



Northern Ireland
Assembly

Committee for Infrastructure

OFFICIAL REPORT (Hansard)

Planning Act 2011 (Review) Regulations
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Department for Infrastructure

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have been April 2018 — and at least once every five years thereafter. So, the Department is required by section 228 to make regulations that set out the terms of the review. Those regulations are subject to Assembly control through the negative resolution procedure and in front of the Committee today.

The delay in meeting the initial time frame for the 2018 publication of the regulations and associated reports stems from decisions made under the Northern Ireland (Executive Formation and Exercise of Functions) Act. Those decisions determined that, in the absence of a Minister or functioning Assembly, it would not be appropriate to make regulations or to publish a subsequent review of the implementation of the Act. The requirement to review and publish a report on the implementation of the Act is to ensure that the Department monitors and reports on the coming into operation of the Act's provisions and to provide assurance that the legislative framework for the delivery of the reformed two-tier planning system has been implemented in a timely fashion.

The focus of the review is on the implementation of the legislative provisions of the Act and the extent to which its original objectives have been achieved. That will inform whether there is a need to retain, amend or repeal any of the Act's provisions. The review will also provide an opportunity to consider any improvements or fixes that may be required to the way in which the Planning Act has been commenced and implemented in subordinate legislation. There is also an opportunity to reflect on other changes and improvements that could be made to the planning system that have come out of the recent coronavirus pandemic and the measures that have been introduced as a result of it.

Just to remind Members, the principal aim of the Act was to deliver the Northern Ireland Executive's decision to transfer the majority of planning functions and decisions to councils and, at the same time, to reform and improve the process. The main reform objectives were to further sustainable development; enhance community involvement in the planning process; make more timely decisions in ways that are transparent and demonstrably fair; allow higher fines for planning offences; and, to some extent, to reform the planning appeals system.

It is important to highlight that, at this stage, the review is not envisaged as a fundamental root-and-branch review of the overall two-tier planning system. It is still relatively early days in understanding how the system has bedded in and how it is working. We do not believe that there is evidence to suggest that now is the time for another planning Act or a fundamental re-examination of the system here, which would take some considerable time to deliver. However, the Minister is very keen to look at further improvements to the system for all stakeholders, including councils, developers and the wider public, not just in planning decisions but in the delivery of local development plans that can provide certainty in the long term. That may not always require legislative change.

As we consider that and get into the review, it must be recognised that the Department already has several work streams and initiatives aimed at improving the effectiveness and efficiency of the planning system, and it is important that that work continue in parallel with work on the review. There is quite a lot going on in planning at the moment. A report towards the end of last year into the performance of the system, particularly that of statutory consultees and major planning applications, recommended the establishment of a planning forum. That forum was established in December, and its work is continuing apace to deliver some of those improvements and to implement the report's recommendations.

In addition, a new Northern Ireland planning monitoring framework was introduced that builds on the three statutory planning indicators — major, local and enforcement — and adds in further indicators, which will be due in next year's publication and will inform an understanding of how the planning system is working or not working. There is the ongoing work that we do with the strategic planning group, which, essentially, comprises the heads of planning. We meet regularly to engage with them to further continuous improvement throughout the system.

As well as that, the Northern Ireland Audit Office (NIAO) has advised that it intends to carry out a review of the planning system at local and central level. Scoping for that review has already commenced, and the Northern Ireland Audit Office recently advised that its audit team has completed its preliminary work and has decided that a full study review should now be undertaken. In doing so, the Northern Ireland Audit Office has set out an outline of its proposed approach, focusing on costs, pre- and post-transfer planning functions, staff allocations local development plans —.

The Chairperson (Miss McIlveen): I am sorry, Angus. Would you mind moving across slightly? Apparently, the broadcast team is not picking you up on the microphones.

Mr Beggs: Madam Chair, can we establish where the interference is coming from? Somebody is hitting a microphone somewhere. I do not think that it is in here.

The Chairperson (Miss McIlveen): I am sorry, Irene; there may be an issue with your microphone. There may be papers close to you, perhaps, which are causing a bit of a rustle in the background. Thank you.

Mr Kerr: OK. I was talking about the Northern Ireland Audit Office review and the approach focusing on central government planning functions with us and also at council level.

Added to that, the Confederation of British Industry (CBI) has commissioned Jim Mackinnon, a retired chief planner, to explore any planning issues that may pose barriers to making progress on regionally significant development. It proposes to release a report on that in the autumn. As many of you will be aware, the Public Accounts Committee has also been looking into planning. The permanent secretary was before the Committee; it is probing further and asking questions about how the planning system is running as well. A lot is going on in parallel with the review of the Act.

