

## **PLANNING REFORM: EMERGING PROPOSALS**

### **Background**

1. Last year, Arlene Foster, the then Minister of the Environment brought a paper to the Executive indicating her intention to reform the planning system, with the key aim of bringing forward proposals that would enable the planning system to play its part in delivering on the Programme for Government priorities and, in particular, by contributing to growing a dynamic, innovative and sustainable economy.
2. At that time she also indicated that she intended to secure the services of an Independent Expert on Planning (Professor Greg Lloyd was subsequently appointed) to provide her with an opinion on the broad direction that the medium to long-term reform measures would need to take to best achieve the objectives of the reform agenda and to work with officials to develop the proposals for how best these might be implemented.
3. The Minister has had an opportunity to review the progress to date, including the report from Professor Greg Lloyd, and has discussed the issues and proposals with his officials. This paper reiterates the aims and objectives of the reform agenda and briefly sets out his emerging proposals for reform of the planning system. Subject to any feedback from the Environment Committee, or from the Executive, which has received a similar paper for consideration, he intends to expand on these proposals and issue them for public consultation this Autumn.

### **Context**

4. The planning system is fundamentally about ensuring the effective and efficient use of land in the public interest and contributing to achieving sustainable development in cities, towns and rural areas. Land use and development involves a complex interaction and analysis of economic, environmental and social issues and, with the return of devolved government

in Northern Ireland, the Executive has made it clear that the top priority for the next three years is sustainable economic growth.

5. Reform is therefore needed to ensure that we have a modern, efficient and effective planning system, as this is critical to supporting the Executive in delivering on its key priorities. The planning system needs to provide confidence to investors, developers and the public alike. It needs to be more responsive to the many and varied challenges we are facing today, including promotion of economic growth, securing environmental protection, enabling sustainable development, addressing climate change, regeneration of disadvantaged areas and demands for more affordable housing and, of course, ensuring effective use of resources and improved service provision.

### **Aims / Objectives**

6. As indicated in the Minister's paper last October, the aim of the reform programme is to bring about improvements in the planning system to ensure that it:
  - supports the future economic and social development needs of Northern Ireland and manages development in a sustainable way, particularly with regard to large, complex or strategic developments;
  - is delivered at the right level with the appropriate managed processes for regionally significant, major, local and minor applications;
  - has streamlined processes that are effective, efficient and improve the predictability and quality of service delivery; and
  - allows full and open consultation and engages communities.
7. The reforms that he is proposing are intended to contribute to the Executive's overall objective of improving Northern Ireland's economy, while balancing this with the aims of protection of the built and natural environment, and contributing to sustainable development. Taken together, the reforms will not only improve the efficiency and effectiveness of the planning system, but will also create a planning system that provides transparency in decision making, and gives confidence to its users.

8. The anticipated outcomes from the proposed reform programme are:
- a streamlined development plan system, which would allow for speedier and more flexible development plans and provide greater clarity for developers and the community;
  - a more effective development control system, which would work better as it would be reshaped to manage the different categories of development in ways that are proportionate to the significance of each application, with a greater focus given to economically and socially important developments;
  - improved efficiency of processing and greater certainty about timescales for developers;
  - a change in the culture of the planning system: seeking to facilitate and manage development applications rather than merely controlling undesirable forms of development, and stronger collaborative working across a range of stakeholders; and
  - a better match of resources and processes to priorities and improved value for money for all users of the planning system through more proportionate decision-making mechanisms.
9. The intended timeframe for bringing forward the reforms, particularly those requiring legislative change, is broadly the same as the timeframe for the implementation of the local government aspects of the Review of Public Administration (RPA). The reform proposals are designed to enable and take account of the transfer of responsibility for most planning functions to the new district councils.
10. To recap, following the implementation of the RPA, local government will have responsibility for key planning functions, including:
- local development plans;
  - development control (excluding regionally significant applications); and
  - enforcement.

Central government will retain responsibility for regional strategic planning and planning policy, regionally significant applications, legislation, oversight, intervention (by exception), audit, governance and performance management.

## **Scope of the Reforms**

11. The reform of the planning system is intended to be comprehensive and, as such, it encompasses the development plan regime, development control, planning policy and enforcement, along with other support-type functions. It is focused on the planning system, not just the Planning Service, and on the greater understanding of the roles and responsibilities of all of the participants, including planners, developers, agents, representative bodies, councils and elected representatives (particularly in context of RPA), communities and individuals.

