



Northern Ireland
Assembly

Committee for Infrastructure

OFFICIAL REPORT (Hansard)

Regional Planning and Strategic Planning
Directorates: DFI Officials

26 February 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Miss Michelle McIlveen (Chairperson)
Ms Martina Anderson
Mr Roy Beggs
Mr Cathal Boylan
Mr Keith Buchanan
Mrs Dolores Kelly
Ms Liz Kimmins
Mr Andrew Muir

Witnesses:

Mr Alistair Beggs	Department for Infrastructure
Mr Angus Kerr	Department for Infrastructure
Mr Scott Symington	Department for Infrastructure
Ms Susan Wilkin	Department for Infrastructure

The Chairperson (Miss McIlveen): I welcome from the Department for Infrastructure Angus Kerr, the chief planner and director of regional planning, Alistair Beggs, Scott Symington and Susan Wilkin. I apologise for last week. Unfortunately, we overran because members were engrossed in Budget issues, and we had to delay the session until today.

Mr Alistair Beggs (Department for Infrastructure): No problem at all.

The Chairperson (Miss McIlveen): I invite you to make an opening statement, after which members will follow up with questions.

Mr Angus Kerr (Department for Infrastructure): Good morning, everybody, and thank you for having us here today for an introductory briefing about the work of the DFI planning group. Alistair Beggs is the director of the strategic planning directorate, and Susan Wilkin is his deputy director. Scott Symington is the deputy director in the regional planning directorate (RPD).

There are two directorates in the group: the regional planning directorate, of which I am the director, and the strategic planning directorate, which is headed by Alistair. If you are content, Chair, Alistair and I will give you a brief overview of the work of each of the directorates, after which there will be plenty of time for questions.

It is important to say that both directorates work very closely together on the many complex planning issues that come our way. We have a mix of professional planners and administrative people on the team. My directorate is more focused on the policy, legislative and oversight role, and Alistair's side

deals with operational matters such as regionally significant planning applications and scrutiny of development plans.

I will give you a bit of background on my side. Since April 2015, as you will be aware, a new two-tier planning system has been in operation in Northern Ireland, which represents a major reform and transfer of planning. It is the single biggest change in the planning system that we have had since the early 1970s. It came about through the implementation of the Planning Act (Northern Ireland) 2011, which at the time was the largest piece of primary legislation that had ever gone through the Assembly. It involved a huge amount of work at the time with the Committee of the day.

The key changes that were introduced through that were the creation of a much more responsive planning system, delivered at a local level by councils and with enhanced local political accountability, and the introduction of a new two-stage and faster development plan system with a much less adversarial approach and a more meaningful level of community involvement in the process. The changes created a more effective development management system for dealing with planning applications, with a focus on balancing the economic, environmental and social impacts of developments. Efficiency and processing were improved, as was certainty around timescales for developers and communities.

Another key change was a much more front-loaded approach to planning, involving developers and communities much earlier on in the plan and the development management process. There is also an emphasis on collaborative working involving all the relevant stakeholders in planning. Ultimately, there is now a more proportionate decision-making mechanism, classified by different applications, to try to deal with planning in a more efficient way.

The new two-tier planning system brought Northern Ireland into line with all the other jurisdictions in these islands, all of which have a two-tier system. The last few years have been a period of huge change for everybody involved in planning, and it has been important for us, in the centre, to bed in the new system a little, allow councils to get used to operating the new system, get council members to understand their role in making decisions and let planners and support staff get used to that as well. Equally, the Department needs to get to grips with its role at the centre of the new two-tier system and how we relate to councils and their work at a more local level.

That links quite nicely to one of the key responsibilities of my directorate, which is the oversight and governance of the planning system. The Planning Act confers a range of responsibilities collectively on the Department, giving us an overarching role in monitoring the operation of planning functions. The Act provides the Department with the capability to oversee and secure the effective implementation of regional policy and good practice by councils. The range of powers includes things such as the ability to "call in" planning applications, making development orders, regulating how councils deal with applications and conducting assessments of council performance. The Department also has a series of reserved powers, enforcement powers, and powers of revocation, discontinuance and modification, among others.

My directorate also works closely with councils to improve planning performance. To do that, we regularly meet the heads of planning in councils and council directors at what we call our quarterly strategic planning group meeting and at a number of other meetings and subgroups throughout the year. We publish performance indicators against three statutory targets: local applications, with a target of 15 weeks; major applications, with a target of 30 weeks; and enforcement, with a target of bringing those to a conclusion in 39 weeks. There has been some good progress on that, particularly on local applications and enforcement, but there are challenges on major applications, and the target is not being met for those and the average processing time in 2018-19 was around 59 weeks across all councils.

In addition to those statutory targets, we published our first planning and monitoring framework last September. That covers a range of additional indicators in the planning system, as those three statutory indicators tell only a very small part of the story. The other indicators that we have developed give a better picture of what is going on and a better understanding of where some of the issues are and where some good practice is. The purpose of the framework is to increase that understanding and to drive best practice and continuous improvement, and encourage us and the councils to talk about what is going on. Over time, we want to expand the framework.

Finally, on planning performance, one area that has been highlighted recently as particularly impacting on application processing times are statutory consultees and the time that it takes them to interact with the system and how they interact with it. To address that and other performance factors, we recently

established a planning forum involving all the main statutory consultees to take forward a range of actions that are aimed at improving planning performance. That was on the back of an independent review of statutory consultees in the planning system.

My directorate is also responsible for formulating and coordinating regional planning policy and for maintaining an effective legislative framework for the overall planning system. The key policy documents for which we have responsibility and with which you will be familiar are the regional development strategy to 2035 and the strategic planning policy statement (SPPS), which essentially covers all the topic planning policies that you will be familiar with and that used to be in their separate PPSs, such as development in the countryside, housing, retailing, renewable energy etc. It also contains the purpose of planning and core planning principles. The team monitors the effectiveness of that policy and how it is being implemented, and considers whether it is fit for purpose or needs to be reviewed or changed. We will discuss planning policy issues with the Minister in the coming weeks.

We will also discuss legislation with the Minister. However, we have done some background work on subordinate legislation, particularly on permanent development changes; telecommunications; the requirement to review the implementation of the Planning Act and the subordinate legislation that needs to be implemented through that; the inflationary uplift of fees; and some other areas. The directorate is responsible for repairing and updating guidance and practice notes for the system. If the Minister wishes to proceed with those kind of changes in those policy and legislation areas, they will be taken through the Committee in the normal way, and there will be plenty of debate. In addition, there will be public consultations on policy changes.

Added to those key areas, RPD also leads on the delivery of an environmental governance work programme to build capacity, and training and guidance on environmental governance in the planning system. The directorate is also responsible for the implementation of the Executive's Rathlin Island policy and action plan and, finally, the procurement of a new shared IT system for planning.

That was a whistle-stop tour of all the work that we do in the team. I hope that that gives you an indication of what we are about. Thank you for listening. I will now pass you over to Alistair, who will talk about his side and what they do.

Mr A Beggs: Thank you. Good morning, Chair. Good morning, members. Angus explained the close working role that we have with his directorate on the regional planning side. Our role in the strategic planning directorate is more about the operational side of the Department's planning function.

I will not refer to the briefing paper in detail, but I want to talk through some of the major elements of our work. Local development plans, which are being prepared by councils, is one major area. You will be aware that, for the first time, councils can lead the development plan process. It is a chance for the plans to reflect and be responsive to councils' aspirations and needs, and, indeed, the differences between councils. The importance of those plans can be set out in the way in which they will guide the development management process. You will, perhaps, be aware that the legislation requires planning applications to be decided, having regard to the local development plan and any other material considerations, and that it is a two-stage process. The first stage is the development of the plan strategies, which will set out the general policy framework to guide development in the future. The councils are at that stage of the process at the moment. Once the plan strategies are adopted, they will work on local plans, which will deal more with the site specifics of an area.