Before I finish, I want to touch on possible next steps and what happens after this. Today is important in engaging with the Committee on the actual statutory rule that will set out the terms of reference for the review. Once that has been agreed by the Minister, we will engage on a targeted stakeholder engagement process on the review with councils, statutory consultees, the community sector, as well as the business and environmental sector, to ascertain their views on how the Act is progressing. When we come to prepare a draft report, we will, no doubt, consult the Committee again. It is likely that that report will make recommendations covering legislative change, policy issues, guidance, training and, maybe other areas to look into in more detail. I do not want to pre-empt what comes out of it, but, as you will understand, there is so much other work going on at the moment in parallel on improvements that need to be made to the system. We are almost beginning to get a sense of some of the areas that need attention. That will then be agreed with the Minister and released, and we will get in to implementing some of the recommendations. The aim is to have it all done before the end of this financial year, at the very latest.

Hopefully, that was helpful, and not too long a summary of where we are and our thinking at the moment. I am happy to take questions, Chair.

The Chairperson (Miss McIlveen): Thank you very much. Obviously, the time frame is useful for the Committee to be aware of. Is the review being carried out internally, or are you bringing in external consultants to assist with it?

Mr Kerr: No, we are not bringing in external consultants. We are doing it internally, although we will, obviously, engage a lot with all the key stakeholders in the system. However, we do not intend to procure any consultants to undertake the review.

The Chairperson (Miss McIlveen): The terms of reference are quite broad, on the face of it, and you are primarily focusing on the original objectives of the Act, as it was first enacted. However, the context has changed considerably during that period, and, as you said, there needs to be a recognition of COVID-19 and the desire that infrastructure should be a key stimulator for the economy. There have been various criticisms about the pace at which our planning system works. Will you be cognisant of that? I am also mindful of the ministerial advisory group on infrastructure and the work that it is carrying out.

Mr Kerr: Absolutely. Inevitably, that will be a key element of the work that we do on the review, and it is the main issue coming out of all the other strands of work that we are doing. Indeed, when the independent panel on infrastructure reports, there may well be elements that will feed into this. What the panel says about the planning system and the planning and delivery of infrastructure will be built into it as well.

The Chairperson (Miss McIlveen): While you say that the report will not be a root-and-branch review of the Act, it will be more than just a tick-box exercise: you are not just doing it in order to have it done. Are you averse to bringing forward amending legislation if required?

Mr Kerr: No. The Minister is very keen to make improvements to the system where possible, but, at the same time, if there is a requirement for an amendment to primary legislation that takes a long time,

or, if there are fundamental changes that go right into the heart of whether, for example, it was right to transfer planning to councils, the different roles and functions of the Departments, and so on, that is probably something that we would not want to get into. It is more focused on the things that you were talking about, Chair: how we speed the system up, whether we can change the nuts and bolts of the system through subordinate legislation, and whether we can work with councils through training, guidance, etc to try and improve it. I do not think that we would want to get into a new planning Act, with new primary legislation coming through. Unless, of course, something came out of the review that pointed strongly in that direction and we were persuaded by the evidence. However, our focus is on getting things fixed as quickly as we can so that the system works as well as it can.

The Chairperson (Miss McIlveen): OK. I was trying to ascertain what your approach would be, and whether, rather than it being very closed, you would be open to change if it was seen to improve the system.

Mr Kerr: Absolutely. Yes.

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

Mr Boylan: Angus, you are very welcome. I see Irene there, as well. It has been a long time since we were at the start of the process.

I want to raise a couple of key points. As you said in response to the Chair's question, it is not a case of wanting to change the primary legislation; however, there may be an opportunity, through subordinate legislation, to tweak it. I want to throw out a couple of things because people have come to me with issues. I am also a member of the Public Accounts Committee and have seen some of the Audit Office reports and recommendations.

The likes of the pre-application process, the community consultation process, and the notice of opinions will be looked at to, as you said, speed the process up, but will we still have proper consultation so that people feel that they are properly involved in the process? That is not the system that was set up in the first place. There is an opportunity there, and you have clarified that there may be some legislative tweaks to subordinate rules, which I would welcome, and the Infrastructure Minister has set up a commission to look at the process.

My main question is this: if those functions were transferred to local authorities, there would be questions about time frames for major developments with the number of weeks that local authorities would need to spend on applications. Do you intend to look at that resource? When we transferred the model, there were issues about whether we had the right model and the resources. That would definitely speed the process up. Will that be part of the overall terms of reference? Will that be part of what we are trying to do?