## **Research and Engagement to Inform Proposals**

12. In order to fully inform the emerging proposals, the Minister's officials and his predecessor have been involved in wide-ranging stakeholder engagement. Arlene Foster announced the reform programme during a major "Planning for the Future" conference last November at which all the main stakeholders were represented. Over 240 responses were submitted to a questionnaire that was developed for the conference and which was posted on Planning Service's website for 10 weeks and these were broadly supportive of the intention set out at that stage to reform the planning system. Arlene Foster met with her ministerial counterparts in Scotland, while officials have been liaising with their colleagues throughout the UK and Ireland. In April, officials, accompanied by Professor Lloyd, also met the Environment Committee to discuss emerging findings. A series of meetings, many of which involved Professor Lloyd, have been held at official level with internal and external stakeholders, including other government departments, representative bodies such as Community Places (previously known as Community Technical Aid), Northern Ireland Environmental Link, the Construction Employers Federation, the Institute of Directors, the Planning Appeals Commission, the Northern Ireland Local Government Association, and others. In addition, Arlene Foster also discussed the reform programme in meetings with a number of these organisations.

13. Since becoming involved with the reform programme in December 2007, Professor Greg Lloyd has fulfilled a key role as the independent expert. His remit has been two-fold:
- to provide Ministers with a preliminary opinion on the broad direction that the medium to long-term reform measures would need to take to best achieve the objectives of the reform agenda; and
  - to work with officials to develop the proposals for how best these might be implemented.

The Minister is aware that he has brought considerable expertise to the role, and his extensive experience of other planning regimes and their reform programmes, particularly Scotland, has been invaluable. The Minister proposes to include Professor Lloyd's report on Planning Reform in Northern Ireland as an annex to the public consultation paper.

14. Wide-ranging research has also been carried out by officials to inform the emerging proposals. Indeed, each of the proposals being brought forward is based on a thorough examination of the situation in the rest of the UK and Ireland, along with an assessment, not only of the pros and cons, but also of the appropriateness and relevance to the Northern Ireland context. In addition, the policy papers produced to inform each of the proposals have benefited from commentary and input from Professor Lloyd.

## Specific Reform Proposals

### REGIONAL PLANNING

15. In accordance with the RPA decisions, responsibility for regional planning will remain with central government. It is, therefore, important to consider the role and function of regional planning in the context of the RPA, planning reform and the review of the Regional Development Strategy (RDS). It is vital that the RDS which emerges from this process is focused at a suitably high level, that it is concise and that its messages are clear. If the new planning system in Northern Ireland is to be improved and work more effectively and efficiently it is important that central government provides a regional planning context in a simple, effective and streamlined manner.
16. The role of central government should be to set the regional strategy and vision for Northern Ireland and provide an appropriate regional spatial planning framework for the new local councils. This would provide the practical regional context for development planning by local authorities and will also inform development management. Effective regional planning should also provide practical guidance for public and private sector investment tailored around specified regional infrastructure investment ambitions and regional policy intentions. It would also include high level guidance for public and private sector investment and activity and promote more effective public and private sector collaboration.
17. Regional planning is a shared DOE and DRD responsibility (for example, DRD leads on the RDS, DOE leads on Planning Policy Statements) and we are working together to agree a way ahead. The Minister welcomes the major review of the RDS that Minister Murphy is taking forward and is keen to build on the initial discussions that have taken place both at official level and through the Executive sub group established as part of the RDS review. In terms of the implications for local development plans, a key outcome of the reform process should be an appropriate oversight regime, which is simple, straightforward and as streamlined as possible. The Minister would hope that

we will be in a position to provide some detail on this issue in the consultation paper.

## **A NEW LOCAL PLAN LED SYSTEM**

18. It is proposed to fundamentally change the development plan system to ensure that it both delivers against my stated outcome of providing ‘**a streamlined development plan system, which would allow for speedier and more flexible development plans and provide greater clarity for developers and the community**’, and ensuring that Councils have a fit for purpose system to fulfil their new development plan functions as part of the RPA. In order to do this, it is intended to create a new **local development plan system**.
19. The consultation paper will set out proposals in four broad areas:
- (1) future objectives of the local development plan system;
  - (2) purpose of local development plans;
  - (3) local development plan process; and
  - (4) content of local development plans.
20. A high level summary of the key proposals in each of the four areas is provided below. These proposals will be expanded upon and illustrated with appropriate diagrams and case studies in the forthcoming consultation paper.

### **(1) The key future objectives of the local development plan system are to achieve:**

- more effective participation from the public and other key stakeholders early in the plan preparation;
  - more effective programme management and speedier delivery of plan documents;
  - a more flexible approach that is responsive to change and capable of faster review;
  - a more visionary and strategic approach with a role in proactive place-making;
  - a stronger link between the evidence base and development plan policies and proposals;
  - a more strategic-based independent examination process that focuses on testing the ‘robustness’ of the plan as well as considering public representations and objections;
- and

- a plan system that will be suitable for the transfer of planning functions to local councils.

(2) The purpose of local development plans is to:

- provide a 15-year plan framework to support the economic and social needs of Northern Ireland in accordance with central government policy, and which also provides for the delivery of sustainable development;
- facilitate sustainable growth by co-ordinating public and private investment to encourage development where it can be of most benefit to the well-being of the community;
- provide an opportunity for all stakeholders, including the general public, to have a say as to where and how development should take place within their local area within the context of regional plans and policy; and
- provide a framework for rational and consistent decision making by the public, private and community sectors as well as for those wishing to develop, and those affected by, development proposals.

