

Councillors' Guide to the Northern Ireland Planning System



Making Planning Work



Local Government Training Group



WE ARE AT THE FOREFRONT

OF THE DRIVE TO IMPROVE PLANNING IN NORTHERN IRELAND



Local Government Training Group

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*Peace Bridge, Derry City
and Strabane District Council
- Photo supplied by J McCarroll*

FOREWORD

Welcome to the Councillors' Guide to the Northern Ireland Planning System.

NILGA, the Northern Ireland Local Government Association, is the representative body for NI's 11 District Councils. NILGA promotes, protects, and develops the role of local government in local, regional, national and transnational work, delivering policy guidance, member learning, evidence provision to the NI Executive and related services as a "Go To" body for local government. NILGA also produces key information about and for councils and councillors, including this Guide.

This is the latest in a series of 'Councillors' Guide' publications issued by NILGA in partnership with the Local Government Training Group, for councillors working in the post reform context for local government. It is also the first in a suite of planning guides for councillors which will be published during the current local government mandate to April 2019, which will follow the publication of the report from the recent independent review of the Code of Conduct.

As the Chairman of NILGA's Planning and Regeneration working group, I am acutely aware of the challenges faced by councils in exercising their new planning powers and functions. This is an exciting time to be a councillor and for the first time in over forty years, actively shape our areas through effective engagement of the whole community. We can now properly create investment and influence the development of the economy, promote the well-being of the community and protect the environment, through our responsible decision-making as elected representatives, working closely with our council planning officers.

It is vital that we as councillors clearly understand our role, and the various roles that others play within the system. NILGA is working assiduously to support our 11 councils and to ensure that members are equipped and provided with the high quality information necessary to enable them to perform their new role, whether that is in their council planning committee, or as part of the wider council. Thanks to the councils which have provided the interesting case studies included throughout this document. NILGA will continue to develop a library of good practice examples as council-led planning advances.

I hope that you will find this guide useful as an introduction to the new planning system in Northern Ireland, and that the information within provides you with an overview of key issues.

ALDERMAN JIM DILLON MBE

*Chair, NILGA Planning and
Regeneration Group*



INTRODUCTION TO PLANNING

Whether you are a newly elected councillor or just new to planning, this Guide is designed to help you understand how planning impacts on your constituents, your District Electoral Area and your Council area, and how you can use it to help your community address local issues. The Guide has been written and published by NILGA, the Northern Ireland Local Government Association. We provide peer support, learning events and resources to help councils and councillors understand and respond to the changing policy landscape.

You may feel daunted by the perceived complexity of the planning system, associated responsibilities and jargon. This Guide will help you understand the most important elements of your role as an elected councillor in relation to planning.

In preparation for the reform of local government, the NI Executive was keen to ensure that the role of councils as leader and shaper of communities was strengthened. In 2008, the then Environment Minister, Arlene Foster stated:

*“Our vision for local government is of a **strong, dynamic local government** creating communities that are vibrant, healthy, prosperous, safe and sustainable and have the needs of all citizens at their core.”*

To deliver on this vision, one of the key work areas to transfer to councils was a **reformed** planning system, with modernised processes and greater community engagement, enabling local people to have greater ability to shape their neighbourhoods, with greater influence over local decisions.

The new planning system operates on a two-tier model of delivery. Councils have primary responsibility for the implementation of the following key planning functions:

- local plan-making;
- development management (excluding regionally significant applications); and
- planning enforcement.

The Department retains responsibility for regional planning policy, the determination of regionally significant and called-in applications, and planning legislation. It also provides oversight, guidance for councils, governance and performance management functions.

A useful source for information on all of these issues is the Northern Ireland Planning Portal, which you can find at www.planningni.gov.uk.

The Portal includes an online glossary of commonly used acronyms and explanation of terms at: <http://www.planningni.gov.uk/index/glossary.htm>.

• **Why is planning important?**

One of the reasons that you became a councillor is because you care about your area; because of that you should also care about planning.

Planning is about getting the **right things** built in the **right places**, about the spaces around buildings and other issues such as social justice, job creation, regeneration and climate change. Fundamentally, planning is about sustainable development – balancing the economic, environmental and social impacts of new development.

Finding this balance is what makes your job challenging and exciting. Hopefully you and your community will want to be materially involved in what planning can do for your place.

If you sit on the planning committee you will be tasked with assessing the different benefits and impacts of applications, and weighing up these considerations against regional policy and your local plan (once published).

Even if you don't sit on the planning committee, you will still have a key role to play in supporting your residents to engage in the planning process, so it is vital that you have a sound understanding of the new system and any changes that take place.

Often, the only time residents and businesses encounter the planning system is when they or their neighbours want to do something to their property – at the planning application stage. This is quite late in the whole process, as it is the plan-making stage that sets out how the council sees the area as developing and outlines the policies against which individual proposals will be assessed.

If you and your community really want to influence the future of the area, the local plan is a good place to start.

Six tips to get you started....

- 1. Ensure that you are clear about your role and are able to explain it to others**
- 2. Get involved. Talk to your residents and local businesses and help them become aware of planning.**
- 3. Find out the timescale and status of your Council's Local Development Plan, and note any emerging themes.**
- 4. Work in partnership with your officers and apply constructive challenge when necessary.**
- 5. Don't be afraid to work with developers, other stakeholders and officers to ensure sustainable local benefits from new development.**
- 6. Understand the implications of the Planning (NI) Act 2011 and the Local Government NI Act 2014, and the opportunities for your council area and your neighbourhood.**

• Planning Committees and How They Operate

Each of the 11 district councils in Northern Ireland has a planning committee, which is charged with approval and oversight of the local development plan prior to full Council ratification, consideration of and decision on planning applications and enforcement of planning controls.

The council planning committee operates according to a protocol, which works in synergy with the council Standing Orders and the Code of Conduct for Councillors. Each council has drafted and approved its own protocol for operation of its planning committee, following a model provided by the Department of Environment. It is recommended, whether you are a member of the planning committee or not, that you familiarise yourself with the content of your local protocol.

The protocol will include the agreed approach in terms of:

- remit and size of the committee,
- frequency and format of meetings and site visits,
- the scheme of delegation,
- enforcement,
- referrals of delegated applications to committee,
- pre-determination hearings,
- speaking rights and procedures for public speaking,
- decision-making options and procedures
- arrangements for review of the protocol

Occasionally it may be necessary to make amendments that members feel are important for improving the operation of the committee.

The protocol should therefore be subject to regular review to ensure that it remains a 'living document' and that fulfils requirements.



