



Subject:	Public consultation by the Department for Infrastructure on its Review of the Development Management Regulations
Date:	13 th February 2024
Reporting Officer(s):	Kate Bentley, Director of Planning and Building Control
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Restricted Reports	
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"/>

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

1.0	Purpose of Report or Summary of Main Issues
1.1	To report on the Department for Infrastructure’s public consultation on its review of the Development Management Regulations.
1.2	The Committee is asked to agree the Council’s response to the consultation.
2.0	Recommendation
2.1	That the Committee gives delegated authority to the Director of Planning and Building Control to respond to the public consultation as per the “Assessment” section of this report (pars. 3.7 to 3.30).
3.0	Main Report
	<u>Background</u>
3.1	The Planning (Development Management) Regulations (Northern Ireland) 2015 (“Development Management Regulations”) set out the following provisions:

- **Hierarchy of development** – the definition of Major development
- **Regionally significant applications** – to require consultation with DfI on applications for Major development of a certain scale to ascertain whether they will be “called in” and determined by DfI as regionally significant
- **Proposal of Application Notices (PANs)** – the content of PAN applications required to be made to the Council. PAN applications set out the proposals for Pre-application Community Consultation relating to applications for Major Development
- **Pre-application Community Consultation** – requirements for Pre-application Community Consultation including holding a public event and publicising the proposal in a newspaper
- **Duty to decline to determine applications where section 27 is not complied with** – specifying a period of 21 days for the Council requiring additional information before declining to determine an application for Major development where the requirements of the PAN process were not followed
- **Pre-Determination Hearings** – the requirement to hold a Pre-Determination Hearing for applications notified to DfI but which it returns to the council for determination
- **Schemes of delegation** – requirement for Councils to prepare a scheme of delegation that sets out the classes of Local development that are to be determined by officers. Prevention of such applications being determined by an officer where the application is made by the council or an elected member, or the council has an estate in the land. Requirement to send a copy of the scheme of delegation to DfI and not to adopt it until it has been approved by DfI. Requirement to publish the scheme of delegation, making it available in the office and publishing it on the council’s website. Requirement for the council to prepare a scheme of delegation at intervals of no greater than 3 years.
- **Transition provisions** – the requirement for Pre-Application Community Consultation to only apply to applications for Major development submitted on or after 1st July 2015.

3.2 A copy of the Development Management Regulations is provided at **Appendix 1**.

Public Consultation

3.3 The Department for Infrastructure (“DfI”) is consulting on its review of the Development Management Regulations as part of the regional Planning Improvement Programme (PIP). The PIP is a response to recommendations of the Northern Ireland Audit Office and Public Accounts Committee reports published in 2022, which seek significant improvement of the NI planning system.

3.4 The consultation proposes changes in three areas:

- a review of the classes of development to ensure they reflect current and future development trends and that the associated thresholds take a balanced approach to community consultation in planning applications for major development;
- proposals to make pre-determination hearings discretionary for councils which will help focus resources and reduce delays in issuing planning decisions for some planning applications; and

	<ul style="list-style-type: none"> proposals to introduce online/digital methods into the pre-application community consultation (PACC) process, to enhance accessibility and encourage participation in the planning process by a broader range of people.
3.5	DfI announced the public consultation in December 2023 with the closing date for comments of 3 rd March 2024.
3.6	A copy of the public consultation document can be found at Appendix 2 .
	<u>Assessment</u>
3.7	It is proposed that the Council responds to the public consultation as set out below.
	Review of classes of development
3.8	The consequence of development being classified as “Major” is twofold. Firstly, that the applicant is required to carry out formal pre-application community consultation before submitting the application to the council. Secondly, that the decision on the application cannot be delegated to officers but must be made by the planning committee.
3.9	In its consultation, DfI suggests that proposals for Major development ‘...require considerably more assessment and processing resources than local developments which, by comparison, are less complex and, on the whole, raise fewer public interest issues.’ (par. 2.2).
3.10	However, this is not always the experience of the Planning Service. Applications for Local development, such as housing schemes of less than 50 residential units, can often be equally complex and raise more public interest issues than Major applications. Whilst the current thresholds for Major development are generally considered to be appropriate, consideration should be given to the requirement for secondary “lighter touch” mandatory pre-application community consultation on certain scale Local applications. Local applications can have a significant impact on local people, particularly in locations such as Belfast which comprise many areas of tight-knit and dense communities where changes to the built environment can have considerable consequences. There should be a formal opportunity for those communities to engage with developers to help shape proposals for the better.
3.11	Conversely, there are examples of Major development proposals, such as larger commercial buildings on industrial estates, where the value of mandatory pre-application community consultation is questionable. There should be the provision for the council to advise that pre-application community consultation is not required in specific cases or for a council to be able to publish “local guidance” on when pre-application community consultation is necessary (this would be criteria based similar to a scheme of delegation).
3.12	Officers recognise that consideration of these issues cannot be separated from the work to date of the regional Planning Engagement Partnership , which published its report: Planning Your Place: Getting Involved in March 2022. The report made various recommendations on how to improve public engagement in the planning process including the pre-application community consultation process.
3.13	It is noteworthy that BCC's Planning Service no longer places emphasis on whether a proposal falls under the “Major” or “Local” development categories, but whether a proposal is of “strategic” importance to the city. For example, there are many examples of Local applications which are of strategic significance to Belfast and Major applications which are

