



Report to:	Shadow Planning Committee
Subject:	Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation The Planning Act (NI) 2011 (Phase2)
Date:	22nd January 2015
Reporting Officer:	John McGrillen, Director of Development (Ext. 3509)
Contact Officers:	K. Sutherland Ext 3578

1	Relevant Background Information
1.1	This report and appended details are for information as the response was considered and agreed at Shadow Strategic Policy and Resources Committee on 19 th December 2014 and Shadow Council on 6 th January 2015.
1.2	The Department of the Environment (DOE) published the Phase 2 Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation for public consultation which closed on the 31 st December 2014.
1.3	The consultation document contains a range of proposals for subordinate legislation to exercise powers already established in the Planning Act (Northern Ireland) 2011. This subordinate legislation is required to bring the 2011 Act fully into operation and support the new two-tier planning system.
1.4	This is key supporting legislation for the future operation of the planning functions by the Council from April 2015. The response to the first phase was submitted earlier last year.
1.5	The submitted response to the consultation on Planning Reform and Transfer to Local Government is attached in Appendix 1 for information.

2	Key Issues
2.1	<p>The key Phase 2 proposals relate to the following elements of the planning process:</p> <ul style="list-style-type: none"> • Simplified Planning Zones (SPZ) • Amount of Fixed Penalties • Modification and Discharge of Planning Agreement
2.2	Simplified Planning Zones
	The 2011 Act provides new powers to Councils to take forward SPZs. The Department will have an oversight role in the process including providing advice and guidance and if necessary an intervention role.
2.3	With these powers an SPZ created by Council has the effect of granting planning permission within an identified geographic area for particular development, or any class of development, specified in the scheme. Relevant development can then proceed without the need to apply for planning permission providing it

	meets the requirements set out in the SPZ scheme.
2.4	The Department has powers to make, adopt and alter a SPZ scheme as set out in The Planning (NI) Order 1991, although the Department has never exercised these powers therefore the process remains untested.
2.5	The Council would generally welcome the SPZ powers as a tool to support local economic development in the Belfast area.
2.6	Amount of Fixed Penalties It is proposed that Fixed Penalty Notices (FPNs) are to be made available to councils as an additional, discretionary enforcement power.
2.7	Councils would be able to issue FPNs for breaches of an enforcement notice (EN) or a breach of condition notice (BCN). The option of prosecution through the courts will continue to be available.
2.8	The Council would support the principle of these powers providing Council enforcement staff with the ability to take direct action to remedy a breach of planning control. The support, in principle, is subject to clarification of queries regarding the process and implications in relation to any ongoing breach of planning control.
2.9	Modification and Discharge of Planning Agreements A planning agreement is a voluntary, legally-binding agreement which can be utilised to overcome identified barriers to the granting of planning permission, normally for large-scale major planning applications, which cannot be suitably addressed by way of conditions attached to the permission.
2.10	The proposed subordinate legislation will give councils the power to enter into planning agreements where they operate as the 'relevant authority' on planning matters, and will provide the necessary detail on the modification or discharge of planning agreements within the new development management system.
2.11	The proposals will reproduce the provisions currently in place for the Department, but will reduce the appeal period from 6 months to 4 months, to bring this in line with other planning appeal periods in the reformed two-tier system.
2.12	It should be noted that the responsibility for the planning agreement relating to the George Best Belfast City Airport will remain with the Department.
2.13	The Council supports the provision of the power to enter into planning agreements.
2.14	The consultation response requested views via 4 questions and the submitted response is outlined in Appendix 1.

3	Resource Implications
3.1	The resource implications cannot be quantified at this stage. The new legislation will have both financial and staff resource implications arising from the changed administrative and legislative processes required under the new Act. The ongoing work in relation to the transfer under LGR will seek to clarify the resource requirements for comparison with the transferring budget or provision when this is provided by DoE.

4	Equality and Good Relations Considerations
4.1	There are no specific Equality and Good Relations Considerations attached to this report.

5	Recommendations
5.1	Committee is requested: <ul style="list-style-type: none"> note the response to the consultation appended which has been agreed by Shadow Council and was forwarded to the Department.

6	Decision Tracking
Timeline: January 2015 Reporting Officer: Keith Sutherland	

7	Key to Abbreviations
DOE- Department of the Environment SPZ- Simplified Planning Zone FPN- Fixed Penalty Notice EN- Enforcement Notice BCN- Breach of Condition Notice	

8	Documents Attached
Appendix 1: Submitted Response to the Proposals for Subordinate Legislation Phase 2 Public Consultation Appendix 2: Summary of the Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation	

**Appendix 1: Submitted Response to the Proposals for Subordinate Legislation
Phase 2 Public Consultation.**

Response forwarded to DOE following approval by Shadow Strategic Policy and Resources Committee.