Mr Kerr: First, the pre-application discussion issue and the pre-application community consultation are there and will be looked at. Those are key issues that are emerging from some of the other work that we have been doing on speeding the system up. Many statutory consultees have identified issues with the quality of the applications, such as there not being proper engagement with communities and the submissions not having all the information in them, and so on. We are looking at that issue, and councils have identified that as an issue. A lot of time is wasted in dealing with planning applications and going backwards and forwards, looking for more information or the right information, and dealing with communities that have not been properly engaged with complaining about applications. You then have to go back, ask for changes and go back to the statutory consultees and tell them that those issues have been raised and ask whether they are reasonable and what we should do about it. That is a major area that we are looking at and that we can bring to the review.

On your second point, resources were transferred at the point of transfer. The transfer of functions grant was set and settled, and DFC has been very clear that that is not up for grabs. We will look at what we can do to help councils with the resources that they have to speed the system up and deal with it more effectively and efficiently. Since the transfer, councils have been using the planning fees and income that they have received. They are in a very bad situation now, but, before the crisis, they employed new planners in their teams to help them to deal with the backlog. Our focus, with our responsibility for policy and legislation, will be on whether we can make fixes and changes to help them to deal with applications more effectively and efficiently.

Mr Boylan: I have two quick points, Chair. The Committee would like to be involved in the process and have its say, and you have committed to that.

Mr Kerr: Absolutely. Yes.

Mr Boylan: I asked about the resources in councils to try to move the process on. It is not that they may need resources. That is the main thing.

That will do me, Chair. I know that other members want to come in.

Mr Muir: I declare an interest in that I was a member of Ards and North Down Borough Council, which is relevant. I thank Angus and Irene for giving evidence on this important issue. Planning, particularly as we try to recover from COVID-19, will be important for the economy.

The Planning Act 2011 is a significant piece of legislation. Last night, I checked to see where the review came from, I read through the debate and who put the amendment, and all the rest of it. It is significant legislation, so a root-and-branch reform and new planning Act is not something that we are looking towards at the moment.

I acknowledge that the Audit Office is to have its review. However, there is a need to do this piece of work, for example on local development plans. Progress on that is slow. I am worried that some will never see the light of day because of the pace of progress. Things like that need to be reviewed.

In the 2020 review regulations, 3(c) refers to amending the Act. What is the appetite for amendment? You spoke about not wanting primary legislation, but there are key issues at an operational level that are inhibiting the Act.

I asked the Minister about the statutory consultees' responses within the statutory time limits. In 2019-20, it was only 70%, so that is an issue. The question is whether there will be an appetite for amendments, for example to have processing agreements and statutory determination deadlines. Those are practical things that will help us to address the issue. Northern Ireland Water undertook a pre-development examination process. Is there a desire to put that on a statutory footing?

Local authorities are working to process planning applications. However, some applications are of poor quality, and there is a need for a statutory process to filter those out to ensure that they can be processed as soon as possible. That is important.

Cathal raised the issue of the pre-application process. That should be a tick box. It should be a genuine engagement and should show that comments are being taken on board. I have heard from concerned residents that they do not feel that their views are taken on board, and the application then just goes in.

Those are practical things. I do not know whether there is an appetite to amend the legislation to ensure that we get those changes.

Mr Kerr: There is an appetite to implement change. Many of the issues that you raise can be changed in subordinate legislation, and such issues emerged in work that we did, particularly in relation to statutory consultees and the planning forum.

For example, getting the right information in at the right time is like a validation checklist. At the moment, however, it is not a legislative requirement. There is a limited legislative requirement about what makes a valid application. Basically, you sign your name, fill in the form, pay your fee, and it is valid. However, if the information is not acceptable, you are going back and forth almost from the start.

I do want to pre-empt what will come out of the review, but one thing that I think will come out of it will be the suggestion to bring in a legislative provision that will place a much more stringent requirement on developers to provide the information needed to assess an application at the start before it can be made valid, so you do not start the clock running until you have the important information. That would be helpful.

We are looking at processing agreements. That came out of the report and is in the planning forum. Whether you need legislative provision to do that, I do not know. The review will look at that. It may be possible to get that working. Belfast has already made administrative strides in that respect without a

legislative requirement and has key developers and agents signed up to it. We recognise that there is a quid pro quo in that if the right information comes in, it needs to be dealt with effectively and quickly.

There is an appetite to change legislation. It is not that the terms of the review are framed in such a way that, "If this issue looks as if it needs primary change, we are not going to look at it". Not at all, and I do not want to leave you with that impression. However, legislation takes a long time. As with anything else, legislation should be a last resort. If you can do something through guidance, training or mutual agreement, you should do so. However, if you need legislation, you bring it in. We are focused more on trying to make quick changes to the system as we go along, as opposed to the fundamental change that you get when you are into an Act and primary legislation. If something emerges and the only fix is through primary legislation, obviously we will look at that.