	not necessarily of strategic importance, classified as “technical Major applications” by virtue of their scale, particularly those relating to change of use of a large area of land.
3.14	Nevertheless, there is often a perception of the importance of a Major application and in this regard, the Department may wish to consider increasing the types of energy infrastructure development, particularly renewables, that fall within the Major development category in order that they are prioritised. Although this needs to be balanced against the commercial disadvantages of making applicants have to go through the 12-week Proposal of Application (PAN) process in terms of added time to the process when the regional objective is to facilitate such proposals in an efficient and timely manner.
3.15	Officers welcome the proposed introduction of a “mixed development” category of Major development for the avoidance of any doubt – the Planning Service has experience of applicants trying to argue that their proposal is not Major development because it is a mixed-use scheme which does not fall within any of the specific current categories even though it is of considerable scale.
3.16	Clarification should be provided in the updated regulations of the category of development that Battery Energy Storage Systems (BESS) fall under to avoid future potential confusion.
3.17	In relation to category 6 ‘Housing’, a significant upward change in the threshold for definition of major housing developments could result in virtually all residential developments proposed being classified as ‘local’ with resultant implications for the time available for processing and the removal of the need for pre-engagement processes such as PAD and PAN along with the requirement to consider masterplanning under Policy DES2 of the Belfast LDP Plan Strategy 2035. This would therefore not be supported.
3.18	Regarding category 7 ‘Retailing, Community, Recreation & Culture’, consideration should be given to splitting ‘Retailing’ into a separate category since retail development presents distinct issues from the other forms of development in this category including retail impact.
3.19	Consideration should be given to increasing the 1 ha threshold for Major developments to 2 ha as some Major applications are considered “technical Major applications” because of their scale but not their impact. Typically, this relates to proposals for a change of use of land or proposals such as “environmental improvements” relating to public realm.
3.20	Officers have no observations in relation to the current thresholds for consulting DfI on potentially regionally significant planning applications.
	Pre-application Community Consultation
3.21	Officers recognise the significant merits of online and digital consultation in reaching a wider and in some cases younger population. However, this it is not considered that this should be a substitute for face-to-face public events because of the value of in-person communication and commitment to genuine engagement that face to face meetings can demonstrate. The Council should therefore support “Option 1” of the consultation, which is to require both an in-person public event <u>and</u> online/digital consultation. Option 2, which is to give the developer discretion as to whether to carry out in-person consultation <u>or</u> online/digital consultation is not considered appropriate.
3.22	The requirements of the pre-application community consultation process should be re-examined having regard to the <i>Planning Your Place: Getting Involved</i> report. Consideration should be given to prescribing further publicity requirements including “leaflet drops” to local property and site notices to be erected by the applicant.

3.23	It is also essential that pre-application community consultation is much more than a simple “tick box” exercise carried out by the applicant. The bar for Pre-Application Community Consultation (PACC) reports submitted with applications is arguably low. There must be a mandatory requirement for applicants to set out the views of local people and interested parties in the report, how they have responded to each of the points, and where changes were not made to address them, to clearly explain and justify the reasons why.
3.24	There should also be an automatic requirement for the applicant to notify the locally Elected Members for the area of the pre-application community consultation.
Pre-Determination Hearings	
3.25	DfI is proposing to remove the requirement for councils to hold a Pre-Determination Hearing (which in turn requires a further meeting of the Committee to retake the decision) when an application is returned to the council for determination following notification to DfI. The current requirement is an unnecessary administrative burden which adds to delays to the application process and creates considerable uncertainty for applicants, an anathema for investors.
3.26	The proposal to remove the requirement for statutory Pre-Determination Hearings under such circumstances and to instead give councils the power to hold a discretionary Pre-Determination Hearing is very much welcomed with officers having lobbied DfI for this change for many years.
Other points	
3.27	Officers welcome the proposal for a third category of development, perhaps titled “Minor” development, for smaller scale proposals such as householder, advertisement, Listed Building Consent and Conservation Area Consent applications. This recognises that the definition of “Local” development is currently far too wide, ranging for an application for single storey extension or satellite dish to 49 dwelling units, and does not permit meaningful interrogation of performance. There should in turn be an even shorter statutory target for determination of such Minor applications, which is less than the 15 weeks average processing time currently prescribed to Local applications.
3.28	Consideration should also be given to removing the requirement for all applications for Major development to be decided by a planning committee. This should be a matter for each council to decide and set out in its scheme of delegation.
3.29	The regulations relating to schemes of delegation should also be amended. Unlike in NI, there is no requirement in England and Wales for councils to have their schemes of delegation approved by central government. This is a localised decision-making matter and the current requirements are one of too many examples of the Department’s over-interventionist role in the planning system in NI. DfI could perhaps amend the legislation to enable it to intervene if it considers an individual council’s scheme of delegation to be inappropriate. In practice, it is questioned how many times the Department has <u>not</u> approved a council’s scheme of delegation since 2015.
3.30	Importantly, the Council’s proposed response to this focused consultation should not be considered to conclude that these regulations (and others applicable to the development management process) do not need further consideration and potential amendment.
4.0 Financial & Resource Implications	
4.1	The changes proposed by the consultation have the potential to streamline legislative processes and in turn have a positive impact on finances, resources and performance.

5.0	Equality or Good Relations Implications / Rural Needs Assessment
5.1	There are no equality or good relations / rural needs implications associated with this report.
6.0	Appendices – Documents Attached
	Appendix 1 – current Development Management Regulations. Appendix 2 – public consultation document