



Response to consultation on Reform of the Planning System in Northern Ireland

Our reference: Cons - 1075

Sept 2009

Response to Consultation on Reform of the Planning System in Northern Ireland

1.0 Background to NICVA

- 1.1 NICVA (the Northern Ireland Council for Voluntary Action) is the umbrella body for the voluntary and community sector in Northern Ireland. It provides over 1,000 members with information, advice, training and support services on a wide range of issues, together with representation for the sector as a whole.
- 1.2 NICVA works to achieve progressive social change, based on equality and equity, working through a community development approach, to empower local communities to pursue their own needs and agendas.

Comments

2.0 The Case for Reform

- 2.1 NICVA welcomes the opportunity to respond to this consultation. We believe that reform of the planning system is much needed and consider it extremely important to be clear about the overall purpose of the planning system. NICVA seeks an appropriate balance of social, economic and environmental factors and note that Planning Policy Statement 1 makes clear that planners' current primary purpose is to facilitate development. Along with other NGOs NICVA would seek a statutory purpose for planning to achieve sustainable development to reinforce the consultation document's statement that planning should contribute to achieving sustainable development. The Planning Reform (NI) Order 2006 introduced a sustainable development purpose for planning, but 'sustainable development' has not yet been defined in respect of the planning system. The planning system should define projects which truly contribute to the economy, society and the environment in an integrated manner. Within this we need emphasis on the shift from narrow land use planning to spatial planning principles which can contribute to development of sustainable communities.
- 2.2 In connection with this, NICVA believes the planning system must contain objectives for the mitigation of, and adaptation to, climate change. The English PPS 1 *Planning Policy Statement: Planning and Climate Change* (CLG, December 2007) is a useful model for planning for climate change in Northern Ireland and since PPS 1 in Northern Ireland is due for review, we would recommend that it should include similar objectives.

3.0 Planning Policy

- 3.1 We agree with the proposals to provide strategic direction and regional policy advice through Planning Policy Statements (PPSs) with local circumstances being considered in local development plans. However, PPPs should be strengthened to ensure coherence in strategic planning principles across Northern Ireland. Linkages between the Regional Development Strategy (RDS) (currently under review), PPSs and local development plans must be clearly established. PPSs and RDS must carry equal weight *vis a vis* local development plans. The nature of changing policy and circumstances, and the flexibility of PPSs means that individual PPSs are likely to be subject to review more frequently than the RDS. In circumstances where a PPS expresses more up-to-date policy than the RDS, it would not be appropriate that the RDS should take precedence in the preparation of a local development plan.
- 3.2 A tension may also arise with the preparation of the RDS and PPSs by different central departments, a split of planning functions which is unique in the UK. The fact that planning related functions are divided across different departments in Northern Ireland does not augur well for joined up policy. The current review of planning also has major impacts on policies other than RDS which are currently being consulted upon, such as DETI's Draft Strategic Energy Framework. NICVA would urge very close working across departments in lieu of departmental responsibilities on these key areas being more closely structurally aligned.
- 3.3 NICVA believes it would be useful to have the plan-led system in place before Councils obtain planning powers, so that they are clear from the start about what is expected of them
- 3.4 The consultation document refers to new powers of community planning which will be vested in councils post-RPA in 2011. Local planning and community planning should be effectively integrated from the start—this means that local planning can begin to address complex issues of deprivation, segregation and contested space which feature prominently in Northern Ireland.
- 3.5 NICVA agrees that a statement of community involvement should be in place in councils before any consultation on the local development plan takes place.
- 3.6 NICVA does not support the proposal that the right to be heard in person at appeals and inquiries should be restricted. The consultation document suggests that change is needed because developers often do not turn up for their scheduled hearing. We consider this to be a management problem and community representatives and others should not be punished because of it.

- 3.7 NICVA would oppose the proposal that the current legislative requirements upon DOE to ensure that plans are in general conformity with RDS should not be carried over the councils. We are concerned that the system proposed may not be sufficiently robust to meet objections about lack of consistency across Northern Ireland, mentioned above.
- 3.8 We support the proposal that DOE should have the powers to intervene in the making, alteration or replacement of a local development plan.

4.0 Development Management System

- 4.1 A key area of concern for NICVA in this is the definition of 'regionally significant'. The definition of in the document is too vague. Would energy infrastructure, such as wind farms, which will require substantial increases to meet the proposed 40% renewable energy target in the Draft Strategic Energy Framework, be considered regionally significant, given that they are part of regional energy infrastructure? Or would they be passed from council to council if considered locally unpopular? It would appear from the document that some may be regional and some may be 'major' and thus subject to local planning decisions, and yet they all form part of strategic regional capacity. It is also possible to foresee a scenario in which councils compete with each other to secure large developments of housing, retail or industrial development. This might lead to councils could providing incentives such as reductions of obligations on a developer to provide infrastructure, which would not be beneficial overall. This could be further exacerbated if councils are permitted to vary the fees involved.
- 4.2 NICVA welcomes the proposals for pre-application community consultation as part of the new 'front-loaded' system. It is important that community views are considered at the earliest possible stage and we agree that this has the potential to lead to applications which are better developed before they come forward for consideration. Within the definition of community we would also like to see voluntary and community groups—which are often the conduit for local voices and opinions. We do, however, have some concerns about the capacity required to make the new system work properly. The statutory requirement should apply not only to regional but also to major applications. Planners are going to require new skills in order to be able to judge whether a consultation has indeed been effective, even if minimum requirements have been set down in statute and there are serious capacity issues within local communities which would prevent them being able to make meaningful responses to technical plans. Communities are unlikely to have sufficient knowledge at make judgements on, for example, knock-on effects that would be detrimental to community, but which may not be considered the developer's problem such as increased traffic. Would these wider issues be highlighted at the stage of the initial consultation?

