



Northern Ireland
Assembly

Committee for Infrastructure

OFFICIAL REPORT (Hansard)

Planning Policy Update: Department for
Infrastructure

13 October 2021

NORTHERN IRELAND ASSEMBLY

Committee for Infrastructure

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Members present for all or part of the proceedings:

Mr Jonathan Buckley (Chairperson)
Mr David Hilditch (Deputy Chairperson)
Mr Roy Beggs
Mr Cathal Boylan
Mr Pádraig Delargy
Mrs Dolores Kelly
Ms Liz Kimmins
Mr Andrew Muir
Mr George Robinson

Witnesses:

| | |
|-------------------|-------------------------------|
| Ms Joy Hargie | Department for Infrastructure |
| Mr Angus Kerr | Department for Infrastructure |
| Mr Philip McGowan | Department for Infrastructure |

The Chairperson (Mr Buckley): I welcome, via StarLeaf, Mr Angus Kerr, director of regional planning, and Ms Joy Hargie and Mr Philip McGowan, both of whom are principal planning officers in planning policy. The meeting will be recorded by Hansard. I will hand over to Angus to brief the Committee. *[Pause.]* I apologise, Angus; we are not hearing you. Are you on mute? *[Pause.]* Technology. *[Long Pause.]* If you drop out of the meeting and come back in, Angus, that might enable us to hear you. *[Pause.]* We are not hearing anything, Angus.

Mr Philip McGowan (Department for Infrastructure): Can you hear me, Chair?

The Chairperson (Mr Buckley): Yes, Philip, we can hear you.

Mr McGowan: It is just Angus who has the problem.

Ms Joy Hargie (Department for Infrastructure): Can you hear me OK, Chair?

The Chairperson (Mr Buckley): I can hear you both very clearly. We are not picking Angus up and his visual image is quite grainy. We can see and hear you both very clearly. *[Long Pause.]*

Mr McGowan: Angus was going to do an opening address but, if it would help the Committee and with your agreement, Chair, I could do that while he deals with his difficulties.

The Chairperson (Mr Buckley): We are happy with that, Philip. However, I would like you to note that the Committee has been having some digital problems over the past while. That is why we requested that officials attend in person if possible. I know that you declined that invitation. I see that Angus is back with us now.

Mr Angus Kerr (Department for Infrastructure): Can you hear me? Is that coming across now?

The Chairperson (Mr Buckley): That is fine now. We will not use that contingency plan. We will go to Angus to give us his opening address.

Mr McGowan: Thanks, Chair.

Mr Kerr: I apologise for that; the joys of technology. Thank you for the invitation to attend today's Committee meeting to provide an update and, in particular, to brief members on the recently issued planning advice note (PAN) entitled 'Implementation of Strategic Planning Policy on Development in the Countryside'. I would also like to update members on the review of the implementation of the Planning Act (Northern Ireland) 2011, and comment on the strategic planning policy review of renewable and low-carbon energy and the Minister's recently announced decision to review strategic planning policy on oil and gas development. We will, of course, be happy to deal with any questions that members may have after this short opening statement.

The two-tier planning system came into operation in April 2015. Councils are, therefore, responsible for the majority of planning decisions and for local *[Inaudible owing to poor sound quality]* enforcement. However, the Department retained responsibility for the determination of regionally significant development applications, planning legislation, regional planning policy and guidance. The two-tier planning system enables councils to interpret and apply strategic policy as set out in the strategic planning policy statement (SPPS) for their areas through their local development plan and development-management decision-making responsibilities. This has empowered local government to meet the needs and aspirations of local communities, taking account of the particular context and circumstances that they face in their areas.

The interpretation, relevance and weight to be accorded to strategic planning policy is for the responsible planning authority to decide and justify, which may result in variations across councils. However, it is important for the integrity of the planning system that the wider regional policy objectives set by the Department are maintained across Northern Ireland. The Department has powers that enable it to monitor the operation of planning matters by councils across the region. These include powers in relation to scrutiny of council-prepared local development plans, powers to call in planning applications, and reserve enforcement powers that are intended to be used in exceptional circumstances. The Department plays a central role in the two-tier planning system, with powers and functions to influence decision-making practices, monitor performance against regional objectives, formulate policy, and bring forward guidance and advice to assist with the effective and efficient operation of the two-tier system.

The Department regularly engages with councils and other stakeholders to understand how the system is working and to assist with its operation. This includes engaging with councils on a broad range of planning issues through the quarterly strategic planning group meeting with heads of planning. The Department's interest in exercising its powers is not to interfere with a council's right and responsibility to take its own decisions, but to safeguard against systemic risks to the achievement of the Department's regional planning objectives.

On 2 August, Minister Mallon issued a planning advice note, 'Implementation of Strategic Planning Policy on Development in the Countryside', as set out in the Department's SPPS. The SPPS was published on 28 September 2015 following extensive engagement during its preparation, including public consultation, Assembly and Environment Committee scrutiny and the Executive Committee's agreement to its publication and final form. Following the publication of the SPPS, the Department issued a call for evidence in March 2016 to help to inform the scope of a potential review of strategic planning policy for development in the countryside. That attracted responses from a wide range of interests, including local government, environmental groups, business/industry, residents' groups, professional bodies and individuals.

In March 2017, the Department procured consultants to undertake research and provide an updated evidential context to inform the best strategic planning policy approach for development in the countryside. This research involved focused stakeholder engagement, including seminars with council

planning managers, professional institutions and environmental interest groups. It also involved individual meetings with relevant organisations, including local political representatives, the Northern Ireland Housing Executive, the Construction Employers Federation, the Department of Agriculture, Environment and Rural Affairs, the Rural Community Network and the Ulster Farmers' Union.

The preparatory work and engagement helped to inform the Minister's decision on her preferred way forward for strategic planning policy on development in the countryside, and her decision to issue the PAN rather than commence a fundamental review of policy in this area. The Minister is satisfied that the current policy approach provided by the SPPS remains appropriate, robust and fit for purpose for the two-tier planning system, but recognises that there are a number of challenges with its application and interpretation. The Minister has brought forward the PAN to seek to address those issues and reaffirm her commitment to sustainable development in the countryside.

