

All Heads of Planning (Northern Ireland)

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Dear Colleague

## **CHIEF PLANNER'S UPDATE**

Further to the launch of the inaugural Chief Planner's Update on 15 December 2016, and in keeping with my stated intention to update councils with information on particular planning issues, please find below a summary of the main areas which may be of interest to you at this time.

### **Regional Planning**

The Regional Planning Unit is currently scoping the development of a Regional Infrastructure Delivery Plan. The Plan will support the spatial elements of the Regional Development Strategy, inform the long term delivery of infrastructure at a regional level and assist in achieving Programme for Government outcomes.

The Department is continuing to work with colleagues in the Department for Housing, Planning, Community & Local Government (ROI) as they develop their new National Planning Framework. It is intended that this collaborative approach, which was previously established via the 'Framework for Co-operation: Spatial Strategies of Northern Ireland and the Republic of Ireland,' will promote co-ordinated spatial planning and infrastructure delivery between both jurisdictions and will identify further opportunities for more co-operative working at a regional and local level.

In this context, both Departments recently facilitated a Cross Border forum for senior officials involved in preparing Local Development Plans in the Border region. The seminar provided participants with an opportunity to meet Plan colleagues in the South and to explore opportunities for enhanced co-operation on issues of mutual interest. It is intended that the Forum will continue to meet biannually with the next meeting of the group scheduled to take place in December 2017.

## **Planning Legislation**

### *Notification Direction*

The Department issued a Direction, which came into effect on 1 April 2017, amending the notification arrangements for when councils **intend to grant** listed building consent.

Under the previous arrangements councils were required to notify the Department in relation to **all** applications for listed building consent irrespective of the consultation response provided by the Department for Communities: Historic Environment Division (HED). Having reviewed how the process operated, the Department considered it was appropriate to remove the requirement for notification where there is no objection to the proposal from HED. The Department will continue to be notified on applications for LBC where there is an objection from HED. The Direction is available to view on the Planning Portal.

[https://www.planningni.gov.uk/Primary%20Nav/lbc\\_notification\\_direction.pdf](https://www.planningni.gov.uk/Primary%20Nav/lbc_notification_direction.pdf)

This direction **does not** remove the statutory requirement imposed by Section 89 of The Planning Act (Northern Ireland) 2011 by virtue of Section 105, to notify the Department (DFI) if it is the intention of the council to grant approval for demolition in a conservation area.

District councils should also be mindful of the requirements of the other notification directions covering major applications and councils own applications. These statutory requirements must be complied with in full, including the information required to be submitted to the Department.

The notification directions can be found at:

[https://www.planningni.gov.uk/index/policy\\_legislation.htm#ld](https://www.planningni.gov.uk/index/policy_legislation.htm#ld)

### *EIA Regulations 2017*

As you will be aware, the Department has made the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017. The regulations transpose the amended EIA Directive (2014/52/EU) and came into operation on 16 May 2017. The 2017 Regulations can be viewed from the link below:

<http://www.legislation.gov.uk/nisr/2017/83/made>

The main aim of the 2017 Regulations is to continue to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and assessment of projects with a view to reduce their impact on the environment. Key changes introduced in the regulations include:

- A revision of the information developers need to provide when requesting a screening direction or scoping opinion. The information planners need to take

into account when making a screening determination and giving a scoping opinion has also been revised

- A new requirement to use competent experts. The developer must ensure that their environmental statement is prepared by competent experts, while the consenting authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.
- The use of coordinated procedures when a development also requires assessment under the Habitats/Wild Birds Directive.
- The introduction of monitoring measures for developments which could potentially have significant negative effects on the environment.

Whilst the regulations replace and revoke the Planning (EIA) Regulations (NI) 2015, the 2015 Regulations will still apply in cases where a request for a screening direction or scoping opinion has been made or an Environmental Statement submitted before 16 May 2017.

The Department has drafted a practice note to accompany and complement the new EIA Regulations which shall be published on the Planning Portal in the near future. The Department is continuing to work on practical operational guidance on various aspects of the updated EIA process.

## **Planning Policy**

### *Timetable for the preparation of Local Development Plans (LDPs) - Clarification*

Diagram 2 (Page 30) of the SPPS provides a simple illustration of the new LDP system to everyone involved in the planning system. The Department wishes to stress that this diagram was produced for illustrative purposes only. The estimated timeframe it presents for the preparation of a council LDP is wholly indicative as the actual timeframe will ultimately depend on the specific circumstances and context of each plan and council area.

The timeframe for preparation of a council LDP is to be more accurately set out in the council LDP timetable required by section 7 of the 2011 Act and prescribed at Part 2 (Regulations 5-8) of The Planning (LDP) Regulations (NI) 2015.

Additional guidance is available in Development Plan Practice Note 03 at:

[https://www.planningni.gov.uk/index/advice/practicenotes/dp\\_practice\\_note\\_3\\_timetable.pdf](https://www.planningni.gov.uk/index/advice/practicenotes/dp_practice_note_3_timetable.pdf)

A council is required to agree its timetable with the Department, and also to keep it under review. The purpose of the timetable is to advise the public and other key stakeholders of a council's programme for the production of the LDP. A council should not undertake a key stage in LDP preparation if their timetable is out of date. The regulations apply equally to a revision of a timetable as they would have applied to its preparation.

## **Planning Guidance**

The Department of Infrastructure has, since the last update, published three further Development Management Practice Notes (DMPN).

