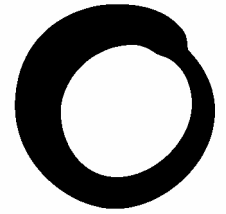


April 2006



**Friends of
the Earth**

Planning for the Environment in Northern Ireland

A user's guide

Friends of the Earth inspires solutions to environmental problems, which make life better for people.

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Introduction

Friends of the Earth works to shape a planning system that is fair, transparent, democratically accountable and delivers high-quality sustainable development. Friends of the Earth NI has engaged closely with the planning reform agenda both nationally and through our voluntary local groups who have first-hand experience of the barriers to participation in planning.

Sustainable development depends on decision making in which all members of society can be heard and contribute to the future of their communities. Participation in planning must not be an afterthought but a cornerstone objective of the system. Participation in the planning process should be recognised as a central way of promoting vibrant democratic governance that encourages active citizenship. It will lead to better-informed, higher-quality decisions based on local knowledge.

While many people recognise the need for an effective planning system they are suspicious of the process, which is sometimes perceived to lack transparency and openness.

In our experience there are a number of common barriers to effective participation that community groups and individuals encounter time and again:

- the cost of information.
- lack of time to comment.
- incomprehensible “planner” speak.
- complex procedures.
- negative attitudes to all objectors.
- lack of understanding as to what issues can be dealt with under the planning system.

This guide has been written to help local communities understand the complex world of planning, and outlines ways in which to effectively participate in the delivery of sustainable communities.

Planning and the Environment

Not all types of land-use are covered by the planning system. Most agricultural and forestry operations do not need planning consent. However, planning does cover a huge range of developments from relatively minor alterations to houses to major industrial infrastructure such as airport development or factories. Development which is subject to planning is defined in the Planning (NI) Order 1991 as:

“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the .making of any material change in the use of any buildings or other land”.

Planning has a major role to play in delivering sustainable development. For example, planning should ensure that development (including the type, design and location of developments) achieves social, economic **and** environmental goals. The principle of sustainable development should therefore underpin all planning policy and decisions and there is a welcome proposal in the Planning Reform (NI) Order 2005 for a statutory duty for planning to contribute to sustainable development.

Many campaigners are very concerned about how their environment is affected by the planning system. This is particularly acute in Northern Ireland where the planning system has a presumption in favour of development. Despite this, the environment is regarded as a ‘material consideration’ when making planning decisions. This means that planners must take relevant environmental considerations into account whenever making any planning decisions. There are a number of planning policies which are specifically designed to promote sustainable development or protect our natural resources. Yet there is still a major potential for conflict between development pressure and the environment, and planners need to ensure that the environment does not lose out. The integration of social, environmental and economic

objectives is an essential part of achieving sustainable development.

Planning Service's overall aim is to:

"improve the quality of life of the people of Northern Ireland by planning and managing development in ways which are sustainable and which contribute to making a better environment."

Article 6 of the draft Planning Reform (NI) Order 2005 will require Planning Service and the Planning Appeals Commission to exercise their functions *"with the objective of contributing to the achievement of sustainable development"*

The promotion of sustainable development is also a key objective for environmental organisations. For this reason it is crucial that campaigners have a good understanding of the planning system.

Planning in Northern Ireland has recently undergone its first major review for nearly 30 years. Under the banner **Modernising Planning Processes**, Government consulted widely in 2002 on a range of reforms designed to enhance the speed, efficiency and effectiveness of the planning system. Both administrative and legislative reforms were proposed. Many of these reforms have been, or are in the process of being, implemented for example through the draft Planning Reform (NI) Order 2005.

Many of the reforms deserve support and will benefit all users of the planning system. Others may be of concern to those who want to ensure that the environment is dealt with fairly in land use planning. The main changes are highlighted in this guide.

Further reform is also on the way as part of the Review of Public Administration process. Under this review, the seven new Councils which have been proposed will assume a wider range of powers and responsibilities, including planning.

The aim of this guide is to provide up to date information about the planning process in Northern Ireland and guidance on how to influence planning to benefit your environment.

1. An Introduction to the Planning System in Northern Ireland

Who is responsible for planning?

Planning in Northern Ireland is carried out by Planning Service, which is an agency of the Department of the Environment (DOE). This is different from the rest of the United Kingdom and the Republic of Ireland, where planning is a function of local authorities. Councils were the planning authorities in Northern Ireland prior to 1972.

When the Northern Ireland Assembly was in operation, all planning decisions were taken under the authority of the Minister for the Department of the Environment. During suspension of the Assembly, the Parliamentary Under-Secretary of State, with responsibility for the DOE, assumes that authority.