Department of the
Environment

www.doeni.gov.uk

**Planning Reform & Transfer to Local
Government:
Proposals for Subordinate Legislation
Phase 2 Public Consultation Paper
Response Form**

Once you have completed this form please return to:

Planning Reform & Transfer to Local Government Consultation – Phase 2
Planning Policy Division
Department of the Environment
Level 6 Causeway Exchange
1-7 Bedford Street
Town Parks
Belfast
BT2 7EG

By e-mail to: PPDConsultations@doeni.gov.uk

or by text phone to 028 9054 0642

All responses should be submitted to the Department no later than 31st December 2014

RESPONDENT INFORMATION

Please note that returning this form will help in managing your response as part of this consultation.

In keeping with our policy on openness, the Department will make responses to this consultation paper publically available. When publishing responses received on behalf of organisations the Department will also publish the organisation's name and address. When publishing responses received on behalf of individuals the Department will not publish details of the individual's name and address.

1. Name/Organisation

Belfast City Council

Title (*Please tick as appropriate*)

Mr Ms Mrs Miss Dr Other

Surname

Forename

2. Postal Address

The Cecil Ward Building, 4-10 Linenhall Street, Belfast

Postcode:

BT2 8BP

Phone:

Email:

3. Are you responding:

As an individual

On behalf of a group/organisation

4. Which of the following best describes the capacity in which you are responding:

Developer

Agent/Architect

Business

Member of Public

Community Group/Organisation

Environment Group

Council/Councillor

MLA, MP, MEP

Other Please state:

5. Acknowledgement

Individual responses will not be acknowledged unless specifically requested.

Questions are numbered as they appear in the consultation paper

Question 1: Do you agree with the proposed approach in subordinate legislation for councils making and adopting SPZs?

Yes No

The Council welcomes the transfer of powers from the Department to local councils to designate Simplified Planning Zones ('SPZs').

It is noted that SPZs will have the effect of granting of planning permission within a designated geographic zone for a particular type or class of development, and therefore allow relevant developments to proceed without the need to progress through the normal rigorous planning processes. However, the Council is concerned that it would not have the opportunity to ensure that environmental issues affecting human health are adequately characterised and addressed. Such issues include, but are not limited to, the internal and external noise climate, land contamination and ambient air quality. These issues may be associated with a new development or a change of use for existing premises.

Moreover, it is assumed that the SPZ process would not provide for local objections and issues to be heard regarding development proposals. As a consequence, the Council would be concerned regarding the impact on the planning process of the comprehensive removal of provisions for public consultation and for the submission of letters of objection and / or issues.

It should be noted that earlier in 2014, the Department consulted upon 'A Strategic Planning Policy Statement for Northern Ireland' and in so doing, the Department affirmed that the purpose of the Northern Ireland planning system is to secure the orderly and consistent development of land with the objective of furthering sustainable development and improving well-being. The Department provided further clarification by confirming that the planning system should positively and proactively facilitate development that contributes to a more economically, socially and environmentally sustainable Northern Ireland.

Whilst it is acknowledged that the designation of SPZs is a matter for individual councils, the Department has indicated that SPZs have been identified as a future tool to support economic development. In order to satisfy the abovementioned strategic objective for the planning system, it is imperative that the designation of SPZs is reflective not only of economic issues but also of local social and environmental priorities.

In relation to the draft Planning (Simplified Zones) Regulations (NI) 2015, Regulation 17 requires a Council not to adopt proposals for the making or alteration of a scheme until such times as the Department has notified the Council of its decision. This is already stated in Paragraph 6(2) of Schedule 1 of the Planning Act (NI) 2011 ('the 2011 Act'). Therefore the inclusion of such a provision in the Regulations appears superfluous.

Question 2: Do you agree with the proposed level of fixed penalty in relation to a breach of an enforcement notice? If not, what do you think the level should be and why?

Yes

No

The Council agrees in principle with the proposed level of fixed penalty (FPNs) in relation to a breach of an enforcement notice.

The Council is however concerned about the assertion that issuing FPNs will avoid “potentially lengthy and costly court prosecutions” as the payment of the FPN does not resolve the substantive breach of planning control.

The Council would ask whether the Department has carried out any research in relation to the costs of carrying out works in default and then seeking to recover the money as a summary debt, and the extent to which statutory authorities have been able to recover said debts in other similar type scenarios.

In addition, the Council is concerned that the consultation document is unclear as regards the position once a FPN has been paid but the breach of planning control has not been resolved.

Paragraph 4.9 of the consultation document states that where a FPN is paid but the breach of planning control is not resolved, “the council may not prosecute in respect of that particular breach. The council may, however, itself, carry out the works necessary to comply with the requirements of an EN and...the cost of the work can be reclaimed from the owner of the land.” That would suggest that once a FPN is issued and paid, the offender is discharged from any further liability completely as regards the breach of planning control.

It is accepted that Section 146 of the 2011 Act provides a power to do works in default. It is also accepted that Section 153 states that a FPN can be offered to discharge any liability for a conviction for an offence. However, the legislation also sets out the basis upon which a Notice ceases to have effect, which is essentially until such times as planning permission is granted, the relevant notice is complied with or is withdrawn. The legislation does not say that upon payment of a FPN the notice is considered withdrawn.