### *Development Management Practice Note 21 'Section 76 Planning Agreements'*

In January 2017 DMPN 21 'Section 76 Planning Agreements' was published to help relevant users through the legislative requirements relating to the use of planning agreements and deals primarily with procedures as well as good practice. A copy of the practice note can be found at:

[http://www.planningni.gov.uk/index/news/dfi\\_planning\\_news/news\\_releases\\_2015\\_onwards/developmentmanagementpractice\\_note\\_21\\_section\\_76\\_planning\\_agreements\\_26.01.2017-2.pdf](http://www.planningni.gov.uk/index/news/dfi_planning_news/news_releases_2015_onwards/developmentmanagementpractice_note_21_section_76_planning_agreements_26.01.2017-2.pdf)

### *Development Management Practice Note 6 'Hazardous Substances'*

On the 21<sup>st</sup> February 2017 the Department published DMPN 06 'Hazardous Substances Controls'. This practice note is designed to guide relevant users through the legislative requirements to safely assess and mitigate the on shore major accident hazards associated with hazardous substances. A copy of the practice note can be found at:

[http://www.planningni.gov.uk/index/news/dfi\\_planning\\_news/news\\_releases\\_2015\\_onwards/dmpn-06-hazardous-substances-controls.pdf](http://www.planningni.gov.uk/index/news/dfi_planning_news/news_releases_2015_onwards/dmpn-06-hazardous-substances-controls.pdf)

### *Development Management Practice Note 05 'Historic Environment'*

On 5<sup>th</sup> September 2017, the Department issued DMPN 05 'Historic Environment'. This Practice Note is designed to guide planning officers and relevant users through the legislation provisions for the additional controls and considerations related to the Historic Environment, including Listed Buildings, Conservation Areas, Archaeological Sites and Monuments and Historic Parks, Gardens and Demesne. A copy of the practice note can be found at:

<http://www.planningni.gov.uk/index/advice/practice-notes/dmpn05-historic-environment.pdf>

### *Development Plan Practice Note 06 'Soundness'- Revised*

In addition to the development management practice notes, the Department has released a revised Development Plan Practice Note 06 'Soundness'. Primarily, paragraph 4.1 has been amended to make clear that a development plan document submitted for independent examination has no presumption of soundness in legislation. A copy of the revised practice note can be found at:

[http://www.planningni.gov.uk/index/news/dfi\\_planning\\_news/news\\_releases\\_2015\\_onwards/development\\_plan\\_practice\\_note\\_06\\_soundness\\_version\\_2\\_may\\_2017.pdf](http://www.planningni.gov.uk/index/news/dfi_planning_news/news_releases_2015_onwards/development_plan_practice_note_06_soundness_version_2_may_2017.pdf)

## **Performance Management**

The Department recently issued a draft planning performance framework to all council chief executives. The framework includes a number of new planning indicators which will be used to measure and collect data, identify best practice and drive forward continuous improvement in order to achieve a more positive, efficient and effective planning system. The new framework will also help central and local government demonstrate planning's contribution to delivering the draft Programme for Government outcome-based indicators. This framework is an ongoing piece of work and the Department will continue to work with local government colleagues to refine and clarify any issues moving forward.

## **Data Protection**

A data protection issue has come to my attention in relation to a Council in England which may be of interest to you. Basildon Borough Council has been fined £150,000 by the Information Commissioner's Office for publishing online an unredacted written statement in support of a static travelling family's planning application. The statement contained sensitive personal data, including mental health issues, the names of all the family members, their ages and the location of their home. The ICO investigation discovered failings in data protection procedures and training. The Council had attempted to argue that it was prevented from carrying out redactions due to planning law. But the ICO rejected this argument, saying planning regulations could not override people's fundamental privacy and data protection rights. Further information can be found at:

<https://ico.org.uk/media/action-weve-taken/mpns/2014149/mpn-basildon-borough-council-20170522.pdf>

## **Planning Case Law**

The following judgment of 6 February 2017 in the case of Patrick Heffron v DOENI (Planning Service) [2017] may be of some interest in relation to the consideration of material policy considerations in a case officer's report. The judgment is relevant to planning decisions pre 1st April 2015 where case officers' reports informed corporate group decisions. It also deals with the timely submissions of applications for judicial reviews. The judgment can be accessed at:

[http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2017/\[2017\]%20NIQB%2025/j\\_j\\_KEE10181Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2017/[2017]%20NIQB%2025/j_j_KEE10181Final.htm)

## **New Northern Ireland Planning IT System**

The Department has been working closely with colleagues in local government to consider the options for a new planning IT system(s) when the contract for the Northern Ireland Planning Portal ends in spring 2019.

We have recently completed a Discovery exercise that has identified the key functions of a new system(s) along with potential options on how this could be delivered. This was presented to the Planning Portal Governance Board earlier this month.

The next phase is to build on the work in Discovery to develop a business case. We have recently appointed consultants to assist with this work. It is expected that a business case will be developed during the autumn which will enable the Department and local government to identify the best way forward.

## **Other Government publications/initiatives**

The Department's involvement in the Manor House Project, Rathlin Island, was recently recognised at the RICS Awards 2017. DFI and the Rathlin Development & Community Association were jointly nominated in two categories, Regeneration and Leisure & Tourism. The awards celebrate the region's most inspirational initiatives and developments in land, property, construction and the built environment. The Manor House Project was highly commended in the Regeneration category recognising that the scheme has conserved and improved the built environment in a way that has contributed to the viability of the area. The Manor House is an iconic and historic structure and a major landmark which greets new visitors to Rathlin. The refurbishment project was innovative in its integrated approach to multi-disciplinary working with the local community playing a key role in bringing the project to fruition.

The Project was also shortlisted in the RTPA Awards for Planning Excellence 2017 – Economically Successful Places Category.

This Chief Planner's Update will be made available on the Planning Portal. I hope you find this information useful.

Yours faithfully



**Fiona McCandless**  
**Chief Planner**