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 were 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 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).

<u>Part 3</u>

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