Mr Muir: I appreciate it because, to be honest, in my time as an elected representative, the one issue that you get most frustration about is planning and planning delays. Any ways to make quick changes to improve that would be really appreciated.

Mrs D Kelly: Thanks for the presentation. I welcome a review of planning. I think that I was about at the same time as you, Cathal.

Mr Boylan: It is a long time ago, now.

Mrs D Kelly: I am sure, Cathal, that your office is no different from mine in terms of delay and delay from statutory consultees. Whilst there is a lot of toing and froing, there is a lot of blaming going on. I had to intervene in a social housing development in Lurgan, because a railway line was much further from the development than the person sitting up in Belfast making the judgement said it was. People need to be familiar with an area and get out of their offices a bit and not just rely on maps, no matter how good they are.

The biggest problem that I have at the moment is that there are one or two developers who, under different company names or guises, continually thumb their nose at enforcement and at the people to whom they sold houses. I have people living in established developments who are still linked to temporary sewerage systems because there is a lack of enforcement and the process takes far too long. We need a short, snappy process. We also need fines commensurate with the experience of the householders, who have paid huge sums, and we need developers almost to be put in a league table.

All some developers do is change the name of the company. Of course the residents' hands are tied, because if I went public and named the development, they would worry about the impact on the price and saleability of their property. The odds are stacked against the residents because of the low level and speed of enforcement and the type of fines. There should be a league table of developers: who is good and who is bad at meeting planning conditions. In terms of following through on planning conditions, I would like to see greater reassurance given to residents through legislation and enforcement.

Mr Kerr: Absolutely. That has been the frustration with the planning system down through the years; I have found it very frustrating. The system is only as good as the enforcement, if you like. You can make good planning decisions, but if they are not implemented it makes a mockery of the whole system. It is an issue that we talk to the heads of planning about regularly. We meet them regularly to push it as much as we can. It is an area that the review can get into. We have produced guidance on enforcement to assist councils with how they look at that and deal with it.

Ultimately, though, because we transferred those powers to them, responsibility fundamentally rests with councils. It is up to them to take a proactive approach to enforcement and to work on it.

Mrs D Kelly: Yes, but they can do that only within the confines and constraints of the enforcement legislation. Whenever there are cutbacks, enforcement invariably falls by the wayside. Let us face it: when the powers transferred, the resources did not. Ratepayers had to pick up a large bit of the bill for the Planning Service, so I have to speak a wee bit on behalf of councils in relation to that.

How will the review seek comments? For example, will the likes of myself, other MLAs and public representatives, be given an opportunity to feed through into the review our experiences in working on behalf of many constituents? Is there a way in which some of the infrastructure should be put in place before a development starts? We do not want to hamper development, because it is about sales and getting money in, but, where you have repeat offenders, should there not be penalties? Those

developers should have the infrastructure in place before they are able to start building the houses and selling them, or at least before sales start. When it comes to taking enforcement action against rogue developers, the law is not on the side of the purchaser. Thankfully, rogue developers are relatively few, but they are significant enough to give me quite an amount of work to do.

Mr Kerr: There will be engagement on the review in order to inform it. We have not quite worked out yet exactly how we will do that. I talked earlier about key stakeholder engagement. The Committee will be fully engaged in the review, but we want to make sure that all those users can feed into it. We can look at the area of enforcement. I understand that it is an issue. It is something that can be in there and that can be considered.

Mrs D Kelly: Statutory consultees are abysmal at times at submitting their responses. They really are. There is toing and froing. You have a month to reply, and then there is another month before people are chased up. Applicants need to know, because sometimes they are caught between the consultant or the engineering company and Planning and do not often know where the fault line lies. I hope that you will take those views on board.

Mr Hilditch: I will touch on the major projects. On another Committee, we were looking at delays caused to capital schemes and at why schemes have taken so long. It emerged that a significant number of major projects were in the process for in excess of five years. That came as quite a shock. As we try to rebuild the economy, it is surely going to take more than a tweak to fix that at the top of the pyramid. I forget the exact figure, but it is very worrying how many were in the process for over five years.

Mr Kerr: Absolutely. The big area of concern in the system has been the major planning applications. It is fair to say that targets have not been met in that area across all councils. Targets have been met for local developments. Some local developments in Northern Ireland are quite big, because the thresholds are quite high, but it is the major developments that have been a big problem. Major developments and statutory consultees were the focus of the report on the performance of the planning system. That led to the setting up of the planning forum, which is most specifically looking at the performance of major developments and what the issues are with them.