The purpose of the advice note is to re-emphasise fundamental aspects of the existing strategic planning policy as contained in the SPPS, and to clarify certain extant provisions of it. The established fundamental core of the regional policy approach is to cluster, consolidate and group new development with existing, established buildings, and promote the reuse of previously used buildings. The PAN is intended to assist in ensuring a consistent interpretation of the policy, which will have a positive impact on the planning system overall and on rural communities.

It is important to be clear that the PAN does not change or add to strategic planning policy on development in the countryside; rather, the PAN re-emphasises the fundamental aspects of the existing policy and clarifies certain provisions of it, including integration and rural character, dwellings on farms, infill/ribbon development and dwellings in existing clusters. The PAN is intended to assist planning authorities and all users of the planning system in the interpretation and implementation of this important policy area.

Members have asked why the Committee was not consulted on the PAN prior to its being issued. It would not be normal practice to consult the Infrastructure Committee on planning guidance and advice of the nature of the PAN. However, a departmental Assembly liaison officer (DALO) letter on the PAN was issued to the Committee on 3 August for the information of members.

On the implementation of the PAN, it is important to remember that it is advice and not new policy. It will not, therefore, have the same weight as new policy. Ultimately, its interpretation, as well as the relevance and weight to be accorded to it in decision-taking and plan-making, remains a matter for councils as planning authorities in their own right.

It is recognised that there has been a generally negative reaction to the PAN since it was introduced, as evidenced by concerns expressed in the media and through correspondence with the Department, including from the Ulster Farmers' Union, several councils and a small number of planning agents. Given that the PAN is of interest to all councils, I have contacted the Northern Ireland Local Government Association, offering to attend a briefing and discuss the PAN with its members. Senior DFI planning officials engage regularly with council heads of planning through strategic planning group meetings to discuss strategic planning issues, including those set out in the PAN.

As I have said, the Minister is fully committed to ensuring that her Department and the wider planning system continue to play their part in managing growth to achieve appropriate and sustainable patterns of development in the countryside that contribute to a vibrant rural community and economy. Minister Mallon firmly believes that the SPPS provides, and should continue to provide, opportunities for farming families, other rural dwellers and sustainable development in the countryside in general, striking a balance between supporting and sustaining rural communities and protecting the countryside from inappropriate development. The PAN should assist that overall objective.

The Minister will continue to consider current and emerging issues, such as the climate emergency, to ensure that strategic planning policy for development in the countryside is fit for purpose. Members will be aware that the Assembly motion on the impact of the Department for Infrastructure's planning guidance on rural communities has been scheduled by the Business Committee for debate on Tuesday 19 October.

I will turn briefly to the policy work that I mentioned at the start. Members will be aware of the Infrastructure Minister's announcement on 21 April of a review of strategic planning policy for renewable and low-carbon energy. Planning officials have been progressing the necessary work. In line with established policymaking best practice, the Department intends to undertake engagement with key stakeholders, including industry representatives, this autumn. Furthermore, on 27 September,

the Minister announced a review of strategic planning policy on oil and gas development, including development involving fracking. The purpose of those reviews is to ensure that the Department's planning policy remains up to date, robust and fit for purpose.

I will provide a brief update on the separate legislative work that we are doing on the review of the implementation of the Planning Act. Members will recall the briefing provided to the Committee on 23 June on the responses to the call for evidence and the review of the implementation of the Act. As you will be aware, the focus of the review is on the implementation of the legislative provisions of the Act and the extent to which the original objectives of the Act have been achieved. That will inform decisions on whether there is a need to retain, amend or repeal any provisions of the Act.

The call for evidence sought to target and engage with key stakeholders in the planning system, including councils, statutory consultees, professional bodies and community, business and environmental interests, although it was open to anyone to respond. The review will also provide an opportunity to consider any improvements or fixes that can be made to the Planning Act or to subordinate legislation. Without doubt, issues with the planning system that have surfaced as a result of the pandemic will be considered as part of the review. It may be that not all of those require legislative change.

Officials have had initial discussions with the Minister about her priorities and next steps. Her focus is on how to speed up the system for development plan preparation and application processing, while improving the system for all stakeholders. The Department continues to work through the responses to the call for evidence and aims to finalise the review report for the Minister later this year. The Department will write to the Committee before the review is published.

Finally, the review report will reflect on any potential legislative amendments that may arise from parallel work that the Department is engaged in to improve the planning system through the planning forum and the planning engagement partnership. Members will be aware that the planning forum is a cross-government group that works in collaboration with central and local government to focus on the role of statutory consultees in improving processes and time frames for dealing with major and economically significant applications. The planning engagement partnership, which was set up in October 2020, looks at how to enhance the quality and depth of community engagement in the planning process at both regional and local levels, and how to improve the planning system experience for those users and stakeholders. The partnership is in the final stages of preparing a report for the Minister.

Chair, I hope that that is a helpful overview of some of the work that is being done in planning and a more detailed view of the PAN. I am happy to take questions.

The Chairperson (Mr Buckley): Angus, thank you for your presentation. Obviously, members will have some very detailed questions on its content. There is quite a bit of interest in today's meeting. There are a lot of frustrations with the current system, among end-users and in the planning world. Some of the key and constant themes that I and other members have picked up on are slow decision-making, inconsistent application of planning policy, excruciatingly slow statutory consultee response times, poor communication from planning officers to applicants and agents, and little or no accountability for poor performance. Some regionally significant planning applications in Northern Ireland have been in the system for over 200 weeks. Do you believe that the system makes Northern Ireland an attractive prospect for inward investment, and, if not, is the planning process fit for purpose?

Mr Kerr: You have been given a flavour of the Department's work to try to improve the planning system. I am lucky to have had the opportunity to see the planning systems that operate in some of the other jurisdictions: all of those have issues and complexities. Planning is a contested area where there is always room for improvement. That is why the Department and the Minister have focused on bringing forward the review of the implementation of the Act, which is a really good opportunity to make changes and improvements to the legislative framework that shapes the system.

Work is being done in other areas as well. The planning forum is an opportunity to bring key leaders from the statutory consultees together with representatives from councils and the Department to work through a series of actions that emerged from an independent report on improving the processing times and, in particular, the role of the statutory consultees in that process. There are other areas of work. I touched on the planning engagement partnership. It is trying to enhance community engagement in planning to try to allay some of the frustrations and concerns that we hear about the system being complex, opaque and difficult to understand for those who feed into it. The work of the

partnership has been really positive as it has tried to look at ways of improving that without having to make significant changes. That will also feed into the review of the implementation of the Act.

