

Development Plan

Practice Note 11

PRACTICE NOTE

11

Receipt of Independent Examination Report and Adoption of a Development Plan Document

February 2023

1. Preamble

- 1.1. This Development Plan Practice Note is designed to guide planning officers and relevant users through the key requirements for the adoption of Development Plan Documents and deals primarily with procedures as well as good practice. It forms part of a series of practice notes stemming from the **Planning Act (Northern Ireland) 2011** (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.
- 1.2. Where appropriate this practice note will therefore highlight:
- Relevant legislation;
 - Procedural guidance;
 - Definitions;
 - Best practice examples / relevant case law.
- 1.3. This guidance is not intended to replace the need for judgement by planning officers in the local development plan making process. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note¹ and legislation the provisions of the legislation will prevail.

¹ Please ensure you are considering the most up to date version of this practice note available on the Planning Portal at www.infrastructure-ni.gov.uk and the most up to date legislation on the legislation website at www.legislation.gov.uk, which is also accessible via the Planning Portal.

2. Introduction

- 2.1. Once a draft Development Plan Document (DPD) has been submitted to the Department and an Independent Examination (IE) has been caused, the Planning Appeals Commission (PAC) or person appointed by the Department, will move forward with facilitating the IE. A report on the Examiner's findings and recommendations will be provided to the Department. This practice note focuses on the key legislative requirements in relation to the consideration of the IE report and adoption of a DPD by a council. It recognises the fact that the new LDP process is still developing and therefore provides for a degree of flexibility. When the system has had an opportunity to mature the Department will then be in a position to provide more detailed guidance on this stage of the process.

3. Legislative context

- 3.1. **Part 2 of the 2011 Act** sets out the legislative provisions for local development plans^[1]. In relation to the IE recommendations and the Department's consideration of the recommendations and subsequent direction to a council, the provisions are set out in **Section 10(8)** and **Section 12 of the 2011 Act**.
- 3.2. **Regulation 24 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 Regulations** sets out the requirements for the adoption of a development plan document by the council. Further details of each legislative requirement will be highlighted and set out below.

4. IE Recommendations to the Department under Section 10(8) of the Act

- 4.1. Once an IE has concluded, **Section 10(8) of the 2011 Act** states that the person appointed to carry out the examination must-

- a) Make recommendations;

^[1] Table 1 of Development Plan Practice Note 01 outlines the 'Key Legislative Requirements for a Local Development Plan' and Figure 3 outlines the 'Key Stages in the Local Development Plan Process', where the IE of the PS comprises part of Stage 2 and the IE of the LPP comprises part of Stage 3 of the four stage Local Development Plan process, respectively.

b) Give reasons for the recommendations.

4.2. This will form part of a report and will be sent to the Department after the conclusion of an IE in line with regulation 24(1) of the LDP Regulations. The report will be expected to:

- Reach clear, reasoned conclusions on the DPD's compliance with the statutory requirements and whether it is sound; and
- Present recommendations on any necessary modifications to the DPD's which are required to overcome any correctable shortcomings in regard to statutory requirements or soundness

4.3. When assessing the soundness of a draft DPD, the Examiner will exercise their professional judgement based on the evidence presented. As set out in s 10(6) of the Act, the purpose of the independent examination is to determine in respect of the DPD, whether it satisfies the requirements of section 7 & 8 or as the case may be, section 7 & 9, and any regulations under section 22 relating to the preparation of DPD, and whether it is sound.