The Department is very much a consultee in the process in one aspect. Our responses to the development plans have focused on elements such as growth strategies, cross-council working and infrastructure availability. We also coordinate departmental consultation responses to council plans. That process involves our colleagues throughout the Department — in roads, transport, rivers and water policy.

The Department also has an oversight role in the plan process. It has the power to intervene at certain stages of that process, perhaps to direct councils to withdraw or amend their plans. Ultimately, the Department directs plans to be adopted. We are working closely with the councils as we go through that process, which is new and unfamiliar because of the changes since the introduction of the two-tier system. We are pleased with the efforts that councils have made in moving their plans forward in that unfamiliar process.

The table in the briefing paper shows the progress of councils to date. Broadly, all 11 councils have prepared statements of community involvement and preferred options papers, and seven of the 11 have prepared draft plan strategies, which have been consulted on. It is important to point out that the

Planning Appeals Commission (PAC) has been asked to hold an independent examination of the Belfast plan strategy, which will probably happen around the middle of the year. Following that, the PAC will make recommendations as to that document's soundness.

Another main area of our work — Angus touched on it — is planning applications. We currently have about 40 applications of various types. The two that you will probably hear most about are regionally significant planning applications and called-in applications. The legislation sets out thresholds of what a regionally significant application is. Those fall to the Department to determine. Being regionally significant, they are often large, complex and contentious. There is a process for calling in applications. They could be called in by a Minister at the start of the process when they are submitted, or they can be called in at the latter stage, when a council has made its view known on the application. I will give you a flavour of the sorts of things that we have been dealing with. Last year, we issued approvals for the transport hub in Belfast; a cruise ship terminal at Belfast harbour; a gas power plant at Belfast harbour; grade A offices at Ebrington and at City Quays in Belfast; and urban extensions to Ballyclare. That gives you a broad flow of the wide variety of work that we carry out.

A lot of our work also involves attending hearings and public inquiries before the Planning Appeals Commission. When, for example, the Department issues a notice of opinion that it intends to approve or refuse an application, an applicant or a council can request a hearing with the Minister before any final decision is made.

The briefing paper refers to Crumlin Road Gaol. Members will be aware that that is a very successful visitor attraction, which has had almost 1.2 million visitors since it opened in 2012. The operator there employs about 70 people. That is important not only to the regeneration of Crumlin Road Gaol itself but for the benefits to members of the wider community in employment and training. Recently, we had an encouraging response to an invitation for expressions of interest in the regeneration of the former warders' cottages at Crumlin Road Gaol, which constitute an important frontage along the main road. The Minister has now agreed that formal marketing of those cottages can be taken forward.

We also have responsibility for the St Lucia site, which was gifted to the Executive in 2010. The Department owns part of that site, including green areas down by the River Strule and some of the former military housing on the site. The historic core remains in the ownership of the Ministry of Defence (MOD), and the issue of restrictive covenants, which once affected those buildings, was resolved in 2018. We have been discussing the transfer of the buildings to the Department with the MOD. It is an interesting site, close to Omagh town centre, but it has a number of challenges, including the condition of the historic buildings and floodplain issues. Discussions are ongoing between us, the Department for Communities and the local council looking at the available options for that site. We will brief the Minister on progress in due course.

That is a broad oversight of our work. Thank you for listening. We are happy to assist you with any questions you may have.

The Chairperson (Miss McIlveen): Thank you very much.

From the outset, I should declare an interest: my brother is the chair of the planning committee in Ards and North Down Borough Council. I am not sure that that is an interest. I say that in case someone raises it.

Angus, you spoke very positively about the two-tier system. However, 2015 was a really difficult year, with the new councils coming into existence and planning functions transferring to them. Essentially, you had a function with no money following it, new teams being established and brand-new legislation that they had to work with. There is an understanding that perhaps there was poor guidance and inadequate training not only for planners but for new councillors, and particularly for old councillors, who perhaps had bad habits from the previous planning system. Essentially, they were advocates as opposed to planners, yet they were being put in a position where they had to make decisions. In hindsight, how would you have approached setting up that system differently?

Mr Kerr: That is a good question and a difficult one. We did a heck of a lot of work around the time leading up to and after the transfer in terms of preparing for it. We had capacity-building programmes for staff and members and all that. There was a huge amount of engagement and work in getting it right for guidance, legislation and all that. It was incredibly challenging. I cannot say anything other than that. We were reforming the planning system and transferring it. We were not just transferring it from one Department to another. We were transferring it to 11 councils that did not exist at the time of trying to sort out transfer to them. It was hugely challenging, and lots of things could probably have

been done differently and better. We were where we were with the way in which it was done. Local government reform was a parallel process that was going through. We just had to get the job done.

That said, and looking back and reflecting on four years of the new system, it is in no way perfect. It was not perfect before we transferred it. There were lots of problems, and there are lots of problems in a system as complex as planning. It is the same when I talk to colleagues in other jurisdictions. There are lots of challenges. However, collectively, between us and the councils, we achieved an amazing transfer. The world did not stop when we transferred. Applications continued to be processed, and decisions continued to be put out. The staff continued to be paid, which was one of my personal worries at the time. There were just basic things like that when you are involved in a transfer of that nature: IT, finance, HR, never mind all the planning processes. Yes, I did not have the grey hairs before the process, and it was very challenging, and there probably are things that we could have done differently. We had a review process internally on all the things that we did in the project, the benefits realisation and all that, and interesting things have come out of that in terms of what you might do again and do differently.

The Chairperson (Miss McIlveen): Are you satisfied that the guidance and training that is in place is sufficient for planners and members?

Mr Kerr: Again, more work can be done on that. We work closely with the Northern Ireland Local Government Association (NILGA) to try to help it to prepare training for members in particular. I would definitely identify that as a key area in which we need to improve and provide even more training. There is no doubt about that. In addition, we have a suite of guidance. We recently reviewed that and identified guidance that is too old, out of date and cannot apply, and we took that off the website and committed to a programme of updating guidance and preparing new guidance. We have really focused on trying to improve capacity and guidance around the whole environmental governance issue, which has been a huge challenge for planning both before and after transfer, and we are making sure that there is sufficient capacity in the profession, in the councils and among ourselves to deal properly with the very challenging environmental requirements of environmental impact assessments (EIAs), strategic environmental assessments (SEAs) and the habitats directive and how they apply to planning. We have done a huge amount of work there and will bring forward new guidance. We plan to do the first stage of that in the summer.

The Chairperson (Miss McIlveen): Environmental governance is in paragraph 14 of your briefing paper. We now have a situation where applications are essentially being assessed by two bodies: the Northern Ireland Environment Agency (NIEA), which is obviously the statutory consultee; and the shared environmental service, which is funded by councils. On occasion, they will come back to councils with different opinions on an application. Whose advice do the planners and the councillors take, because that is quite confusing?

Mr Kerr: Yes. In a sense, this links to the question about the capacity in the councils. When we transferred, we realised that one of the challenges with the system in Northern Ireland is that councils here do not have all the functions that they have in other jurisdictions. It is very helpful to have planning along with conservation, biodiversity, local roads and all that, and there is an expertise in councils in other jurisdictions that can feed in to help the planners make the right decisions. We did not have that in Northern Ireland so, when we transferred, we set up the shared environmental service, which is essentially a bit like having environmental expertise in each council, except that we did it as a shared service that is hosted in Mid and East Antrim Borough Council. The shared environmental service is really just part of the council system. The statutory consultee on environmental issues is still DAERA, and it ultimately has the final say on the statutory process and planning. The purpose of the shared environmental service is to provide local expertise for members and planners to take what DAERA is saying, as a statutory consultee, and to develop it and understand how it applies to the planning decision that they are about to make. It is not to usurp DAERA's role as the statutory consultee; it is to bring the expertise into the councils to help to deal with what DAERA is saying and how it applies to planning.