(3) Proposals for the local development plan process

- The proposal is for a two-stage process, which will lead to a Plan Strategy document and a Site Specific Policies and Proposals document (see diagram at annex A);
- The Plan Strategy will be produced and scrutinised at Independent Examination (IE) before the Site Specifics Policies and Proposals document is completed, thereby saving time and also providing for greater flexibility for a Council to change the Site Specific Policies and Proposals document or add a local area or local subject plan without necessarily having to amend the Plan Strategy;
- The length of the overall development plan preparation process will be reduced from the current timeframe of over 6 years to just over 3yrs (40 months);
- Legislation will be introduced to require local Councils to prepare a programme management scheme for all of their local development plans. The scheme must be submitted to central government for agreement, and will include a requirement to tie in the timing of the IE.

- Councils will be required to prepare a Statement of Community Involvement (SCI)<sup>1</sup> which will set out their policy for involving the community in their planning functions including preparing development plans.
- A stakeholder participation stage will be introduced early in the plan-making process and the process will include the publication of strategic options and a preferred option for the plan;
- Plans will be required to meet certain tests of robustness at the IE stage including that the provisions contained within the SCI have been met in the process of preparing the development plan;
- Legislation will be introduced to require that a Sustainability Appraisal<sup>2</sup> will be carried out for local development plans that will incorporate the requirements of the Strategic Environmental Assessment (SEA)<sup>3</sup> Directive and Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 and the requirement of contributing to the achievement of sustainable development;
- The plan examination process will be used to assess whether or not local development plans align with central government regional spatial plans, policy and guidance;
- The Planning Appeals Commission or External Examiners will be appointed by Central Government to carry out an IE and produce a report;
- Central government will issue a binding report to the local Council on foot of the IE; and
- The Plan Strategy and Site Specific Policies and Proposals will be monitored annually and reviewed regularly (at least every 5 years) and alterations to the plan brought forward as required.

#### (4) Content of local development plans

To achieve the plan objectives, the local development plan must contain:

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<sup>1</sup> An **SCI** is a statement of a planning authority's policy for involving the community in the planning functions that it carries out, and this includes preparing and revising local development plans.

<sup>2</sup> **Sustainability Appraisal** involves assessing the social and economic effects of development plans in addition to the environmental effects covered by SEA. SA assesses the likely significant effects of the plan upon the objectives of sustainable development which includes social and economic issues as well as the environment.

<sup>3</sup> **Strategic Environmental Assessment (SEA)** is a process that aims to integrate environmental considerations in strategic decision making. The objective of the SEA Directive, 'Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment', is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development.

- a map based spatial strategy showing where development should and should not take place and the location of key development proposals;
- policies and proposals which are logically derived from the spatial strategy and which conform to regional plans and policy;
- a description of the rationale and justification for the policies and proposals of the plan with particular regard to the scale and distribution of development; and
- measures for implementing, managing, monitoring and reviewing the plan.

In addition:

- Delivery mechanisms, such as delivery agreements and master plans, may be included, where appropriate, by a Council to deliver the plan objectives;
- Councils will also have the power to formulate separate 'subject plans' or 'local area plans' to cover specific local issues. These subject or local area plans may include plans focussed on a small local area such as a town centre or covering a particular subject such as Houses in Multiple Occupancy;
- Detail on the recommended topic areas which may be covered by the Plan Strategy, Site Specific Policies and Proposals will be provided in the consultation paper; and
- There may be advantages in joint working arrangements between local Councils in the making of local development plans and legislative provision will allow for this, as appropriate.

### Planning Policy

21. In addition to reform of the local development plan system, the need for reform of planning policy is also being considered in relation to two separate but interlinked areas:
- the future role and status of Planning Policy Statements (PPSs) in light of the impending transfer of key planning functions as a result of RPA; and
  - the content and process of preparing PPSs. Currently the timescale can be of the order of two years, although a large part of this relates to the time provided for consultation and stakeholder engagement. Any review of timescale needs to be balanced against the desire to adopt a more

customer orientated approach to policy development to ensure as far as possible that their needs are addressed.

22. Work is continuing on these issues but it is anticipated that the consultation paper containing proposals to reform the role of PPSs so that, rather than providing detailed operational policy for all of Northern Ireland, they will provide strategic direction and national policy which would then be interpreted locally in development plans. In relation to content and process, the proposals are expected to reflect the desire to produce shorter documents within a quicker timeframe.

