



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

All Heads of Planning (Northern Ireland)

Clarence Court
10-18 Adelaide Street
BELFAST
BT2 8EG
Tel: (028) 90540636

Email: angus.kerr@infrastructure-ni.gov.uk
Julie.maroadi@infrastructure-ni.gov.uk

Your Reference:
Our Reference: CPU3

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Dear Colleague

CHIEF PLANNER'S UPDATE

In keeping with the Department's intention to update councils with information on particular planning issues, please find below a summary of the main areas which may be of interest to you at this time.

Recent Appointments

Since the last Chief Planner's Update there have been a number of changes at senior management level within the Department for Infrastructure (DfI). On 6th September Katrina Godfrey replaced Peter May as Permanent Secretary of DfI. John Irvine has been appointed Deputy Secretary (acting) with responsibility for Planning, Water and DVA, replacing Fiona McCandless who moved to the Department for Agriculture, Environment and Rural Affairs (DAERA) in June. I remain the Director of the Regional Planning Directorate, and have also assumed the role of Chief Planner. Alistair Beggs has also been appointed the Director of the Strategic Planning Directorate following the retirement of the previous Director, Carol Ramsey.

Planning Legislation

Notification Direction 2017

The Department issued a Notification Direction which came into effect on 1st December 2017. The DfI Planning (Notification of Applications) Direction 2017 replaced the 2015 Direction and sets out the arrangements and criteria for councils to consult the Department in relation to planning applications for particular major developments, for example, which will significantly prejudice the implementation of the local development

E-mail: planning@infrastructure-ni.gov.uk
Website: www.planningni.gov.uk

plan or where there has been a significant objection by a government department or statutory consultee. The purpose of the Direction is to give the Department an opportunity to consider whether to exercise its call in powers under section 29 of the Planning Act (NI) 2011.

The Direction clarifies the information councils should send to the Department. This should include a statement clearly setting out the council's reasons for proposing to grant planning permission. The statement should provide a full explanation particularly where, for example, a council proposes to grant planning permission against the advice of its officials.

A link to the direction is attached below:-

https://www.planningni.gov.uk/Primary%20Nav/the_planning_notification_of_applications_direction_december_2017.pdf

Council's Own Conservation Area Applications

Councils are reminded that applications submitted by a Council for Conservation Area Consent, commonly referred to as Demolition in a Conservation Area (DCA), must be determined by the Department by virtue of section 105(3) of the Planning Act (Northern Ireland) 2011.

Regulation 11(3) of the Planning (Conservation Areas) (Demolition) Regulations (NI) 2015 requires any consent made by a Council to be processed as if it had been referred to the Department. However prior to submitting, the Council must, as per Regulation 11(4), publish a notice in at least one newspaper circulating in the locality and publish a notice on the Council's website where it normally advertises planning applications for determination.

It is advised that Councils should highlight within the notice that the application is to be determined by the Department and that any correspondence should be forwarded to the Department.

In order to allow DfI to determine the application, information is required to facilitate the DfI assessment. A copy of the application, including copies of any accompanying plans, drawings, statements, assessments, pre-application material and any other supporting information. Any representations made to the Council should also be forwarded to the Department to allow full consideration to be made of any views on the proposal. More information can be found in Development Management Practice Note 05 Historic Environment paragraph 3.14.

<https://www.planningni.gov.uk/index/advice/practice-notes/dmpn05-historic-environment.pdf>

Notification of applications

May I take this opportunity to remind District Councils of their ongoing statutory notification responsibilities for certain applications including major applications, council

own applications and listed building consents as per the provisions of the Legislative Directions as well as their notification responsibilities in relation to Conservation Area Demolition applications as set out in the Planning Act 2011 all of which are available on the Planning Portal.

Miscellaneous legislative amendments to Northern Ireland (NI) planning legislation arising from the United Kingdom (UK) exit from the European Union (EU).

