

PLANNING POLICY AND PRACTICE @ RTPI: 2009

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1 October 2009

Northern Ireland Planning Reform Paper

Draft High Level Response

14 September 2009

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Action:

The committee is asked to consider and approve this high level response to the Department of Environment's paper on Planning Reform in Northern Ireland and to note the thinking of the Irish Branch (Northern Section)

Introduction

1. The RTPI broadly welcomes the proposals and congratulates the Department on its comprehensive review of the Planning system in Northern Ireland
2. The reform paper is a process led options paper and directs consultation responses in a specific process orientated manner. As a result key issues of the reforms, particularly interactions between the different elements are not completely drawn out in the proposals.
3. The RTPI has prepared this high level response to address these elements together with other aspects that the Institute is and has been concerned with in the reform processes in England, Scotland and Wales.
4. Accordingly this high level response comments on the following basis: -
 - It makes a series of high level responses to the Reform Paper
 - It sets out the interactions between the key elements not drawn out in the Reform Paper
 - It provides the principles that have underpinned the Institute's detailed response to the Reform Paper

Background

5. The Northern Ireland planning system is essentially unchanged from that introduced in 1973 and is a regulatory system devised in the 1960s of the sort long since abandoned in the rest of the UK.
6. The long period of the Troubles depressed development and investment in Northern Ireland and as a result the flaws in the system, obvious elsewhere, did not come to light until the property boom of the last 10 years.
7. An aspect of the Troubles was the removal of local authority powers to central bodies; control over planning, highways, regeneration, education, housing and health were key powers removed from local control as part of the Government's response to civil unrest that highlighted corruption in local authorities in Northern Ireland in the early 1970s. While it might be argued that this was necessary at the time it produced a "democratic deficit" that needs to be addressed if the Province is to move further towards normalisation of its society.
8. Accordingly the Review of Public Administration was a central tenant of the 1998 Stormont Agreement and subsequent agreements that led to the re-establishment of the Assembly in 2006. RPA returns many powers to a radically reduced set of local authorities; 11 are proposed to replace the current 26. The 11 authorities is a political solution, originally 5 or 7 were proposed, and as a result they will suffer from a lack of scale and population.

High Level Responses to the Reform Paper

9. The RTPI has recently completed a wide ranging review of its New Vision to address the pressing and dynamic need for planning to address the management and mitigation of climate change. To ensure planners are equipped to meet this challenge and to assist the alignment of the built environment sector generally the Institute published its 7 Commitments in June 2009. The 7 Commitments are: -
 1. To Promote Behavioural Change
 2. Adapt Existing Places
 3. Work towards Responsive Legislation and Policies
 4. Improve Current Practice
 5. Celebrate Best Practice
 6. Compile a Compendium of Best Practice
 7. Develop Climate Change Education and Skills

More information on the 7 Commitments is appended to this response.

The Institute welcomes the inclusion of sustainable development in the Reform Paper and agrees with the paper's general thrust of making the achievement of sustainable development one of the main aspects of the reformed system; however it is disappointed to note that the need to manage and mitigate the effects of climate change is not included as one of the key drivers of the reform process.

10. In GB the introduction of spatial planning is one of the central elements of the planning reforms that have taken place. Spatial planning offers a measurable and accountable means of cost saving to government while ensuring the delivery of effective community services. Spatial planning is also widely regarded as the most applicable means of securing the management and mitigation of climate change.

The Reform Paper does not propose a spatial planning system and instead proposes a reformed land use planning system; the Institute considers that Northern Ireland has missed an opportunity to align its planning system fully with the planning systems in England, Scotland and Wales.

11. The Institute believes that a planning system which is centred on the creation of quality outcomes delivers efficiency and effectiveness in its decisions as well as a broad range of social and environmental benefits. The promotion of quality has been at the heart of the Institute's work with DCLG in devising the indicators used in its assessment of Housing and Planning Delivery Grant. High quality plans and decisions reflect a wide range of elements and are a prudent form of investment in our social capital and built environment. In this context efficiency and effectiveness are key elements in a wider whole that seeks to deliver quality outcomes either in terms of Local Development Plans or in terms of Development Management decisions. The Institute would therefore urge the Department to adopt a quality basis for decision making and move away from its narrow focus on efficiency and effectiveness.
12. The Institute welcomes devolution of planning powers to democratically elected bodies. It is concerned, however by the differences in the detail between different proposals in the consultation document. Specific parts of the reform proposals have been worked out in detail, while others remain simply proposals. In addition not all individual elements have been set out in the same detail. A part of the problem is that the reform paper is a process document rather than a planning document and contains proposals that vary widely in terms of the degree to which they have been worked out. As a result there is only limited continuity between the different proposals.

In particular the Institute would highlight the degree of control that is proposed to be exercised centrally; in particular, the control over the hearing and adoption of the new Local Development Plans which contrasts with democratic objectives that underlie the proposals. The Institute understands that the Department has collaborative action as its goal but the proposed reforms reflect the exercise of control rather than collaboration.

It is also unclear how many planning applications the Department expects to be handled centrally, the definitions of regionally significant, major and local are not consistent, for example 500 dwellings or sites of 4 hectares is the residential threshold.