### **A NEW SYSTEM OF DEVELOPMENT MANAGEMENT**

23. As indicated, the reform programme is intended to deliver three further critical outcomes:

- ***‘a more effective development control system, which would work better as it would be reshaped to manage the different categories of development in ways that are proportionate to the significance of each application, with a greater focus given to economically and socially important developments’;***
- ***‘improved efficiency of processing and greater certainty about timescales for developers’; and***
- ***‘a change in the culture of the planning system: seeking to facilitate and manage development applications rather than merely controlling undesirable forms of development, and stronger collaborative working across a range of stakeholders.’***

24. The proposals that will enable delivery of these outcomes are referred to briefly below.

## Development Control

25. To deliver these outcomes we need to move away from our current system of development control, and move to a new regime of development management. The key focus is on proportionality and developing ways to deal with different types of development in different ways. This will involve devising systems and processes to give priority to processing the most significant applications expeditiously, in particular those relating to economic and social development and infrastructure, and to doing so in an active way making use of project management methods. At the same time, it is intended to streamline the procedures for other applications, including reducing bureaucracy for many householder and other local and minor developments. We will also aim to build on the gains from the short-term measures that officials have been taking forward by addressing unnecessary delays and uncertainties in the planning process in a deeper and more structured way.
26. The proposals that will be consulted on in the Autumn include:
- adopting a system of development management based on proportionate, responsive prioritisation and efficient decision making at appropriate levels which will require a change in culture in the planning system. This is more than just a name change from development control – it is a different way of decision making that aims to be positive, constructive and promote high quality sustainable development, while still preserving safeguards within the planning system and continuing to support public involvement in the process;
  - adopting a planning hierarchy as the basis for proportionate and more efficient and effective decision making – moving away from the ‘one size fits all’ approach. It is proposed that the categories of development to be created within the hierarchy will be:
    - regionally significant developments;
    - major developments; and
    - local developments.

The hierarchy will enable important economic and social developments in both the public and private sector to be prioritised. All development will be allocated to one of these three categories.

The consultation paper will seek comments on the proposed hierarchy, including how the three categories might be defined and the procedures a particular development should follow;

- adopting a system of performance agreements (combining a pre-application discussion stage and application stage) for regionally significant and major developments. This approach builds on the existing work being taken forward by the Strategic Projects Division at Planning Service HQ and the protocol established to ensure that applications of significant economic and social benefits (including housing and health) are processed effectively at Divisional level. It front-loads the planning process with constructive pre-application discussions designed to ensure submission of good quality applications, which are accompanied with the necessary information to allow the application to be determined. Such an approach will increase effectiveness and efficiency and involve a structured approach to managing applications. The existence of an agreement would not guarantee approval for an application (it would still be rigorously assessed against all relevant considerations) but it would provide for certainty on procedures and timing and this would give confidence to investors and others;
- making pre-application consultation a statutory requirement for all regionally significant and major developments. The proposal to introduce this new right for local people to be consulted by the developer is intended to improve the level and quality of public participation in the planning system, to strengthen the involvement of communities and interested parties, and to ensure that this happens from the outset, not at a late stage in the process;
- making pre-determination Council hearings a statutory requirement for all major developments. Following the transfer of powers to Councils, the

opportunity for hearings, before the Council takes a decision on major developments, will enable greater transparency and openness in the decision-making process. They will give assurance to the public that decisions are being made within a clear and open process and they will support the emphasis on greater community engagement by developers at the pre-application stage of a proposal; and

- adopting proposals to bring forward legislation for Council schemes of delegation post-RPA for certain types of local development. This will build on the extremely successful pilot that is underway with Derry City Council and will introduce similar arrangements to those in place in the rest of the UK. Delegation has efficiency savings in terms of time and resources and allows minor, non-contentious developments to be processed to decision in an efficient timeframe.

### Permitted Development

27. The introduction of development management will include a rationalisation of planning permission for minor developments. It is proposed to achieve this through simpler and more streamlined processes for planning applications for minor development and by extending the range of minor developments for which planning permission is given without the need for a planning application.
28. Applications for planning permission for minor developments, particularly from householders, form a large proportion of the planning applications within the planning system. In 2006/07 applications for domestic extensions/alterations represented 40% of all applications received and 98% of these were approved. Officials are already examining the scope for extending the range of householder permitted development rights whilst still protecting the interests of neighbours, the wider community and the environment. A further review will consider how this approach could be extended to other forms of development, including, for example, industrial and warehouse development, temporary buildings and uses, agricultural buildings and operations, and certain developments by statutory undertakers. Both the foregoing reviews are expected to report by the end of 2008, with a public consultation on specific

proposals to follow in 2009 and any legislative changes brought forward thereafter.