It is a complex picture. It is not just the fault of the statutory consultees. When you dig down into this, there are a lot of issues. There are case-management issues, around the way in which planning applications are handled and managed. There are issues around over-consultation, where the application is going back and forward and back and forward again. We talked earlier about the problem with the quality of the submissions that come in. The application gets sent to the statutory consultee, which comes back with, "This is not the right information that I need to make the judgement for this particular case".

Mr Hilditch: That goes on for five years?

Mr Kerr: There can be toing and froing on applications.

Mr Hilditch: Investors looking to come to Northern Ireland, when they see that sort of record, will turn and go somewhere else. It is shocking.

Mr Kerr: It is. It is unacceptable. That is why we are focusing on it. As well as that, it is something that we will focus on in the review. We want to make sure that we do not oversimplify things and that we look at all the contributing factors. It has been a problem with the planning system for many years, and not just here. When I talk to my counterparts in the other jurisdictions, they say that they also have difficulties. Planning is a complex system, where lots of different regulatory requirements come in, along with public and community objections and opposition to things. It is a matter of looking at where it all comes together. It is difficult to work on some of the areas very quickly, but we need to find ways and means of trying to do that, and that is what we are focused on.

Mr Hilditch: That will take time, but, as we try to rebuild from the effects of COVID, we do not have that time. We need boots on the ground.

Mr Kerr: That is why the focus is on doing this quickly. As I said, there are parallel streams of work. We are already working with the councils and statutory consultees to make improvements to try to deal with this issue. It is something that we are massively focused on and want to address.

Mr K Buchanan: Thank you, Angus. The Chair touched earlier on the internal review. Who is heading that up in your Department?

Mr Kerr: The review is sitting on my side in the Department. It is in the regional planning directorate, which is the directorate that I lead.

Mr K Buchanan: This is no reflection on you personally, but do you see it as a conflict of interest that you are reviewing part of the stuff that you are overseeing?

Mr Kerr: No, not really. The way in which the central government planning Department is structured is that there are two directorates. The one that I am in charge of covers legislation, policy and those sorts of issues. Alistair Beggs, my colleague in there, deals with the casework and the strategic planning applications, so there is a good separation there to prevent any potential conflict of interest in dealing with the strategic applications. If you look at my remit, you will see that it is a good situation that I am in, because I do a lot of engagement with the councils and have that understanding of how the planning system is working. I also have my colleagues on the other side of the house to talk to about the regionally significant applications and the issues with processing them, their relationship with statutory consultees and all the issues that they have in trying to deal with the applications.

Mr K Buchanan: Angus, who made the decision that that stayed internally and was not outsourced?

Mr Kerr: There was no decision necessarily taken not to outsource. It was a requirement for us to deliver the provision in the Planning Act and undertake a review. There was no decision to have it done externally.

Mr K Buchanan: OK. I have a couple of other small points to make. You referred to it, and Mr Muir and Mr Boylan spoke about the quality of applications coming in. How do you see that being improved? Where is the failure happening? You are jumping through two hoops, and then you have to jump through another hoop. If people knew at the start that they had to jump through three hoops, they would know what they were dealing with. Where is that falling down? It goes right down to council level, irrespective of the bigger process.

Mr Kerr: As we touched on, a lot of it is to do with the work that happens before the submission of the planning application. The pre-application discussions take place with the planners and the statutory consultees around the expectations for the planning application, particularly if it is a major development. Moreover, pre-application engagement takes place with the community for major applications so that there is an understanding before the application comes in of what the issues are with the community. Those can then be fixed and dealt with before the clock starts. Finally, what we touched on earlier will be important for how a planning application is validated. When it comes in, a high degree of good information is needed along with the application in order to make it valid. If there is not, sorry, but it just waits, and the clock does not start.

Mr K Buchanan: OK. I have one final point. Retrospective planning seems to be a big issue, certainly in Mid Ulster. I am not sure about other areas. The mindset is not necessarily to build what you want but to do what you want and then go for retrospective planning, knowing that you will get it. Is any work going on between your Department and councils to look at the percentage figures for how many retrospective planning applications are submitted and pass, as they always seem to do?