It is therefore the Council’s interpretation of the legislation that whilst a FPN will discharge liability for an offence observed on a particular date or dates (as specified in the FPN) it will not discharge liability generally for failure to comply with the Notice or the substantive offence. In other words, the failure to comply with either an enforcement notice or breach of condition notice is a continuing offence, i.e., that an offence is committed every day until such times as the Notice is complied with, withdrawn etc.

The Council would request that the Department confirm that is also their interpretation of the legislation.

Question 3: Do you agree with the proposed level of fixed penalty in relation to a breach of a condition notice? If not, what do you think the level should be and why?

Yes No

The Council agrees in principle with the proposed level of fixed penalty in relation to a breach of condition notice for residential properties were the breach is relatively minor.

However, it is concerned that the proposed level of fixed penalty is not a sufficient deterrent to commercial premises or interests who fail to comply with a breach of condition notice. It is therefore recommended that a graduated scale of FPNs be introduced so as to more accurately reflect the type and scale of the breach of condition.

Also, see points raised in response to Question 2 regarding FPNs generally.

Question 4: Do you agree that the period of appeal against the determination of applications to modify or discharge an agreement should be reduced from 6 months to 4 months in line with other appeal provisions under the 2011 Act?

Yes No

The Council agrees that the period of appeal against the determination of applications to modify or discharge an agreement should be reduced from 6 months to 4 months.

The Council is concerned as to how the generation and negotiation of planning agreements will be resourced and would request further clarification on how the Department envisages this will be delivered. In particular, the Council is concerned about whether transferring staff will have the necessary skills and experience to deal with planning agreements.

All responses should be submitted to the Department no later than 31st December 2014.

Appendix 2

Summary of the Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation PHASE TWO

Purpose of this document is to introduce the second phase of consultation discussing the subordinate legislation involved in the improvements in the planning process and establishing the two-tier planning system in Northern Ireland. The first phase of consultation ended in August and responses to this second phase must be submitted by 31st December 2014.

The proposals in this phase 2 consultation relate to:

- Simplified planning zones
- Levels of fixed penalties
- Modification and discharge of planning agreements

This subordinate legislation is required to bring into effect the 2011 Act fully into operation and the new two-tier planning system. From 1st April 2015, councils will be the planning authorities responsible for:

- local development planning – creating a clear vision of how the council area should look in the future by establishing what type and scale of development should be encouraged in the council area and where it should be located;
- development management – determining the vast majority of planning applications; and
- planning enforcement – investigating alleged breaches of planning control and determining what action should be taken.

3 Simplified Planning Zones (SPZ)

The 2011 Act sections 33 to 38 and Schedule 1 provide the powers for new councils to take forward SPZs, the Department will continue its role in the process including providing advice and guidance.

The council will have to consult and notify relevant statutory consultees before finalising initial proposals. Finalised proposals must be publicised in newspapers, on the website and hard copies in council offices. The council will manage objections and representations and reach a decision on each of these prior to the adoption of proposals which is to be advertised in local newspapers. If a council decides not to proceed with a scheme or alterations it shall newspaper advertise in the same manner and advise those who have made valid objections or representations and not withdrawn them.

Proposed regulations require a council to provide the Department with copies of all newspaper notices and documents made available for inspection and provide details on the mechanisms by which the Department may issue directions to a council where it feels this may be necessary.

Any SPZ scheme must be kept as part of a council's planning register so that it is readily accessible by the general public.

4 Amount of Fixed Penalties

Fixed Penalty Notices (FPNs) are to be made available to councils as an additional, discretionary enforcement power.

Councils can issue FPNs for breaches of an enforcement notice (EN) or a breach of condition notice (BCN). The option of prosecution through the courts will continue to be available.

Reflecting the Scottish model the Department proposes fixed penalties of £2,000 for being in breach of an EN and £300 for being in breach of a BCN. Sections 153 and 154 of the 2011 Act provide for 25% reduction of the amount payable where a fixed penalty is paid within 14 days.

5 Modification and Discharge of Planning Agreements

The proposed 2015 Regulations (Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015) will essentially reproduce the existing provisions of the 2005 Regulations and also include:

- A revised appeal period of 4 months
- Transitional arrangements in relation to planning agreements and appeals functions exercised prior to the date on which the proposed regulations come into operation, by the Department, which will be exercised after that date by the relevant council. Schedule 2 will set out the planning agreement for which responsibility remains with the Department
- Revocation of the 2005 regulations with effect from 1 April 2015.

For those agreements already in the system it is proposed that in line with the new hierarchy of development the Department will retain responsibility for any planning agreement made in relation to what would be considered regionally significant development and all others will transfer to the new councils. The planning agreement related to the George Best Belfast City Airport is the only one remaining with the Department.

Proposed Change to the Period of Appeal- any appeal under section 78 of the 2011 Act shall be made within 4 months of the date of the notice of the determination giving rise to the appeal; or in the case of an appeal under section 78(1)(a) (non-determination), the expiry of the period specified in the regulations. The 4 month period of appeal would then be consistent with other appeal provisions under the 2011 Act.