29. It is recognised that planning impacts on everyone's daily life and any planning system must be able to meet the challenges of a modern day society. One key challenge facing us all is climate change. One way of tackling climate change is to maximise the use of energy from renewable energy sources that are continuously replenished by nature. This will give rise to new forms of development, such as that associated with the use of small scale renewable energy technologies (microgeneration), which have the potential to add to planning application numbers in the future. While the processing of these applications is relatively straightforward, provided they have minimal impact upon neighbours and the local environment, they consume resources which, if they could be released, would be re-deployed elsewhere to improve overall service delivery. Officials have therefore been working on the provision of a simplified regulatory regime for microgeneration development that features easily understood permitted development rights. The work on microgeneration has two strands – domestic microgeneration associated with the energy needs of dwellinghouses, and non-domestic microgeneration, primarily associated with commercial and industrial energy needs.
30. In 2007, the Department consulted on proposals for domestic microgeneration permitted development rights and changes to the Planning (General Development) Order (Northern Ireland) 1993 are expected to be brought forward later in 2008, making it easier for householders, if they so wish, to meet a significant portion of their energy needs from renewable sources. A review is also underway on the provision of microgeneration permitted development rights for non-residential land uses, including commercial, industrial and agricultural development. This review is expected to report by the end of 2008, with a public consultation on specific proposals to follow in 2009.

### Consultees and Other Stakeholders

31. Other parties will also have a role to play in improving the planning process and there will be opportunities for stronger collaborative working as a result of the RPA. These may include opportunities, for example, for closer working between Planning and Building Control, particularly on issues such as enforcement.
  
32. A key proposal in the forthcoming consultation paper affects the role that consultee bodies play in the planning process and improvements in that area will help ensure that the anticipated outcomes of the reform programme are met. It is proposed to expand the list of statutory consultees to ensure that, post-RPA, planning authorities consult relevant statutory bodies, and in conjunction with this, introduce a statutory obligation on the prescribed authorities to respond within a specified timeframe. Introducing this provision sends out a clear message about the need for efficiency and accountability in the planning process and also ensures that the public and others will have confidence that planning applications are properly considered and that the relevant expertise is being appropriately applied when necessary.

### Appeals

33. In addition to other consultees, another significant player in the planning system is the Planning Appeals Commission (PAC) and officials have engaged with OFMDFM (the sponsor department) and the PAC as part of the process of developing these emerging proposals. A number of proposals to reform aspects of the appeal process will be included within the consultation paper. These are briefly summarised below:
  - *Fast tracking appeals.* Given that a proportionate response to planning applications is a major theme of the reform programme, it is proposed to reduce the time period for lodging all appeals from 6 months to 2 months, giving more certainty to the decision making process, while still ensuring ample time for an appeal to be submitted;

- *Local member review bodies.* The possibility of minor appeals being determined at local level (subsequent to RPA implementation) will be explored in the consultation paper to establish if there is any support for it in the wider community – in simple terms this is based on mechanisms being established in other UK jurisdictions where certain decisions taken by planning officers on behalf of the Council (delegation) can be appealed to the Council (or a committee of the Council). However, it would be proposed in the paper that the introduction of such an approach here would be delayed until a future stage, post-RPA, to allow the Councils time to settle into their new roles and develop their practices/skills prior to the introduction;
- *Allow appeals bodies to determine the appeal method.* In line with the principle of proportionality, it is proposed to consult on the introduction of legislation to allow the PAC to decide the most appropriate method for conducting any specific appeal, e.g. by written representation, round table discussion or formal hearing, thereby removing automatic opportunity to appear before and be heard by the Commission. This would be a better match of resources and processes to priorities and it builds on work already begun by the PAC to encourage more flexible, proportionate appeal processes;
- *Restricting the introduction of new material at appeal.* In order to encourage ‘front loading’ of the system, which requires applicants to produce the best possible application at the earliest stages of the process, thereby reducing work later on, it is proposed to restrict the introduction of new material at appeal;
- *Linking planning appeals and enforcement notice appeals.* The paper will consult on the possibility of giving the planning authority the power to decline to determine a planning application for a development that is also the subject of an enforcement appeal. This is intended to prevent applicants from manipulating the different timescales for appealing against planning permissions and enforcement notices in an attempt to

retain unauthorised building works or to continue unauthorised uses for as long as possible;

- *Power to decline repeat enforcement appeals and to impose a time limit for lawful development certificate appeals.* Views will be sought on the possible introduction of legislation to prevent repeat applications for enforcement appeals and on imposing a time limit for lodging certificate of lawful development appeals. This would introduce more streamlined, clearer processes and bring enforcement appeals into line with planning appeals; and
- *Award of costs.* An issue that officials intend to discuss with OFMDFM before publication, but on which we anticipate seeking views, is the possible introduction of legislation to allow the PAC to make awards of costs to compensate parties that have been put to unnecessary expense by unreasonable behaviour. The potential benefits are: more efficient scheduling of appeals and improved efficiency of processing by discouraging unreasonable behaviour.