13. The Institute has concerns in respect of the mechanism by which staff and current/working files will be transferred to the new authorities, as this is not detailed in the Reform Paper. The nature and hierarchy of these organisations is also unclear and needs to be clarified in order that the proposals can be set into the appropriate administrative context. Clarification of these points would be essential before the Planning Reform proposals pass on to the next stage of legislation and ideally therefore before the end of 2009.
14. The Institute is also concerned about the cost of the reform proposals in an era public spending cuts. In particular following the next general election in 2010 it seems likely that whichever party is returned to Westminster, central government will be looking to save costs on services. Accordingly the Institute has real concerns that the proposed reformed planning system will be seen as prohibitively expensive to operate and that a lesser form of reform will result.
15. Community Plans are a key feature of the plan system in GB and the reform proposals clearly envision Local Development Plans being the outworkings of Community Planning. While the Institute broadly welcomes this approach it is concerned that the Reform Proposals do not describe the form or content of Community Plans or provide a legislative mechanism for their delivery.
16. The Institute believes that there is a fundamental right to a hearing in a democratic society and would not support the transition of decision making in respect of a hearing to any unelected body. It considers that such a transition may be inconsistent with Article 6 of the Human Rights Act. In the context of the fall off of appeal numbers and the proposed alterations to Plan examination there is no longer any administrative necessity to implement this transition.

High Level Interactions

17. The Institute also welcomes the revisions to the proposals for Local Development Plans, and supports the move to make Planning Policy Statements LDP guidance documents rather than detailed operational Development Management policy. Detailed comments will be made regarding both of these.

However, the Institute is concerned that the proposals do not fully address the interrelationship between the PPSs and LDPs; specifically the need for a full suite of PPSs to be available to enable preparation of LDPs. No timescale is given in the Reform Paper for the production of PPSs, which has traditionally been done at an average of one per year. The Institute considers it highly unlikely that a full suite of PPSs will be ready in time for the new system to be implemented in 2011, the reform proposals do not contain any interim or transitional measures and it is considered that this is a serious weakness in the proposals.

It is highly likely that the new authorities, especially those with old or out of date Development Plans, will wish to commence work quickly on new LDPs. The Institute welcomes the Reform Paper clearly setting out the case for adopting a plan-led system at the earliest possible opportunity in order to further encourage the new councils. However, the Institute is extremely concerned that it will not be possible to bring LDPs forward rapidly in the absence of either revised PPSs or transitional arrangements. The reformed system is heavily dependent on the timely production of LDPs and the omission of either a timetable for the production of PPSs or transitional arrangements is a serious omission from the proposals.

Accordingly, the Institute views this as a gap in the proposals that needs to be plugged as a necessity and would welcome more detail on the transitional arrangements that are envisioned or a timetable for the production of PPSs.

18. While the Institute supports the principle of a Community Infrastructure Levy it is concerned that the proposals do not consider how this could affect LDP making; there are a series of knock on effects that logically follow from the introduction of CIL and which relate to LDPs and Community Planning. These effects are also related to the manner in which CIL is delivered; a regional approach will result in finances raised not necessarily being spent in the community and a sub-regional approach is necessary. The sub-regional flow of logic seems to dictate that LDPs should be prepared on a sub-regional basis to support CIL and that LDPs become a form of taxation document.

It is difficult to see how community needs can be identified in order to establish a CIL level in the absence of concrete proposals for Community Plans in the Reform Proposals. The interrelationship between Community Plans that set out and establish the needs, specification and costs of community facilities and CIL, which is the delivery mechanism, is so significant that the Institute is concerned that it will not be possible for authorities to implement CIL in their absence.

Accordingly the Institute is concerned that the proposals as presently constituted do not contain sufficient consideration of this interrelationship for CIL to a workable proposition and it would welcome further detail on how the Department envisions the system will work.

19. A further interrelated issue is the status of CIL; the Northern Ireland Assembly has no tax raising powers and cannot ring-fence CIL once raised and absorbed by the Exchequer. This issue would need to be clarified. It is the Institute's view that there will be resistance to a Community Infrastructure Levy that does not spend the monies raised directly in the community to which they relate and as there is unlikely to be any support from the community for a CIL that cannot be spent in Northern Ireland. In these circumstances the Institute is of the view that Northern Ireland would be better served by more fully developing Article 40 Planning Agreements with more advanced guidance and a broader range of agreements similar to Section 106 Agreements.

20. The Institute welcomes the proposals to bring a plan-led system forward with the introduction of new LDPs. It would highlight the interrelationship between the plan-led system and the consideration of third party rights of appeal. In a plan-led system the plan sets out the parameters for development through its Examination in Public and adoption while the Development Management process acts as a checking mechanism to ensure the plan is appropriately worked out. Disputes between first parties and authorities ending up at appeal will concern the detail of proposals rather than the principle, which will have been established through the LDP. However, third party rights open up the prospect of the principle of the development being re-debated in an inappropriate forum.

The Principles Underlying the Detailed Response

21. The Institute's response has been shaped by a number of principles; these are: -
- I. Meeting the challenges presented by Climate Change
 - II. Achieving Sustainable Development
 - III. Shifting from land use planning to Spatial Planning
 - IV. Maintaining fundamental rights and responsibilities
 - V. Ensuring the move away from regulatory planning to a framework identifying development opportunities is achieved
 - VI. Delivering a quality planning system not simply a process orientated or efficient system
 - VII. Assisting with as smooth a transition of power to local authorities as possible

Next Steps

22. It is the NI Branch Executive's intention to engage DoE/Minister in on-going dialogue about the reforms beyond the consultation cut off on 2nd October; accordingly there is an opportunity to pass on any views the PPPC has that it considers should be expressed after the meeting on 1st October.
23. RTPI NI will be embarking on a programme of councillor and officer training in the next few weeks, the Branch wants to actively engage with the new councillors and our members on the responsibilities and higher level issues emerging from the planning reform document.