The Chairperson (Miss McIlveen): I am not sure that that is necessarily applied. More guidance around that might be helpful, too.

You referred to the statistics that indicate that councils are performing reasonably well. Some may say that there could be a manipulation of those statistics and that councils are simply prioritising more straightforward applications and leaving the more tricky ones to later. What is your comment on that?

Mr Kerr: Yes, that is a challenge across any walk of life. You introduce targets and indicators, and you do not intend to drive perverse behaviour, but sometimes that can happen. As I said, we do a lot of work with the councils, and I am not saying that that does not exist, but I genuinely do not get the sense that that is what any of them is about. They are very serious about the role that they are taking on, and they are very keen to try to progress it as quickly as they can. I mentioned earlier the planning forum that we set up as a result of the review that the head of the Civil Service instigated into the performance of statutory consultees. It kind of broadened into performance of planning. We have done a lot of work with councils around that and on trying to understand what are the issues and problems that they have with getting applications out reasonably quickly and within the targets, and how we can work together to address some of those issues.

You could change the targets, but it might drive other behaviour. My approach is to work with them to improve performance; it is not to get too tied up about targets. You do need to have them, and we have introduced the other indicators, which are interesting and show some of the other things that are going on, for example, around the performance of statutory consultees and so on. It is about driving that continuous improvement collaboratively with the councils and helping them as much as we can to take that forward.

The Chairperson (Miss McIlveen): Finally from me, I have a situation in my constituency, and I am guessing that others have too, where disused quarries have been put back into use. I am curious to know where the Department is relation to the review of old minerals permissions (ROMPs).

Mr Kerr: It has been around for quite a while, and there is a bit of a history to it. When it came through originally, it was during a recession and decisions were made, before I was ever involved in it, to put it on hold. We started this before the Minister came in, but we are accelerating it now. We are looking at what we need to do to properly consider ROMPs and how it can be implemented now in the system. It was in the Planning Act when we transferred across. It is there, and there may need to be some tweaks made to the approach that is set out because it goes back originally to 2006. There may need to be some work done on how we commence that. We are working on that at the moment, and we want to talk to the Minister about that. It is certainly a problem that we are aware of across a number of council areas.

The Chairperson (Miss McIlveen): Will it be applied retrospectively?

Mr Kerr: That is kind of the nature of it. In whatever way that it applies, it will apply to old permissions and will mean that those permissions have to be reviewed and either revoked and taken away or updated with new, more modern conditions. Some of the old approvals from the 1970s contain one line where there is hardly any conditions on them. Whereas, if you are getting permission now for a quarry, there is, as you can imagine, a whole list of conditions around opening times, noise, vibrations and all sorts of things like that. It does apply retrospectively; that is kind of the purpose of it in a way. It is to go back and look at old permissions and try to get them into a position where they meet modern standards.

The Chairperson (Miss McIlveen): Obviously, there are environmental implications, and there are neighbour issues, and that has been quite difficult for a number of folk.

Mr Kerr: Absolutely. The other thing about that is that, with a two-tier system, we have to engage closely with the councils about ROMPs because, if ROMPs comes in, it will have quite huge implications for their workload, affecting staffing, resources and so on. We have to engage with the industry as well, and we have had some conversations with them on that.

Mr K Buchanan: Angus and Alistair, thank you very much for your presentation. I will follow on from the Chair. She must have been reading my notes. As regards the assessment from your oversight of the councils that they are performing reasonably well, do you do any oversight of the applicants or ask the applicants how they feel the process is going?

Mr Kerr: No, we do not, actually. We used to. Under the unitary system, when Planning Service was in operation, a questionnaire was done to gauge applicant satisfaction with the planning process, but we do not do that now. I do know —.

Mr K Buchanan: Is that something that you should do?

Mr Kerr: Under the two-tier system, it is really a matter for councils to do that about their own planning service. I know that some of them, for example, Belfast, are working on that sort of area. It has come up in some of our conversations. I think that it is a good idea, but it is a matter for them to take forward at that local level.

Mr K Buchanan: Can you go into the oversight role a bit deeper, Angus? When you have your quarterly meetings with, for example, my local council, Mid Ulster, what detail are you going into with it on how it is performing? If you were to ask applicants, they would say that the council is not performing well. How deeply do you go into that?

Mr Kerr: We have a set agenda, and Chris Boomer would be there, as he is the head of planning for your area. All the heads of planning are there plus some directors from certain councils. On that agenda, continuous improvement is one of the items that we do go into in quite a degree of detail, and we talk about the overall performance of the system and the indicators. There have been lots of conversations in particular about majors, because majors is where the difficulties have been. Most of the councils are not hitting their targets on majors. It is a very open and frank conversation about the issues that they have.

As I said earlier, we are developing that into the planning forum, where we at the Department are talking to the statutory consultees about how they are performing and putting into that system. Also, at the last strategic planning group meeting, we instigated a subgroup to look at planning performance and the performance of statutory consultees, which Scott will be chairing. It will be getting into even more detail to feed back up into the strategic planning group on what the issues are with performance, particularly on the majors. Some of the heads of planning from the group will sit on the subgroup, along with some of their colleagues from councils.

Mr K Buchanan: You mentioned consultees. Do you have any influence on times for feedback? Do you take into account that, if a council is not performing, ultimately it is not their fault, it is the fault of the consultees?

Mr Kerr: In our oversight role, it is not that we are delving into every council and application and saying it is not good enough. We could not do that; we do not have the resources. It is much more of a strategic oversight role. Therefore, as part of the work that I have described here, we are talking about the 21-day target for statutory consultees to reply, why some consultees are hitting the target better than others and whether there are things going on with the way that particular target is being implemented. I go back to what the Chair said about statistics, because sometimes there is agreement to extend the 21-day period and so on. We are getting into a lot of detail on that, but it is not necessarily focused on lots of individual planning applications.

We are doing some of the work on the planning forum, on some of the more strategic applications, with the statutory consultees. So, for example, at that meeting I will say to the Roads person, "The big applications in the system from your side are here. Some of these applications are well beyond the 21-day period. What is going on with that?". So, there is a little bit of a challenge with the statutory consultees, but it would be impossible to do it for all applications.

Mr K Buchanan: My final question, as the Chair alluded to, is on the NIEA and SES, the shared environmental service. Obviously there is a lot of agriculture in my area, and in a lot of rural areas. If you are a councillor on Mid Ulster Council you get a paper saying one thing and then another paper saying another, and you are in the middle. The two things are not helping each other. They are conflicting. Generally, it is the whole ammonia-level issue. How do you see it being improved? It is causing conflict, indecisive decision-making and a lack of direction, and the councillors are stuck in the middle.

Mr Kerr: I am aware of that situation. I know it is a difficult situation. Ultimately, the councillors and the planning committee have to rely on the advice from the professional planners who will be advising them on the application. The professional planners will set out what the consultees are saying, what the advice of our shared environmental service is, the planning policy framework and the responsibilities that they need to be addressing and the approach that they think the planning committee should take.

That is planning. Sometimes you get that situation where the advice coming through from a statutory consultee — whether about ammonia, environmental issues, transport or flooding — can be set aside if there are other material planning considerations that outweigh it, for example. It must all be

considered; it must be weighed. However, it is not the case that you are always following a series of pieces of advice that point in the one direction. Sometimes there is conflicting advice. Really, the skill of the planner is to balance all those up and come to the right overall recommendations in the public interest.

Mr Muir: Thanks to the officials for coming along. I have a couple of varied questions. Obviously the Planning Act went through in 2011, and the councils came into existence in 2015 to formally have those planning powers. I declare for the record that I was previously a councillor on Ards and North Down Borough Council and also a former employee of Translink. Is there a plan to review how that planning system is working now, a number of years down the line, where things are and what could be improved? Some aspects have worked well. It is good to have planning powers devolved to councils. They are the people on the ground.