Lagan pedestrian and cycle bridge, Belfast City Council - Photo by P Mackey

PLANNING IN PRACTICE

- **A plan led system**

The local development plan (LDP) is written and implemented by the district council in close consultation with the community. The high level part – the ‘Plan Strategy’ is based on evidence gathered by the council and sets out the vision and strategic objectives for the area. The plan will set out what will be required to achieve the vision, working within the opportunities and constraints of the evidence, which includes planning policy in addition to information from the community on their aspirations for their streets and neighbourhoods.

The plan for your council will be comprised of more than one document, including the plan strategy, a series of development plan documents (DPD) and a local policies plan.

The whole process involves engagement and partnership working with other council services, voluntary and community organisations, businesses, neighbouring authorities and statutory consultees such as the Northern Ireland Environment Agency, Transport NI and NI Water.

Your council is also responsible for leading **community planning** within its area.

- **Link to community planning, to regeneration and to investment**

The Local Government (NI) Act 2014 introduced a requirement for each council to produce a community plan. Community planning is a process whereby councils, statutory bodies and communities themselves work together to develop and implement a shared vision for their area, and your council will be working to produce and implement an overarching community plan with the aim of integrating service and function delivery at local level. The community plan should set out the future direction for development within a council area, promoting community cohesion and aiming to improve the quality of life for all of its citizens.

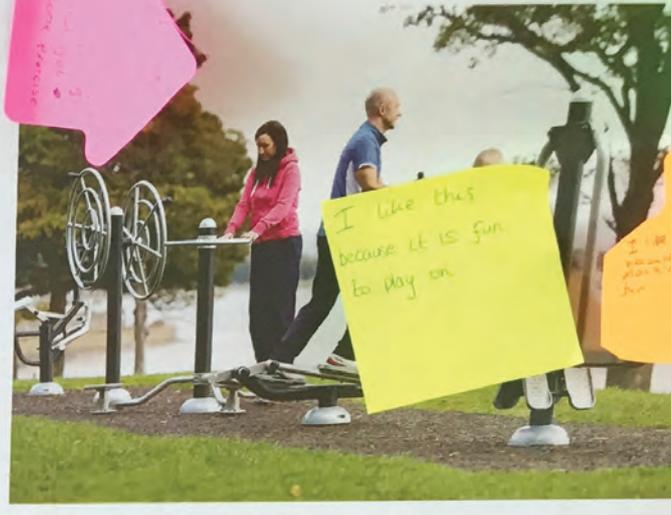
The Act also amended the Planning legislation, so that councils are required to take account of their current Community Plan when preparing their local development plan. It is intended that the local development plan will provide a spatial expression to the community plan, thereby linking public and private sector investment through the land use planning system.

At the time of writing (May 2016), regeneration powers which were to formally transfer from the Department for Social Development have not yet been conferred on councils. Councils are already materially involved in regeneration of their districts, and their existing activity can be enhanced through use of the new General Power of Competence and related legislation.

It is intended however, that once the transfer of regeneration powers takes place, the overall suite of complementary community planning, land use planning and regeneration powers will be combined more effectively to amplify the impact councils can have in shaping and attracting investment to their areas, and consequently improving local environmental, economic and social wellbeing.



primary school
play area



I like this because it is fun to play on

I don't like this because the old factors can't play here if someone

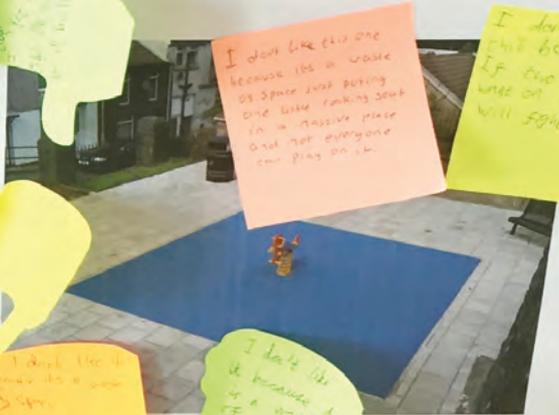
I like it because it looks like it could have cool history



It is a nice place to come and chill out at yes

Total waste of space

I don't like this because it is a waste of space

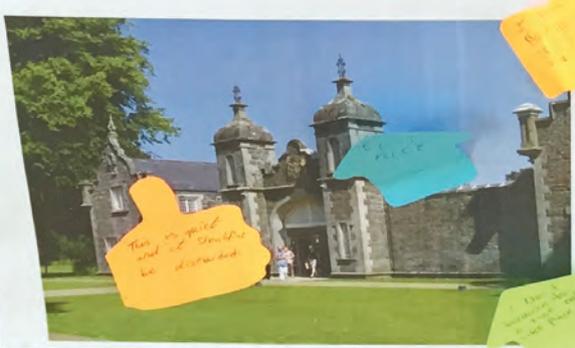


I don't like this one because it is a waste of space just putting one little railing seat in a massive place and not everyone can play on it

I don't like this because if the children were on it they will fight

I don't like it because it is a waste of space

I don't like it because it is a waste of space



This is a great place to be discovered

I don't like this because it is a waste of space

The building is a waste of space



I don't like this because it is a waste of space

I don't like this because it is a waste of space



I don't like this because it is a waste of space

I don't like this because it is a waste of space



I don't like this because it is a waste of space

I don't like this because it is a waste of space

A design wall at an Antrim & Newtownabbey BC community engagement event

DEVELOPMENT PLANS

- **Community Engagement**

Public and stakeholder participation at the start of the plan-making process is essential to identifying relevant issues and capturing local views from the outset.

As part of your role in the preparation of your council's development plan, you can ensure residents and other stakeholders have the opportunity to influence the future of their neighbourhoods by encouraging them to express their views in the plan-making process.

Engaging with everyone – Case Study

Antrim & Newtownabbey Borough Council recognises the importance of community engagement. To celebrate the Council gaining its new planning powers on 1st April 2015, the new Planning section, in partnership with the Royal Town Planning Institute, held a weeklong event for school children to explore the planning that goes into designing a healthy and enjoyable place to live and visit.

Pupils from each of the Borough's primary schools were invited to take part. The 'Planning My Place' workshops consisted of different activities designed to introduce the children to planning and encourage them to consider how their local environment could be improved. During the sessions the children were introduced to urban design, land use mapping and had the opportunity to plan their place using a purpose built model.

