

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

### Final NILGA response to the call for evidence

14<sup>th</sup> April 2021

The following paper is the final NILGA response to the Review call for evidence. NILGA was successful in obtaining a four-week extension to the consultation period, which now closes on **16<sup>th</sup> April**.

This paper has been developed further to a meeting of the Place-shaping and Infrastructure Network on 25<sup>th</sup> March 2021, when members and officers from the 11 councils had an opportunity to discuss the Review and associated key issues with senior DfI officials. Given the initial deadline for the call for evidence, a number of councils had already submitted their responses and forwarded these to NILGA. Key issues from these responses have been incorporated into this paper, along with issues highlighted at the meeting on 25<sup>th</sup> March and several NILGA Executive Committee meetings. The NILGA Executive Committee has been materially involved in developing this response.

The focus of the review is 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 aims to provide 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.

The Department has noted the likelihood of issues with the planning system being considered as part of this Review, that have surfaced as a result of the Coronavirus pandemic.

It is also highlighted by DfI that the review is *“not envisaged as a fundamental root and branch review of the overall 2 tier planning system or the principles behind the provisions”*.

A number of the issues experienced by councils clearly stem from the incomplete transfer of powers and functions to councils in 2015, and the fragmentation of government delivery on place-shaping in Northern Ireland. Although this review may only touch on these issues, it presents an opportunity to highlight to government, the need for further reform, while at the same time improving the planning system through review of the current legislation.

**Derek McCallan**  
Chief Executive

14<sup>th</sup> April 2021

## **1.0 INTRODUCTION**

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of the 11 Northern Ireland district councils and is supported by all main political parties. The Association welcomes the opportunity to participate in the discussion on the review of the Planning Act (NI) 2011 and we trust that the views outlined below will be taken into account as improvements to the Act and supporting legislation are made.

## **2.0 INITIAL COMMENTS**

This is a valuable opportunity to bring about much needed change. We need to be more creative, and redesign how we do things. This 'light touch' review, while we agree that changes are needed to the legislation, is not going to be enough. NILGA is keen to see the Department address the known issues with the system; we believe that to do less than this and just 'tinker round the edges', would be a dereliction of duty.

Pressure is building within local government in Northern Ireland for councils to become more like English unitary authorities with powers / functions transferred (accompanied by relevant resources) to enable better integration of planning, transport planning, minor roads responsibilities and regeneration, i.e. place-shaping at local level. The intended (in RPA) suite of place-shaping powers was not transferred and this needs to be addressed as a matter of urgency – although it is accepted that on its own, a review of the Planning Act cannot achieve this.

An independent expert review of the system is required, to ensure we keep pace with GB and RoI, eliminating the huge amount of red tape councils face, and designing flexibility into the system. The planning system is currently holding NI back. Someone credible, with planning experience, from outside NI is needed to take a look and make recommendations of how we can improve, based on their knowledge and experience. We need to overcome the stasis and in some quarters, recalcitrance, within government.

We are moving into a Post Covid, Post Brexit, changed world – investors will be choosier and currently face too many checks and balances within the planning system here that are not experienced in competitor regions. Building confidence in our planning system is imperative.

We welcome the recognition within the Department that community engagement in the planning system needs to be improved, and note the progress already being made by the

planning engagement partnership, through our involvement in this group. We await the partnership report and recommendations with interest.

## **2.1 KEY ISSUES HIGHLIGHTED BY NILGA MEMBERS**

**It should be noted that in conversations with elected members, from all councils and all of the main political parties, the issues that caused most concern, due to the negative impact on the credibility of the planning system, were as follows:**

- 1. the need to improve enforcement processes and practices;**
- 2. the need for an improved validation system for planning applications;**
- 3. the need for less departmental intervention and for a more streamlined ‘call-in’ process; and**
- 4. the need for a more concise and less prescriptive Strategic Planning Policy Statement.**

## **3.0 RESPONSES TO CONSULTATION QUESTIONS**

NILGA would be keen to see the following changes made to the legislation. The relevant section of the Planning Act (NI) 2011 and specific Regulation has been provided, where possible.