With regard to the awareness of elected representatives — not only those on planning committees but those in a council generally and those in the wider sphere — understanding the planning system and the issues. Having spoken to planning officers, I know that it is important that, whatever engagement they are getting, they understand the policy context in which they are working. Maybe that is the first question around the review and the awareness of elected reps.

Mr Kerr: The Committee at the time introduced a requirement in the Planning Act to review its implementation after three years. At that time, there was a concern that we were bringing through an Act before the local government reform. It comes back to the complexity of this whole thing. There was almost a feeling of, "Will this happen, and, if it happens, how will it happen?" So, that requirement is there. That review has not been done yet because we did not have Ministers or an Assembly. One of the first things that we will be talking to the Minister about is complying with that requirement to review the implementation of the Act. The extent and scope of that review is something we need to talk about with the Minister. The level that we get into is still up for consideration, but it is something that we need to do. The terms of the review will be in subordinate legislation, so it will come to the Committee in due course.

In a more general sense, it goes back to the conversations that we have been having about working collaboratively with councils, through the mechanisms that I talked about, to try to understand what is going on and continually work to improve performance.

Mr Muir: What is your view on the pace that councils have done LDPs? Some have done it at a fast pace, and some have been slower. There are different views on which is better. Some councils are beating themselves up that they have not progressed. Others are saying that some have maybe moved a bit too fast.

Ms Susan Wilkin (Department for Infrastructure): A lot of councils are still developing their area plans evidence base, hence the speed of them moving through this process. The new system of LDPs is based on soundness, and evidence base goes to the heart of that. A lot of councils are still gathering that and getting their positions. I think that a lot of them have sat back and have seen how others have moved forward. Maybe that is to their benefit, too.

Mr Muir: We had the Belfast metropolitan area plan (BMAP), and there was a legal challenge to that. Is there a view that the process of developing LDPs will make things a bit more robust in terms of protection from legal challenge? One concern is that councils are making decisions based on extremely old development plans because of the legal challenge to BMAP. It is important that we are able to get the LDPs that come forward in place, because the planning decisions that are being made are based on very old information and data.

Ms Wilkin: The desire is to get a full suite of plans. People relying on draft BMAP is not unusual. Decisions have still been made. With this being a new process, there may still be challenges to it that we have not foreseen. We are working with councils at the earliest stages of the process to point them in the direction of producing the soundest plans that we can.

Mr Muir: It is important to work with them to ensure that occurs. You outlined the applications that were called in. What criteria do you go by when calling something in?

Mr Kerr: It is an interesting thing we have done within the group. The decision of whether or not we call in is on my side. If we decide to call something in, or if the Minister decides to call something in,

then it goes to the operational side for Alistair to deal with the application. That is quite deliberate. Of course, he gets cross if we decide to call things in [*Laughter.*] Calling a planning application in is an exceptional thing for us to do, and it is not the Department's intention. It is the same in all the other jurisdictions, and we have had conversations with the chief planners and so on in the other jurisdictions about that, because that was one of the big questions about our new role in the centre of a two-tier planning system. So, it is an exceptional thing that we will do, and we do not want to get into a situation where we are calling in lots of planning applications and, essentially, undermining the whole purpose of the transfer of planning to councils. Councils are supposed to deal with those planning issues themselves, rather than having the situation where people who are unhappy go to the Department and the Department calls it in, or if people have a difficult application, they go to the Department, the Department calls it in and so on. That is a key thing that we wanted to lay down as a marker from the start.

The criteria is around whether or not it is a matter of subregional or regional importance, where it is really a matter for the centre — for the region as a whole — not a local matter. That can be, for example, an issue where there is a regional policy on a particular issue, say, on built heritage or on flooding or something like that, where a decision that a council makes is deemed to be undermining the operation of that regional policy. By setting a precedent, it would mean that the policy is undermined going forward. That is really the key test around that subregional/regional issue raised by the application, and, therefore, it is something that would be more appropriately dealt with by the centre.

I keep saying this: it is not about whether or not the council has made the right planning decision. We do not decide to call it in because we do not like the planning decision. We decide to call it in because we think that it is an application that would be better dealt with by the Department and the Minister because it is of regional significance and it raises regional issues. It has taken us a while, if I am honest, to get to grips with all that and to understand that. There have been a lot of discussions about how they work this in Scotland, England and Wales, but that is the way that we approach it, and we have got into that way of doing it now.

Mr Muir: That is really useful because it brings clarity to how that occurs. Even if they are called in or if applications are already deemed to be regionally significant, in the current legislation, the Minister makes the decision in relation to that. I am aware of other scenarios in the British Isles, such as An Bord Pleanála and also the UK National Infrastructure Commission, where that has taken a bit away from ministerial direction. What are your views in relation to benefits associated with that? Why have you decided to go down the ministerial route?

Mr Kerr: That's about making the decision. Alistair?

Mr A Beggs: I get my chance at last. In making decisions, we think that the system that we have in place at the moment seems to be quite responsive to our particular needs. I am aware of An Bord Pleanála, down South, looking at decisions, but we always have the scope here for the Planning Appeals Commission to become involved in any public inquiries or hearings, so we get its independent advice on many occasions. That has been quite effective as well. Its view can then be rolled into the decision-making process. We always need to keep our eyes and ears open as to best practice elsewhere and what is going on, but at the moment, we do not perceive any potential changes.

Mr Muir: There is just one last thing. The whole issue of climate change is clearly here, and people know that is a real issue, and that should have been the case many years ago. One of the things around planning is how much climate change is considered nowadays when applications are made. For example, when houses are being built, they are not ready for e-cars. Is that something that the Department can give direction on, or are we waiting for councils to do that? We need to build for the future rather than for the past.

Mr Kerr: Again, that is a good question. When the strategic planning policy statement came out just after the transfer in 2015, it reflected the issue of climate change quite well. It requires councils and us to take account of the implications of climate change when development plans are brought forward and decisions are made. Though, if I am honest, there is probably a bit of capacity building and a bit of guidance and so on still needed to try to tease out more clearly what that actually means for planning and what the role of planning is in contributing to climate change in, for example, reducing the need to travel by bringing forward effective plans that think through the issues of commuting. If you develop a town or city in a way that creates more need to travel, that will have an impact on climate change,

CO2 emissions and so on. There is a requirement, but I think it is an area on which we probably need to do a little bit more work.

Ms Wilkin: The plans that are progressing at the minute are doing so on the basis of existing policy. The draft plan strategies that have come forward refer to climate change, but more in relation to how it can be mitigated through the likes of sound land-use planning and transport issues, mitigation measures for flooding and so forth. It has, therefore, been a feature.

Ms Kimmins: Thank you for your presentation. I have a couple of questions. Your briefing paper mentions Casement Park. It is at the centre of a lot of what has been happening since the Assembly has returned. The briefing stated that, depending on the finalisation of the further environmental information process, there was potential for a decision in the spring. Are we still on track for that?

Mr A Beggs: The issues around Casement Park are certainly current and in the news. Diverse views have been expressed to us, and those are views that we have to take, run through the process and look at fairly and objectively when we come to make a final conclusion. You asked about the timescale. A decision round about Easter has been mentioned in the press. While I cannot confirm that to be the case, because it has to run through the processes, it is a possibility. I will leave it at that.

Ms Kimmins: That is good. At this stage, there is outstanding information for the progression of the project. Has it been accounted for? Do you foresee any other delays?

Mr A Beggs: Until you make the final decision on a planning application, there is always an opportunity for additional information to come in. The information that we asked for most recently from the applicant has been received and is being consulted on. We do not know what the consultation response will bring up on that. From a planner's point of view, you always hope that you are at the end of a process. Hopefully that will allow us to go forward.

Ms Kimmins: There have been so many delays with the project; people are keen to see a decision. One of the outstanding issues was around noise pollution from the social club. Obviously, the new Casement Park is going to be a lot better attended. Has that been resolved or is it still an issue?