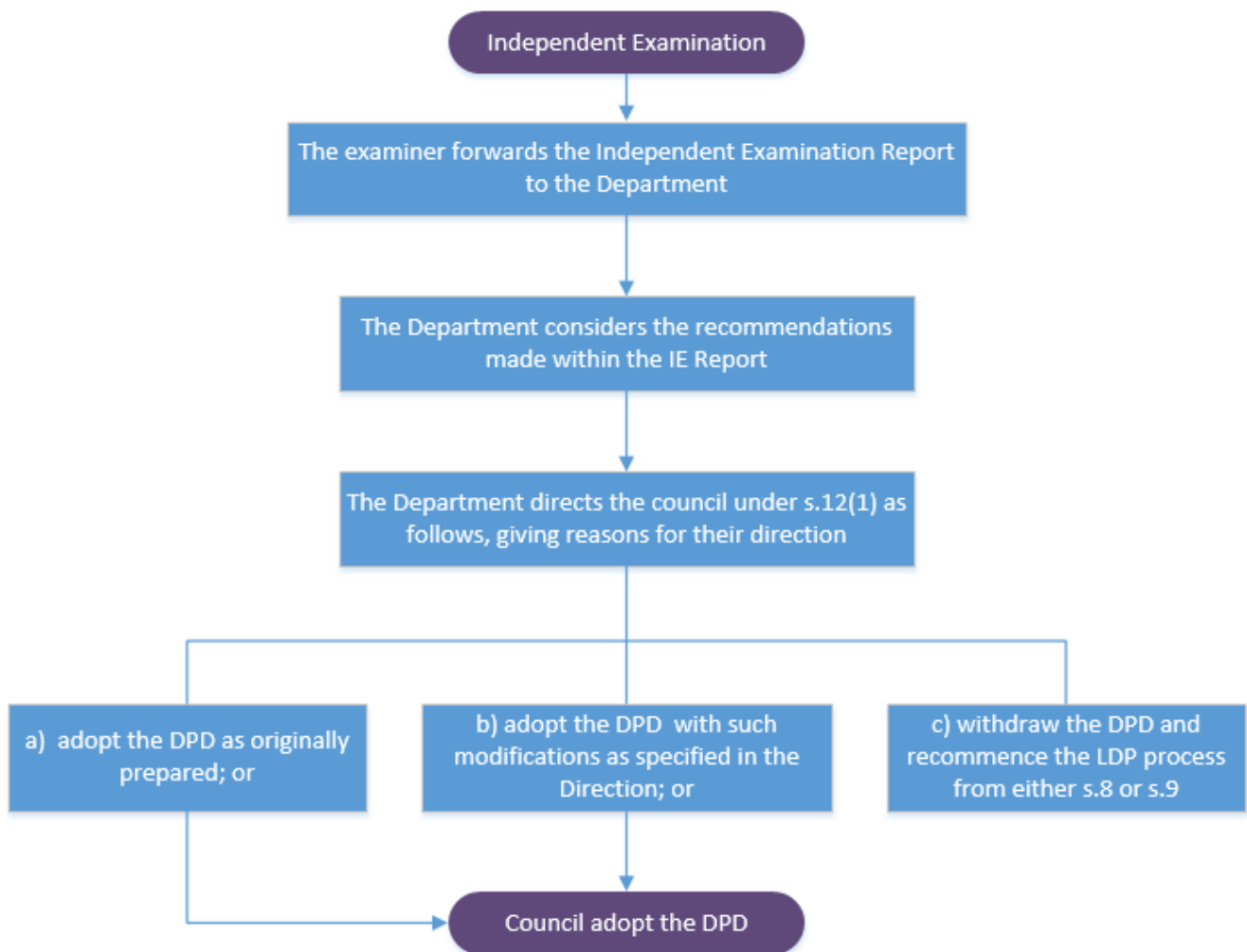
4.4 It should be noted that a degree of flexibility may be required around the timescale for IE or post IE report consideration, given the potential scope and nature of recommendations made and set out in the IE report on any necessary modifications.

5. Direction issued by the Department under section 12 of the 2011 Act

5.1. **Section 12(1)** states that the Department must consider the recommendations made under section 10(8) and direct the council to-

- a) Adopt the development plan document as originally prepared;
- b) Adopt the development plan document with such modifications as may be specified in the direction; or
- c) Withdraw the development plan document.

Fig 1 – DPD Adoption Flow chart



5.2. **Section 12(2)** states that the Department must give reasons for any direction given. The Department will consider the recommendations made within the report and direct the council accordingly.

5.3. In carrying out this consideration, the Department will be guided by the rigor of the IE process and its key powers and functions in the important role of the adoption of the local development plans, to ensure orderly and consistent development of land and the planning of that development. The Department must consider the recommendations made in the context of the report, and also consider the need to exercise ministerial powers of intervention.

- 5.4. The Department will also be guided by its legal requirements, the reasons and recommendations of the IE report which has fully examined the evidence at IE, and the objective of furthering sustainable development and promotion or improvement of well-being.
- 5.5. It is important to note that the Department is not bound by the Examiner's recommendations, although the ability to rewrite the plan at this point is limited. In the event of a departure from the recommendations within the report, the Department will provide clear reasoning and justification for this. For example, a departure from the recommendations may be warranted where new regional or strategic policy has come into effect during the IE process. As the LDP process evolves, there may be other instances that arise where departures are necessary, and this guidance will be kept under review.
- 5.6. The timeframe for the Department's consideration is not prescribed although the intention is that this consideration should take approximately 12 weeks. The exact timeframe will depend on the nature and scale of the recommendations made, and implications for any modifications required. Councils should factor this into timetables to ensure flexibility and the Department will liaise with individual councils to provide an indication of when its consideration will be concluded.
- 5.7. As set out above at paras 5.5 & 5.6, there will be a range of matters within the report and its recommendations for consideration which will inform the Department's direction. Therefore, where necessary, the Department will, in confidence, grant the council a two-week period for fact checking aspects of the report immediately prior to issuing its Direction to the council.
- 5.8. The primary purpose of the fact-checking exercise is to enable the council to highlight any factual errors or inconsistencies in the report. This is essentially a proofread. The council may not question the conclusions and recommendations in the report, as this is not an opportunity to revisit any of the discussions held during the IE process. The council should not share or publish the report at this stage for the reasons set out in para 5.5, as it does not constitute the

Department's Direction, which is the final decision. The Department will liaise with the council in advance of and during the fact check to facilitate the process.