Antrim and Newtownabbey Borough Council was the first council in Northern Ireland to introduce such an event, and this was welcomed by the Mayor, Councillor Thomas Hogg, who said: "The Council recognises the important role young people have to play in shaping our future and this is just one of many events that they will have the opportunity to take part in. This particular event prompts them to think about what they like and dislike about their local environment and encourages them to help shape where they live."

Feedback from those who attended the event was very positive, and the children were engaged and enthusiastic.

Enhancing stakeholder engagement and transparency provides for more meaningful participation and better informed plan preparation, which should mean fewer representations and greater likelihood of support as a plan progresses to adoption.

Councils must ensure that communities are given the opportunity to be actively involved in the preparation of their LDPs at the most appropriate stages in their preparation. (The new requirements for community consultation are one of the key reasons for the length of the new development planning process.)

- **Local Development Plans – How are plans made and what is my role in the process?**

The Local Development Planning process involves setting a vision, gathering and reviewing evidence, developing and consulting on options and local plans policies and assessing the plan against a series of Northern Ireland and European Union criteria for sustainability. Your officers will be heavily involving your community and will need your input and involvement through the process as well. When the council is happy with their plan and satisfied that it addresses the issue for the area, the plan is submitted for independent examination. If agreed – or found to be ‘sound’ – the council can then ‘adopt’ the plan, making it the statutory plan for the area.

This has to be a rigorous process to ensure that all of the impacts of the policies are sufficiently considered. After all, the plan is your foremost consideration when making decisions on applications. The policies will direct what kind of development can happen and in which places it can go. It can also have a huge influence on land values.

Councillors play a very important leadership role in the development of the local plan. These are the policies that you and your successors will be basing planning decisions on for years to come. It is important that you ensure that the priorities expressed by your community are well-reflected in the plan. Councillors have a vital role in facilitating engagement with their communities in the production of the various components of the plan (outlined in the next section).

When it is time to make a tough decision, it will be easier if the plan is based on sound evidence and strong community engagement.

- **The Local Development Plan System**

Statement of Community Involvement (SCI)

Councils must publish a **Statement of Community Involvement (SCI)** as a statement of its policy setting out how and when they will engage with the local community and interested parties in both the preparation of planning policy and decisions around planning applications.

The SCI is a key tool in increasing awareness of the scope for community participation and involvement. Councils must attempt to agree the terms of the SCI with the Department. In the absence of agreement the Department may direct the terms of the SCI with which councils must comply.

‘Preferred Options Paper’

The reformed plan-making system provides for the preparation of a **‘Preferred Options Paper’** in order to front-load community and stakeholder involvement.

The Preferred Options Paper should contain a series of options for dealing with key issues in the plan area, as well as the council’s justification for its proposed approach. Key issues should include: the overall pattern of new development throughout the plan area, options for planned growth of main settlements; and options for major infrastructure projects.

‘Plan Strategy’

The high level part, the **‘Plan Strategy’**, is based on evidence the council has gathered. The council must set out the vision and strategic objectives in relation to the development and use

of land in its district, the strategic policies for the implementation of those objectives, and other relevant matters.

The overarching purpose of the Plan Strategy is to provide the strategic policy framework for the plan area as a whole and to bring forward a local growth strategy. Depending upon a council's objectives and local circumstances, it may also be appropriate to include additional strategic policies and proposals, zonings and designations specific to issues pertaining to the plan area, provided they are of a strategic nature.

'Local Policies Plan'

A '**Local Policies Plan**' must be prepared after the Plan Strategy has been adopted. It must set out the council's local policies consistent with the council's Plan Strategy. The Local Policies Plan will bring forward local site specific designations (e.g. zonings and policy areas), associated policy criteria and key site requirements consistent with the Plan Strategy

Development Plan Documents

Development Plan Documents (DPDs) will be published, made subject to public consultation and independent examination and adopted separately and in sequence. This approach allows the Plan Strategy to be published quickly (anticipated within 2 years). Agreement on the strategic direction at an early stage will secure efficiencies in bringing forward the Local Policies Plan which should be consistent with the Plan Strategy.

The statutory requirement to monitor the LDP on an annual and review on a five yearly basis will ensure that the LDP is kept up to date and reflects and responds to emerging issues so that the plan process is genuinely plan-led.

Soundness

A key feature of the local development plan system is a requirement to test DPDs for '**soundness**' by means of an independent examination. The tests of soundness include procedural, consistency, and coherence and effectiveness tests.

Sustainability

Councils must carry out a sustainability appraisal (which will incorporate the Strategic Environmental Assessment) of LDPs to ensure that the Plan Strategy and Local Policies Plan are assessed against social, economic and environmental objectives. This should ensure that all key objectives of sustainability (i.e. social, economic and environmental) are fully taken into account in assessing the effects of the plan.

Good programme management is central to delivering LDPs more efficiently and effectively. Councils must prepare (and keep under review) a timetable for the preparation and adoption of their plans. This should indicate the programme for the production of key documents and the timelines for reaching key stages in the LDP process.

PLANNING POLICY

Your local plan will reflect issues of local importance such as where people live, work and spend their leisure time. Issues of wider importance like climate change and economic development will also be reflected in your plan. The Strategic Planning Policy Statement will require certain topics to be covered, but the local interpretation and weight placed on these issues will vary.

The Strategic Planning Policy Statement is designed to enable a new approach to be taken to planning policy, stating a new purpose for planning and new core planning principles. It contains strategic planning policy on a range of topics, and will be kept under review to ensure it remains contemporary. The SPPS presents a dramatic reduction in size and complexity from the previous set of topic based planning policy statements and is designed to be more accessible, allowing councils more freedom of local interpretation.

In furthering sustainable development and improving well-being, the planning system must support the Executive's Programme for Government commitments and priorities as well as the aims and objectives of the Regional Development Strategy 2035 (RDS) which is the overarching spatial strategy for Northern Ireland. All planning policy and guidance prepared by central government must be in general conformity with the RDS.

The changing policy context means that your role as a local councillor is vital. With less prescription from central government, combined with your decision making role, you will need to prioritise the plans and topics that are most important for your area. For example, if job creation is needed in your area, you might want to prioritise policies that make the area attractive to new businesses, like the provision of a flexible supply of land.

Members should make themselves familiar with the transitional arrangements for planning policy that have been put in place as councils prepare for publication of their first local development plan.

- **Transitional Arrangements**

A transitional period will operate until such times as a Plan Strategy for the whole of the council area has been adopted. During the transitional period planning authorities will apply existing policy together with the Strategic Planning Policy Statement (SPPS), apart from:

- PPS 1: General Principles
- PPS 5: Retailing and Town Centres; and
- PPS 9: The Enforcement of Planning Control

Any relevant supplementary and best practice guidance will also continue to apply.