Mr A Beggs: We will not come to any recommendations on a planning application until all the information is before us. There are objections and letters of support in relation to that. Once we have all the information on all those matters to hand, we will collate it and come to a recommendation before we place anything before a Minister. This time, because that is still in formation, and we have not come to any conclusions yet, I cannot go any further.

Ms Kimmins: That is fair enough; that is grand.

I have just come to the Assembly after six years in the council, so I am very familiar with planning and planning issues and that type of thing. You mentioned planning performance. Can we see the stats for that for the 11 councils? Are they published? It would be interesting to see them, because I know some of the issues faced. I was in Newry, Mourne and Down Council. We had people complaining, for instance, which I know is probably what happens across all areas, but it would be interesting to get a sense of where that all sits. Maybe it is not for today, but going forward.

Mr Kerr: Yes, the statutory indicators are available — they are monitored quarterly — and an annual report on those is put out as well. They are available on our website. You can see the performance of individual councils and the overall performance, although a lot of the work that we are doing with the councils is about trying to get away from that — you will be familiar with it in councils — it is almost like a competition. It can be good in some ways, but we are trying to work more collaboratively with them to try to bring everyone up to a good standard. The planning monitoring framework is published annually, so that was published in September, and it contains more information, with a couple of pages on each council and how they are doing on different issues.

Ms Kimmins: That is fair enough. As you said, it is not a good system if people are working competitively, because everywhere has its unique issues and things that can cause difficulties. It is about trying to nail those down and find ways forward. The 2011 Act requires the Department to review its implementation every three years.

Mr Kerr: It is after three years, and then every five years.

Ms Kimmins: At this stage, do we have a date for the review?

Mr Kerr: As I said earlier, we have obviously missed three years. We will be talking to the Minister about bringing forward a review of the Act's implementation and what the terms of that review will be. That has to be set out in subordinate legislation that will come to the Committee in the next month or two.

Ms Kimmins: That is fair enough. That is great. Thank you.

The Chairperson (Miss McIlveen): Just on that, do you collate information on the number of judicial reviews taken against each of the authorities and provide an analysis of whether they have been successful or otherwise?

Mr Kerr: That is the one of the issues that has come up at the strategic planning group. We did ask whether we could try to get information from each of the councils on judicial reviews. It has been difficult, to be honest, to get that, but I am not quite sure why. We have been pushing it. We also tried, through the Departmental Solicitor's Office, to go in and get information on it through the courts. Again, they do not really collate the information by council area. So it is a work in progress. We will be taking that up with the heads of planning again on the strategic planning group to try to understand it. It is definitely worthwhile to try to understand what is going on around the judicial reviews. We obviously keep a very close eye on judicial reviews when they come out. We analyse those and try to get grips with the key things that are being said. There have been some very interesting decisions recently about the way in which councils make decisions and so on, and we are talking to the councils about that. I put out a chief planner's note every so often, and the last one referred to the Knox judgement, which is about the decision-making process that councils use.

The Chairperson (Miss McIlveen): Of course, having an excessive number does not necessarily mean that there is a problem in the council. It could be that someone was very disgruntled, and they won.

Mr Kerr: Exactly, yes. You should be careful with statistics.

The Chairperson (Miss McIlveen): Absolutely. Thank you.

Ms Anderson: Thank you for the presentation. When you referenced the statutory process of planning being in DAERA, was that with regard to environmental compliance or the general application of the statutory process and where that is located? I say that because we as a Committee are pursuing how, by default, we are told that the statutory responsibility for the Reservoirs Act 2015 is in DAERA but that the staff are in the Department that you work in. When you said that, it rang a bell with me. I thought, "Is this another part where part of the responsibility is located in one Department but the staff are in another?". I want to get an understanding of that.

Also, I see that part of your key responsibilities is North/South spatial planning, and I want to get a handle on where that is at. What kind of spatial planning is being done on an all-Ireland basis? In that context, as part of looking at what will happen with the future relationship, given what could potentially happen with a level playing field not being there and with the environment not being there, how is that going to impact when you may have two different regimes of environmental compliance, North and South? I want to get an understanding of where you are at in working your way through how that is going to play out.

I have a particular concern about the Mobuoy dump scandal. I raised it at the last meeting, but I had hoped to engage with you, and I appreciate the opportunity to do so today. You talked about the amazing transfer process that has taken place. I am not sure whether that is with Mr Beggs in the strategic planning directorate or with you, Mr Kerr, but I would like to get a handle on what has happened since the Mills review, considering the language used in the report about the flourishing conditions for eco-crime. It is a damning indictment of any Department for a review to talk about illegal dumping of waste that, essentially, got planning permission. I would like to understand that, and maybe this is where there are overlaps, because you talked about oversight and governance, particularly in the context of environmental compliance, and that being part of your directorate now. Perhaps the retrospective planning might have come from your directorate. Can you explain that to me?

Obviously, I will not name the firm that has been responsible for quarrying at Mobuoy. It is my understanding that a number of retrospective applications were put in after quarrying took place for illegal dumping of waste in those quarries, and those applications were granted. That happened on not one, two or three occasions, but more. That is really creating a lot of concern, particularly for the people of Derry and those who reside around the River Faughan. I know we are going to be dealing with flooding later, Chair, but, in 2017, there was a situation when the abstraction point could not be used because of the flooding that had taken place there. There was concern about potential contamination of water in the River Faughan, which may or may not have taken place. People are still concerned about that.

How many retrospective planning applications were granted for quarries, into which waste was then dumped illegally? What is the scale of retrospective planning? I understand that people come along and make retrospective planning applications, and of course that process is necessary and should be supported, but there should not be repeated retrospective planning for an illegal waste dump to go into a site.

Those are my concerns. I would like to know, because of the situation that has taken place, what learning there has been from the Mills review. Where are we on ascertaining and giving certainty and assurances to people that what has happened before will never, ever be repeated, whereby we grant planning applications retrospectively to a firm that is involved in what the report called a flourishing condition for eco-crime? Can I get some understanding? I am not sure whether it falls into either or both of your remits.

Mr Kerr: You have raised a number of issues, which include the statutory consultee and DAERA thing and the North/South spatial planning point. You also raised general questions about retrospective planning and so on. Maybe I will deal with those three issues, and I will pass to Scott to talk about retrospective planning when I come to that, because he has been doing some work on environmental governance. Finally, Alistair can deal with Mobuoy, because he has been working on that issue. I suppose that it is the specific example of all that.

First, on the statutory consultee point and DAERA, it is not another example of that transfer, thank goodness. I am looking back at colleagues, who will probably talk later on about some of that stuff and the reservoirs. It is not that: it is basically just that DAERA, appropriately, is the statutory consultation body for planning on nature conservation issues.

Ms Anderson: That is OK. I understand that.

Mr Kerr: It is the statutory expert that we go to on planning on those issues. It is in the right place for that.

In terms of North/South spatial planning, we do a lot of work on planning with all the jurisdictions. Twice a year, there is a chief planners' meeting — we call it the five Administrations meeting — where all five chief planners get together, move around the different countries and talk about shared concerns and angst around planning. I find it to be a very useful meeting because we can talk about the very similar issues that we all deal with. Different solutions, innovations and ideas come from all the jurisdictions.

We work specifically with colleagues down South a lot as well. We have a collaborative framework for cooperation that was established a number of years ago through the Executive and allows us to link up. We have done work with the Derry and Donegal councils, which are doing a lot of work together in the north-west. We have attended lots of conferences and seminars and worked with them on that. We work on the development plan side by bringing together plan managers from the border counties because, obviously, planning and environmental impacts do not stop at the border. So there is work that goes on. There is a mutual benefit within that framework across a number of areas. Another area where we collaborate is the regional development strategy and the Republic of Ireland's national development plan and national planning framework. I could go on. There is work being done in the North/South Dublin corridor. An ESPON — European Observation Network for Territorial Development and Cohesion — proposal that we are taking forward there is looking at the impacts of climate change on that corridor and so on.