Mr Kerr: No. We do not collect that information, but we can certainly gather it. We are aware of the issue with retrospective planning applications. It is a feature of all the planning jurisdictions in these islands. Back when we brought through the Planning Act, there were discussions at that stage about whether you criminalise planning and introduce a system whereby if somebody builds a fence, an extension or a porch without planning permission, that becomes a criminal offence, and you move down that road. At that time, the Assembly and the Executive were very much focused on not going down that road and on having a system whereby it is possible to regularise development after it happens, because people sometimes genuinely make mistakes. The issue lies where that is not the case and where something is unacceptable, and had an application come in, it would have been refused. In that case, you need to go down the road of refusing the retrospective application and taking enforcement action. The councils have the menu of processes and tools at their disposal to do that.

Ms Anderson: Thank you, Angus, for your presentation. Irene, I know that you are listening. Given that you said that it is not a root-and-branch review, I am concerned that it sounds very much like a desktop review. I therefore would like to understand the extent and the scope of the review. Has that been determined?

Mr Kerr: The review's extent and its scope are as set out in the regulations, which are the terms of reference. The terms of reference are very broad. They talk about looking at the original objectives of the Planning Act and at reform. We do not want the review to be limited, however. We want to make sure that all views and issues with the planning system are factored into it. In the years that I have been involved in it, there has never been a time when there has been more of a focus on planning. Many different things are going on, such as the planning forum, the Public Accounts Committee interest and the CBI report that is coming out. The Department has been provided with a lot of information and evidence about what is going on with the planning system and what its problems are, and a lot of investigating and checking is happening. I am pretty confident that we will have a really good evidence base for what the issues are with the system, going into the review.

Ms Anderson: We know what the original objectives were, and I am conscious of what David said. We have met a number of stakeholders who are quite annoyed, and rightly so, at the length of time that it has taken, and is still taking, to have some of their applications processed. The original objective was to have a target of 30 weeks. Although the time has improved by, I believe, six weeks since planning transferred to councils and is now something like 52 to 54 weeks, that is still almost double the target time. It is nowhere near the target.

As we go into the post-COVID recovery period, I am concerned. I am also conscious that the Audit Office has said that we do not want to move too fast in the wrong direction, as there has been criticism of some of the expenditure. This is why I asked whether the review of the planning process is going to be only a desktop review. It needs a root-and-branch review, because of the concerns that are brought to our tables as MLAs.

Mr Kerr: I understand that. Perhaps "root-and-branch review" is the wrong phrase to use. All the planning system issues that we are hearing about and the concerns that people are raising will be fully considered. Those issues come across all our desks in different ways. There is no sense at all that the review is a desktop exercise or a tick-box exercise. The Minister is genuinely concerned about the problems with the planning system. A lot of issues have been raised with the Department about the planning system, and those are something that we certainly want to address as fully and effectively as we can through the review and the other mechanisms that we are involved with.

Ms Anderson: OK. I will pick up on the point about the full consideration that is to be given to developers, as was raised previously. There is a situation in Derry in Woodland Mews, Woodside Heights, Woodland Chase and Woodland Close. I can call out the developer now, because this has been going on for over 10 years. I am going between Roads Service and NI Water about the issue of trying to get the roads adopted and to get the sewerage sorted out. As I said, that has been going on for well over 10 years. The residents are still stuck in a process, and I am trying to get everyone around the table.

How do we ensure that what developers take on can be enforced? I will mention another place in Derry: the Barleyfields development. The houses there are beautiful, but, because the road is not adopted, some people at the bottom of the estate, which is still being developed, have to drag their bins almost a quarter of a mile to the top of the road, as bin lorries cannot come into the estate. The estate is still being developed, so the developer does not have to deal with the roads.

The planning review needs to deal with all those problems. Will it capture such problems? Residents have spent a lot of money and taken out big mortgages to buy, they hope, great homes. The pathways outside their doors are not finished. The roads are not adopted, however, so bin lorries cannot come in, and the sewerage is not right either. We can all give you examples of those types of problems from right across the North. Will the review bring forward a recommendation to deal with those problems?

Mr Kerr: Absolutely. This is an issue that has been raised a couple of times today. We can definitely take it away and look at it. It is also an issue that comes through to us in correspondence. We are aware of it. It involves not just planning but colleagues in DFI Roads and NI Water, as well as the bond system that is in place.

Ms Anderson: Are you trying to enforce that bond?

Mr Kerr: And trying to enforce that bond.

Ms Anderson: It should be used more often than it is.

Mr Kerr: Absolutely. We will look at it, but I am just saying that it is something that will engage other parts of the Department as well. We will certainly do that.

Ms Kimmins: Thank you, Angus and Irene, for coming today. Like other members, I have quite a number of examples. I was a councillor when the powers transferred, and I had been a councillor for a number of years. I know that there has been quite a settling-in period. In my area — I represent Newry and Armagh, but I sat on Newry, Mourne and Down District Council — we had quite a number of issues, particularly with the length of processing times.