This is an issue of concern to many campaigners who consider that planning should be carried out by democratically elected local authorities, rather than a centralised government department. Public confidence in the Northern Ireland planning system is often low. Partly this is because of this democratic deficit, and partly because an under-resourced planning department has struggled with a backlog of planning decisions, plans and policies.

Under Review of Public Administration it is intended that the newly formed Councils will be restored as the planning authorities by 2009. These local authorities will then be responsible for preparing development plans and the control of development. Planning policy should remain with central government, along with decisions on minerals and waste and a power to call in major applications.

When this change occurs it is essential that the new planning authorities are well resourced, have high standards of professionalism and have a complete suite of robust plans and policies to implement.

What do they do?

The main function of the Planning Service is to exercise its duties under the planning legislation. The principal legislation is the Planning (Northern Ireland) Order 1991, which has been amended since its introduction (see Section 3).

In practice the main activities of the planners are:

- **Developing planning policies** - which will help Planning Service meet its aims and objectives
- **The production of development plans** – strategies for determining where and how new development will occur
- **Development control** – the process of determining new planning applications
- **Enforcement** – dealing with unauthorised development or breach of planning conditions

Strategic Planning

An added complication in Northern Ireland is that some aspects of strategic planning are the responsibility of another Department – the Department for Regional Development (DRD). The DRD was responsible for the Regional Development Strategy for Northern Ireland 2025. This provides a broad strategy for the development of Northern Ireland, without being very specific about the location of developments. That is the job of the Development Plans and Development Control carried out by Planning Service. Some Planning Policy Statements are also prepared by DRD rather than Planning Service, and these are identified in Table 2 below.

Structure of Planning Service

The Planning Service is headed by a Chief Executive who is based at its headquarters in Belfast. Headquarters staff deal with the preparation of planning legislation, planning policies and some major individual planning applications, such as mineral extraction or major retail proposals. The Divisional Offices handle the majority of planning applications and are responsible for the preparation of development plans.

Northern Ireland is divided into six Divisions, and a further two sub-offices

Table 1 – Planning Divisions in Northern Ireland

Planning Office	Council Areas covered
Headquarters	
Ballymena	(Antrim, Ballymena, Carrickfergus, Larne, Magherafelt)
Belfast	(Belfast, Newtownabbey, Castlereagh)
Craigavon	(Armagh, Banbridge, Craigavon, Newry and Mourne)
Downpatrick	(Ards, Down, Lisburn, North Down)
Londonderry	(Derry, Limavady)
Omagh	(Cookstown, Dungannon and south Tyrone, Omagh, Strabane)
Coleraine (sub division of Londonderry)	(Ballymoney, Coleraine, Moyle)
Enniskillen (sub division of Omagh)	(Fermanagh)

Contact details are given in Appendix I of this guide. Further contact details for each office are available from http://www.planningni.gov.uk/key_contacts.htm

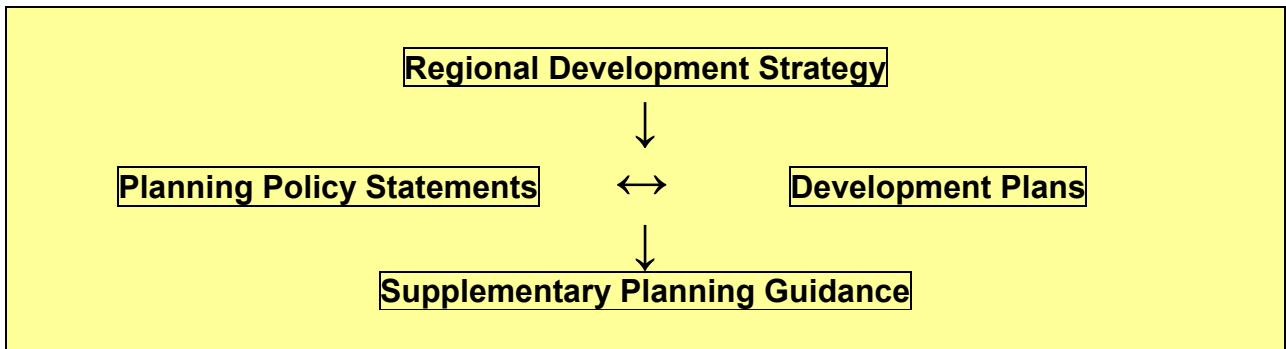
A map of the areas covered by the different Divisional Offices can be accessed at <http://www.planningni.gov.uk/images/Divisions.jpg>

Each Division is headed by a Divisional Planning Manager who leads teams of planners in dealing with development control or development planning issues. It can be helpful to become familiar with the roles of the planners in your local office, since there may be a planner who is particularly knowledgeable about the environment or one who deals with Tree Preservation Orders for example.