When a council adopts its Plan Strategy, existing 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.

Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in the favour of the provisions of the SPPS. For example, where the SPPS introduces a change of policy direction and/or provides a policy clarification that would be in conflict with the retained policy the SPPS should be accorded greater weight in the assessment of individual planning

applications. However, where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies this should not be judged to lessen the weight to be afforded to the retained policy.

In preparing a Plan Strategy councils will address the range of policy matters set out within the Strategic Planning Policy Statement (including the topic areas set out as Subject Planning Policies). This approach will also ensure an appropriate policy framework remains in place during transition to the first new plan.

NILGA will endeavour to support members to develop their understanding of planning policy, to better inform decision making at local level.

Local Development Plan Member Policy Workshops – Case Study

Between the end of September 2015 and the beginning of January 2016, Lisburn & Castlereagh City Council's Planning unit held a series of workshops with Councillors, which focused on a number of key themes stemming from preparatory papers that had been completed for the Local Development Plan. These included Housing and Settlements, Retailing and Town Centres, Employment and Economic Development, Tourism, Recreation and Open Space.

Workshops provided Members and officials with a platform to consider and discuss strategic issues that will inform the preparation of the new Local Development Plan and were facilitated by an independent consultant employed by the Planning Unit.

Feedback from the Plan Workshops was extremely positive. They provided an important opportunity for assisting Members with further exploring the evidence base and highlighting any issues which the Local Development Plan will need to address. They provided valuable opportunity for debate and evidence analysis whilst building good relations between officials and Members.



*Irish Hare
- Photo by P Mackey*



**Cornmarket,
Belfast City Council
- photo by P Mackey**

DEVELOPMENT MANAGEMENT

Dealing with planning applications

If you had experience of the planning system prior to local government reform it was probably either through your previous ‘statutory consultee’ role or through a planning application for changes to your personal property or a neighbour’s. This would have been handled by the local office of the DOENI Planning Service. You may know of this as development control. Determining planning applications is just one aspect of what development management does to bring forward development in an area

Development management is a positive and proactive way of controlling development and managing the use of land. It doesn’t mean that you always have to say ‘yes’ to development, but it allows you to work with applicants to find mutually acceptable solutions. The goal is to promote development that helps to deliver the vision set out in your local community and local development plans.

However, if a development isn’t acceptable for your area, planning permission can be refused provided there are sound planning reasons for doing so. Councils should be aiming to make decisions on applications that are obviously in line with or against their policies quickly where possible.

As a councillor you can encourage developers and partners to engage with the council and residents at the early stages of the planning process. When problems arise in discussions your officers should be able to propose appropriate solutions that would mitigate any adverse impacts of the development.

Using Site Visits to Improve Decision-Making – Case Study

Causeway Coast & Glens Borough Council are advocates of the good use of site visits for applications on the Agenda to be heard by the Committee.

For example: Two planning applications were received for separate commercial scale wind turbines in the same area outside the urban area of Coleraine. In this case officials had recommended both applications be refused given that the proposals would collectively add to an accumulation of similar scale wind turbines in a relatively small area. The additional two were considered by officials to have an adverse effect visually by reason of adding to the overall number. Furthermore, their specific siting between and adjacent the existing turbines would have the visual effect of pulling them all together so that they would look like a group.

A site visit was arranged on the morning of the Planning Committee. At the site visit officials identified the existing turbines and pointed out the location of the additional proposals. This was enhanced by use of a GIS based map, which indicated the existing and proposed turbine locations. Members asked questions about the dimensions of the existing turbines, noted the proximity of the existing turbines and came to an understanding of how the proposed turbines would read visually with the existing ones. They visited a site from where the overall grouping would be readily seen.

At the Planning Committee meeting that afternoon, Members had benefitted from their site visit to consider the harmful cumulative impact issue, and raised comparatively few questions regarding the proposal, signalling their understanding of the issues gained from their site visit earlier that day.

- **What planning decisions will I be making?**

If you are on the planning committee, your role in deciding planning applications is also a part of development management.

There are two main types of applications that you will see: outline and full planning applications requesting consent for changes to a listed building or advertisements, for example. Regardless of the type of application, you may be lobbied by a range of groups who seek to sway your opinion on the proposal.

Imagine an application for consent to put solar panels on a listed building. You might have a historical society writing to you with a range of conservation issues to consider. A local sustainability group may ask you to prioritise environmental concerns over heritage. It's your job to weigh up these issues and make a decision based on Northern Ireland-wide and local policies

- **Key features of the process for deciding Planning Applications**

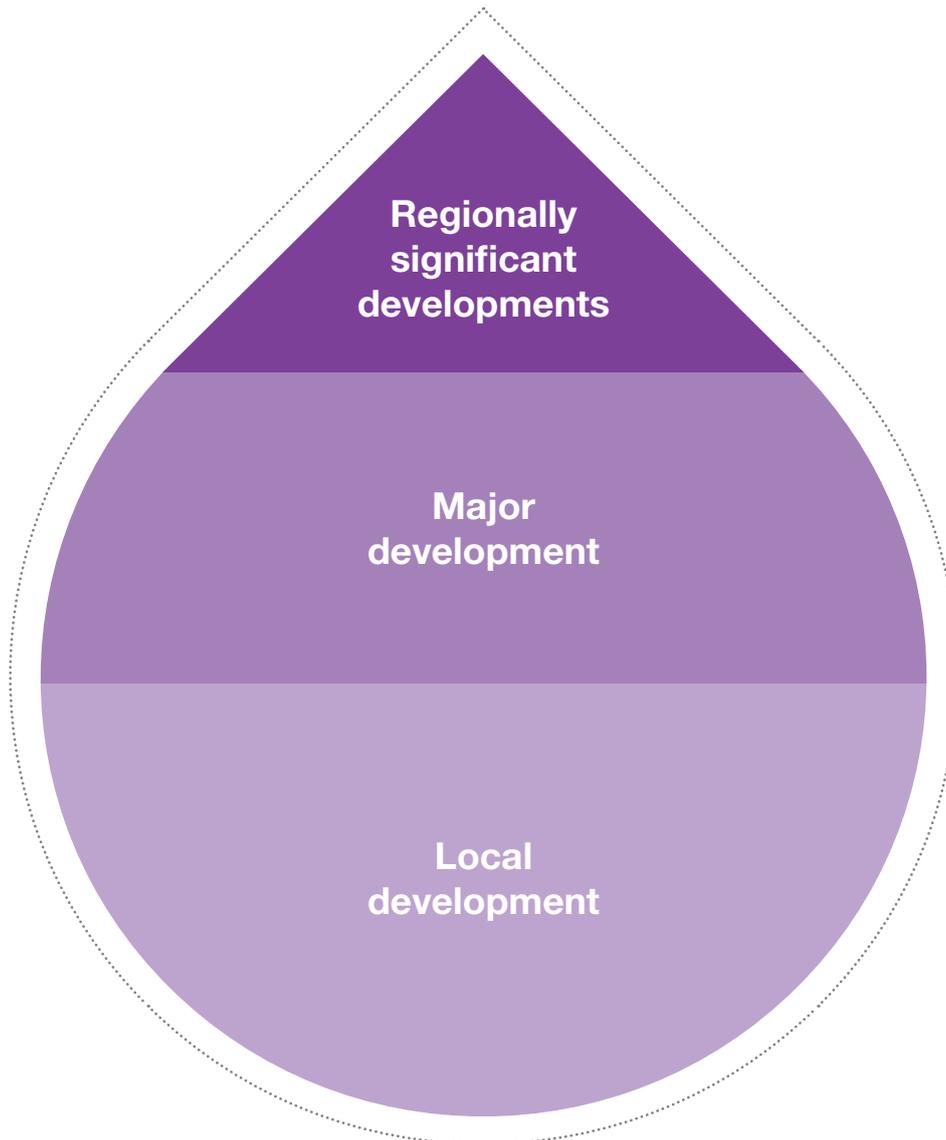
The process for determining planning applications has changed since transfer of planning responsibilities to councils, and there a number of key features which members should ensure they are aware of and understand.