### Third Party Appeals

34. In view of previous and continued interest from some parties on the issue of third party rights of appeal, the case has been reexamined for third party appeals as part of the planning reform programme. Given the aims and outcomes sought from reform, it has been concluded that there would be grounds for introducing third party appeals only if they contribute to the objectives of planning reform or were necessary for the purpose of implementing the RPA decisions in relation to planning functions. Front-loading third party involvement in the planning system promotes better quality plans and policies which then provide a firmer basis for decision-making. This remains a guiding principle of planning reform and of the design of the system to implement RPA. Third party appeals are at odds with this principle because they would lie at the end of the process, not at the beginning or during it. The regulatory impact assessment (RIA) produced by the Department in 2004 summarised eight potential benefits of third party appeals:

- equity/natural justice vis a vis the first party right of appeal;
- enhanced third party participation in the planning system;
- more accessible/ relevant than judicial review – a reduction in the numbers of judicial reviews;
- enhanced decision making through the availability and exercise of the third party appeal process;
- incentive to good practice among applicants – by promoting greater consultation with third parties before applications are submitted;
- efficiency of decision making – swifter decisions in the knowledge that third party appeal would be available to concerned third parties;
- public confidence in the planning system – the system would be seen to be fair and inclusive; and
- removal of the Management Board Referral system.

However, the RIA concluded that there was little evidence either to validate or refute these perceived benefits or to allow an accurate estimation of their likely extent. In many cases the benefits were based upon the perceptions of consultees and were difficult to validate one way or the other.

35. On the other side of the equation are the estimated costs of third party appeals. Unlike the perceived benefits, which could not be quantified, the RIA was able to estimate the cost of third party appeals and produce an assessment of the impacts upon the planning system. There are definite conclusions that can be drawn, if third party appeals were to be introduced:

- there will be a significant net cost to the public purse;
- there will be a delay in the final decision on all planning applications to enable third parties time to appeal;
- there will be a greater delay in the final decision on some planning applications which are subject to a third party appeal;
- there will be an additional burden upon the staffing resources of both planning authorities and the Planning Appeals Commission;
- there will be greater uncertainty as to the outcome of the planning process; and

- there will be a potential adverse impact upon investment in the economy.

These are impacts we can be quite sure about, unlike the ‘perceived’ benefits of third party appeals.

36. It has been concluded that provision for third party appeals:

- is not necessary to support the future economic and social development needs of Northern Ireland;
- would be detrimental to streamlined processes that are effective, efficient and improve the predictability and quality of service delivery;
- would not provide greater clarity for developers and the community;
- would not contribute to improved efficiency of processing and greater certainty about timescales for developers; and
- would not, on the evidence, provide improved value for money for all users of the planning system through more proportionate decision-making mechanisms.

37. Supporters of third party appeals have also expressed the view that when local Councils are the primary decision-makers in relation to planning applications, the need for third party appeals would be reinforced. They considered that, in such a scenario, there would be potential for greater inconsistency of decision making than exists under a unitary planning authority. They were concerned about the level of professional expertise that would be available and that planning decisions would be more open to greater “non-planning”/ “political” influence, as well as the possibility of corruption. The Minister does not agree with these arguments. The RPA decision to transfer planning functions to local Councils restores local democracy to the Northern Ireland planning system. Councils responsible for decision making will take account of the views of local people on planning matters before decisions are made and justify their decisions to their electorate, and there will be greater local ownership of plans and policies. Furthermore, it is intended that the planning system post-RPA will be designed with checks and balances, including arrangements for oversight of the planning system that will address concerns about the integrity of local planning authority decision making,

learning from lessons elsewhere in relation to governance issues. The planning system in Northern Ireland post-RPA will also have the same level of expertise available to it that it does now, as all planning staff carrying out those functions for which councils will become responsible, will transfer with the function. It is also desirable that the main components of the planning system envisaged post planning reform/RPA are established now, providing a stable framework for the planning system, within which everyone can move forward to achieve the objectives of planning reform/RPA.

38. The conclusion that will be reflected in the consultation paper is that the case for third party appeals has not been proven. They would not contribute to the objectives of planning reform/RPA, would be expected to be detrimental to the anticipated outcomes of planning reform, and are not a necessary feature of the Northern Ireland planning system following planning reform and the transfer of planning functions to Councils.

#### Enforcement and Criminalisation

39. Another area that is inextricably linked with that of development management is enforcement. One of the fundamental elements of the planning process is the power to take action against unauthorised development and breaches of planning control, otherwise the credibility and integrity of the planning system will be undermined. The enforcement provisions in Northern Ireland are wide-ranging and varied and for the most part now parallel those in Great Britain (GB).
40. It is important that we continue to effectively use and consolidate the enforcement powers currently available to the Department, including the strengthened and relatively new powers contained in the Planning Reform (NI) Order 2006. This will be reflected in the consultation paper, which will also seek views (but not offer firm proposals) on the introduction of provisions similar to those in place in Scotland, such as Fixed Penalty Notices for breaches of planning control, and Notification of Initiation of Development and Completion Notices. We will also want to look at other means of discouraging development without planning permission, such as a premium fee for

retrospective planning applications, subject to legal advice on the matter. The policy consultation will also provide an opportunity for the Department to look again at the issue of criminalisation and set out in more detail the advantages and disadvantages of making it a criminal offence to commence development without the required planning permission, and to seek current public opinion on the matter. The issue of criminalisation and the way forward can then be revisited post-consultation from a better informed position and in the context of the wider emerging reform programme.