There are another couple of areas to highlight, Chair, in the work to address the issues that you raised. We are working with our partners in local government on a new, shared, regional IT system for the planning system in Northern Ireland, which will make a big difference. Those who have used the planning portal express quite a few frustrations about it being old, outdated, not that intuitive and difficult to navigate. An awful lot of work is being done to bring in a new system for next year. It will be much more modern and up to date and will allow applications to be made online. That will speed up the system quite significantly.

The final point, which I have mentioned to the Committee before, is that a Northern Ireland Audit Office review of the planning system is ongoing. I understand that that is not too far from being finalised. It will be interesting to get that audit, as it will be an independent perspective on the local government aspects of the system alongside the central government, DFI, aspects.

I am not saying that things are perfect; they are certainly not, and there is room for improvement. However, I hope that I have managed to give you a sense of the huge amount of work that we are doing to try to improve the system and to make sure that it plays a fundamental part in the recovery from the pandemic and in addressing many of the challenges that we face, such as climate change.

The Chairperson (Mr Buckley): OK. I accept that no system is perfect, but the evidence consistently shows that Northern Ireland vastly underperforms on the planning process targets set by the Department, when compared with other regional Assemblies and jurisdictions across these isles. We all know what the problems are. You accept that some of those problems are well known to you and your officials. Do you accept responsibility? Do you accept that Northern Ireland vastly underperforms compared to those others jurisdictions?

What I and other members are being told is that there is plenty of talk about reform of the planning process and plenty of reviews and working groups set up to address it, but very little action. We are not reinventing the wheel. The issues that have existed, alas, since I came into politics still affect the planning process. There is nothing more frustrating to members, and, indeed, to those who are looking to Northern Ireland for inward investment, than a planning process that is bureaucratic and does not meet its targets. It is stifling economic investment. A robust plan must be put in place, not just talked about. Planning reviews have gone on over time. This continues to roll out, and we welcome the fact that we are reviewing the Planning Act. However, there is recognition that it has been slow.

Before you go on to your next point, I ask this: will this be time-focused? Can we give confidence and reassurance to agents and applicants that we will get a grip of the current backlogs? What possible solutions have you or the Department in mind to address the real problem of statutory consultees running down the clock on applications, which stifles them, and then coming back after whatever period — it could be 60-plus days — to ask for further information, which causes further delay?

Mr Kerr: It is not a straightforward issue, Chair. There is no one single thing that causes delay in the planning process. The statutory consultee issue is a key one that, as you heard, we are giving a lot of attention to. However, many other issues impact on the way that the planning system works, both at council and central government level. Those range from resources to complex applications to insufficient quality of information submitted with applications, all of which we are *[Inaudible owing to poor sound quality.]*

The Chairperson (Mr Buckley): I am sorry, Angus. We are not hearing you. We have cut out completely.

The evidence session was suspended from 10.40 am to 10.47 am.

The Chairperson (Mr Buckley): OK, members. We are live again. I see Joy. I do not see Angus, but I see his screen. I see Philip McGowan. Angus is back now. I will do a soundcheck. Joy, can you hear me?

Ms Hargie: Yes, Chair. I can hear you. Thanks.

The Chairperson (Mr Buckley): OK. Angus, can you hear me?

Mr Kerr: Yes, I can.

The Chairperson (Mr Buckley): OK. Philip, can you hear the Committee?

Mr McGowan: Yes, Chair.

The Chairperson (Mr Buckley): OK. An apology from our side: StarLeaf, the Assembly system, crashed. However, we are back live again and will continue with our briefing session.

I will draw a line under that. You know the frustrations that I put across. Hopefully, those will be reflected in the review and the work to try to address some of the issues.

I will move on to the PAN, which you mentioned quite extensively in your briefing document. You will know that the Committee has had a considerable number of responses on the PAN. All of those were negative bar one that did not pass an opinion. I will go through a series of questions, Angus. I would appreciate it if you could be brief in answering them, as that will help to develop where I am coming from on the matter. In your statement, you explained why the PAN was introduced. You mentioned that it was to clarify policy. Do you agree that the PAN not only clarifies but, in some respects, changes policy?

Mr Kerr: No.

The Chairperson (Mr Buckley): OK. Let us take what you say is clarification of the policy on infill dwellings and ribbon development, CTY 8 of PPS 21. Do you agree that CTY 8 makes no distinction between different types of buildings?

Mr Kerr: The important point to make is that the PAN that we put out clarifies policy in the SPPS, which links very much to the four areas that I have talked about: integration and rural character; dwellings on farms; infill/ribbon development; and dwellings in existing clusters. We are simply clarifying the interpretation of that policy and its application.

The Chairperson (Mr Buckley): You say that it is clarification, but do you agree that policy CTY 8 makes no distinction between different types of building?

Mr Kerr: I do not have CTY 8 in front of me. The point is that the PAN is trying to clarify how the policy and the SPPS work in relation to infill/ribbon development.

The Chairperson (Mr Buckley): It is disappointing that we are discussing the PAN, and you, as the chief planning officer, do not have the specific policy, CTY 8, in front of you, but I will move on.

Do you agree that the PAN seeks to exclude from the term "building" certain types of building, such as a domestic garage or a small outbuilding?

Mr Kerr: It clarifies that point.

The Chairperson (Mr Buckley): OK. That is a yes, then.

Mr Kerr: The PAN covers that issue.

The Chairperson (Mr Buckley): Is that not a change in policy?

Mr Kerr: No, it is not; it is just a clarification of the policy's original intent.

The Chairperson (Mr Buckley): Do you agree that it will certainly feel like a change for any constituent — councils have also raised issues — who applied on or before 1 August under CTY 8 to build a domestic garage or small outbuilding? That accounts for quite a number of rural applicants.

Mr Kerr: If such a planning application for a single dwelling is with a council, the council planning authority will make an assessment on the basis of the policy, the PAN and any other material planning consideration. The weight attributed to the PAN, which is an advice note, is a matter for the individual planning authority.