One of the things that struck me as we were talking is whether the review is likely to look at good practice in different council areas. I will give you an example. At the minute, with COVID-19, we are very keen to get investment into our towns and cities to help with the recovery. At the minute, I am dealing with an issue with a pretty major investment for Newry that was submitted last October. We were told that it would take 15 weeks to process, but we are still waiting. Statutory consultees are holding it up. To prioritise that, we should look at good practice across different council areas for planning applications. Will how we improve on times be looked at as part of the review?

Mr Kerr: Absolutely. That is something that will be looked at. It is a focus that we have anyway, with our regular meetings with the heads of Planning and the continuous improvement to the programme that we try to bring through those meetings.

Some councils try to do things differently. They report back on that and share whether it worked or not. The stuff that I was talking about on the validation checklist is something that Belfast led on. Other councils looked at that and thought it a sensible idea. We did too, and we are going to build that into the review. Best practice is absolutely in there as something that we want to look at and encourage.

Ms Kimmins: It is like everything else. There is no point in reinventing the wheel. From speaking with individual developers, I know that they say, "In such and such an area, I do not have this issue" or "In another area, it has been a lot quicker". That would be a good start.

Have we a timescale for the length of the review and the implementation of recommendations brought forward? How long will the review take, and how long do you think it will take to implement anything that comes out of it?

Mr Kerr: We hope to get the review report agreed and out before the end of the financial year, at the latest. Ideally, we would try for a bit sooner than that, but I am picking up lots of issues here and am conscious that I am going to have to build those into it. Following that, we are into implementation.

There is so much work going on in these issues, such as the planning forum, the work that we are doing with the councils or the CBI report that is coming through. If it is sensible and we can do it, we should just do it, provided the Minister and the Committee are content. It is not quite that we will stop everything, do a review, wait until the end of March and then decide to do stuff. One of the messages that I want to get across to the Committee today is that a load of stuff is going on already anyway. If something comes out of that work that is really sensible, we will probably try to push on with that. We will include it in the review report as being part of it, but it is not the case that we are not doing anything while waiting for the review and then going to do a lot of stuff. Hopefully, stuff will begin to change and measures come forward almost immediately.

Ms Kimmins: That is quite good. It is a sensible approach, because there are things that need to be addressed fairly quickly. It is good that the review is to be done almost on a rolling basis.

My last question is this: if any major recommendations come out of the review, has the Department committed to adopting them?

Mr Kerr: The Minister will see the recommendations and agree with them or not, depending on what they are. It will be her call, subject to all the consultation.

Mr Beggs: Thank you for your presentation. The planning system gets the blame when anything goes wrong. Sometimes it is your specific responsibility, but sometimes it is just slightly outside but clearly connected to the planning process. Will your review therefore be looking at all aspects of the development system to catch those situations in which you have irresponsible developers and those in which Roads Service has been late? For one unadopted road on my patch, it took 18 years to draw down the road bonds. That is ridiculous. In others, there needs to be a mechanism to ensure that there is greater understanding of and transparency about the responsibility of each. For instance, I have come across private developments where there are no road bonds, and my reading of the legislation is that a big responsibility falls on the solicitor conveying the property to make sure that individuals are aware of that and of the associated risks. It is the solicitor's responsibility to make that very clear and also to make individuals aware that they can sue their solicitor if their solicitor does not make them aware of that. My main focus is on whether you will be ensuring that the wider responsibility for the development process is knitted together and that you are not simply looking at the technical planning process.

Mr Kerr: That is a good question. It is a big issue for us, because you are right that people seem to see the planning system almost as being the solution to all problems to do with development and also as being the problem when there is a difficulty with development, whereas part of the issue with planning is that there are so many different people, bodies and agencies involved in the process that you need to understand the bigger picture in order to fix the planning system or understand what the issue is.

Yes is therefore the answer. That will be my approach. I always try to look at the bigger picture, which is what planning is trying to do and achieve, and we will be doing that as part of the review. We will be trying to engage on the issues that have been raised about bonds and so on with the other statutory consultees. We will be trying to make the point that a lot of the delays that happen in the system are blamed on planners and planning, but quite often delays happen because there has not been proper engagement early in the process, the community has been ignored and local elected representatives have been ignored. Suddenly everybody is shocked when there is a whole hoo-ha when the planning application comes. There are lots of objections, everything is delayed and nobody is happy. I will definitely be pushing the angle, if you like, of the way in which planning is looked at.