### **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:

#### **Part 2**

##### **LDP Preparation**

##### ***Opportunity to ‘fine tune’***

The LDP statutory process should enable councils to respond to consultation submissions and consider changes during the plan development stage, prior to formal submission for Independent Examination (IE). A clear statutory basis for this approach should be embodied in the relevant primary and secondary legislation, building on the remedies sought by DPPN10. Given both the long timescales involved in the current LDP process and 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 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.

### ***Role of the Department***

NILGA is concerned that 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, we believe that the ability of the Department to veto the report and findings of the PAC (having already taken part in the IE process) 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 would not 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.

### ***'Two Stage' Process***

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 has been evident to our member councils that the 2-stage process is causing a degree of frustration with no evidence 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.

### ***Consultation Bodies***

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 licensees 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.

As the lists are not NI specific, the Regulations should be amended to remove licensee holders for gas, electricity and telecommunications from being 'consultation bodies' which must be consulted, but instead left to the discretion of the Council to filter the lists to only maintain contact with those they think would have an interest in the Council's LDP. The possibility of using wording based on Regulation 24(3)(f) should be explored. i.e. write to all the listed licensee holders once and subsequently only '*notify any person who has asked to be notified/kept informed of the stages of the development plan document*'.

Alternatively, the Department could take responsibility for managing a local list reflecting those operating in NI, or the consultee body could be named as the relevant umbrella regulator body, such as the Utility Regulator or Ofcom.

Reg 18 (Public consultation on site specific representations) appears unnecessary for DPS which is on Strategic rather than site specific issues, and causes unnecessary delay (and consultation fatigue) in the DPS process.

In Reg 21 and Reg 22, as before, the requirement to notify all 'consultation bodies' of this stage is again of great time and expense, with very little or no interest from the hundreds of electronic, gas and electricity licensee holders.

NILGA members are of the view that other NI public sector participants in the planning system did not prepare adequately to cope with the requirements of 12 planning authorities, such as a suite of 11 LDPs being produced simultaneously, and that there is a continuing under-resourcing of statutory consultee activity.

The Planning Appeals Commission should be adequately resourced to examine LDPs and not hold up the process.

Statutory consultees should be adequately resourced to ensure timely and appropriate input into LDPs, and planning applications – particularly major applications.

### ***Advertising***

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. It should be noted however, that the impact of COVID-19 on public engagement in planning processes is causing concern to elected members, who are keen to see the current work on public engagement reach a conclusion and for relevant recommendations to be implemented. A particular concern has been highlighted in relation to the 'digital divide' and potential for greater exclusion of the more disadvantaged from engaging in the process due to ongoing restrictions.

### ***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 the ongoing pandemic, for example), the strict adherence to a proposed timetable should not be a matter of soundness.

It is the view of some of our members that (Reg 22) publicity of the IE should be left to the DfI or PAC to advertise the IE as they are causing the IE.

## **Local Development Plans**

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

NILGA is confident that the 11 councils will comply satisfactorily with their statutory obligations in terms of monitoring and review, as is the case in other areas of work. NILGA looks forward to a constructive relationship between local government and the Department as plans are adopted and their implementation rolls out.

However, it is highlighted that the Planning Act introduced a two tier Local Development Plan, comprising of a Plan Strategy and secondly a Local Policies Plan. At the time of transfer, it was anticipated that both documents would be adopted within approximately 3 ½ years. However, almost six years on and not one of the 11 councils has adopted a Plan Strategy.

Although not intended as a fundamental root and branch review, it is obvious that the new two tier plan system is not working and has not met its anticipated framework for delivery. The process is too slow and complex and has failed to deliver local planning policy within a reasonable timeframe. This failure to deliver policy at the local level cannot be corrected without fundamental corrective surgery to the two tier Local Development Plan process.