The Department has brought forward Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018 No.1235) which amend various pieces of planning legislation in preparation for when the UK leaves the EU on 29 March 2019. In the absence of a functioning NI Assembly, the essential technical legislative amendments are being progressed through the Westminster Parliamentary process via a Statutory Instrument (SI). The Regulations were formally laid in Westminster on 28 November 2018 and have been published on the government legislation [website](#). They are expected to come into operation on exit day.

The Regulations make no substantive changes of policy but will ensure the relevant NI planning legislation in the following regimes continues to operate effectively once the UK leaves the EU:-

- Environmental Impact Assessment – which aims to ensure that environmental considerations are taken into account at the development consent stage of the planning process;
- Management of Extractive Waste – which aims to ensure operators in the onshore extractive industry manage extractive waste so as to prevent or reduce as far as possible any adverse effects on the environment and human health;
- Hazardous Substances Consent – these ensure that the objectives of preventing major accidents, and limiting the consequences of such accidents, are taken into account in land-use planning.

The Regulations also make a small number of technical amendments to other planning legislation.

Regional Planning and Policy

Independent research reports have been received in relation to strategic planning policy for ‘Development in the Countryside’ and ‘Renewable Energy’. Officials are considering the reports and their recommendations with a view to bringing forward advice for an incoming Minister.

Environmental Governance

As discussed at the Strategic Planning Group on 20 September 2018 the Department has initiated an Environmental Governance Strategy based around three main work strands:-

- Capacity building, engagement and support;

- Targeted and prioritised monitoring and review of council operational activity (with initial focus on unauthorised EIA development and enforcement); and
- Broader engagement with GB, ROI and EU.

The Department is currently piloting work with council staff to develop the operational delivery of key elements of these strands and further information on developments will emerge in the near future.

Transboundary/EIA

Following the introduction of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 in May 2017 the Department undertook a series of awareness raising sessions with councils highlighting the key changes introduced under the new legislation. The Department would like to further highlight the change under the Regulations in relation to revised procedures for proposed EIA development likely to have significant transboundary effects on the environment of another EU Member State (regulations 29 and 30 refer).

As a general overview, for any EIA applications in NI with transboundary effects submitted under the 2017 EIA Regulations, councils must send a copy of the application and environmental statement to the Department in line with the requirements of regulation 29. The Department will be responsible for the transboundary consultation arrangements including advertising, engagement with ROI and forwarding any representations received from ROI to the relevant council.

Similarly, transboundary consultations for developments in ROI likely to have significant effects on the environment in NI will be filtered through the Department. Following notification from ROI on such applications, the Department will provide the public, statutory consultees and the relevant council(s) with an opportunity to comment and make representations on the application.

The Department is currently developing an administrative protocol with the Department of Housing, Planning and Local Government in ROI on the arrangements for such transboundary consultations and will issue a guidance note with more detailed procedures in the near future.

Planning Guidance

Since the issuing of the previous CPU there have been three further practice notes published, which are as follows:-

Development Management Practice Note 24 Section 54 Applications

On 15 December 2017 the Department published DMPN 24 'Section 54 Applications'. This practice note is designed to guide planning officers and others engaged in the planning system through the fundamental legislative requirements associated with applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. A copy of the practice note can be found at:-

<https://www.planningni.gov.uk/index/advice/practice-notes/dmpn24-section54applications.pdf>

Furthermore, the application form for section 54 applications, Form RVC1, which is a non-statutory form, has been revised and can be accessed on the Planning Portal via the following link:-

https://www.planningni.gov.uk/index/advice/fees_forms/rvc1_form.pdf

Development Management Practice Note 01 Hierarchy of Developments

On 7 December 2018 the Department published DMPN 01 'Hierarchy of Developments'. This Practice Note is designed to guide planning officers and others engaged in the planning system through the hierarchy of developments of the development management system. A copy of the practice note can be found at:-

<https://www.planningni.gov.uk/index/advice/practice-notes/dmpn01-hierarchy-of-developments.pdf>

Development Management Practice Note 04 Types of Planning Applications

On 7 December 2018 the department published DMPN 04 'Types of Planning Applications'. This Practice Note is designed to guide planning officers and others engaged in the planning system through the various types of planning applications that exist and their associated requirements. A copy of the practice note can be found at:-

<https://www.planningni.gov.uk/index/advice/practice-notes/dmpn04-types-of-planning-applications.pdf>

The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018

You will be aware that on 14 May 2018 Justice Keegan delivered her judgment on the planning decision of 13 September 2017 to grant planning approval for a major waste disposal incinerator in the Hightown and Mallusk area (an application referred to as the Arc 21 incinerator). Justice Keegan judged that the decision taken by the Department was unlawful. The Department appealed the High Court decision.