2. The Planning “Hierarchy”

Planning must, by definition, be a strategic exercise. Development applications cannot be decided on a piecemeal basis, but must be made within a framework of policies and criteria which must first be taken into account in the determination of planning applications.

There is a hierarchy of planning instruments which flow from the most strategic level down to decisions on individual planning applications.



More details about the planning hierarchy when determining planning applications in Northern Ireland can be accessed at:

http://www.planningni.gov.uk/Devel_Control/info_leaflets/hierarchy/hierarchy.pdf

The critical documents – development plans

Regional Development Strategy

At the top of the hierarchy is the Regional Development Strategy or “Shaping Our Future” as it is also known. This is a strategy for the development of Northern Ireland up to 2025, which identifies broad areas of growth and transport infrastructure. It attempts to adopt a sustainable approach, although it is not a Sustainable Development Strategy.

The Strategy does have a broad spatial element. That is, it indicates the proposed location of certain infrastructure, without containing the level of detail contained in Development Plans. It also has related Strategic Planning Guidelines which give the planning context for:

- Strengthening the regional economy and tackling social and economic disadvantage
- Protecting and enhancing the natural and man-made environment
- Housing, transport, air and water quality, energy and waste strategies, infrastructure and public service providers, and
- Development plans and for guiding public and private investment decisions relating to land use.

An environmental appraisal (known as a Strategic Environmental Assessment or SEA) of the Strategy was undertaken. This identifies whether each Strategic Planning Guideline would have a positive or negative effect on the environment. SEA is now required for all such strategies under the recent Environmental Assessment of Plans and Programmes Regulations (NI) 2004.

Status of the Regional Development Strategy

The Strategy has a statutory basis and under the Strategic Planning (NI) Order 1999 Planning Service must take it into account both when preparing Development Plans and when deciding upon individual planning applications. In addition, under the Planning (Amendment) (NI) Order 2003, new Development Plans must also be “*in general conformity with*” the Strategy.

However, problems emerged when decisions were being made based on existing Development Plans which were drawn up before the Strategy was published. There was confusion over the

role of the Strategy in these cases. In addition, Government was concerned that natural resources could be damaged if decisions were based on an old plan, and not on an emerging plan which, although not finalised, was prepared in line with the Strategy and gave better protection to the environment.

The situation was clarified by a **Joint Ministerial Statement** made on 31st January 2005. The statement gave guidance on what weighting should be given to plans in their different stages, and also set out when it would be appropriate to refuse planning permission on the grounds of “prematurity” (where a new Plan has not yet been adopted).

The Statement concluded that greater weight should be given to the policies in an emerging Plan than those in an existing Plan, since the emerging Plan will have been prepared in conformity with the Strategy. In practice, however, there is a great deal of uncertainty about the status of this position. Although Planning Service has refused applications on the basis of such “prematurity”, none have yet been upheld by the Planning Appeals Commission when taken to appeal. To date the situation has not been tested in court.

The Shaping Our Future document can be accessed at:
http://www.drdni.gov.uk/DRDwww_RegionalPlanning/

Planning Policy Statements

Planning Policy Statements (PPS) contain policies on a range of planning matters including nature conservation, built heritage and quality residential environments. They all apply to the whole of Northern Ireland, and set out the main considerations taken into account in reaching planning decisions.

Planning Service, along with the Department for Regional Development, is working to complete a full set of up to date Planning Policy Statements. A number are already out of date and Table 2 gives an indication of the Department’s timescale for producing both new statements and updates.

Table 2 Current Planning Policy Statements

PPS Number and Subject	Date Issued	Next policy due	Department responsible
PPS 1 – General Principles	March 1998	Review underway. Timescale unknown. Paragraphs 46-48 superseded by Joint Ministerial Statement of January 2005.	DOE
PPS 2 – Planning and Nature Conservation	June 1997	Review suspended due to other priorities. May be resumed 2006/7.	DOE
PPS 3 (Revised) – Access, Movement and Parking	February 2005	Revised version replaces PPS3 – Development Control, Roads Considerations	DOE
PPS 4 – Industrial Development PPS 4 (Revised) – Industry, Business and Distribution (Draft)	March 1997 January 2003	Revised version will replace PPS4 – Industrial Development. Target date for completion was March 2005. Should be finalised 2006.	DOE
PPS 5 – Retailing and Town Centres	June 1996	Review required. Delayed until outcome of Judicial Review into Sprucefield issues.	DOE

