireland departments, a regional development strategy for Northern Ireland, that is to say, a strategy for the long term development of Northern Ireland”. The RDS provides an overarching strategic planning framework to facilitate and guide the public and private sectors. It does not redefine other Departments’ strategies but complements them with a spatial perspective.</p> <p>The SPPS has a statutory basis under Part 1 of the Planning Act (Northern Ireland) 2011 which requires the Department to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development. The existing suite of Planning Policy Statements and the remaining provisions of ‘A Planning Strategy for Rural Northern Ireland’ will be cancelled when all eleven councils have adopted a new Plan Strategy for the whole of their council area.</p> <p>Both the RDS and SPPS are subject to periodic reviews to ensure they remain appropriate over time and can respond to new and emerging issues or challenges.</p> <p><b>Proposed Action: The Department will, in the exercise of its functions, continue to keep extant planning policy under review.</b></p>
<p><b>(OM-04) Measurement of Planning Performance (Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015)</b></p>	<p><b>Our response:</b> This issue is out-with the scope of this review.</p> <p>The Department monitors the performance of Councils through a number of mechanisms including 3 statutory planning performance</p>

<p><b>You said</b> – A small number of councils, together with some from the business and professional sectors consider that the way in which planning application performance is measured should be reviewed. Respondents suggested that the approach in GB of measuring the percentage of applications determined within the statutory target should be adopted, and that Statutory Performance Indicators should be reviewed to take account of quality decisions rather than the speed at which an application can be moved through the process.</p>	<p>indicators, which are reported upon quarterly and annually and also a number of non-statutory planning indicators, contained within the Planning Monitoring Framework, which is published annually. All information relating to these indicators is published on the DfI website (see attached links):</p> <p><a href="https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-2019-march-2020">https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-2019-march-2020</a></p> <p><a href="https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2020">https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2020</a></p> <p>Any changes to the way in which council's performance is measured would require amendment to the Measurement of Planning Performance (Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015).</p> <p><b>Proposed Action: The Department will keep this matter under review.</b></p>
<p><b>(OM-05) Infrastructure Commission / Independent Planning Body or Regulator</b></p> <p><b>You said</b> – A small number of respondents from business, renewables and political spectrums suggested the establishment of an independent body to decide on regionally significant planning applications. Some individual respondents further contend that such a body should not pre-exist a commission with regards to climate and biodiversity, and that the Department should also establish a 'Planning Regulator' to operate an independent oversight role of the planning system.</p>	<p><b>Our response:</b> While such matters are out-with the scope of this review, the Minister has for some time now, been engaging with Executive Colleagues on the need for a better, longer term approach to infrastructure planning and delivery here and is pleased that the recommendation of her own Ministerial Advisory Panel on Infrastructure, that an Infrastructure Commission should be established here and a key action in the Executive's Covid-19 Recovery Plan will now be progressed in a positive way via a cross-departmental working group, led by TEO (see link below). Minister Mallon continues to offer her support and that of her officials to this group and hopes that rapid progress can be made with this work.</p>

	<p><a href="https://www.infrastructure-ni.gov.uk/news/ministerial-advisory-panel-infrastructure-present-report-minister">https://www.infrastructure-ni.gov.uk/news/ministerial-advisory-panel-infrastructure-present-report-minister</a></p> <p>Part 9 of the 2011 Act provides for the continued governance arrangements of the Planning Appeals Commission including its senior structure, impartiality and administration. These provisions were transferred to the <b>Department for Justice</b> by the <a href="#">Departments (Transfer of Functions) Order (NI) 2016</a>. With regards to the small number of planning applications deemed regionally significant and dealt with by the Department, the independent PAC may consider these, if requested, by way of either a public local inquiry, or notice of opinion called / served by the Department.</p>
<p><b>(OM-06) Belfast Metropolitan Area Plan (BMAP) Status</b></p> <p><b>You said</b> – A small number of respondents including some councils and political representatives requested the department provide clarification on the status of the BMAP, (and Joint Ministerial Statement on prematurity) with clear guidance as to how competing area plans should be weighted by each local authority.</p>	<p><b>Our response:</b> Such matters are out-with the scope of this review.</p> <p>Draft BMAP and all representations received to it, together with the Planning Appeals Commission inquiry reports, continue to be material considerations to be weighted by the decision maker in the determination of planning applications. Draft BMAP also provides a more up to date evidence base for the creation of local development plans by councils. The Minister is exploring with officials the most appropriate way forward with draft BMAP.</p> <p>The Joint Ministerial statement issued in 2005 by the then DOE and DRD Ministers on the importance of emerging development plans in deciding planning applications, has not been superseded or rescinded.</p>
<p><b>(OM-07) New Strategic Infrastructure Order</b> – Some respondents within the renewables / electricity sectors requested the introduction of ‘Strategic Infrastructure Order’, to deliver energy projects which contribute to or</p>	<p><b>Our response:</b> This matter is out-with the scope of this review. [Please see comments above in relation to an Infrastructure Commission].</p>