The Chairperson (Mr Buckley): What is a small outbuilding? Can you take me to a section in the PAN where it is defined? Do you consider there to be an adequate definition of it in the PAN?

Mr Kerr: I cannot take you to anything in the PAN that is not in the PAN. I presume that you have read it, so you will understand all that it says about that particular issue. There is no section that defines that anywhere.

The Chairperson (Mr Buckley): It has been interpreted not just by me but by many of the local authorities as a change. What constitutes a building has changed because of that guidance note. Do you agree that, if the PAN changes policy, it ought to have been subject to public consultation prior to its publication?

Mr Kerr: Yes.

The Chairperson (Mr Buckley): If it is the case that a plan ought to have been the subject of public consultation, do you believe that the call for evidence fulfilled that?

Mr Kerr: Yes. I believe that the call for evidence was a valid public consultation exercise. It looked at the issues of strategic importance around the policy on dwellings in the countryside.

The Chairperson (Mr Buckley): That is an interesting point. The call for evidence was not actually a consultation on the draft PAN, so why do you feel that it constituted an adequate consultation?

Mr Kerr: It was an adequate consultation for the purposes of what it was intended to do. I did not say that it was a public consultation directly on the PAN, for which there is no need because it is not a change of policy; it is guidance, an advice note.

The Chairperson (Mr Buckley): OK. Let us look at the call for evidence, which took place five and a half years ago. Can you tell me of a single document published by DFI that relied on a consultation, or, in this case, as you clarified, a call for evidence, that took place over five and a half years previously? I am not aware of any. Maybe you can point me to one.

Mr Kerr: No, I cannot. The point is that the PAN is not policy. It is advice, and advice does not require consultation. We are not relying on or saying that.

The Chairperson (Mr Buckley): Again, that is the evidence on which you are relying in introducing the PAN. It is quite disturbing that the Department is relying on a call for evidence that is over five and a half years old. What steps has DFI taken to bring the input by the public from 2016 up to date on this matter? Much has changed in the world and in the realm of planning since 2016. We now have vast experience from the transfer of planning to local authorities and their experiences. The responses that the Committee has received overwhelmingly show that any council that has had any interaction with CTY 8 of PPS 21 see it as a change of policy, yet the Department does not.

Mr Kerr: That is what I am saying. We do not view the advice note as a change of policy. It is an advice note similar to advice notes that we have issued in the past, which were not consulted on. It merely clarifies and explains the policy. Therefore —

The Chairperson (Mr Buckley): Has DFI —?

Mr Kerr: — it does not require consultation.

The Chairperson (Mr Buckley): Apologies for cutting across you. Since the 2016 document, has DFI taken any input from the public or local authorities?

Mr Kerr: As I said, the Department has worked closely with councils throughout the process of the transfer of planning and the creation of the new two-tier planning system. A lot of work has been done to monitor the system and understand what is happening, including liaising with councils and heads of planning to try to understand how the system is working, but there has been no direct public consultation on this PAN.

The Chairperson (Mr Buckley): I will finish there, but it is fair to say that I believe that there are major questions surrounding this PAN, why it was introduced in the time that it was, the lack of public engagement since the 2016 consultation and the varied interpretation of its application. Major questions surround this, and the Department will have to look at it. That is my opinion and the opinion of many on the Committee. A debate on it is scheduled, and, following the meeting today, the Committee will have a further conversation about what action it will deem satisfactory. Thank you for answering my questions. I will move to Committee members, who may wish to take up some of those points.

Mr Muir: I have a couple of questions. Apologies if they are quite lengthy, but these are detailed issues, and it is important to give them the proper airing and consideration that their complexity deserves.

I will start with probably the easiest question, which is about the review of the Planning Act (Northern Ireland) 2011. My understanding was that we should have seen the outcome of that review by the beginning of the summer recess. Now, we have received correspondence that puts that back to towards the end of the year. I am a bit disappointed that that is the case, because there are key issues here. The letter that the Committee received says:

"Officials have had ... discussions with the Minister as to her priorities and next steps. The Department continues to work through the responses to the CfE and aims to finalise the review report later this year."

I would like to have an understanding of why there have been delays in finalising the report.

I have three other issues. I am the kind of person who comes into politics focused on solutions rather than problems. We could focus on problems every day, and it would get us nowhere. We need solutions, particularly in the planning system. There are three key issues on which it is very apparent that the Department needs to take action. I want an understanding of whether the Department has an appetite to deal with those as part of the review. If I leave here today with an understanding that the Department may be "thinking about" or "considering" that, I will leave in great despair, because we need to get stuck into these issues and deal with them.

They are relatively simple issues — well, the first two are relatively simple. One is in relation to applications that are of a poor standard. We know that applications are being put into the system that are not of the right standard. What happens is that an iterative process goes on for months, if not years, backwards and forwards with the Department or councils trying to improve the application. It serves no one and reflects badly on the timescales. It is important to understand whether there is an appetite in the Department to have a checklist, or something like that, to ensure that, when the applications are received, they are of a sufficient standard, and, if not, they are rejected. The onus is on developers to ensure that they submit a correct application.

The next issue is that one of the major hold-ups in applications is getting a response from statutory consultees. If further responses are required, there are issues around getting those back in a timely manner. A couple of key offenders sit within the Department for Infrastructure. The problem lies in your building, and we need to deal with that. There are clear opportunities for action, whether it is a statutory time frame in which to reply or they get an element of the fee — usually, money motivates most people in the world. We need to find a way to improve the time taken by statutory consultees to respond. To be honest, Angus, if we do not do that, the planning system will continue to be the way that it is, and it will deter investment. We need to find a way to do that. I know that there is a working group and all the rest of it. We can set up all the meetings and working groups that we want, but we need concrete interventions.

The last issue is regionally significant applications. The Chair has quoted the timescales for those. One of the main issues is judicial reviews. Planning and judicial reviews go hand in hand in Northern Ireland. When a planning decision is made, you can almost put money on in the bookmakers on how long it will be before a judicial review. Has the Department made any contribution to the Audit Office review of judicial reviews? What more are you doing in that context? You are very conscious of that, and it stymies the decision-making because you always want to make sure that you get it completely right. It is right that you do the application correctly. What happens is that it is heavily loaded, and a lot of work is put in, in the context of judicial reviews.