Following a hearing on 25 June 2018, the Court of Appeal dismissed the appeal in a judgment handed down on 6 July 2018. The Court of Appeal concluded that the decision made by the Department was crosscutting, significant and controversial. It was, therefore, a decision which could only be taken by the Executive Committee.

As a result of the Buick verdicts, the Department did not take any further decisions on Regionally Significant Applications (RSAs) or applications retained under Section 29 of The Planning Act (NI) 2011.

On 1 November 2018 the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 came into effect. This provides for senior civil servants, in the absence of a Minister, to exercise a function of the Department where they are satisfied that it is in the public interest to exercise that function. The Department will continue to progress planning applications to a point where a decision can be made. At that point the Department will then consider on a case by case basis the provisions of the Act and associated guidance published by the Secretary of State in considering whether to issue a decision.

Belfast City Council v Planning Appeals Commission (February 2018)

The following judgment in the case of *Belfast City Council v Planning Appeals Commission (February 2018)* considers a number of important issues and rulings in relation to the operation of the planning legislative framework in place from April 2015. These are listed in the Judge's Summary of Conclusions - para 110. A copy of the case can be found at:-

<https://judiciaryni.uk/sites/judiciary/files/decisions/Belfast%20City%20Council%27s%20Application.pdf>

In particular, the judgment confirmed that the operation of section 59 of the Planning Act (Northern Ireland) 2011 means that, in general, new matters, including amendments to plans and drawings, may not be introduced at appeal. They may only be introduced if the appellant demonstrates to the satisfaction of the PAC that:-

- they could not have been raised before the Council made its decision (taking into account considerations of procedural fairness and reasonableness); or
- they were not raised before the Council made its decision due to exceptional circumstances.

In relation to section 59(2) the ruling confirmed the policy intention behind the drafting of section 59 of the 2011 Act that appellants may no longer argue that amended plans or drawings are material considerations justifying their admission.

New Northern Ireland Planning IT System

You will be aware that the Department has been working together with councils to identify a new IT system that will support the planning service at local and central government. As part of this work we carried out a Discovery exercise last year that identified over 400 user requirements for a new planning IT system(s). Since the completion of this exercise, we have been working with consultants (PA Consulting) to develop a business case that will help us identify a preferred option for a new system. The latest version of this business case will be shared with colleagues in local government by the end of December. Subject to agreement I would hope that we could commence procurement for a new planning IT system by spring 2019.

Other Government Publications/Initiatives

As advised at the Planning Portal Governance Board in January, the Department has been reviewing the Planning NI website and, where appropriate, transferring relevant

information to the nidirect or Department for Infrastructure (Dfi) websites. Once all relevant information and documents have been transferred to their new location, the Planning NI site will be closed.

A Project Board has been established to oversee this work and includes colleagues from local government. The initial focus of the project has been to transfer relevant content and associated documents to the Dfi site. A workshop was held during the summer to look at the proposed topics to be covered on the nidirect website and the drafting of this content will commence shortly. It is anticipated that the project will be completed by March 2019.

Local Development Plans

It is very encouraging to note that considerable progress is being made by councils in the development of Local Development Plans for their area, with 10 out of the 11 councils having published their preferred options papers and 2 having published their draft plan strategies. Based on current LDP timetables, it is anticipated that independent examinations into the first draft plan strategy documents will take place during 2019.

This Chief Planner's Update will be made available on the Planning Portal and Dfi Website. I hope you find this information useful.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Angus Kerr', written in a cursive style.

ANGUS KERR
Chief Planner &
Director of Regional Planning