

Title of Report: Item 8: Review of the Implementation of the Planning Act (NI)	Officer Presenting: Author: Head of Planning
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1 Purpose of Report/Recommendations

- 1.1 The Department for Infrastructure is currently undertaking a review of the implementation of the Planning Act (NI) (The Act) as required by section 228 of the Act. The Department is seeking views of interested parties, including Councils, by way of Calls for Evidence (Appendix 10).
- 1.2 This Report and Appendix summary (Appendix 11), is a draft consultation response which seeks to outline the key issues to Members which officers consider important which have emerged since transfer of powers in April 2015. It seeks to feedback this Council's experience of operating the new system and the Planning Act and suggests providing more clarity, removal or insertion of elements which we believe will help to improve the efficiency and implementation of the Planning system in Northern Ireland.

2 Background

- 2.1 The Planning system was fundamentally reformed in 2015, not only with the transfer of responsibility/power for most local planning decisions and plan making functions to Councils, but also significant changes to the development management and plan making processes.
- 2.2 This involved commencement of significant new primary legislation in the form of the Planning (NI) Act 2011, together with a raft of other supporting subordinate legislation, which came into effect on 01st April 2015.

- 2.3 Section 228 of the Act requires the Department to review and publish a report on the implementation of the Act no later than 3 years after the commencement of Part 3 of the Act (Planning Control) and at least once every 5 years thereafter. The Department is required by Section 228 (2) to make regulations setting out the terms of the review. The Department has carried out this process and the Regulations were made on 12th October 2020 and came into operation on 02nd November 2020.
- 2.4 The Department has advised the delay in meeting the initial date of April 2018 stems from decisions (not to proceed) made under the NI (Executive Formation & Exercise of Function etc) Act 2018. These decisions determined that, in the absence of a Minister or functioning Assembly, it would not be appropriate to make Regulations and publish a report on the implementation of the Planning Act.
- 2.5 It is important to note that the Planning Act 2011 (review) Regulations (Northern Ireland) 2020 specify the terms of this Review, it must –
1. Consider the objectives intended to be achieved by the Planning Act (background in Appendix 10;
 2. Assess the extent to which these objectives have been achieved; and
 3. Assess whether it is appropriate to **retain, amend or repeal** any of the provisions of the Planning Act, in order to achieve those objectives.
- 2.6 Also to highlight in terms of the Purpose and Scope of the Review and Calls for Evidence will 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. And the issues potentially experienced as a result of the Coronavirus pandemic has been highlighted.
- 2.7 However, the Department has advised that they are not envisaging this Review to be a fundamental root and branch review of the overall 2 tier planning system or the principles behind the provisions. The deadline for the Consultation response has been extended from March 15th 2021 until April 16th 2021.

3 Key Issues

- 3.1 The Planning Act consists of 15 Parts, 255 sections and seven schedules. A list of these can be found in Appendix 10. A small number of the provisions of the 2011 Act have not been commenced mainly four parts which relate to Mineral planning permissions and Correction of Errors. Also the Department has made approximately 40 statutory Subordinate rules under the Planning Act to facilitate the transfer of powers and the introduction of the two tier system.

- 3.2 A draft response to the Calls of Evidence is enclosed, it separates the main functions of the planning system, Development Management, Enforcement, Local Development plan making, others including TPO and issues which officers wish to raise.
- 3.3 In terms of **Local Development Plan process**, Members will be aware of the extensive time which the plan making process has taken to date across all Councils. We are proposing that the Department needs to review the system fundamentally in terms of the two tier approach, it is too cumbersome with multi stages and repeated consultation exercises and timescales. There is a lack of clarity on a number of key issues including the advertising and consultation process which we are highlighting and seeking simplification and flexibility. Members will be aware these were issues which this Council did require to seek internal and external legal advice on and caused delay and expense.
- 3.4 In regard to the **Development Management** process, you will see officers have highlighted fundamental issues with the current system that if adjusted would allow for considerable improvement in providing both speed/efficiency in the overall system /process, clarity to external customers and allow for a smoother more efficient operation of the Planning Committee process. This has focused on areas such as the Initial stages of Validation to improve the quality of submission of planning applications, Pre Application Discussion process, scale/number of revised submissions and Late Information. There are a number of other specific issues which have caused ambiguity and required legal advice over the last few years and delay which officers have also suggested as requiring review, such as PDH's, Call in procedures and Notice of Opinion to DFI.
- 3.5 In terms of other key issues for improvements which need addressing includes consideration of the introduction of Third Party Appeals, Council's own applications and revision of the main Performance Measure target system and Fee changes to include other types of functions which Council performs which are increasing and do not have discretion in the legislation to allow a fee to be charged at the moment.
- 3.6 In terms of **Enforcement**, officers are suggesting that a review of maximum fines is now timely and in particular the fine for a Breach of Condition Notice be increased in order to make this tool more effective. Also extending Injunction function to DFI when dealing with significant and complex cases we believe is required for a dual approach and legislation that will allow the Department to enforce against its own decisions.
- 3.7 In terms of the **COVID recovery** section, officers have suggested the need for Emergency legislation to cover pandemics in regard to Permitted Development rights for change of use, outdoor furniture and signage etc.

4 Financial, Equality, Legal, HR, Improvement, Rural Needs and other Implications

- 4.1 There are legal implications to the various aspects of the Review which the Council is participating in a consultation exercise presently, however, DFI will be responsible for the implementation of the Review and any changes to legislation.

5 Recommendations

- 5.1 That Members note the Report and Appendices with draft response attached and discuss the matter at Planning Committee with a view to finalising before forwarding onto DFI before deadline of 16 April 2021.

Background Papers

Appendix 10 – Calls for Evidence

Appendix 11 – Draft Consultation Response