Coming full circle, and in summary, I am looking for answers to these questions: why is it taking so long, what will we do about poor applications, and what about statutory consultees? Is there any

practical stuff that the Department will do on that? What about the impact that judicial reviews are having on regionally significant applications?

Mr Kerr: I am slightly surprised by your point about delays. We were with the Committee before the summer, and, at that time, we indicated that the target was to have the review report with the Minister by the end of the year and that there was a process of engagement, further analysing the responses and talking to the Minister. There was also to be some stakeholder engagement on the review. We are still on target for that, albeit it has been challenging.

I will turn to the three issues that you identified. Certainly, the first two are fairly and squarely at the heart of what we are trying to do. The point about poor applications has been raised time and time again by councils and others as a fundamental issue in trying to speed up the system. They also have an impact on the statutory consultees, which was your second point. Quite often, the delay with the statutory consultees comes about because the information that comes in with the application is not up to scratch.

Although it would be wrong of me to pre-empt what will come out of the review, because it needs to be agreed by the Minister, one of the key areas that we are looking at is some sort of validation checklist, which is what you were hinting at, Andrew. Everybody is fairly confident that that would make a big difference. We have a precedent in Belfast City Council, which has been running one on an administrative basis for a while. It seems to be working well, and the council has given us some information on how it has been working. I reassure you that that is one area that we will look very firmly at.

A huge amount of work is going on around the role of the statutory consultees. Work has already been developed through the planning forum, and it will flow into the review of the implementation of the 2011 Act. Some of that is quite simple stuff to do with communication between statutory consultees and the standing advice for councils that is available so that they do not necessarily have to consult and keep reconsulting. There are principles around what the role of the statutory consultee and the planning authorities are in consultation, as well as advice on the role of the statutory consultees throughout the process of planning from cradle to grave. There is also work on the pre-application stage, which is critical in trying to speed up processing times.

As I said earlier, so many different factors are involved in what we need to do to speed up. It is not just about statutory consultees. You mentioned the culture in Northern Ireland of taking a long time to get applications over the line and enabling them to be approved. Other jurisdictions do not do that. I am, however, fearful of comparisons with other jurisdictions that have different systems, processes and ways of measuring performance. When I meet their officials, they certainly raise the same issues with their systems as you are raising with ours: the delays and so on. There is no doubt, however, that they are much more hard-nosed, if that is the right expression, about applications that are just not acceptable. Rather than spending time working with agents and developers to try to get their applications to the point where they are acceptable, they simply refuse them or offer the developers an opportunity to withdraw their application. Their performance statistics reflect that approach. That is a cultural point that is also in the mix.

The judicial review is a matter for the Department of Justice and the courts. It is difficult for us, on the planning side, to influence that significantly. Our focus is more on trying to do things right. That is exercising us at council and departmental level: dotting the i's, crossing the t's and getting legal advice before we take decisions. That is just the reality of where we are in the planning system in Northern Ireland.

Mr Muir: I understand that. I welcome your responses about statutory consultees, but, as part of the review, will consideration be given to more radical stuff such as statutory response times for statutory consultees or financial incentives for them? Are those things on the table?

Mr Kerr: Those matters have been raised by a number of respondents to the review, and they are being looked at. I cannot pre-empt what the Minister will decide on some of those things. Certainly, they are in there, and they will be considered.

Mr Muir: OK. The outcome of the Audit Office's review of planning is due soon. Will that be reflected in the review of the Planning Act (Northern Ireland) 2011, or will it be dealt with separately?

Mr Kerr: If timing allows, we will reflect that, yes. It just depends on when the outcome of that is known.

Mr Muir: OK. I have a couple of other questions. A review of renewable energy is one of a number of reviews going on. It is important that they are given consideration here today. The review of renewable energy is largely to be welcomed, but there is concern about how long that will take. There is a degree of uncertainty in the industry: people do not know whether to proceed with projects because they do not know whether the goalposts will be moved. Will you give us an understanding of whether a real sense of urgency is being given to the review of renewable energy? What plans are there are to consult the industry?

Mr Kerr: Obviously, a lot of work is going on in that area. We intend to consult the industry over the coming weeks. As we said before, the plan is to try to get a public consultation document out before the end of this financial year.

Mr Muir: OK. I have one more question — I am probably pushing my luck here — and it concerns the PAN and PPS 21, which the Chair raised. One of the letters from, I think, the DALO or the Minister stated:

"Ultimately the interpretation, relevance and weight to be accorded to all material planning considerations, including this guidance"

— which is the PAN —

"will be a matter for each planning authority to determine in any individual case."

You have issued the PAN. If, in your view, the PAN is not being adhered to, how do you intend to enforce it?

Mr Kerr: It is like any policy, advice or guidance that the Department puts out there, whether it is a regional development strategy, the SPPS or an advice note such as the one that we are talking about. The way in which the planning system works is that they are interpreted and weighed as material considerations by the local planning authority, which then takes a decision. That is the nature of the new two-tier system that came about after handing those powers over to councils. It is not the case that we would be enforcing or making those decisions from the Department's point of view. All we can do is put out the policy and advice. It is then a matter for councils to consider that. There is a hierarchy of policy, with the SPPS central to that. This is just an advice note that would sit underneath the policy.

Mr Muir: The two key concerns that have come through to us, among others, are financing for new homes and health and safety. Are you hearing those concerns, and how much weight do you afford them?

Mr Kerr: We are aware of concerns. The Ulster Farmers' Union raised those concerns in recent correspondence to the Department. The Minister is just about to write, if a letter has not already gone out —

Ms Hargie: Yes, it has gone out.

Mr Kerr: — to raise those issues with UK Finance, which used to be the Council of Mortgage Lenders, and impress upon it the importance of looking at the rural planning context in Northern Ireland, which is different from other jurisdictions. There has been a lot more development of houses in the countryside here, often, because of the policy, close to farms.

Ms Kimmins: Thanks, Angus. My questions are largely around the PAN. I share the concerns raised by the Chair about the policy change. On what constitutes a "dwelling and a domestic garage only", legally, a group can be two. My interpretation is that it is not possible to obtain planning permission for a house on a farm with an ancillary building. Surely that is a policy change.