PPS 6 – Planning, Archaeology and the Built Heritage PPS 6 - (Addendum) Areas of Townscape Character	March 1999 August 2005	Target of production by March 2006 has been met	DOE
PPS 7 – Quality Residential Environments	June 2001		DOE
PPS 8 – Open Space, Sport and Outdoor Recreation	February 2004		DOE
PPS 9 - The Enforcement of Planning Control	March 2000		DOE
PPS 10 - Telecommunications	April 2002		DOE
PPS 11 – Planning and Waste Management	December 2002		DOE
PPS 12 – Housing in Settlements	July 2005		DRD
PPS 13 – Transportation and Land Use	February 2005		DRD
PPS 14 – Sustainable Development in the Countryside (Consultation Draft)	March 2006	Policies will apply to all planning applications received after 16 March 2006	DRD
PPS 15 – Planning and Flood Risk (Draft)	December 2004	Target to produce in final form by March 2006	DOE
PPS 17 – Control of Outdoor Advertisements (Draft)	February 2004)	Target to produce in final form by March 2006 should be achieved	DOE
PPS on Renewable Energy	n/a	Initial scoping work has started on this new PPS. A formal commitment to produce the PPS is expected to be included in next Business Plan.	DOE

PPS 1 sets out the guiding principles for planning decisions. The key principal is that development should be permitted, having regard to the development plan and all other material considerations, unless it would cause demonstrable harm to interests of acknowledged importance.

It is hoped that this often-criticised presumption in favour of development will be replaced in the current review, and that this will also confirm the implementation of a plan-led system in Northern Ireland, where development plans are the key consideration in deciding planning applications.

The sustainable development duty set out in Article 6(1) of the forthcoming Planning Reform (NI) Order means that for the first time there is a statutory duty on planners to contribute to the delivery of sustainable development. The new PPS1 should provide planners with guidance on how to implement this duty. This is especially important as the draft Order does not contain any definition of sustainable development and there are concerns about how the provision can be implemented effectively.

PPS 2 is a crucial document for the nature conservation campaigner. It establishes a hierarchy of policies for the protection of important wildlife sites, with the most important sites being served by more robust policies and a stricter series of tests for developers to satisfy.

Table 3 Sites covered by policies in PPS 2

Status of wildlife site protected by specific policy	Type of Designation
Internationally Important	Special Protection Area (SPA) Special Area for Conservation (SAC) Ramsar sites (Ramsar Convention)
Nationally Important	Area of Special Scientific Interest (ASSI) Area of Scientific Interest (ASI) National Nature Reserve (NNR) Nature Reserve (NR) Marine Nature Reserve (MNR)
Locally Important	Local Nature Reserve (LNR) Wildlife Refuge Nature Reserve (non-statutory) Site of Local Nature Conservation Importance (SLNCI)

While PPS 2 is an important tool for environmental protection, it is already outdated and needs to be updated to reflect a range of recent developments in policy and legislation such as the Northern Ireland Biodiversity Strategy, the Strategic Environmental Assessment Directive and further aspects of the Habitats Directive. A review of PPS 2 was proposed for 2005/2006, and while this has been initiated, it has been suspended while other priorities are assessed.

PPS5 sets out policy on town centres and retailing. It deals with crucial issues of sustainable development such as:

- the vitality and viability of town centres
- accessibility and the availability of public transport
- choice and flexibility in terms of retail, including the survival of local shops

The PPS contains a specific policy on out-of-town shopping centres, stating that there is no justification for any new regional centres and restricting the growth of Sprucefield shopping centre. This has been the source of great controversy, culminating in a Judicial Review of a decision by the Environment Minister to permit further development at Sprucefield. This legal process has also delayed the production of an updated PPS, and this delay has itself become the subject of another Judicial Review! It seems unlikely, therefore, that a new PPS will be produced in the near future.

PPS11 deals with waste management. This issue is of great concern to residents of Northern Ireland where waste management has often fallen short of EU requirements and standards, particularly in the context of re-use and recycling. The PPS sets out policy on the development of waste management facilities and seeks to promote high environmental standards for such developments.

PPS14

A draft PPS was published on 16th March 2006. This PPS been produced to address the proliferation of development, and especially single dwellings in the countryside. This rate of development was widely considered to be unsustainable, with particular concerns about sewage disposal, habitat loss, landscape quality and dependence on private transport to access services.

The PPS effectively removes the presumption in favour of development in the countryside, and requires certain criteria to be satisfied before development can be permitted. In effect, the Northern Ireland countryside is treated as if it is a Green Belt, with future development being steered into the settlement limits set out in Development Plans.