- The development hierarchy for all planning applications;
- Pre-application discussions
- Pre-application consultation between prospective applicants and communities;
- Pre-determination council hearings; and
- schemes of delegated decision-making - “schemes of delegation”

A combination of early engagement on development proposals, and transparency in decision-making is the ‘best practice’ approach which councils are encouraged to use to deliver a high quality planning service locally.

Your council will have its own policy on delegated decision-making. Officers are likely to deal with all of the straightforward planning applications. These will be about 90% of the planning applications received by the council. This gives the planning committee more time to focus on the strategic or controversial applications.

Development Hierarchy



Regionally significant developments have a critical contribution to make to the economic and social success of Northern Ireland as a whole, or a substantial part of the region.

They also include developments which have significant effects beyond Northern Ireland or involve a substantial departure from a LDP. These applications will be determined by the Department with the decision taken by the Minister.

Major developments have important social, economic and environmental implications for a council area. With potential to deliver important benefits for the local community, these applications will be given appropriate priority to avoid undue delay and risk to investment decisions. In exceptional circumstances the nature and scope of some applications for major development may also raise issues of regional significance. This type of application will require the Department to consider whether it should be called-in for the Department to determine.

Local developments comprise the vast majority of residential and minor commercial applications likely to be received by a council.

In the majority of cases, decisions on planning applications for categories of major and local development will be taken by councils.

Call-in

The Department has powers to direct that certain applications be referred to it rather than being dealt with by councils. This provides a necessary safeguard where there are applications that raise issues of such importance that their impact is considered to extend to a sub-regional or regional level. **It is the Department's intention that these powers will only be used in exceptional circumstances as it is recognised that councils are best placed to deal with the vast majority of applications within their own council areas.**

Councils are also required to notify the Department in instances where they propose to grant planning permission for certain types of development as set out in a direction. These could include e.g. a major development application which would significantly prejudice the implementation of their local development plan objectives and policies; or where councils have an interest in the land. **Departmental guidance on 'call-in' is in preparation.**

Pre-application discussions (PADs) and performance agreements

Pre-application discussions (PADs) are designed to enable 'front loading' of the new development management system, which should help all parties, by ensuring the submission of high quality applications and by establishing an agreed course and timetable for determining a development proposal. It may be that councils will consider the potential for charging for PADs, once services have stabilised post-transfer.

To help create the conditions for a more efficient and high quality decision-making process, councils can make performance agreements available to developers proposing regionally significant and major developments. These are designed to formalise communication between the planning authority and the developer and other partners to bring about early engagement on projects, more collaborative working, project leadership and community involvement, but are not a statutory requirement.

Pre-application consultation between prospective applicants and communities

This is a statutory requirement for all major and regionally significant, development proposals, and is the responsibility of the applicant to undertake this consultation.

Relevant applicants must therefore demonstrate that they have undertaken consultation with the community prior to the submission of a planning application.

Some applications will also need to be accompanied by a design and access statement, which is particularly useful when engaging with the community at the early stages of a project.

Pre-determination council hearings

Councils have already started exercising their ability to hold pre-determination hearings for certain planning applications. This is usually done on a non-statutory basis, although there is a mandatory requirement to hold a pre-determination hearing for other prescribed applications. These would include those major developments which have been referred to the Department for call-in consideration but which have been returned to a council. This allows both objectors and applicants to air their views prior to a decision being taken.

More detailed guidance on pre-determination council hearings is available on the Planning Portal in 'Development Management Practice Note 17'.

Schemes of delegated decision-making - “schemes of delegation”

All councils have now produced a scheme of officer delegation to assist on streamlining the system. Schemes of delegation describe the classes and types of development which the council planning committee regards as suitable for delegation to an appointed official of the council. They are used for decisions on straightforward planning applications, enabling speedier decisions and are tailored to suit local circumstances.

Most councils have schemes in place which delegate over 90% of applications to officers, enabling members to focus on the larger, more strategic and more problematic applications.

- **What can I base my decisions on?**

Planning decisions can only be made on valid planning grounds. These are called **material considerations**. The following material considerations are relevant in most planning applications, but other **conditions exist**:

- central government planning policy and advice
- local planning policies
- draft policy
- the environmental, social and economic impacts of the proposal
- access and provision of infrastructure for the site
- the design of the proposal
- the planning history of the site
- the views of organisations and individuals, in relation to relevant planning matters

It is important that planning decisions are made in line with council corporate objectives. This should be reflected in your local plan, but you may need to work with colleagues across the council to understand what a specific proposal could do to meet wider objectives. When applications are approved they often have conditions attached. **NILGA will be providing a Councillors’ Crib Sheet on Planning Conditions in a separate document.**

An applicant can appeal against a refusal, or against conditions. These appeals are heard by the Planning Appeals Commission, which then makes the final decision. Appeals may only be made by or on behalf of the person who made the planning application. There is no “third party” right of appeal and this means that objectors or other parties who may have an interest in the proposal cannot make an appeal if they are unhappy about the decision.