Mr Beggs: The other aspect that I have come across and that certainly needs looked at is spine road development, which is going to be developer-led. There seems to be a disconnect on occasions between the area plan and the ultimate spine road development. I can think of one instance in which a significant bit of the spine road has been developed upstream yet there is a section of it that has still not even been approved for development. It is still green-zoned, so the full route will never be developed until that connection is made. Secondly, how will you ensure that unscrupulous individuals do not use sections of the spine road as a ransom strip?

Mr Kerr: The approach to that is to have really good, comprehensive planning for the particular area and the particular development. The area plan that looks at the transport needs associated with developments proposed in the area needs to deal properly with the issue of the accessibility and road requirements for the development.

There are also key site requirements. When the planning application comes in for the development, whether through conditions or through a developer agreement — a section 76 agreement — the road is developed as part of that. It requires that it be done in the right sequence, if you like, so that you do not get a situation in which you get sterile land that is not possible to develop.

Mr Beggs: How do you ensure that you do not have orphaned sections of the road, which are not connected to development land? That has occurred.

Mr Kerr: On a simple level, it is just good planning. It is about thinking it through properly at the plan stage and making sure that the key site requirements are there so that you cannot develop unless the bits that are needed before you develop are done. If that needs to be a condition or be in a planning agreement, so be it. You are in a difficult situation, depending on the developers.

The best way forward has happened. It has happened very effectively at some of the sites in Derry, where the planners worked closely with a group of developers. There was proper collaboration, with things coming forward in a timely fashion. It can be difficult, however. It is not easy, because you are still faced with determining a planning application as and when it comes in. You cannot say, "This planning application has come in too early. It makes more sense to wait for the other one to come

through". You therefore still have to determine it. You are statutorily obliged to do so. You have to try to control some of the issues that you are talking about, through either agreements or conditions.

Mr Beggs: A specific problem that I am aware of arose because the original landowner siphoned off portions of the land to sell and left a section of the spine road as an orphan, without any development land being in the same ownership. Surely that was a failure of the planning system.

Mr Kerr: Honestly, I would need to see the detail in order to understand it. I do understand the issue, however. It is something that we consider and talk a lot about in planning, in order to try to avoid those sorts of things happening. That is particularly the case for ransom strips. If you are wise to the issue when the planning application comes in, there are ways of doing it, such as putting in the right conditions.

The Chairperson (Miss McIlveen): Mr Boylan and Mrs Kelly have indicated that they will ask really short questions.

Mr Boylan: We know what we went through to bring in the Planning Act. It is a major piece of legislation and took a long time. People have to understand, however, that it is not the panacea to for all the problems. When you say "root-and-branch review", I understand that that is not the right terminology, because we are not going back and changing major legislation. There are, however, opportunities to do so through subordinate legislation and other means. You have to take the reasons for the hold-ups in their totality, such as NIW or the electricity end.

On behalf of the Committee, I will say that, if we can clearly identify the responsibilities that can be dealt with by subordinate legislation or where guidelines will work, and we try to line things out that way, we will get a better understanding as a Committee. Some of this does not sit within the remit of the Planning Act, but we can work collectively. I would like to see that implemented overall as part of the review, and for the terms of the review to bring all the people together to try to best solve the problems. For example, the Audit Office report states that it takes 54 weeks to process an application, but it does not say that it was NIW or NIE that held up the application. Do you understand me? There is a collective responsibility there. That is what I want to see the review try to resolve on behalf of us all.

Mr Kerr: Yes, That is sensible and is something that we can definitely do.

Mr Boylan: I ask that we write to the Department and outline some of that stuff, but I will bring it up again.

Mrs D Kelly: Will the PSNI be a consultee? I ask because there are issues around designing out crime and road safety. More and more residents want traffic-calming measures in a development. Is that a consideration that you might look at?

Mr Kerr: Designing out crime and that sort of work fits more into the planning policy regime as opposed to the provisions of the Act and the nuts and bolts of how the planning system works. That is therefore something that we look at more on that side of our work. The review is going to be more focused on the process of planning rather than on the policy around planning and what we are trying to achieve from planning. That is a whole other briefing for the Committee. I know what you mean, but it is probably likely that we will be looking more at the process elements.

The Chairperson (Miss McIlveen): Thank you very much for your attendance. Irene did not really get an opportunity to say anything.

Mr Boylan: Irene sat there quietly. That is the best way.

Mr Kerr: If she had been here, she probably would have spoken.

Ms Anderson: She was taking all the notes.

The Chairperson (Miss McIlveen): How they appear is something that other witnesses perhaps need to think about.

Mr Kerr: Yes. How that works.

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

Mr Kerr: Thank you.

Ms Anderson: Angus, thank you.

Ms Irene Kennedy (Department for Infrastructure): Thank you, Chair.