To avoid a large influx of planning applications, the draft PPS will apply to all planning applications received after 16 March 2006.

Planning Policy Statements can all be viewed at:

http://www.planningni.gov.uk/AreaPlans_Policy/PPS/PPS.htm

A Planning Strategy for Rural Northern Ireland

Published in 1993, this was an early version of a Northern Ireland wide planning policy for the countryside. It has now been largely replaced by the Planning Policy Statements. Each PPS indicates the Planning Strategy policies which it is replacing.

The Planning Strategy does remain in force for those issues which are not covered by a PPS, for example tourism development in rural areas

Development Plans

In Northern Ireland, most development plans are known as Area Plans. There are also some Local or Subject Plans, which focus on smaller and more complex areas or issues. One example is the Belfast Harbour Local Plan. See chapter 5.2 for how to get involved in preparing these.

These Plans apply all the Department's regional policies at the local level. Until recently most Area Plans covered just one Council area. Now, however, most new or emerging plans cover a number of adjoining Council areas within the relevant Planning Divisions (see Table 1).

Development Plans provide information on the land use proposals and policies that will guide planning decisions in a local area. They provide land allocations for a full range of land uses, including housing, industry, transportation, open space, formal recreation and nature conservation. This zoning information is illustrated on maps and accompanied by explanatory text in the Plan documents.

Development Plans are the main way of assessing and addressing any potential conflict between development needs and the need to protect the environment. The Department must take the policies and provisions of the relevant Development Plan into account when making any planning decision. The status of plans in the planning process was strengthened by the Planning (Amendment) (NI) Order 2003 which requires planning decisions to be made "*in general conformity with*" the plan, unless there are other material considerations which dictate otherwise.

Eleven Area Plans are currently being worked on by Planning Service, including the Belfast Metropolitan Area Plan. When these are complete, the whole of Northern Ireland will be covered by Development Plans which are in line with the Regional Development Strategy.

Emerging plans such as the Belfast Metropolitan Area Plan and the Northern Area Plan contain policies which seek to protect areas of important wildlife habitats **outside** the designated sites shown in Table 3.

Details of the current status of each plan can be obtained at:

http://www.planningni.gov.uk/AreaPlans_Policy/Plans/Planshome.htm

Supplementary Planning Guidance

This is non-statutory guidance which is prepared to supplement or clarify existing plans or policies. As non-statutory guidance documents they are not subject to the same consultation procedures as planning policy or development plans. They can include Design Guides (for example for residential developments), Conservation Area Guides or Development Control Advice Notes.

Development Control Advice Notes provide guidance to developers, their agents or advisors on many aspects of the planning system. They can also provide helpful clarification on complex issues to planners and campaigners as well. There are currently 14 Development Control Advice Notes covering a range of subjects including Environmental Impact Assessment (DCAN 10), Planning Control for Hazardous Substances (DCAN 12) and Siting and Design of Radio Telecommunication Equipment (DCAN 14).

The full range of Development Control Advice Notes can be accessed at http://www.planningni.gov.uk/AreaPlans_Policy/Supplementary/DCAN/DCAN_Home.htm

Additional Policies Relevant to Planning Decisions

It is also important to note that a wide range of other non-planning policies and strategies can be taken into account by Planners on occasions. These include the Northern Ireland Biodiversity Strategy, the NI Regional Transportation Strategy, and the NI Waste Management Strategy.

Helpful NI Strategy Documents

Biodiversity Strategy

<http://www.ehsni.gov.uk/natural/biodiversity/publications.shtml>

Transportation Strategy

http://www.drdni.gov.uk/DRDwww_TransportationPlanning/

Waste Management Strategy

http://www.ehsni.gov.uk/environment/wasteManage/waste_management.shtml

3. Planning Legislation and Recent Reforms

The Planning (Northern Ireland) Order 1991 provides the main statutory framework for the present-day planning process in Northern Ireland, including the duties and functions of Planning Service.

The 1991 Order has had a number of amendments, the most notable of which is the Planning (Amendment) (NI) Order 2003. The 2003 Order adds to the Department’s statutory powers and responsibilities and introduces new penalties for breach of planning provisions. It also introduces stronger Tree Preservation Order measures which are detailed later in this guide.