### Developer Contributions

41. A further issue that we intend to seek public views on is the possible increased contributions that the development industry can make to the provision of infrastructure necessary for Northern Ireland's economic and social improvement. While this issue is not intrinsic to planning reform, the forthcoming consultation paper offers a suitable vehicle to initiate debate on an issue which has the potential to significantly enhance the level of funding available in Northern Ireland. There are different approaches adopted in relation to developer contributions in other jurisdictions in terms of the extent to which contributions should be sought and the mechanisms adopted to secure those contributions. A common theme, however, is that society should harness some benefit from developers for the increased economic value that planning permission brings.
  
42. It is important in the Northern Ireland context to determine how this issue might best be taken forward. The Minister, like his predecessor, is committed to looking at the issue of developer contributions in relation to affordable housing, using the existing mechanism of Article 40 agreements<sup>4</sup>. However, The Minister thinks it is timely to look at the issue more generally, both in terms of what developers might appropriately be asked to contribute to and what are the most suitable, efficient and effective ways of securing such

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<sup>4</sup> Article 40 of the Planning (Northern Ireland) Order 1991 empowers the Department to enter into an agreement with "*any person who has an estate in land*", for the purpose of facilitating, regulating or restricting the development or use of land. Such an agreement, commonly known as an "Article 40 agreement", is normally tied to a planning permission and is binding on future owners and occupiers of the land.

contributions. In England and Wales, for example, there are proposals to introduce a Community Infrastructure Levy which will support the provision of infrastructure associated with public transport, roads, flood defences, hospitals, schools, parks and playgrounds and other community facilities.

43. From a Northern Ireland perspective, it is intended through the consultation paper to pose a series of questions to gauge initial views on possible options (such as enhanced use of existing Article 40 agreements or the development of a regional levy type approach) for increased developer contributions to infrastructure provision beyond strictly site-specific requirements. It is intended that consultation responses will inform the way ahead in relation to an issue which is of interest to a number of other government departments, particularly those with responsibility for infrastructure provision.

## **ENABLING REFORM**

### Capacity

44. A key part of increasing effectiveness and efficiency will be about ensuring that there is sufficient capacity within the system. This will relate to capacity in terms of competence, behaviours and skills and also in terms of having and applying the appropriate resources and processes to achieve efficient and effective outcomes. In relation to competence and behaviours, we propose to develop and implement a Planning Service programme for capacity building to respond to the medium to long-term needs arising from reform/RPA. The programme will involve a co-ordinated approach in relation to three elements:
- the competence-based requirements for fulfilling the role of a planner;
  - specific training/guidance to address process/procedural changes as the result of reform; and
  - strategies for addressing behavioural and attitudinal changes.

Succession planning will also be an important consideration.

45. However, the Planning Service is only one player in the planning system. Enhancing the capacity of other key players and stakeholders is equally

critical if the reforms are to be successful. Officials will work with other sectors, through RPA and other appropriate structures, to explore the opportunities to enhance capacity within the entire system, particularly to ensure readiness for the changes that will arise in the context of the implementation of RPA and planning reform. The consultation paper will seek views on ways to ensure capacity development for all those involved in the planning system.

46. As indicated previously, a further outcome to be delivered by the reform programme is -
- ‘a better match of resources and processes to priorities and improved value for money for all users of the planning system through more proportionate decision-making mechanisms’.***
47. This outcome will be brought about as a result of the implementation of all of the reforms referred to above, particularly in relation to the speedier, more streamlined development plan system and the reshaped, proportionate development management system. In addition to all of the changes referred to above, work is also being undertaken as part of the reform programme in relation to funding the planning regime.