It is the view of some of our members that councils should only be required to prepare one Local Development Plan document. In a jurisdiction the size of Northern Ireland there is no need for 11 high level Plan Strategies.

In reality, each council is expected to re-write the existing retained Planning Policy Statements – adapting forty years' worth of planning policy. However, councils must follow the policy direction set out in the Strategic Planning Policy Statement for Northern Ireland. This means that after a considerable period of time and effort, we will have 11 slightly different versions of the same policy, because councils can currently only tinker with the minor detail of regional planning policy. For example, how each Planning Authority in Northern Ireland considers development within a flood plain should be consistent.

Councils do not have a lot of control over elements of the LDP process, but they are held accountable for them. Primary and subordinate legislation becomes a very rich area of potential challenge; we know planning is quite a litigious area and it is easy for someone to use the process to challenge something they do not like, rather than the substance of what is in the documentation that has been in a rigorous process via the council planning committee.

Our members are concerned that wider central-local cognisance of local development plans is not all it should be at present, and that other departments, particularly DENI and DfC area and master planners should be required to collaborate effectively with each council in relation to local development, requirements and aspirations. Again this is a symptom of our fragmented system of government – education and regeneration both being within the remit of councils in other areas.

### **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?

### **Part 3**

#### ***S 25 Hierarchy of Development***

It is now six years since the transfer of planning functions from central government to local councils. As yet, no council is meeting the major development target for processing planning applications. Either the target needs to be changed or a more realistic and achievable hierarchy of development introduced.

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. There is no similar hierarchy in the Republic of Ireland.

#### ***S 29 - Call in of applications to the Department***

It is the view of NILGA that the Department 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 we can be economically competitive as a region.

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, we understand no such applications have been 'called in', which demonstrates that the rationale for such decisions by councils 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'. NILGA understands that there are examples of major applications experiencing unacceptable delays for this reason (4 months in some cases), which have been highlighted to the Department by relevant councils.

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.

### ***S 30 - Pre-Determination Hearings***

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 a council 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.

Pre-determination hearings are there to enhance public participation in the development management process, and should be a discretionary function. Classes of development should not be prescribed in the Development Management Regulations, and current requirements leave the system open to abuse by objectors, undermining the decision making process rather than adding value.

### ***S31 - Schemes of Delegation***

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.

### ***S40 - Form and content of planning applications (validation issues)***

S40 (and Article 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015) –

### ***The NILGA Executive Committee views review of this Section of the Act and associated regulation as a priority issue, requiring urgent attention.***

Our members are of the view that the bar for a valid planning application in Northern Ireland is currently far too low. Applications are invariably not submitted with all the information required by planning policy and good practice, 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.

NILGA is aware that this was identified as an issue quite some time ago and that some councils (e.g. Belfast) have taken the matter into their own hands, with publication of a local 'Application Checklist' as far back as 2018, providing 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, at present, Application Checklists of this nature carry no statutory weight and are essentially a "workaround" of the legislation.

Belfast City 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 their review has already been provided to the Department and in NILGA's view, should form part of the evidence base for much needed legislative change to improve information requirements at validation. It is regrettable that councils have been required to wait for over four years for a pragmatic change of this nature to take place.

NILGA 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.

We would also welcome a legislative provision to 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.

#### ***S40 - Determination of applications (Validation issues)***

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, as is the case 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. We believe 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). Cross-checking with associated Local Government performance legislation would therefore also be required, namely the Local Government (Performance Indicators and Standards) Order (NI) 2015.

#### ***S41 - Notice etc. of applications for planning permission and appeals***

S41 and 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 densely populated urban areas). 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. 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.

### ***S59 - Matters which may be raised in an appeal***

NILGA is of the view that this provision should be revised to reflect what we believe 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 a 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 – Developer Contributions***

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.

NILGA 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 signatory 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.

Developer contributions are currently underused, with poor mechanisms in place for the central-local working that is necessary within our fragmented government system. Until such time as councils are made unitary, or at least provided with a more complete and integrated set of place-shaping powers, it will be vital to improve central-local collaboration and agreement on development priorities at local level, and to ensure appropriate systems are in place to allow financial flows from councils (who receive DCs) to the departments responsible for works. Alternatively, more use could be made of the General Power of Competence, with Departments required to support councils in their development requirements.