Table 4 Northern Ireland planning legislation – key statutes

Legislation	Main measures
Planning (NI) Order 1991	General duty on Department to co-ordinate and formulate policy for orderly and consistent development of land, and the planning of that development Powers to enable the Department to carry out these duties including granting of planning permission, production of development plans and planning enforcement. Provisions for planning appeals and updates functions of PAC
Planning (Amendment) (NI) Order 2003	New enforcement powers Stronger tree protection provisions Relationship of development plans etc to Regional Development Strategy Allows Planning Service to refuse to consider certain repeat applications
Planning (Environmental Impact Assessment) Regulations (NI) 1999	Procedures relating to the requirement for environmental impact assessment of certain proposals Description of development which require or may require EIA Matters for inclusion in an Environmental Statement
Planning (General Development) Order (NI) 1993 (as amended)	Definition of “permitted development” – i.e. development which does not require planning permission such as certain agricultural and forestry developments (see Chapter 5) Procedures relating to permitted development

Northern Ireland legislation can be accessed at:
http://www.opsi.gov.uk/legislation/northernireland/ni_legislation.htm

Current and Proposed Planning Reforms

The *Modernising Planning Processes* programme identified proposals for reforming planning legislation further, and these were the subject of a “*Reforming Planning*” consultation process which was launched in August 2004.

The consultation document contained some significant proposals which are designed to produce a more efficient and streamlined planning process. Some of the proposals have

implications for the environment and those seeking to protect it. While some streamlining is sensible and desirable, care must be taken to ensure that this is not at the expense of necessary environmental safeguards.

Main Legislative Reform Proposals in 2004 Consultation

- A statutory purpose for planning – to explain the role of planning in delivering sustainable development
- Decrease of duration of planning consent from 5 years to 3 years;
- Review of old mineral permissions to ensure compliance with modern environmental standards;
- Requirement for developers to submit a statement of design principles which have been applied to a proposed development;
- Planning Appeals to be decided by a single Commissioner (rather than quorum of at least 4 as at present);
- Third party appeals will **not** be introduced (see below)
- Power to serve Stop Notices where a breach or threatened breach of planning control is identified;
- Possible introduction of new offence of commencing development without permission;
- Use of appointees (other than Planning Appeals Commission) to hear objections to development plans;
- Introduction of discretion over which issues are heard at public inquiry in oral evidence or proceed by written submission;

Forthcoming Legislation

In October 2005 the Department produced a public consultation document for the draft Planning Reform (NI) Order 2005, which is intended to bring forward the main reforms highlighted in the previous Consultation exercises.

The draft Order has been broadly welcomed by environmental groups, although a number of key provisions are still absent.

For example, environmental groups, including Friends of the Earth, have argued strongly for the introduction of third party appeals to balance the existing right of developers to appeal the refusal of planning permission. The draft Order makes no reference to Third Party Appeals and this is considered to be a missed opportunity to introduce a system which works well in other jurisdictions, including the Republic of Ireland.

Also absent is a new offence of commencing development without planning permission. This was proposed by the Environment Committee of the Northern Ireland Assembly at Stormont in 2003 and the Environment Minister at the time, but is not supported by central government Ministers.

There was also concern about a proposal to remove the right for third parties to be heard at public inquiries at the discretion of the Commissioner or other independent appointee (see final bullet point above). This would have reduced campaigners to using written submissions instead of having the opportunity to debate in the examination in public. However, it is extremely welcome that this proposal has **not** been brought forward in the draft Planning Reform (NI) Order, and so the right to be heard has been retained.

Table 5 lists some key provisions set out in the draft Order and summarises the effect these

should have.

Table 5 Key Provisions of the Draft Planning Reform (NI) Order

Provision	Article in Order	Impact
Community Involvement	Article 3	Requires the Department of the Environment to produce a statement of how it will involve the community in development proposals
Status of Development Plans	Article 4	Confirms importance of development plans in deciding planning applications. Decisions must be in accordance with the development plan “unless material considerations indicate otherwise”. It is of some concern that there is no clarification of this phrase, as this could undermine the new status of development plans.
Independent examination of development plans	Article 5	Previously the Department could cause a public local inquiry to be held by the Planning Appeals Commission (PAC). Article 5 now allows for an independent examination by the PAC into objections or alterations of a development plan. Objectors will still have the right to be heard by the PAC provided they have made a request to be heard. This confirms the right of an objector to be heard. It is unclear how in practice an independent inquiry will differ from an examination in public in terms of public involvement and guidance will be required to clarify this.
Sustainable Development	Article 6	Imposes a statutory duty on both the Department and Planning Appeals Commission to contribute to the achievement of sustainable development. It is uncertain just how this will be implemented, especially in the absence of any definition or criteria which should be followed.
Design Statements	Article 8	Requires certain applications to be accompanied by a statement about design principles, and how access issues have been dealt with.
Power to decline to determine applications	Article 9	This will prevent Repeat Applications, where an application has already been refused and not appealed in previous two years, unless there has been a material change in circumstances. It will also prevent Twin Tracking – where developers introduce an application which is similar to another one which has not yet been determined or is still under consideration by the PAC.
Conservation Areas	Article 12	Allows for wider consultation on proposed Conservation Areas. It also allows controls such as demolition control and protection of trees to be introduced on a temporary basis before consultation takes place.
Temporary Stop Notices	Article 13	Allows the Department to serve stop notices to halt a breach of planning control, as soon as it is identified.
Crown Development	Articles 21-24	Development by or on behalf of the Crown will be brought under planning control, subject to national security considerations.
Mineral Planning Permissions	Article 26	Allows the Department to review all old mineral permissions to ensure conditions meet current environmental standards.