I am going to pass over to Scott.

Ms Anderson: Just before you pass over, can you explain what forecasting work you are doing, particularly as we go through this transition period, with a level playing field not being there and the implications that that may have for planning?

Mr Kerr: In this transition period, the regulatory regimes are the same. The environmental impact assessment directive (EIA), for example, applies down South and here as well. We are involved in the work that is being taken forward centrally around frameworks for the different policy areas, like environmental governance and so on. We link up with DAERA, which is doing work on the Environment Bill and that sort of thing. We also link up with our colleagues in the Ministry of Housing, Communities and Local Government in London on the implications for planning of EIA, habitats regulations and strategic environmental assessment and how those will all be handled in the UK going forward.

Ms Anderson: Have you done an impact assessment of having to potentially work to different regimes? As you said, it does not stop at the partitioned part of Ireland. Planning is across the island, as is the work that you have already been involved in. How will the environment here not being on a level playing field and having a different regime here than in the South impact on that planning application process or the work that you are doing on spatial planning?

Mr Kerr: We have not done a specific analysis of that, but it is probably something that we will look at. We need to try to understand how it is going to work out in practice.

Ms Anderson: Good luck on that one.

Mr Kerr: Is there going to be complete regulatory alignment around environmental issues, which would make sense and help planning? Until we get that understanding, it is difficult for us to do too much on it. It is certainly an area that we are fully aware of and considering and working on with colleagues down South, locally and across the water.

Scott may want to talk about the tricky issue of retrospective applications and the environmental governance issue more generally.

Mr Scott Symington (Department for Infrastructure): The planning system allows for retrospective applications but, over time, concerns have been expressed for a number of reasons, particularly over retrospective minerals applications. Minerals applications can result in significant and irreversible harm. As part of the concerns that have been raised, we have developed an environmental governance work programme because of various concerns and escalation in environmental concerns about the planning system over the last number of years. One of the key issues that we are focusing on is the issue of retrospective minerals applications and unauthorised EIA development. We are developing the first tranche of EIA guidance, which we hope to produce before the summer. It will be specifically about how to deal with retrospective minerals applications. One of the issues with them is that they often attract requirements under the EIA directive. Once you get into the territory of retrospective applications being unauthorised EIA developments, there is a lot of case law that suggests that the bar should be very high indeed for a developer to get planning permission.

It is a very complicated area of planning, because the EIA directive did not envisage a situation where you would have an unauthorised development for which you would have to get permission after the fact. The principles around how you deal with that have built up through case law. Guidance around that has not actually been produced in any of the jurisdictions yet. We have a draft of that guidance now, which we need to run past our senior counsel before producing it. A lot of that came out of what happened in and around the Mobuoy Road site. There have been various complaints at different levels about how that was dealt with. One of the issues was about dealing with retrospective applications rather than going in and enforcing robustly against the quarries. One of the lessons to be learned in the planning system is that, when it comes to unauthorised development, particularly potentially very harmful development like unauthorised minerals, councils and/or the Department, as the case may be, should take robust and swift enforcement action and not end up in the position where you have to deal with retrospective applications. Arguably, that culture created some of the conditions for the illegal dumping at Mobuoy Road. We are very aware that it is —.

Ms Anderson: How was that allowed to happen given that you did not need to get to the end of the process to realise that, "Houston, there's a problem"? The Assembly had a motion in 2014, and information was brought to the Department in 2011 and 2012, even before the Assembly debated the issue. How many applications did that particular firm receive? When did the Department decide, "We

need to put a stop to this and not allow the spread of the quarrying to take place so that more illegal dumping could happen as a consequence of it"? To end up with a report that talks about a flourishing condition of eco-crime, and that illegal waste was, essentially, done with planning permission, is an absolutely shocking indictment. You do not need guidance to know that that is a problem. At what point was the red flag waved in the Department to say, "This must stop. We have a problem, and this is extending. We have mission creep here with regards to dumping that's spreading out"? As a consequence, in 2017, we had a situation where the abstraction point could not be used for the Faughan drinking water because of the difficulties that that could potentially cause to the residents and citizens of Derry.

Mr Kerr: I think that we are getting into the specifics of Mobuoy. Alistair, do you want to update on where we are with Mobuoy?

Mr A Beggs: Yes. If you lived in the vicinity of Mobuoy, the situation would, clearly, have caused you great concern. As you also said, the Mills report responded to that. The recommendations are being taken forward by our colleagues in DAERA. In terms of the planning application history, I cannot think off the top of my head of anything in regard to retrospective consents, but I can confirm that to the Committee —.

Ms Anderson: Chair, can we ask for some information on that?

Mr A Beggs: We can certainly get that for you.

Ms Anderson: With the dates around when it happened.

Mr A Beggs: We can certainly do that. DAERA is carrying forward its own investigation into that, and a court case is to be heard in relation to events out there; I think that it is due to be heard in about September of this year. I do not want to go into too much detail about that. As a Department, we also have enforcement notices on the site. We have a close working relationship with our colleagues in DAERA in relation to how we go forward from where we are now. It is important to focus on how we try to resolve the situation with the site. We are looking at an integrated remediation strategy with our colleagues. Again, that is being headed up by DAERA. A number of the directorates in the Department for Infrastructure are on the relevant project board. There is good liaison on that, and we hope to move on from there with all the stakeholders.

Ms Anderson: The Planning Appeals Commission has already said that the enforcement order has to be taken forward. There has been a challenge to that, and it has already ruled that, despite the knowledge that you have just imparted — members are aware that there is an ongoing case — notwithstanding that, the commission has said that the enforcement order needs to be implemented.

Mr A Beggs: There was a hearing before the Planning Appeals Commission in relation to one of the notices, and a timescale was given for that to be enacted. As with all those notices, any action that is taken on foot of that would clearly need to be discussed with the Minister in the context of the situation at the time and having regard to how the remediation strategy was coming on. We will obviously want to be in close contact with everybody involved in how things are proceeding.

The Chairperson (Miss McIlveen): If the member is content, we could maybe return to this and follow it up with correspondence if required.

Ms Anderson: Yes.

The Chairperson (Miss McIlveen): Thank you.

Mrs D Kelly: I want to pick up on a point. I understand that there was substantial illegal dumping in the River Foyle as well — at the Faughan river, yes? I am not sure if it is still subject to legal proceedings, but I believe that there was a cross-border element and organised crime gangs were involved. Has the National Crime Agency's expertise been brought in in pursuit of those responsible? If the criminal evidence was insufficient, has any thought been given to look at using unexplained wealth orders in relation to some of those responsible?

Mr A Beggs: Is that separate to the Mobuoy site?

Mrs D Kelly: Yes.

Mr A Beggs: I am afraid that that might be a matter for the council. I am certainly not aware of any of the detail of that.

The Chairperson (Miss McIlveen): Maybe it is DAERA.

Mrs D Kelly: I find it strange, because the NIEA was involved.

The Chairperson (Miss McIlveen): It will not be for planning.

Mrs D Kelly: I know. It will probably have moved to the environment bit. We will chase that up, too.

Most of the points have been covered, and I will not go back over them. I understand that, with the voluntary exit scheme, the Department's staffing resource in the area development plans was diminished considerably. Has that has any impact on the time frames for the development plans? If so, have you been able to bring in some additional expertise? The plans do take a considerable time, and you could lose the will to live waiting on them

Mr Kerr: At the point of transfer, the vast majority of planning staff left the old DOE and moved over to the councils. Only a small rump was retained in the Department; about 400 staff moved across. They broadly lined up with the old Planning Service divisions, if you remember them. There were six divisions, and they were converted to the 11 councils. Some additional staff, such as heads of planning and so on, had to be put in place to facilitate that.