ENFORCEMENT

The remaining important part of the planning process that you will be aware of as a councillor is around the checking that applicants are delivering what was decided on planning applications and things happening in your area are in line with the council's aims. Effective planning enforcement is a key activity in development management in ensuring that the strategic vision is not undermined by inappropriate or prejudicial development, and therefore one of the overarching considerations around enforcement action should be an assessment of impact of development on the local plan and local authority objectives.

Enforcement action is discretionary law so councillors need to work with their officers to establish enforcement policies and priorities for the authority and make sure that there are sufficient resources available to deliver against the local authority's priorities.



*Tower Museum, Derry City
and Strabane District Council
- Photo supplied by J McCarroll*

DUTIES, RESPONSIBILITIES AND RISKS INVOLVED IN PLANNING

Probity and conduct are areas of concern for many councillors. This is understandable given the consequences of behaviour or decisions that are perceived to be driven by a bias. But these concerns shouldn't prevent you from performing your role.

Your involvement in the development management process is crucial. It is important that you are confident of your role in representing the needs of your residents in discussions with developers.

The Northern Ireland Local Government Code of Conduct for Councils has been adopted by your council. The Code and its accompanying guidance state the parameters for your involvement in planning processes. Your role in development management has to be transparent. Your decisions and behaviour in relation to applications are accountable to the public, and it is important that you can explain the basis for your decisions.

The following section of this guide summarises the main requirements of the Code in relation to Planning. Case study examples from other jurisdictions are provided in Appendix 1

The Northern Ireland Local Government Code of Conduct for Councillors

- **General Information**

If your council is to maximise the opportunities that planning powers and functions present, it will be vital to ensure that you are confident in your role and willing to take bold decisions. Planning processes are not without risk, such as that of media and public criticism, the potential for adverse risks to investment, and legal risks such as risk of judicial review, the risk of Planning Appeals Commission costs to be incurred, and also risk of sanctions on individual councillors for breaching the Code of Conduct.

In Northern Ireland the legal culture is different from other places due, in particular, to the sheer number of judicial reviews that take place, so members and their planning officers need to manage risk accordingly.

You as an elected councillor can play your part in this risk management process by ensuring you comply with the code of conduct. You can also work within your political party to ensure that there is clarity in relation to the level of engagement and role of other elected members working in your area, i.e. your local MLAs and MP as well as council colleagues.

For planning processes to work well in your council area, your council will need to ensure better integration of approach between elected members, planning officers and the public, and to communicate effectively the new roles in place for all concerned. Effective use of the Code of Conduct will provide you with safeguards as you develop your own approach to working within the planning system.

The Councillors' Code of Conduct was brought into effect on 28 May 2014, in advance of local government reform, with the section on Planning (Part 9) becoming effective on 1 April 2015.

The Code is divided into nine parts, with parts 1– 8 covering the work of councils in general, and part 9 giving detail on how the code applies in relation to planning matters.

Part 9 of the Code applies to all councillors, whether or not they are on the planning committee, although there will be different considerations depending on your role, either as a member of the planning committee or as a member of the full council.

The Commissioner for Complaints has produced a substantial guidance document that explains the requirements of the code and how it will be applied.

You can find a copy of the Code of Conduct and associated guidance from the Department (on part 9) and the Ombudsman on the NILGA website: www.nilga.org.

You should familiarise yourself with the rules as they apply to you, and also with how to comply should you wish to participate in the process for a particular application – as an advocate for or against the proposal. It is particularly important, if you are a member of the planning committee, to be clear on what safeguards are in place for you should you need to act as an advocate in this way.

- **Keep yourself right! How the code of conduct protects you**

Rules for Planning Committee members are found in sections 6 – 9 of the Code of Conduct.

Judicial Reviews (JR): A Judicial Review process may be triggered if there is perception of:

- Bias – for example if there is perception of you having an interest in a particular application
- Predetermination – i.e. if there is perception that you have made your mind up before hearing all the evidence
- Irrational decision-making – i.e. if it could be shown that your decision was illogical or ‘devoid of reason’.

The Code of Conduct can protect you from these three situations, as follows:

- *Bias*

The requirements of Section 6, if you adhere to them, will protect you from allegations of **bias**. Section 6 deals with declarations of interest – both ‘direct or indirect pecuniary’ (i.e. financial) and ‘significant private or personal non-pecuniary’ interests. Categories of both kinds of interests are set out in Section 5.

Financial interests need to be recorded in the council in advance of the meeting at which the relevant matter is to be discussed. If you have a financial interest in a matter, you **cannot speak or vote** on the issue concerned and you **must leave the room** while the matter is being discussed.

‘Significant private or personal non-pecuniary’ interests have to be declared as soon your interest in the matter becomes apparent to you, and you **must leave the room** while the matter is being discussed. This is an area where you are **personally responsible** for determining whether you have any such interest.

If in doubt – ask your Chief Executive, the relevant Director or Head of Planning for advice.

Section 6 also gives information on how to deal with exceptional circumstances.

- *Pre-Determination*

The requirements of Section 7, if you adhere to them, will protect you from allegations of **pre-determination**, specifically in relation to lobbying activity and access to you as a councillor.

It is really important that you continue to be accessible to your electorate, and to companies or individuals who may wish to invest in your area, but there are some mechanisms you can use to protect yourself from allegations of having made up your mind on an issue before the matter has been fully considered.

If you are being lobbied, and you will have a role in making a decision – i.e. if you’re on the planning committee - there are 12 ‘Golden Rules’, outlined overleaf.

- *Irrational Decisions*

The requirements of Section 8, if you adhere to them, are designed to protect you from allegations of **irrationality** and also **pre-determination**, specifically in relation to lobbying activity and access to you as a councillor. This section of the code is under review at present (May 2016). **An update on progress is being sought from the Department.**



12 Golden Rules

When you are involved in deciding planning applications

YOU CAN

1. Listen
2. Seek factual information about the progress of the case,
3. Give procedural advice
4. Advise those lobbying that they should contact the planning officer so that their opinions can be included in the officer's report to committee
5. Advise those lobbying that they can write or speak to a councillor who is not on the planning committee

BUT, YOU MUST:

6. Make it clear that you will not be providing a view either for or against the matter on which you are being approached until you've heard all the evidence, at the planning committee meeting
7. Direct such representations to the appropriate department of the council

AND, YOU MUST NOT:

8. Organise support for a particular recommendation on the matter
9. Organise opposition to a particular recommendation on the matter
10. Lobby other councillors about the matter
11. Comply with political group decisions on the matter where these differ from your own views
12. Act as an advocate to promote a particular recommendation in relation to the matter

Remember: The issue at hand is **perception** of breaching the Code. It is remarkably easy – and a very natural thing - to give someone the impression that you agree or disagree with them, and from that, they may infer that you intend to vote a certain way.