4. The Role of Other Bodies in the Planning Process

While the Planning Service is the planning authority for Northern Ireland, the planning legislation also identifies other bodies which have a statutory role in the planning process.

Planning Appeals Commission

The Planning Appeals Commission (PAC) plays an extremely important part in the Northern Ireland planning system. It was established in 1973 as an independent body which considers planning appeals and presides over public inquiries involving both major planning applications and development plans (see Section 5). The PAC also has a wide range of other functions relating to different aspects of the planning system. These include:

- Determining appeals against enforcement notices;
- Hearing and reporting on representations relating to hazardous substances consent applications;
- Determining appeals against the refusal, or conditional grant, of listed building consent.

Full details of the PAC's varied functions can be seen at: www.pacni.gov.uk

Statutory Consultees

Planning Service consults with a range of statutory consultees over planning matters. They routinely consult with other Government departments such as Environment and Heritage Service (EHS), Roads Service and Water Service through Service Level Agreements (SLAs). These SLAs are agreements drawn up between different Government departments, or sections of the same department, to formalise the services they will provide to each other.

Planning Service always seeks the views of EHS on any proposal which may have implications for designated sites or protected wildlife, landscape or water quality etc. EHS staff therefore have a substantial number of planning cases to consider at any time. It is important for campaigners to inform EHS of any environmental concerns relating to a planning proposal, as this may inform the advice EHS gives to Planning Service.

It is important to note that EHS cannot *formally object* to planning applications as a third party, as the statutory agencies do in Britain, since EHS is part of the same Government department as the planning authority. Instead, EHS provides the Department's scientific evidence and advice which is used in the determination of planning applications. However, in practice a clear recommendation for refusal by EHS may have the same effect as an objection by English Nature or Scottish Natural Heritage.

Consultation with statutory consultees can often lead to delays in the planning process, as some Government bodies do not have the staff resources to deal with a large volume of planning applications. Consideration is being given to the imposition of a time constraint on statutory consultees to respond.

Local Authorities

Planning Service must also consult with the relevant Local Authority on planning applications and when either preparing or amending a development plan. Local authorities have planning committees for considering planning applications, and Planning Service consults with Councils at monthly meetings where Planning Service gives a preliminary opinion on each application.

Councils make a recommendation to Planning Service for approval or refusal, but while this is taken into account, Planning Service is under no obligation to apply that recommendation in its final decision.

Planning Service has agreed new consultation arrangements with Councils to improve the

efficiency of the process. This includes:

- Reducing the number of times the Council can defer an application where they disagree with the Department's opinion, to one site or office meeting;
- Allowing Planning Service to issue planning consents for minor (householder) proposals without formal consultation;
- Restrict the referral of cases by the Council to the Planning Service Management Board (which Councils are entitled to do if they disagree with a decision by the Divisional Planning Office).

Council for Nature Conservation and the Countryside (CNCC)

CNCC was established under the Nature Conservation and Amenity Lands (Amendment) (NI) Order 1989 to provide advice to the Department of the Environment on nature conservation and countryside issues. It regularly provides advice to EHS on major planning applications, development plans and other planning issues.

Objectors making a submission with a nature conservation or landscape element should copy objection letters to both EHS and CNCC.

Non-Government Organisations (NGOs)

While NGOs are not statutory consultees, many organisations have developed substantial expertise in planning matters. It can often be useful to seek their advice on planning and the environment, or on specific cases. In some cases, a conservation organisation may be making a similar case to local campaigners, and a co-ordinated approach to commenting on the proposal would be beneficial.