### Funding

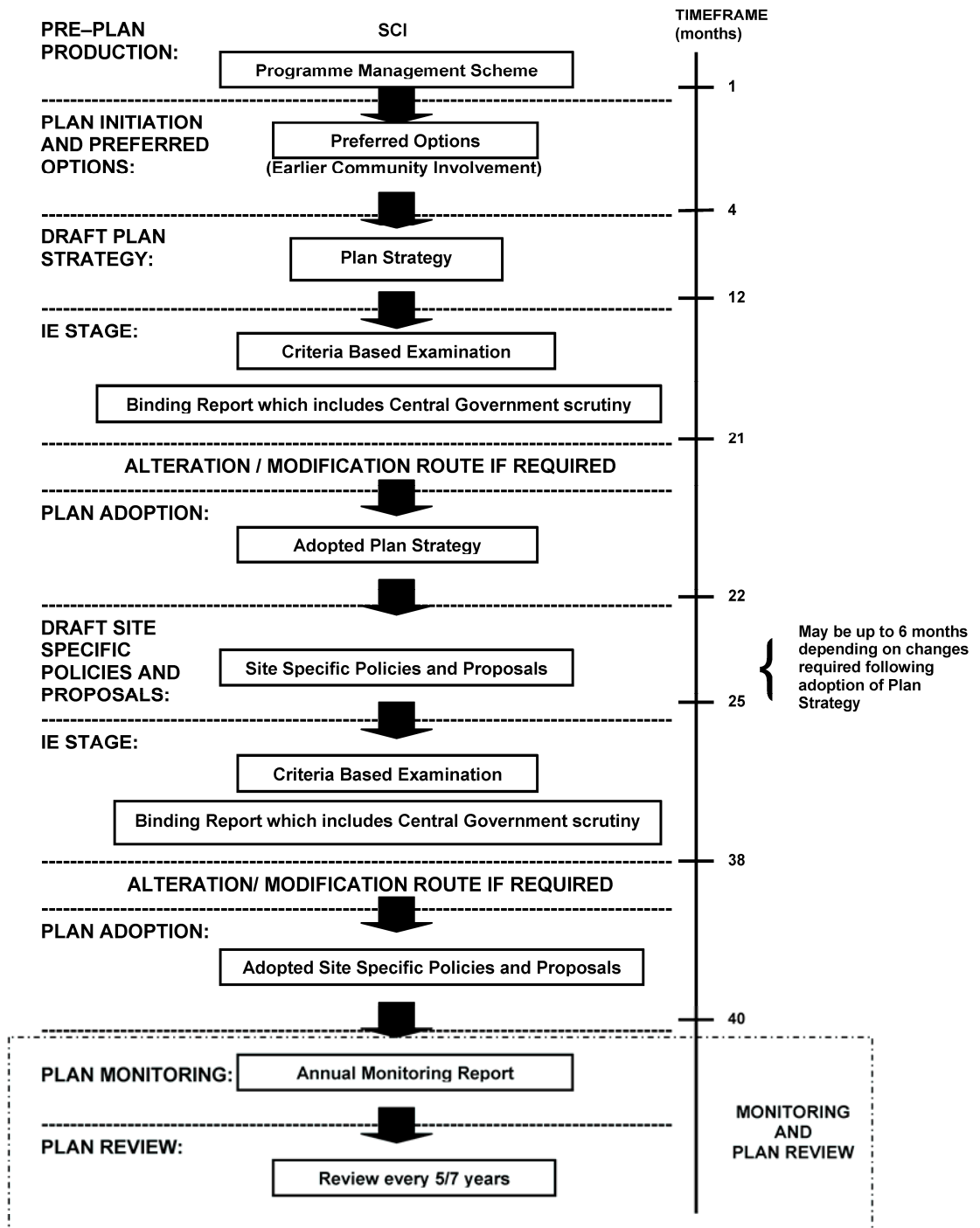
48. It is intended that specialists will be procured to provide expert advice on how the planning system should be funded in light of RPA and the reform initiatives and, in particular, to advise on the implications for the fee regime, while also ensuring that we get as simple and transparent a system as possible.
49. Fees will be set centrally for the first 3 years following transfer of responsibility of planning functions to Councils. After this time, it is proposed that this arrangement would be subject to a full review, and consideration given to transferring fee setting powers / responsibilities to Councils. To this end, the consultation paper will reflect that it is proposed that the legislative power to allow this to happen will be taken but that it would not be commenced until after the full review.

50. As indicated above, the consultation paper will reflect proposals to expand the list of statutory consultees and to introduce a statutory obligation on the prescribed authorities to respond within a specified timeframe. In line with proposals brought forward in the Planning Reform (NI) Order 1996, further work will be carried out with consultees, and as part of the wider funding review outlined above, to consider the resource implications of these proposals, and in particular how planning fees will be used to fund consultees to provide an efficient and speedy response to consultations on planning applications and to meet any statutory deadlines.

### **Next Steps**

51. The next key step in the process will be the publication in the Autumn of the reform proposals for a minimum of a 12-week consultation period, which will also involve structured engagement.
52. At the end of the consultation process, the responses will be analysed to inform final policy decisions on the way ahead. Reforms will then be progressed on a twin track approach, with administrative changes being rolled-out progressively over the period of reform, with the relevant legislation, as required, being brought forward by March 2011.
53. The formal consultation process is a critical step in the planning reform process: it is a means of beginning the process of culture change for all those involved in the planning system. Land use and development involves a complex interaction and analysis of economic, environmental and social issues. If we are to deal with these complex issues in an effective manner then we need a common, shared and accepted understanding of what the planning system is for and how it operates, and from this there should follow agreement on our rights and responsibilities within that system. The proposals outlined seek to move us towards that position

# The Proposed Local Development Plan Process



\* The flowchart is based on the assumption of development plan functions transferring to Local Councils under RPA