If you feel that this is a particular issue for you and you recognise this as your usual approach to communication, it would be best to arrange to meet those lobbying, by arrangement, with a planning officer.

- **What Happens if I Breach the Code?**

The Planning Appeals Commission

In addition to potential action by the Commissioner for Complaints, breaching the Code of Conduct can result in the Planning Appeals Commission awarding costs against you, as a result of:

- Causing an unnecessary appeal
- Unnecessarily prolonging proceedings
- Abandoning or not proving part of a case
- Withdrawal of or conceding an appeal

The Commissioner for Complaints

The Guidance from the Commissioner for Complaints sets out in the first few pages the role of the Commissioner and detail on assessment, investigation and adjudication of complaints. The following information is a short summary of key points within that guidance.

The Local Government Ethical Standards (LGES) Directorate within the Commissioner's Office receives, assesses and investigates complaints, and the Commissioner then adjudicates when necessary.

The Directorate will **only** investigate allegations made directly to them, **in writing**, that a councillor has, or may have, failed to comply with the Code. Telephone complaints or newspaper articles alleging misconduct will therefore not trigger an investigation. Anonymous complaints are not normally accepted.

Assessments

The complaint will be assessed against a number of criteria, including:

- whether the conduct complained of is within the scope of the Code;
- when the conduct occurred; and
- whether it is proportionate or in the public interest to conduct an investigation.

Importantly, they will also consider whether any evidence has been provided by the complainant, or is readily available, to support the allegation that there has been a breach of the Code. The requirement for supporting evidence helps to ensure that vexatious, malicious or frivolous complaints will not be investigated

A complaint about your conduct which meets all of the assessment criteria will be investigated, regardless of the motivation of the complainant in making the complaint.

The Directorate aims to complete the assessment of cases within 4 weeks from the date the complaint was received.

Investigations

The purpose of an investigation is to determine if there is evidence of a breach of the Code and, if there is, whether the matter should be referred to the Commissioner for an adjudication decision. A decision to investigate does not mean that it has already been decided that you have breached the Code.

If the Directorate decides that a complaint about your conduct is to be investigated, you will be given an opportunity to comment on the allegation made against you.

They aim to complete the investigation of the complaint within 48 weeks of the date they notify you, and the complainant, of the decision to conduct an investigation. You can assist in concluding the investigation as quickly as possible by co-operating with any requests the Directorate makes to provide information and to attend for interview.

Adjudications

The Commissioner will decide whether or not you have failed to comply with the Code and, if so, what sanction, if any, should be imposed. The adjudication decision will usually be taken following a public hearing. The Commissioner can impose one of the following sanctions:

- that you should be censured;
- that you should be suspended, or partially suspended, from being a councillor for a period, up to a maximum of one year; or
- that you should be disqualified from being or becoming a councillor for a period, up to a maximum of five years.

If the Commissioner decides that you should be censured, suspended or disqualified, you may seek leave to appeal to the High Court to appeal the decision.

Further information for councillors is available at the following link: <https://nipso.org.uk/site/wp-content/uploads/2016/02/L7-NILGCS-About-our-Service-for-Councillors-web.pdf>

- **Section 9 – Application of the Code of Conduct with regard to Planning Matters**

Section 9 of the Code provides useful interpretation of the Code of Conduct as it applies to planning and covers issues specific to the development management process, decision making, policy and strategic issues, ‘other’ interests and unauthorised development. Section 9 is intended to be used IN CONJUNCTION with section 1- 8 of the Code.

Section 9 provides clarity on the following:

1. Your role as a councillor is to **represent the views and aspirations of your community** through the development plan, discussions with developers and planning officers, or in deciding on planning applications.
2. Whether you sit on a planning committee or not, **you, representing the needs of your community, can encourage developers and others to engage with the council and residents in the planning process.**
3. **It is important that you feel empowered**, using your local knowledge, advice from your planning officers and appropriately considering the interests of developers and interest groups, **to make balanced decisions which benefit the whole community.**

Section 9 also reiterates the importance of four of the 12 ‘golden rules’ for planning committee members highlighted above i.e.:

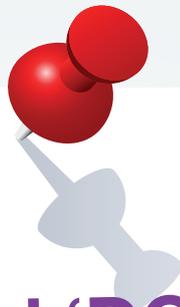
- You must not make public statements about a pending decision.
- You must not express a ‘for’ or ‘against’ view, or state your intention to vote in a particular way before the committee meeting has taken place.
- If you are approached in relation to an existing or proposed planning application you should restrict yourself to giving procedural advice or advise them to contact a member who is not on the planning committee.
- Nothing should keep you back from listening to the views of lobbyists, developers or other interested parties.

“What happens if I don’t want to remain impartial?”

If you are a planning committee member and wish to speak on behalf of constituents or other parties, you may attend the relevant meeting and make representations, after which you should leave the room while the members consider it and not take part in the voting.



*Queen's Square,
Belfast City Council
- Photo by P Mackey*



12 more ‘DO’s’ and ‘DONTs’

1. **DON'T** put undue pressure on officers to come up with a particular recommendation.
2. **DON'T** propose, second or support a decision contrary to an officer's recommendation unless you are doing so on the basis of sound planning considerations fairly and reasonably related to the application concerned.
3. **DON'T** propose, second or support a decision contrary to the development plan unless you are doing so on the basis of sound planning considerations fairly and reasonably related to the application concerned.
4. **DO** facilitate your local community to engage with the production of planning policy by encouraging them to express their views in the plan-making process.
5. **DO** engage with the plan-making process yourself. You are fully entitled to express your views or advocate proposals in relation to the making, approval or amendment of the development plan and supplementary council planning guidance.
6. **DON'T** accept a place on a planning committee if you have substantial land, property or other interests that would prevent you from voting on a regular basis.
7. **DON'T** act on behalf of, or as an agent for an applicant, other than in the course of your professional role which you must have registered.
8. **DON'T** participate in the process for an application made for yourself, a family member, friend or close personal associate, beyond explaining the proposal to an officer.
9. **DO** refer cases of unauthorised development to the council planning office for enforcement action, and advise all subsequent enquiries to deal directly with the relevant department/officer.
10. You are entitled to seek information about, but **DON'T** lobby for a particular outcome in an enforcement case.
11. **DON'T** seek to influence an enforcement action decision if you have an interest in the outcome of that decision.
12. If you work as a lobbyist for a developer you must declare this as an interest. **DON'T** participate in the process relating to or potentially affecting that developer.