Do you agree that not all farmers have existing farm buildings on their farm? How can a farmer now obtain permission for a new farm dwelling on his farm when the siting of the proposed dwelling cannot be read along with a group of buildings that constitutes a dwelling or domestic garage only? That issue has been raised with us, and that is my interpretation of it.

Mr Kerr: Sorry, my sound disappeared, and I did not quite catch the question. Apologies.

Ms Kimmins: On the point about a group of buildings that constitutes a dwelling and domestic garage only, I share the concerns of the Chair that this would be a policy change. Do you agree that not all farmers have farm buildings on their farm? How do you propose that a farmer can obtain permission for a new dwelling on his farm when the siting of the proposed dwelling cannot, on the basis of what the policy says, be read along with a group of buildings that constitutes a dwelling or domestic garage only?

Mr Kerr: I do not accept that it is new policy. The wording of the policy remains exactly the same. That dwelling must:

"be visually linked or sited to cluster with an established group of buildings on the farm holding".

We are looking at the intention of the policy and clarifying it. That is in the context of the objective of the policy, which is to strike the balance between protecting the environment from inappropriate development and supporting sustainable rural communities, and doing that through the well-established cluster, consolidate and group approach. Look at the policy and set it in the context of what it is trying to achieve. All that we are doing is clarifying that its purpose is to make sure that there is visual linking and clustering with a group of buildings on a farm. We are trying to clarify what we think that means.

Ms Kimmins: The briefing note says that this is to try to ensure consistency, but, at the same time, it is contradictory, because it also says that you are leaving it to councils to interpret that for themselves. I cannot get my head around that at all. In my experience, planning permission in rural areas is extremely difficult to obtain as it is. This will further restrict rural dwellers in getting planning permission. That is fairly clear. I have real concerns. Mid Ulster District Council's planning committee, for example, stated that the PAN would prejudice its ability to progress its local development plans. Do you agree that the PAN directive will have a negative impact on the ability of some councils to progress their draft local plan strategies?

Mr Kerr: No, I do not think that it will. When councils take forward local development plans, they are required to take account of the Department's policies and guidance. Depending on what stage the plan is at, there is an opportunity now for councils to take account of this rural policy and the PAN that clarifies certain aspects of it. There is flexibility in the system, as there is for the councils when they are making decisions. They can weigh up those considerations as they see fit. I have talked many times at the Committee about the new two-tier system. The local development plan process is specifically designed to allow councils to interpret some of the big regional policies in a way that suits the circumstances that pertain in their area, so there will be some differences in the way in which councils deal with that. The councils just need to fully explain and justify a decision when it is subject to independent examination and the soundness test. If it is found that a plan takes a certain course of action, and there is evidence to explain why that is, that will have been properly investigated and handled through independent examination. There is an opportunity for rural planning policies to be addressed in that way.

I know from the team that is looking at the plans coming into the Department that quite a few different approaches are reflected in the draft plan strategy on rural policy, depending on the council area. Councils that are more rural have particular landscapes, more dispersed settlement patterns and different issues. That tends to be reflected in their plans.

Ms Kimmins: I still think that, largely, it is very contradictory. We are saying that different approaches have been used, but we are still leaving it up to councils to interpret the PAN.

Was there any engagement with councils before the PAN was issued? If not, given the concerns expressed by councils and rural bodies such as the Ulster Farmers' Union, would the Minister consider withdrawing the PAN until proper consultation takes place and agreement on a way forward is reached?

Mr Kerr: On the first point, as I said, there is a lot of engagement between the councils and us on a range of issues. Since the transfer, we have talked on and off about rural planning. It is one of many planning issues discussed.

As you can probably gather, we are not minded to withdraw the PAN. We do not consider it to be a policy change. It is a positive and helpful document that explains the rural policy that we have here and clarifies it so that it can be better and more clearly implemented.

Ms Kimmins: I will finish on that. It is clear that there was no engagement specifically on the PAN, which I think is quite bare. You said, Angus, that you think it is a better way, but that is certainly not the feedback we are getting or the feeling on the ground. I ask that the Minister and the Department reflect on that.

Mrs D Kelly: I will pick up on the point that Andrew made and that is made in the Ulster Farmers' Union's submission about mortgage lending. I have a case in which there is a large garage-type workshop. Planning approval has been granted, but the people cannot get a mortgage, because the big workshop behind it is seen as a commercial building. What were you saying about the Council of Mortgage Lenders and the requirement — I do not know whether it is a requirement in law — to have regard to the planning policy in relation to the countryside?

Mr Kerr: We have written to UK Finance, which is the body that incorporated the old Council of Mortgage Lenders, if I understand it correctly. We wrote to point out the issues that have been raised to us about that, Dolores. We are trying to emphasise that a flexible approach should be taken to the circumstances in Northern Ireland, where there are a lot more single dwellings in the countryside, self-build mortgages and those sorts of things than you get in other jurisdictions, where rural policy is much more restrictive. Hopefully, that will receive a favourable response, and we will, obviously, engage with UK Finance as necessary. We will see how it responds to the letter to try to address that issue.

Mrs D Kelly: Chair, I would welcome the Committee being kept informed of the outcome of that letter to UK Finance, because that is a problem.

The requirement to build close to farm buildings is another problem that a member of the Ulster Farmers' Union told me about. What if the farm is a piggery? I do not know how many people have been downwind of a pig farm or even just a few pigs, but you would not want to be clustered beside them, let me tell you. Are there exemptions for the type of farm activity?

You have also given some nod towards the need for exceptional circumstances for care and all the rest of it, but that is not very clearly defined. I know that the threshold is very high, because, as representatives, we have made representations on behalf of constituents to the planning authorities.

This may not be your fault, Angus, but, when dealing with some councils, many people report to me that they are paying hefty planning fees. That is partly because the Executive did not give councils enough resources in the transfer of functions to them. At the end of the day, those people are service users and therefore customers, yet, very often, they cannot get easy access to a planner to discuss their application. I know I am digressing a wee bit, but the whole planning system is not any easier just because it is in councils.

The Chairperson (Mr Buckley): It is a fair point. Angus, I do not know if you want to comment more on the broader issue, but the other points are certainly valid for future review, particularly on CTY 8 in PPS 21 and the requirement to build a dwelling house as close to the farm as possible. There are health and safety concerns if you have young children, and that comes up continually in the countryside. Angus, do you want to make a comment?