<p>connected with the delivery of renewable energy or net zero carbon targets, via an accelerated / simplified planning process.</p>	
<p><b>(OM-08) Planning Judicial Reviews</b></p> <p><b>You said</b> – A small cross-section of public representatives and business suggested the establishment of a dedicated Court to deal with planning related Judicial Reviews.</p>	<p><b>Our response:</b> This matter is out-with the scope of this review.</p> <p>Consideration of the need for, and establishment of a new dedicated court for planning related judicial reviews would be for the NI Executive to determine in conjunction with the Department of Justice and Department for Infrastructure (as it would involve more than one NI department).</p>
<p><b>(OM-9) Planning Processing Agreements (PPA)</b></p> <p><b>You said</b> – A cross-section of respondents including business, renewables and private practice suggested the introduction of PPAs into legislation. Respondents are of the opinion that an agreed PPA between Councils / the Department and applicants would set out the roles and responsibilities of all parties, possibly including penalties for failure to adhere to the pre-agreed schedule for determination of an application.</p>	<p><b>Our response</b> - A planning processing agreement is a project management tool. It sets out the key processes involved in determining a planning application, identifying what information is required from all stakeholders' involved and setting timescales for the delivery of various stages of the process. Processing agreements set out a route to a decision on an application, not necessarily to an approval. These are available to planning authorities in Scotland in relation to major applications or for local developments that are complex, involve legal agreements, or are likely to be contentious or require amendments to be made to the proposals during their processing. The main purpose of the agreement is to provide clarity to all parties involved in the determination of the application of their responsibilities and to establish realistic timescales for processing the application. The Scottish Government has actively promoted the use of processing agreements as a project management tool for planning applications for a number of years</p>

	<p>PPAs are linked with PADs and other forms of early engagement between applicants and the planning authority. As a management tool it would not require statutory provision, however introducing PPAs in NI would require significant engagement and consultation amongst all stakeholders, particularly agreement with statutory consultees. The introduction of processing agreements would involve additional administrative burdens to councils and the Department. Councils would therefore need to be consulted on this option. While they may be encouraged elsewhere they are not mandatory, and would likely only be particular to a relatively small number of applications in Northern Ireland. Furthermore, the Department does not consider the introduction of fines or penalties to be beneficial for what would be a non-statutory management process tool.</p> <p><b>Proposed Action: The Department will keep under review.</b></p>
<p><b>(OM-10) Consistency between terrestrial planning and Marine Planning regimes</b></p> <p><b>You said</b> - The Planning Act should be amended to ensure consistency with marine legislation (Marine and Coastal Access Act 2009 and the Marine Act (Northern Ireland) 2013) with regard to decisions affected by marine plan/marine policy documents.</p>	<p><b>Our response</b> – The UK Marine Policy Statement (MPS) acknowledges that in achieving integration in marine and land-use (terrestrial) planning systems, policy and development plan documents already include policies addressing coastal and estuarine planning. Marine policy guidance and plans seek to complement rather than replace these, recognising that both systems may adapt and evolve over time. It should be noted that in many cases the policies reflected in this MPS are already taken into account in the terrestrial planning system (including land-use planning decisions) and other consenting regimes which affect or might affect the marine area unless relevant considerations indicate otherwise<sup>16</sup>.</p>