- 5.9. The initial publicity of the IE report will be the responsibility of the individual council once the council receives the Department's Direction, as set out below at paragraph 6.4.

6. Requirements to be met by the council after the receipt of the Department's direction

- 6.1. Section 12(3) states that the council must comply with a direction given by the Department. Where this direction issued is to adopt the DPD, either as originally prepared or with modifications, under Section 12(4) this must be by resolution of the council (which is full council) and must be done as soon as reasonably practicable after the receipt of the Department's direction under section 12(1)(a) or (b) in accordance with regulation 24(2).

- 6.2. The councils should ensure, in light of the modifications prescribed within the Department's direction to allow the plan to proceed to adoption, that any reviews and updates to the sustainability appraisal and any other assessment as necessary are undertaken. As a result there is no prescribed timeframe for the adoption of a DPD, however the time required will be dependent on any work associated with the adoption process. For example, any additional consultation that may be required as a result of the IE process, modifications prescribed or the preparation of Supplementary Planning Guidance (SPG) to sit alongside the PS if necessary. The council may wish to publish a copy of the IE report and Direction prior to adoption for information and decision-making purposes. In addition, the council should consider if any future consultation is required at this stage.

- 6.3. As prescribed in Section 8(7) and 9(8), a plan strategy or a local policies plan, is only a plan strategy or a local policies plan, when adopted by resolution of the council (full council) or approved by the Department under Section 16(6) under the Department's default powers.

6.4. Regulation 24(3) sets out the requirements that must be met by the council on the date on which they adopt the DPD, including requirements for publicity and advertising of the DPD and other reports as prescribed. It states that the following documents must be made available for inspection at the council's principal offices and in such other places within the district of the council as the council considers appropriate;

- The DPD,
- A statement prepared by the council specifying the date on which the DPD was adopted,
- the report under section 8(6)(b) or 9(7)(b),
- the recommendations made and the reasons for those recommendations under section 10(8), and
- the Department's direction under section 12(1)(a) or (b).

6.5. In accordance with regulation 24(3)(c) the council must publish the above information on its website. It must also give notice in the Belfast Gazette and by local advertisement of the statement prepared by the council specifying the date on which the DPD was adopted and details of where and when it can be inspected in line with regulation 24(3)(d).

6.6. In accordance with regulation 24(3)(e), the council must send to the Department a copy of each of the documents referred to above and in regulation 24(3)(a). They must also, in accordance with regulation 24(f), notify any person who has asked to be notified of the adoption of the DPD.

7. Adoption of Plan Strategy

- 7.1. As set out in the Schedule to the LDP Regulations (Regulation 32 Transitional Arrangements), when the plan strategy is adopted by a council or approved by the Department, any reference to the LDP in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the newly adopted plan strategy read together (3(a)).
- 7.2. Furthermore any conflict between a policy contained in a departmental development plan, and those of the plan strategy must be resolved in favour of the plan strategy, (3(b)).
- 7.3. When a council adopts its Plan Strategy, policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.
- 7.4. The Regional Development Strategy (RDS) 2035, Strategic Planning Policy Statement (SPPS) and any other relevant planning policies and guidance issued by the Department continue to be material to decisions on individual planning applications and appeals. Ultimately, the relevance and weight to be attributed to all material considerations are matters for decision takers.

8. Adoption of Local Policies Plan

- 8.1. When a council adopts the local policies plan for its district the relevant departmental development plan/s shall cease to have effect, for the area to which the LPP relates.
- 8.2. When both a Plan Strategy (PS) and Local Policies Plan (LPP) are adopted together they comprise the local development plan (LDP) for a given council area.

9. Monitoring

- 9.1. The final stage in the local development plan preparation process is monitoring and review which are essential in establishing whether the objectives in the local development plan are being achieved and if any changes are required.
- 9.2. Monitoring is a continuous process and does not end once a DPD is adopted. Monitoring and review should be an ongoing function of the plan led system and is a vital aspect of evidence based policy making.
- 9.3. It represents an essential feedback loop within the cyclical process of achieving sustainable development and achievement of the plan objectives.

10. Monitoring of PS

- 10.1. **Section 3 of the 2011 Act** sets out the survey and information which a council must keep under review. Therefore in considering what has been examined at IE, a council must undertake comprehensive and reliable monitoring of the PS in order to establish how the objectives are being achieved and determine whether any changes are required to ensure the continued delivery of the PS.
- 10.2. All councils will have identified a range of different requirements within their monitoring frameworks, this will assist in the plan, monitor manage approach advocated by the SPPS and in ongoing review of evidence base which inform emerging draft policies to be contained within the LPP.

11. Monitoring of LPP

- 11.1. The successful monitoring and review of the PS framework will then assist and inform the content and details which should be provided in the LPP monitoring framework.
- 11.2. A further Development Plan Practice Note (DPPN) in relation to monitoring will set out more detail regarding guidance and legislative requirements.