Mr Kerr: I agree. Health and safety would be part of the consideration in many of those cases, and it may well preclude the ability to use certain sites because of that. There is a point to be made on the frustrations about communication and access to planners and so on. Obviously, a lot of this is a matter for councils, and the way councils manage their planning departments and so on is a matter for them. I touched on the work we are doing in trying to look at ways to improve community engagement with planning, and that will, I think, help to address some of that issue. Part of what we are looking at there is raising awareness of the planning process so that there is much easier guidance that people can click to on websites to understand the process, understand how they engage and when is the right time to engage and understand that, if they are not hearing anything at a particular time, that is normal and so on. One of the issues that has come out of that work is the lack of understanding among communities that are engaging in the system. Hopefully, that work will help a little bit with that.

Mrs D Kelly: At the moment, the threshold for personal circumstances seems to be very high. I have been to planning meetings where people have been told, "Oh, build on". Inheritance, who will get what

and how things are divvied up is always a source of contention in families, but none less so than in farm families. It seems a very glib solution for some planner to say to the applicant, "Well, why do you not build an extension?" What does the guidance say about the threshold for personal care needs? I can give you an example of a young person who has epilepsy and the father works in England. If the child has a seizure at night and requires hospital admission and there are other small children in the house, they would need a relative to be able to dash next door. That was not considered to be reasonable.

The Chairperson (Mr Buckley): Do you want to come back on that briefly, Angus?

Mr Kerr: Obviously, I cannot comment on the case, but the basic judgement that is needed by the planning authority in those cases is an assessment of the evidence on the requirement to have a dwelling beside the person who needs assistance. If that is justified based on the medical evidence and other evidence that will be provided in cases like that, the planning authority can use that policy facility to approve those dwellings. You are quite right, Dolores: it is a hard test to get over because it needs to be very clear that a new dwelling is required to meet that need. There may be other ways of dealing with the situation, and, in cases like that, that will all be looked into by the planning authority.

Mrs D Kelly: The whole point of this session was to clarify inconsistency in interpretation, but it will not do that in that scenario.

The Chairperson (Mr Buckley): No. It is a fair point. We can take that up. Angus has clearly heard Dolores Kelly's frustrations about that, and many others have experienced those very difficult circumstances. When you are dealing with a case of need in particular, it always happens that nobody would apply under that terminology unless there was a serious case of need to be met, so a bit of flexibility in the interpretation of that provision would certainly go a long way.

I ask members to please keep their questions specific and concise, because we have a number of members to get in before we move on to strategic planning.

Mr Boylan: Angus, you are welcome back to the Committee. It is not a good topic to come back on, but I just want to pick up on a couple of points. I will try to stay away from the commentary that has been made already, but it is important for people to understand that the PAN attacks three areas of the policy: CTY 2a; CTY 8; and CTY 10. The farm building issue is a simple one, because we all know that, for all the reasons that members mentioned, people find it very hard to get a mortgage if they are visually linking a house with a cluster of buildings. That is one area. The other area is the infill of the gap sites. CTY 2a is about clusters. Dolores mentioned other areas of the policy. The PAN does not attack that.

You say that, on the one hand, it is a matter for the councils to interpret the PAN and that assessing relevance and weight are down to them, but, on the other hand, you have introduced additional policy tests. It may not be a change of policy in your eyes, but, as I read it, with those additional policy test measures, you are now saying to councils, "This is the direction that you have to go in". We are saying that, on the one hand, it is up to the local authority to deal with it. It is a two-tier system. You are saying, "Deal with it yourselves. You have the autonomy", but, on the other hand, you are introducing those extra measures.

I am dealing with a relevant issue, and what would have been passed in June or July of this year is now being refused on the grounds of the policy tests on clustering and the infill of gap sites. For five years or so, councils went down the route of interpreting. You cannot say that PPS 21 is for sustainable development in the countryside when those measures, if introduced and adhered to, would certainly restrict opportunities.

You know, Angus, that, from the start, the reason why we put those acts through caveats was to create opportunities for people to reside in the countryside. It seems to me that you are putting in additional measures and policy tests that will have an impact. You have heard what the Ulster Farmers' Union said. You have heard what Mid Ulster District Council and many others have said. These are changes, and I ask the Department to take the PAN back to the Minister so that she can withdraw it and have open and meaningful discussion with local authorities on how it will impact on rural communities. I see it, if not as a policy change, as clearly introducing extra policy test measures for councils to interpret.

Mr Kerr: I understand and note the comments. I will have to repeat myself again: it is our view and the Minister's view that these are not new policy tests or new policies. It is about clarifying the existing policy and the correct interpretation of the existing policy. That is what we are trying to do in order to properly deliver on the objectives of the rural policy in the SPPS by striking a balance between sustainable development and providing opportunities for rural communities and clarifying what is meant by the cluster group and the consolidated approach that the policy advocates.

Mr Boylan: This is my final point, Chair, because, obviously, members have already made it. How can you say that? When you look at domestic garages, which were included in the policy tests, you see that they are now looked at differently and that you will include dwellings. Those are changes. For five years, those decisions had been made by councils. You cannot talk about sustainable rural communities and put those restrictions in place. You cannot tell councils, "Go and make the decision, but, by the way, this is the way to go about it". The autonomy should lie with the local authority. Serious issues will be raised, because you cannot ask councils to go and look at their local area plans and develop *[Inaudible owing to poor sound quality]* over 10 or 20 years and then introduce this PAN, which means they will not meet those targets, so it is going to be an issue for them. These are additional policy test measures that are being introduced.

Mr Kerr: We will have to agree to disagree on that, Cathal. Fundamentally, the councils have the ability to attribute weight to the PAN, whether for decision-taking or for their local development plans. As councils, they have that judgement to make.

Mr Beggs: The Rural Community Network has given us a nice, neat graph of the planning statistics on applications for new homes in the countryside. They seem to have been stable between 2016 and 2021, and, if anything, perhaps, going down between 2019-2020 and 2020-21. Given that applications relating to the countryside seem to have been stable, what triggered the new advice note?