<sup>16</sup> <https://www.legislation.gov.uk/nia/2013/10/section/8>



	<p>The draft Marine Plan for NI has been developed to support and complement other existing legislation, policies, plans and strategies, also taking account of Local Development Plans (LDPs). Equally, the Planning Act 2011 requires councils in preparing LDPs to take account of such other matters as the Department may prescribe or direct, and to have regard to such other information and considerations as appear to the council to be relevant which can include a Marine Plan affecting the particular area. In this respect, there exists a degree of integration between both regimes.</p> <p><b>Proposed Action: The Department is not persuaded of the need to amend the Planning Act in this way. (See also to PT2-3)</b></p>
<p><b>(OM-11) Retrofit / Reuse of existing buildings</b></p> <p><b>You said</b> - Rather than demolishing and rebuilding new, the Department should consider promoting the reuse of existing buildings to assist towards a reduction in carbon emissions and to reduce the construction industry's consumption of resources.</p>	<p><b>Our response</b> – The reuse and retrofitting of existing buildings as opposed to new builds, falls outside the scope of the this review.</p> <p>Existing policy (SPPS) makes provision for the re-use and adaptation (or 'retrofitting') of existing buildings and specifies that the planning system should help to mitigate and adapt to climate change by, among other things, <i>"promoting sustainable patterns of development, including the sustainable re-use of historic buildings where appropriate"</i>.</p> <p>It also makes specific provision for the conversion and re-use of existing buildings in the countryside for residential and a variety of other non-residential uses; and, for certain farm diversification</p>

	<p>schemes where proposals involve the re-use or adaption of existing buildings.</p> <p>In addition, regional policy supports the re-use of existing buildings in a number of scenarios, including listed buildings, where redevelopment would “secure the ongoing viability and upkeep of the building”. Also, the Planning (Use Classes) Order (NI) 2015 can help by prescribing the circumstances where a change of use is not regarded as involving development, where the former use and new use are both within the same class specified in the Order.</p>
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## **APPENDIX 3b**

### **DFI Report – Recommendations**

#### **Recommendation 1**

##### Local Development Plan Guidance

The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.

#### **Recommendation 2**

##### Consultation Bodies in Plan-Making

The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to local planning authorities.

#### **Recommendation 3**

##### Digitization in the Planning System

The Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online / digital means of communication in plan-making, development management, and in the planning system generally to improve accessibility for citizens.

#### **Recommendation 4**

##### Categories of Development

The Department will review existing thresholds and categories of development to determine the need for revisions.

#### **Recommendation 5**

##### Pre-Application Community Consultation (PACC) and Notice

The Department will bring forward proposals to provide for both in-person and on-line/electronic PACC public engagement. This will include consideration of any recommendations to emerge from the work of the Planning Engagement Partnership. Clarity on the PAN process could be provided in expanded guidance if appropriate.

#### **Recommendation 6**

##### Call-In Applications

The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.

## **Recommendation 7**

### Incomplete Applications and Validation Check-Lists

The Department will bring forward proposals to introduce statutory 'validation check-lists' and will seek to advance policy development at the earliest opportunity. Councils should consider the introduction of compulsory training for members of planning committees, including procedures where training requirements have not been met.

## **Recommendation 8**

### Time period for consultation responses

The Department will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory.

## **Recommendation 9**

### Pre-Determination Hearings (PDH)

The Department will bring forward proposals to make PDH discretionary for councils in the exercise of their functions.

## **Recommendation 10**

### Matters Raised at Appeal

The Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal.

## **Recommendation 11**

### DFI Directions

The Department will undertake a general review of current departmental directions.

## **Recommendation 12**

### Commencement of Development

The Department will review this provision to establish if any technical amendments are appropriate.

## **Recommendation 13**

### Tree Preservation Orders (TPO)

The Department will review current requirements around TPOs with a view to bringing forward proposals to permit councils to vary or revoke TPOs. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions.

#### **Recommendation 14**

##### Review of Old Mineral Permissions (ROMPs)

The Minister is to consider options on the way forward with regards to ROMPs early in 2022.

#### **Recommendation 15**

##### Fixed Penalty Notices (FPN)

The Department will explore the possibility of applying FPNs to advertisement control.

#### **Recommendation 16**

##### Planning Fees

The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees.

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