Since then, the councils have recruited generally, some more than others, to bring staff in. The councils would probably say that they would like more resources, but we would say that we transferred across everybody that we had. Over time, they have been able to add to and supplement those staff. That has been a good thing for the planning profession generally. It has allowed graduates to come into the profession, who were unable to get jobs in Northern Ireland for quite a number of years before that. Yes, they would probably like to have even more resources and bigger teams bringing forward the plans, but, as Susan and Alistair said, there has been quite good progress across all 11 councils when you consider all the changes and all the new processes and approaches. We are working to make sure that those things are brought through even quicker, but progress has been OK thus far.

Mrs D Kelly: Chair, I want to put it on record that I have had a lot of experience of delays by other statutory consultees. I urge the Department to chivvy them along a bit and look at the process and time frames.

That is about it. Everything else has been covered, Chair.

The Chairperson (Miss McIlveen): Thank you.

Mr Boylan: Thank you very much for your presentation. Angus, you are welcome back.

Mr Kerr: Thank you.

Mr Boylan: You are a happy chappy now; your football team is doing OK.

I have a number of questions and will try to move through them as quickly as possible. I was on the Committee that transferred the powers, and we had a long discussion. It is interesting to hear some of the points made by members. There are things that we can learn from it, but, we often said, "Be careful what you wish for", when we transferred the powers. We have former councillors present who have experienced that.

I want to pick up on a few points, and then there are a number of questions that I will ask directly.

When taking an overview of the Act, is there an opportunity to look at the workforce model, or is that solely down to councils now? You made points, Angus, about the average number of weeks in taking the process forward. Maybe there is an opportunity to look at that. All of us have working relationships with most of the councils. I deal mostly with the councils for Armagh City, Banbridge and Craigavon

(ABC) and Newry and Mourne. We know some of the pressures that they are under, but good decisions have been made. Let us have a look at the workforce model in the review.

As far as the Committee is concerned, you said that there are a number of subordinate legislation pieces to come forward. Can we get sight of them? Obviously, the Committee may look to support some of those pieces.

The LDPs are not distinct from the regional development plan. Councils now have the autonomy to do their own thing with LDPs, but there should be a wee bit of ambition there to develop the areas. ABC council is relatively big, so I would like to see further development and to see that recognised. I do not know whether that is in the nine-part process. Certainly, I would like to see it given the opportunity to do that.

My next point is about St Lucia. "Lucia" will do, although we pronounce it differently. The covenant is an issue. A number of MLAs and councillors contacted us about the site. It is part of a broader programme for the council. It is keen to move the process on and to develop the site. Will you expand on that? Where exactly are we with that? People are keen to see that site developed.

I am going through my points as quickly as I can, Chair. I have further questions, and they are probably for you, Angus. On the Dalradian gold-mining, other information was submitted as part of the process. Will you give us an update on that and on the issue of a public inquiry?

On Arc21, in the light of climate change and environmental issues, people are raising complaints. I want you to respond to that.

There is the issue of developer contributions. We introduced that as part of the Act, but Scotland has brought forward a new model of developer contributions. At the opposite end of developer contributions, where does the contribution go? Developer contributions should be used for communities, green initiatives and anti-poverty measures. If we were looking at that, I would prefer to see it used that way. I am mindful of where the contributions should go. If the developer was to put that on the site, where would it go, in major infrastructure projects?

My final point is the issue of permitted development rights for oil, gas and petroleum exploration. Will you give us an update on that? I know that there was talk about removal and consultation on some of that. The options were to be brought forward to the Minister. Will you expand on where we are with that and whether the Committee will have sight of the consultation responses? Clearly, as other members mentioned, it is predicated on the issue of climate change and all the green issues. There is a lot of opposition to such development nowadays.

Will you respond to some of those questions? That is all I have, Chair.

Mr Kerr: There is quite a lot there. I propose that Alistair will deal with the questions on St Lucia, Dalradian, Arc21 and local development plans. I will pick up the rest of them.

The issue of the workforce model, staffing and so on is really in the past now. We had that model at the point of transfer, and we are now in a situation where it is up to the councils to look after their own staffing and their own resources. We do not really have a role in that. We do a bit of work with them on interchange, where there is an opportunity for some staff to move across and work in a council or for some council staff to work in central government, which is really good for staff development and career development and so on, but the model is really for each council to sort that out itself.

The issue of the subordinate legislation programme leads into the oil and gas question. I assume that we will come forward with subordinate legislation across a range of issues, but I still have to have the conversation with the Minister about the various pieces of subordinate legislation. For example, we will be talking to her today about the telecommunications area, and we have provided development proposals in and around that. Again, that will be for her to decide. Should she decide to go forward with that, we will, of course, go through the usual subordinate legislation process, which will involve the Committee. There are a number of areas, as I touched on at the start, including telecommunications, the review of the Act and the issue of oil and gas, which you mentioned. In 2016, as you mentioned, we went out to public consultation on options for removing permitted development rights for oil and gas exploration. Just to be clear, it is about exploration, not about the actual extraction of those minerals. We will be talking to the Minister about the outcome of that and about the options for taking forward the removal of permitted development rights for oil and gas, and, as I said, if

the Minister decides to remove those permitted development rights, we will come to the Committee with the subordinate legislation to do that.

The developer contributions issue is interesting. We have had quite a bit of engagement with councils on that since transfer, and one of the features of the new two-tier system is that councils have made a bit more use of developer contributions in section 76 of the Planning Act than the old DOE, which took quite a conservative approach to developer contributions, would have done. The power is there, as you rightly said, and it is being used by some councils. There are issues with viability. It is a brilliant facility that the planning system has to make sure that, through a planning agreement, the developer contributes to the implications and impacts of a particular development by providing infrastructure and providing a contribution towards some other impact that the development may have. It allows you to take on board issues like climate change and green issues, such as open space provision and other issues. That is a power that can be made use of. There is a viability issue, as you rightly said, and you have to get the balance right between what it is reasonable for the developer to contribute to and with a view of where the money will come from for all that. We have worked quite closely with the councils on that and have tried to encourage it. We introduced a practice note on developer contributions in section 76. That has been published and is available on our website, and it sets out how to operate that function. We have been pretty clear with the councils that, we feel, the best way for them to deal with developer contributions is to flag it up in their development plans, because developers then have an understanding of the expectation around a particular site.

Mr Boylan: Is there no intention of widening the scope and having a discussion with Ministers? The authority on that is down to the councils now.

Mr Kerr: The scope is as set in section 76. It is about developer contributions and a planning agreement around the actual development itself and about mitigating the implications of that development in planning terms. There is a wider debate about, if you like, a community infrastructure levy-type approach, which they have in England. That is almost more like a levy or a tax, which applies not through a section 76-type agreement but generally to certain types of development in certain locations. In this jurisdiction, that is something that would need to be taken forward at Executive level. It is based around an understanding of the overall cost to the public purse of servicing a town or a city and then coming up with a reasonable contribution that could be made by developers in that area and setting a levy on that basis. That is something that is, obviously, outwith this Department and individual councils, because it cuts across the whole of government and includes Education, Health and so on. There was something done in a previous Assembly, but it is something that could be taken forward.

Unless I have missed anything, I will pass over to Alistair.

Mr A Beggs: Thanks, Angus. I will go through the queries that were raised. St Lucia is a fascinating site on the edge of the town, and I can understand the great interest in it and how that is going to be brought forward. We have been discussing that with the Department for Communities, which has produced a strategic outline business case to look at potential options for the site. We will be briefing the Minister on that in due course. There is lots there to look at, such as the historic core and the difficulties with the condition of the building. As with any old building that has been left for a time, it will have to be brought up to a certain standard. There are also issues around the existing military housing on the site and how everything relates to the Strule River and the open space there. We hope to take something to the Minister relatively shortly in relation to that.