- 4.3 In NICVA's view consultation processes should include:
- a statutory requirement for pre-application consultation for both regional and major developments;
 - requirements for advertising (neighbour notification, on-site notices);
 - minimum duration periods for consultation;
 - good practice advice on consultation techniques;
 - procedures on the evaluation of the consultation report (quality, effectiveness and feedback to participants).
- 4.4 NICVA agrees with the power to decline to determine applications where pre-application community consultation has not been carried out or the requirements insufficiently complied with.
- 4.5 NICVA has no objections to the proposals for permitting delegation of certain planning decisions to planning officers rather than to elected members in certain circumstances. We would like to see systems in place to ensure that a developer cannot make a series of small applications which might add up to a substantial development but not receive political scrutiny as a whole.

5.0 Appeals and Third Party Appeals

- 5.1 As mentioned above, we do not agree with the proposal to remove the automatic right to be heard in person by the Planning Appeals Commission.
- 5.2 NICVA agrees that there should be restriction on introduction of new material at appeal. In the past developers have been able to appear at appeals with new plans that have not been subject to scrutiny. But it is essential that third parties are invited to submit additional relevant information if it has become available. It should be made clear that only information that was not available during the consideration of the planning application can be submitted for consideration during an appeal and other parties provided with an opportunity to comment on it.
- 5.3 NICVA is in favour of the introduction of limited Third Party Appeals. Third Party Appeals feature in almost every planning system in Europe and in our view are not at odds with the 'front-loading' principle, but would provide a vital safeguard and help to ensure front-loaded participation is carried out effectively. NICVA thinks this will enhance local democracy and increase accountability to citizens in the planning system. Evidence from Ireland shows that community representatives are most likely to lodge an appeal, demonstrating that these groups are more representative of communities than developers who already have a right of appeal in the current system. Irish experience also shows that, since over 99% of Third Party Appeals there are wholly or partially successful, they are not in fact likely to be frivolous or vexatious. In

order to ensure that this is also the case in Northern Ireland, we believe there should be certain conditions, fees and rules which apply to deter vexatious appeals.

- 5.4 Without the counterpoint of a (limited) public right of appeal, the Statement of Community Involvement means little in itself. There is no requirement to take community views into account, only to carry out the consultation, and no guarantee that 'community' includes voluntary and community organisations. There is no way for the public to object if the SCI is not met on development management cases, without recourse to legal action. Third Party Appeal would provide this balance. Thus we do not think that Third Party Appeal is in any way in conflict with the proposed front-loaded system and would, if implemented properly actually make the proposed new system more meaningful.
- 5.5 NICVA would draw the Department's attention to work done by non-governmental organisations in England in 2002. A group of organisations published the report of a research project, Third Party Rights of Appeal in Planning, which was carried out by a group of planning and legal experts. The report suggests five categories of cases, operating separately or together in which Third Party Appeal should be allowed:
- where the planning application is contrary to the provisions of an adopted development plan;
 - when the planning application is one in which the local authority has an interest;
 - major applications;
 - when the application is accompanied by an Environmental Impact Statement; and
 - when the planning officer has recommended refusal of planning permission.

6.0 Enforcement and Criminalisation

- 6.1 NICVA believes serious consideration should be given to criminalisation of development without planning permission. Our members have expressed frustration that developers seem happy to pay fines which they can easily afford and press ahead with non-permitted development.
- 6.2 We agree that a premium fee should be charged for retrospective planning applications.

7.0 Developer contributions

- 7.1 NICVA supports the principle of developer contributions. We recognise that the existing Article 40 agreement allows for individual negotiations on a case-by-case basis with developers and may lead to important contributions to affordable and social housing, for example. NICVA believes developers should make a contribution to infrastructure and

thus we support the extension of developer contributions through the introduction of a Community Infrastructure Levy which would not be subject to individual negotiation and thus also gives developers more certainty about their financial liabilities. However, we would not want to lose the benefits of Article 40 in securing social and affordable housing. Furthermore, we understand that income from a levy would be likely to go into a central funding pot and thus the benefits would not necessarily accrue to the area in which the development is taking place and could be spent by a range of departments unconnected to the planning application. For larger infrastructure projects, such as roads and sewerage, this would obviously make sense, but more local needs arising from the development should also be able to be taken into account.

For further information, please contact Frances McCandless, Director of Policy, frances.mccandless@nicva.org