Mr Kerr: As I should have set out at the start, we went through a process for the call for evidence on rural policy, and that was some time ago now. Also, the consultants that looked into rural policy undertook quite a lot of stakeholder engagement in 2017-18, and that highlighted that there were issues with the way that the policy was being implemented. That has been built upon by some of the work that the Department did following on from that and in engagements that we had in order to understand how the policy was being implemented. Therefore, the purpose of the PAN is simply to clarify what we consider to be the correct understanding of the policy so that it can be applied and to bring consistency so that there is an understanding across all the councils about what the Department and the Minister mean by the policy.

Mr Beggs: On the requirement to integrate with existing buildings, will any degree of understanding or flexibility be shown when it can be demonstrated that limited options exist? For example, they could be close to slurry tanks or middens, which are not good for public safety, or they may have to be accessed through a busy farmyard. If there are animals or dangerous machinery etc, that would be totally impractical. Will some degree of flexibility be shown in such situations as you adopt the new policy?

Mr Kerr: It is not a new policy. As I said, health and safety considerations need to be weighed into the planning authority's decision on particular cases. It is difficult to pre-empt what that will be as it depends on the circumstances of the case. As I said, there may be issues that mean that certain sites will not be acceptable from a health and safety perspective. The sites may not be appropriate. That is in the policy, and it always has been.

Mr Beggs: I will try to push that a little bit further. You are saying that is not acceptable, so will a degree of flexibility be shown in other locations that are adjacent to buildings?

Mr Kerr: I am not sure that "flexibility" is the right word. It is a case of the circumstances and the material considerations that apply to a site no matter where it is located. A site may tick a number of policy boxes, but it can be problematic from a health and safety perspective because of nearby livestock or other matters like flooding and accessibility. Those all have to be weighed. Whilst it might pass quite a few tests, it may not pass them all. The planning authority needs to make a judgement on whether it is appropriate to go ahead with that site and to make the planning decision in accordance with that.

Mr Beggs: Paragraph 16 of your planning advice note states:

"Departmental guidance was issued in the past for situations where there were no buildings on the farm, including holdings which may have at least a residential dwelling and garage. This guidance was subsequently withdrawn".

Can you advise when that was originally published and when it was withdrawn?

Mr Kerr: I will look to Joy and Philip to help me out with that. If they cannot, we can come back to you with the specific dates.

Ms Hargie: It was under the unitary system when it was withdrawn, so it was around 2014.

Mr Beggs: Do you accept that you have contributed to your own difficulties and the confusion by issuing some advice that you later withdrew?

Mr Kerr: That was some time ago now, and it was in a different context. It was in the unitary system before we moved to the two-tier system. I was not personally involved at that point, but it was probably not an ideal scenario. From memory, I think that was brought about as a result of a legal case that highlighted an issue, and a decision was taken to withdraw that guidance.

Mr Beggs: Finally, paragraph 18 of the planning advice note states that you are concerned about:

"creating or adding to ribbon development, or ... potentially creating further future infill opportunities".

What evidence do you have that that has been happening?

Mr Kerr: We have a certain awareness of the issues that I mentioned before with the application of the policy. That flows from the call for evidence, the work that the consultants did, some work that we did in the intervening period to understand the decision-making and general engagement with council heads of planning and planners to understand what some of the issues are. The point that we are making there is that it is important to avoid the unwanted consequences of that happening, which is what the policy is designed to do. We are really about trying to clarify how that can be achieved so that we do not end up in that scenario.

Mr Beggs: Thank you.

Mr Robinson: I thank Angus for the presentation. Is there any point in having local area plans if the Department will not allow them to diverge from previous planning policy statements? The Causeway Coast and Glens Borough Council, which covers the area that I represent, has not had an area plan for quite a long time. When will the next area plan for my area come to fruition?

Mr Kerr: I know that the council is working on an area plan for the Causeway Coast and Glens area. Again, I will look to Philip and Joy in case they know what stage that plan is at. There are 11 plans going forward across the different council areas. Some are at a more advanced stage than others, with the Belfast one being in the lead. Joy, can you help me here?

Ms Hargie: The council is progressing its draft plan strategy at the minute. That has not yet been published. I am not sure of the time frame for it.

Mr Kerr: That means that the council is still working on it. Once the plan has been completed, it will be put through to the Department for an independent examination into the soundness of the plan. That will be the next step.

Mr Robinson: Right. Thanks for that, Angus. I have one other wee question. An assessor was brought in from Scotland to assess the Causeway Coast and Glens Borough Council's people. Has that come to fruition yet? If so, has there been any feedback on the findings?

Mr Kerr: I think that I know what you are talking about. That was an arrangement made by the council. The Department did not do it. You need to check with the council whether that process is complete.

Mr Robinson: Are you saying you have no knowledge of it?

Mr Kerr: I was aware that something was going on. Jim Mackinnon, who is one of my former chief planner colleagues from Scotland, may have done it. It was not something that we asked for. I do not know what the outcome was or whether it has been completed.

Mr Robinson: The Chair used the word "flexibility". That does not seem to apply to the Causeway Coast and Glens area. I get quite a lot of complaints from constituents about things being a wee bit too rigorous from a planning point of view. That needs to be addressed seriously. It is probably not just in the Causeway Coast and Glens area but right throughout the planning system in Northern Ireland. In my opinion, the planners should be looking for solutions, not trying to stop these applications.

Mr Kerr: OK. That is noted.

The Chairperson (Mr Buckley): Thank you. In closing, I thank the officials, Angus, Joy and Philip, for coming to the meeting this morning. We look forward to further engagement with you.

As Chair, I am acutely aware of one point that has not been mentioned in the meeting. I met Hydrogen NI and other hydrogen representative groups. Obviously, there is huge potential in that for the Northern Ireland economy, particularly with green hydrogen. The concern is that it will take a length of time for planning to catch up with the needs and requirements of the industry, thereby hampering our ability to harness that huge potential for renewable energy.

A strategic planning policy for hydrogen is being talked about. Perhaps at a later date, Angus, you or your team could come back to us to discuss potential solutions to ensure that we have adequate engagement before such times as there is a direct need?

Mr Kerr: The process that we have already started to review planning policy for renewable and low-carbon development may provide us with an opportunity to look at that, which would be great. It would enable that to be considered as part of that process.

The Chairperson (Mr Buckley): OK. Thank you for that. I thank the three of you for attending the Committee this morning.