On the subject of planning applications, you mentioned Dalradian. At the time of the submission, you will recall that it was proposed to use cyanide to help extract ore as part of the processing on the site. The application was amended, I think, in August 2019, to remove that process from the site. Amendments were made to the application and, therefore, a significant amount of further environmental information came to us to be assessed. That is in the process of going through the system. As with any planning application, it is difficult to comment on the merits of the case, when it is still being processed through.

The situation with Arc21 is that the decision to approve the application was quashed by the courts. Again, that was submitted back to us, and we received further environmental information on it. That is being analysed at the moment. That is where we stand, and I hope that that answers your questions in relation to those applications.

Ms Wilkin: You are right: the local development plans and the plan strategies that have come forward to date are all ambitious, and they all want to grow. The Department is, of course, supportive of that. In the early engagement that we have with the councils, we always bring them back to the fact that this is now in a soundness-based approach to their plans moving through an independent examination. In that respect, we ask them to look at their evidence and to make sure that they are producing or suggesting policy that can be effective and coherent and can work, because those are the issues that will be tested through the independent examination.

The plans by Newry, Mourne and Down District Council and Banbridge council are at the earlier stage. They have not yet produced their plan strategies, so they are still moving through that process. Early engagement with us and other stakeholders is key in the process, and we are very supportive of that. We sit on a number of plan working groups and steering groups to feed as much information and to provide as much guidance to the councils during the process as we can.

Mr R Beggs: Thank you for the information that you have given us. I am looking at the indicators that you use to monitor local planning decisions or planning decisions generally. You look at the length of time that it takes for local decisions and for major planning decisions. It has come to light that the target for major planning decisions is 30 weeks, but, when it was last monitored in 2018-19, the average processing time was some 59 weeks, almost twice the target. What is happening here?

Mr Kerr: This area has been the most difficult and challenging in trying to get performance to move forward a bit faster. In the new two-tier system, the thresholds that identify which applications are major are actually quite high, and that has come up a number of times as something that we may need to look at. To put it another way: there are quite a lot of fairly major applications that fall into the local category. For example, housing developments of under 50 houses are considered to be local applications. I do not know if that is right for Northern Ireland, because a 50-house development in a town in Northern Ireland is quite a big development. We do not have that many housing developments over 50 houses, but, if they are over 50 houses, they are then major applications. That gives you a sense of the size of the major applications. They really are the big ones, and they are the more complex ones. They are the ones that the councils are struggling to deal with. The local ones do encompass quite a lot of fairly significant development, which they are dealing with a lot better and a lot more quickly.

As I said earlier, that is a key focus for us. There is the review of the planning system commissioned by the head of the Civil Service, the planning forum that was set up for statutory consultees, the work that we are doing on the strategic planning group and the subgroup that Scott is chairing. We are doing a whole range of work to try to push it down, and it is not just as simple as the statutory consultees being slow or late. There is a whole range of issues around case management and the approach that councils take to dealing with the individual applications. The nature and quality of the application, when it comes in, is a key factor, because, quite often, we have a culture in Northern Ireland where developers and agents put in applications that really are not of a sufficient quality and which in some of the other jurisdictions would just be kicked back out again. We are looking at all those areas.

Mr R Beggs: You gave the figures for 2018-19. What is the current figure?

Mr Kerr: That is the latest figure that I have. We do monitor them quarterly, so I can get you the more up-to-date figure. I can certainly send that through after the meeting.

Mr R Beggs: Is there no assessment of the quality of decisions that are being made by councils? Mention was made of judicial reviews, but you do not even have that collated by council. Is it not possible to get the postcodes? It is hardly that there are too many judicial reviews in Northern Ireland. Is there not a mechanism for solving that, either through talking to the Courts and Tribunals Service or other Departments or by simply getting the postcodes and working out what council area they are in? What sort of numbers are there of them?

Mr Kerr: It is difficult to say, and that is part of the reason why we are trying to investigate whether we can get that information by council. There is not a huge number of judicial reviews.

Mr R Beggs: Are you monitoring other possible red flags, such as when councillors take decisions against their local planning officers' recommendation against the local area plan? In particular, are you monitoring whether any dominant groups on planning committees are going against the planning officer and the area plan?

Mr Kerr: I talked about the planning monitoring framework that we published in September, and that is the one that includes some additional indicators that are trying to tease out more about the quality side of things. For example, that includes stats on the number of planning applications decided by planning committee, the percentage of committee decisions decided against officer recommendation, the percentage of decisions made under delegated powers and things like that. Those are all indicators as to how efficiently and effectively the committee is working, and they give you a sense of the extent to which the committee is overturning officer decisions. We have been working with the PAC to try to introduce an indicator to the next monitoring framework around the performance of councils at planning appeals. That would measure the number of planning appeals that they are winning and losing, which is also an indicator of the quality of the decisions that are coming through.

Mr R Beggs: Is that information available publicly?

Mr Kerr: Yes. The planning monitoring framework was published on our website in September. The intention is that we do that every year. Decisions made contrary to statutory consultee advice are notified to us through the notification process built into the planning system. That is one situation when we can decide whether to call a planning application in. We monitor that, so we have a good sense of the number of times that that is referred to us.

Mr R Beggs: Other areas of your responsibility include Crumlin Road Gaol and St Lucia Barracks. You said that Crumlin Road Gaol is out to a private company to manage and run. Are they paying rent or is the Department paying them?

Mr A Beggs: They are paying us, as a lessee, and they are contributing. I cannot remember off the top of my head the exact figure that they contribute, but, yes.

Mr R Beggs: OK. You will go through some form of competitive process for the new tenant?

Mr A Beggs: They went through a competitive process. Yes, that is the intention at the moment.

Mr R Beggs: There are 40 homes on St Lucia Barracks, which were lived in, presumably, until 2010. Have they been sitting empty since then?

Mr A Beggs: They have been empty. They are the sort of buildings that are not up to modern standards at all. My recollection is that they are a single-brick construction. Therefore, they are not really suitable to put people and families into, at the moment.

Mr R Beggs: That is an asset, and the Department is under significant financial pressures. Are you proposing to move the asset to a housing association, to sell it off, if we are not using it? What is happening with the site?

Mr A Beggs: At the moment, we are simply considering the options for the site. It is an interesting site, with its location, but it does have issues that need to be looked at, such as getting access, the condition of buildings and so on. That is something that we are working on and discussing with the council and Department for Communities. At this stage, we have no firm proposal to bring forward, but we will be briefing the Minister, in due course, on potential options for the site.

Mr R Beggs: Do you accept that public assets have to be used for the public benefit and the sooner a decision is made to utilise that asset, the better? It was gifted to the Northern Ireland Executive 10 years ago, and 10 years is a long time. No business would sit with that asset empty during all that time.

Mr A Beggs: It was one of the sites where we had the issue regarding the restrictive covenant, which was taken off only in 2018. We appreciate that that is something that we need to look at and bring forward.

The Chairperson (Miss McIlveen): Angus, you mentioned in your introduction that you are looking at bringing forward legislation. The Committee is keen to get a sense of when that might be. We have spoken to a number of officials who said that legislation was coming. We want to look at a timetable. Do you have any concept of what that may look like?

Mr Kerr: For the pieces of subordinate legislation that I referred to, it is the next few months. I have not had discussions with the Minister on them yet, and that is what I need to do before I can be definitive about it. Assuming those conversations take place and we decide to move forward with them, the vast majority would be in advance of the summer.

I will be working closely with the team to make sure that, as soon as we know that something is going forward, we pass on the timescale to you, so that you can begin to plan your work and make sure that it fits in with how you are —.

The Chairperson (Miss McIlveen): This will be secondary legislation, as opposed to primary legislation?

Mr Kerr: Yes.

The Chairperson (Miss McIlveen): That is useful to know. I am conscious that, perhaps, everyone may bring things in a rush together, towards the end of the mandate. We have only a short time left, really, considering the time that it takes to scrutinise.

Thank you very much for your time this morning. It is very much appreciated.