## **Part 4**

### ***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.

### **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. Demolitions 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.

### **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.

### **Minerals Permissions**

NILGA is supportive of commencement of this part of the legislation and a review of minerals permissions as per Schedules 2 and 3.

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

### **More Effective Central-Local Working**

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 buildings, transport and road safety, and local ecological issues, as an option 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 under-performance and makes the planning system in Northern Ireland highly ineffective. Statutory consultation frequently takes too long, with failure to take decisions in some cases. Councils may be unwilling to proceed in the absence of statutory consultee advice.

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. NILGA is keen to see further progress on ‘augmentation’ of local government reform, including the transfers of functions and powers that are still outstanding.

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. Councils in Northern Ireland are becoming much more confident in their place-shaping abilities and are keen to move towards being unitary style authorities with increased planning and place-shaping powers. In a more challenging post-Covid environment, this change will be essential if our towns and cities are to compete for investment with other places 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 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.

**Part 12** of the Planning Act should be implemented, which would allow Councils to correct errors in decision notices.

### ***Agriculture Buildings and Operations - Part 7 of The Planning (General Permitted Development) Order (NI) 2015***

PD rights in relation to intensive livestock need to be updated. Agriculture buildings up to 500 square metres tend to benefit from PD rights. However, because these buildings are used to house livestock a HRA will be required which removes PD, and with a Lawful Development Certificate planners are unable to attach conditions to limit the number of animals to mitigate harmful impacts such as ammonia emissions.

When assessing a Certificate of Lawful Development for an agricultural shed, it is difficult for the Planning Officer to know what the proposed building’s end use will be, for example, whether it will be used to house livestock or whether it will be used for the storage of farm machinery and animal feed. Given Planning Authority environmental governance responsibilities, clarity on what is ‘permitted development’ is urgently required.

**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 enforcement?**

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

***The NILGA Executive Committee has flagged up enforcement as one of its four key concerns (See 2.1 above), and view poor enforcement as a major issue impacting negatively on the credibility of the planning system.***

Members are keen to see enforcement exercised effectively, as a vital part of maintaining confidence in the planning system. NILGA members from across Northern Ireland have articulated a common belief that enforcement is underused - citing examples of repeat/habitual offenders able to exploit loopholes in the enforcement system. While they recognise that the planning system is designed to enable development, our members have expressed a great deal of frustration at developers building illegally, then stopping when enforcement is triggered to submit an application (when enforcement stops). Likewise, cases have been discussed where businesses (e.g. car repair) repeatedly start up then cease operating to frustrate the process. They have outlined instances where building is not 'to plan' - enforcement starts - then stops when a new plan is submitted. They are also deeply concerned by the impact that COVID has had on enforcement processes, with 'grace' periods being given and enforcement ceasing.

**NILGA would be keen to see consideration of how to develop better legislation and process to support an enforcement system in which the public can have confidence.**

**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.

**S153** - Fixed Penalty Notices are not being used. No one has been fined under this power. By serving a FPN a planning authority would dispense with the offence in question, rather than having the breach remedied. FPNs are a punitive measure only and accordingly should be removed. Furthermore, they do not apply to advertisements.

**Q.7. Covid recovery: 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?**

***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.

***The Planning (Local Development Plan) Regulations (Northern Ireland) 2015***

10a Availability of the preferred options paper

15a Availability of development plan document

17b Availability of representations on a development plan document

19a Availability of representations on site specific policy representations

21b Availability of submission documents

The above regulations require councils to make Local Development Plan information available for inspection during normal office hours in a number of venues. During the lockdown restrictions most council buildings were shut to the public. As such, these requirements could not be complied with.

There is a view within councils that making hard copies of documents available for public inspection is no longer necessary given that this information can now be provided digitally and published online, and that the legislation needs to be updated removing any reference to making documentation available for inspection during normal office hours.