CONCLUSION

We hope that this guide has substantially simplified planning for you. We also hope you understand how the planning system works to achieve what residents want to see in their community. Good planning requires strong plans with a clear vision for the future. Your objective should be to achieve the development and investment needed to make your area look like the vision set out in your plan. Sometimes that will mean saying that a development is the wrong building in the wrong place because it will not produce the right outcome.

Your specific role will vary depending on whether you are a planning committee member or not. Either way, your role as a councillor is to represent the views and aspirations of your residents through plan development, discussions with developers or deciding on planning applications.

As previously highlighted, the Northern Ireland Planning Portal www.planningni.gov.uk is a useful source of information on the new planning system, and additionally NILGA is in the process of developing a range of guidance and support to help you.

We are developing a training syllabus for councillors and will be delivering online materials and training sessions for councillors, using peer support from other jurisdictions.

You may also find our Key Information Bulletins and other NILGA publications a useful way of keeping up to date with the world of planning. Use this link to find information for councillors on the NILGA website: www.nilga.org

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APPENDIX 1

Examples of Code of Conduct Breaches from Other Jurisdictions

SCOTLAND

- 1. Failure to Register/Declare an Interest (No breach)**
<http://www.publicstandardscommissioner.org.uk/decisions/decision/607/laed1621>
- 2. Failure to Register/Declare an Interest (Breach)**
http://www.standardscommissionscotland.org.uk/uploads/files/1450356481LAEL1654_DECISION_Final.pdf

<http://www.standardscommissionscotland.org.uk/uploads/files/1450356683LAFi1501FINALWRITTENDECISION.pdf>

http://www.standardscommissionscotland.org.uk/uploads/files/1450358167LAWD1418_LAWD1419_decision.pdf
- 3. Pre-determination (Breach)**
http://www.standardscommissionscotland.org.uk/uploads/files/14503582801449677679150825LAS1336_decision.pdf

WALES

- 1. Failure to Register/Declare an Interest (Breach)**
<http://gov.wales/docs/apw/publications/151125-decision-cllr-haulwen-lewis.pdf>

Planning

Design

Heritage

Economics

Sustainability

Engagement

A wider

Perspective

Hamilton House

3 Joy Street

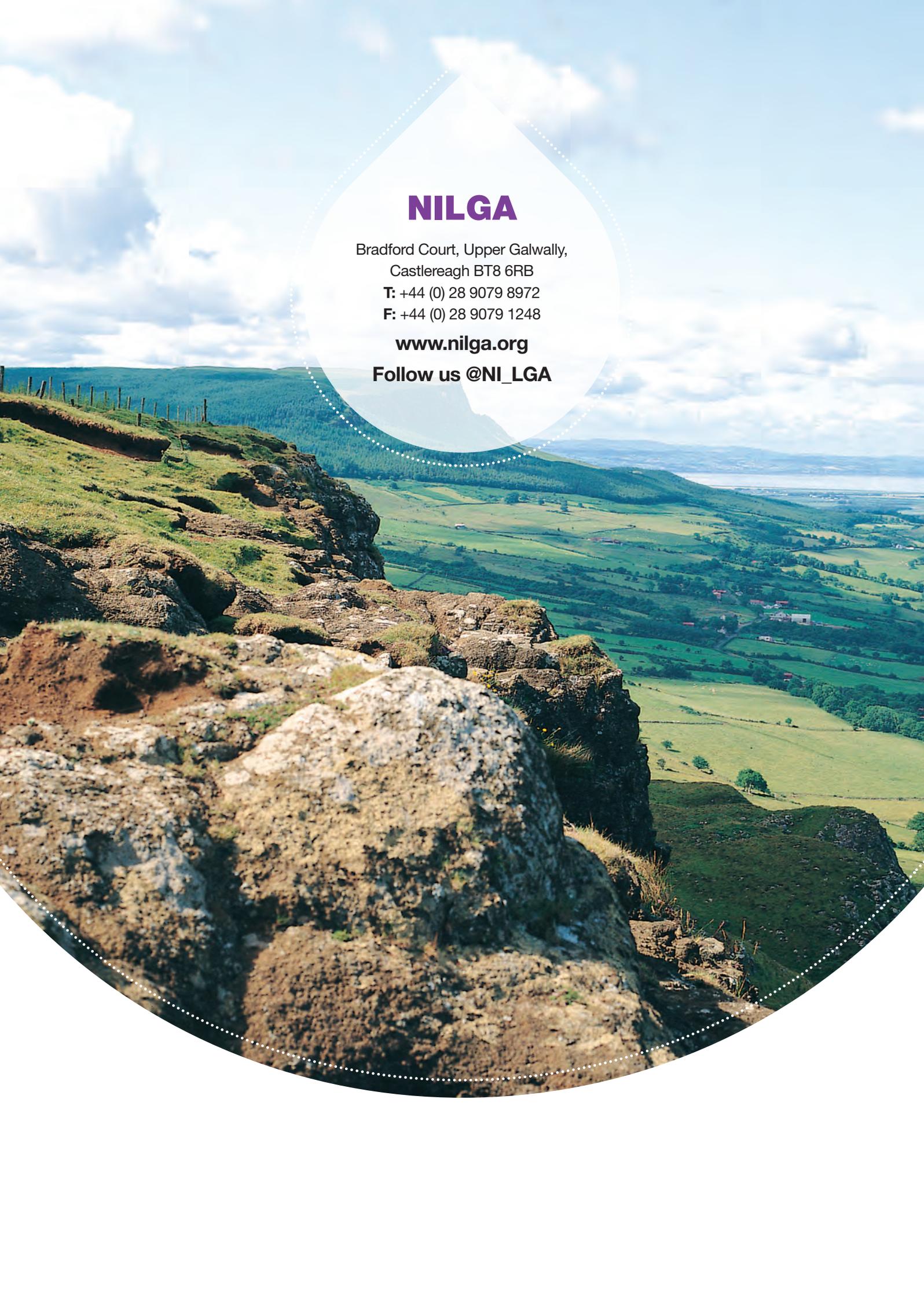
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