NILGA would advise caution in relation to this, as there is potential for adding to any growing 'digital divide', particularly affecting the economically disadvantaged and rural dwellers.

However, given that most councils have introduced agile working policies and that remote working from home is likely to continue, and become part of the 'new normal', council premises may not have the resources to supervise members of the public calling into offices to inspect documents. Although in reality very few people now avail of such a service, and most will either view the information online or download a digital copy, thought needs to be given as to how to best ensure access is not prevented to those who can't.

**Q.8. Other parts of the 2011 Planning Act: 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?**

***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.

Planning fee income falls well short of the service being cost neutral. This means that local rate payers are unfairly subsidising each council's delivery of its Planning Service. NILGA understands that this concern has been raised with the Northern Ireland Audit Office which is 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 paying application work undertaken by Planning Authorities. It is estimated e.g. in the Belfast area, that approximately 25% of applications attract no fee.

There should be an automatic uplift in planning fees each year in line with inflation, as a bare minimum.

***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.

### ***Other Key Issues***

**Policy:** 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.

**SPPS:** 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. There is a view emerging within local government that the SPPS is too long and prescriptive, and that now confidence has grown in the new system, councils need to be given more freedom to make local policy decisions.

**Sharing Services:** NILGA is keen to work with councils and the Department to further develop shared council ownership and delivery of more specialist services - such as minerals and urban design – which, working individually, they may not have the resources to access. We note that planning as transferred wasn't cost neutral, and available resource has had to be supplemented by most if not all councils. There are some continuing skills deficits. Quality needs to come to the fore, rather than to be treated as an afterthought, and we would like to see development of appropriate skills and resources within councils to ensure this.

**Vacant and Derelict Sites:** NILGA members have ongoing concerns in relation to issues caused by vacant and derelict sites, and would value consideration of legislation for local charging mechanisms, as is the case in the Republic of Ireland.

**The legal system:** NILGA members, noting that the issue is unlikely to be considered within the context of this Review, wish to flag up ongoing concern with the legal system as it pertains to planning in Northern Ireland.

In a time of great financial challenge, it is felt that the public money currently required to be set aside by councils to cover potential legal costs, could be used much more productively in other ways. Elected members have cited issues regarding ‘malicious’ and ‘serial’ objectors, the inconsistency of the judiciary when it comes to decision making, and of the difficulties experienced as a result of the often subjective nature of planning.

A key concern is the relative ease with which a Judicial Review can be triggered in Northern Ireland in comparison with other jurisdictions.

NILGA members would therefore urge the Minister for Infrastructure and her Department to work closely with the Justice Minister and Department to explore if there are potential solutions available, to ensure best use of public money and to further streamline the planning (and legal) system.

**New Opportunities:** Although we are aware that the terms of reference of the review are limited, NILGA would be keen to see the department use this opportunity to consider new opportunities that could be valuable in future-proofing activity. For example, we have already noted the inclusion of legislation in the UK Environment Bill in relation to Biodiversity Gain, which is not being extended to Northern Ireland in the same manner as other parts of that Bill. Derry City and Strabane District Council are already including biodiversity new gain in their approach to planning, and NILGA would be keen to see the Department consider the development of policy and legislation on biodiversity gain as per the UK Environment Bill, as we believe this could play an important part in Northern Ireland meeting UK (and forthcoming regional) climate action targets.

#### **4.0 CONCLUSION**

NILGA and councils are ready, willing and with additional capacity and resources will be able to work substantively with Department for Infrastructure, wider government, business and the public to begin to meet the challenges of improving planning services. We look forward to the outcomes of this Review, to better inform, focus and revitalise efforts. This important work and

policy enablement will require sustained central and local government and societal collaborative proactivity over a considerable period of time, with long term generational benefits for the wellbeing of our community. NILGA trusts that the outcomes of this consultation include material involvement by this Association and wider local government on the realisation of the goals required.

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