Table 6 Environmental NGOs with an interest in planning issues

Organisation	Role in planning matters
Community Technical Aid	Support for community groups
Friends of the Earth	Working on a wide range of environmental issues and planning policy.
National Trust	Planning policy and cases impacting upon Trust properties
Northern Ireland Environment Link	Umbrella organisation which communicates members' views on strategic planning issues
RSPB	Planning policy and cases involving important wildlife sites, especially for birds
Ulster Architectural Heritage Society	Planning policy and cases involving built heritage
Ulster Wildlife Trust	Planning policy and cases involving important wildlife sites
Wildfowl and Wetlands Trust	Cases involving wetland sites, but particularly Strangford Lough
WWF	Strategic planning issues and some major cases involving wildlife interests

Contact details for these organisations can be found in Annex I of this guide.

5. Getting Involved in Planning

Both individuals and local groups can influence the planning process to benefit the environment. Using the background information from the preceding chapters, this section provides guidance on how you can make a difference for the environment in your area.

5.1 Development Control (planning applications)

Early Involvement

Many people and local groups are first introduced to the planning system through concern for a particular planning application in their area.

It is very important to get involved at a very early stage in the planning process. It is frustrating to find out about a controversial proposal once the 14 day statutory objection period has lapsed and the application is being processed. After 14 days from the date when the application first appeared in a newspaper, the Planning Service is no longer under an obligation to consider your comments (see Planning (NI) Order 1991 Article 25(2)). In practice, however, they will often consider late submissions, partly because of the delays they encounter in receiving responses from some statutory consultees.

Only adjacent neighbours or landowners can expect to receive notification about a planning proposal from Planning Service. It is therefore a good idea to monitor planning applications in your local area regularly. There are several ways of doing this:

- All planning applications, with the exception of minor proposals such as house extensions, are advertised in the local press;
- Planning applications are available online from the Planning Service website. Applications are listed by Council area, according to the schedules for discussion at Council planning committees: http://www.planningni.gov.uk/Devel_Control/council_schedules/schedules.htm
- A planning register is kept at your local planning office. You can ask to see details of any application, including drawings, maps and any other documents such as an Environmental Impact Assessment. By paying a fee it is possible to obtain a copy of these details.
- Commercial planning registers are available through payment of a subscription. These can provide additional information such as details of recent decisions, listed by area or subject.

The Planning Application

Not all activities require planning applications. Only those which fit the definition of “development” in the Planning Order require planning consent. Development includes most building, engineering, mining works or a significant change of use of land or buildings.

Activities or operations which do not require a planning application are known as **permitted developments**. These include:

- Minor house alterations
- Laying or repairing of pipes and cable by statutory authorities

- The use of land for agriculture or forestry, including certain buildings
- Certain port and harbour developments for shipping
- Some aspects of mineral exploration, including boreholes and seismic survey.

It is important to be aware of permitted developments, as using the planning process may not always be the appropriate way of expressing concern. Some will be subject to other types of consent, for example under water pollution regulations such as the Water (NI) Order 1999 or other environmental protection legislation. All such consents are open to public scrutiny – for example the Department of the Environment keeps a register of applications made for discharge consents made under the Water Order.

However, even permitted developments do require environmental scrutiny. For example, in 1995 the law was amended so that any permitted development likely to have significant effects on the environment must be the subject of a planning application. The application must be accompanied by an environmental statement. Prior to this there was a high potential for environmental damage from certain permitted developments, but now these have been brought within the planning process and are subject to environmental assessment.

Full or Outline?

Once it is established that a planning application is required, it may be made for either *full* or *outline* planning permission. An application for outline permission generally means that the application has been lodged without full details and plans relating to the proposal. Even if a proposal succeeds in obtaining outline permission, it is still required to receive full permission before it can proceed. The applicant would need to address any *reserved matters* which have been identified by the Planning Service from the original application. Reserved matters are those issues and details which are not addressed in an application for outline permission. If outline permission is granted, the detailed aspects (or reserved matters) of the application must still be addressed.

Some developers favour outline permission when they intend to sell land on, as it avoids the time and expense of preparing a more detailed application.

It is important to identify whether a proposal is for full or outline permission, as this can influence the tactics you use. While an outline application may offer a second chance for third parties to raise concerns, you should not be lulled into inactivity. A high proportion of outline applications receive full permission once reserved matters are addressed, so campaigners should always prepare a full submission of comments at the outline application stage.

Objecting to a planning application

Lodging an objection is the most direct way of expressing concerns about a planning application.

Third parties are entitled to object to any planning application. All objections are taken into account by Planning Service in reaching their decision, providing the objections address issues which are known as '*material planning considerations*'. Environmental issues such as pollution and nature conservation are valid reasons for objecting to a proposal.

Here are four things to remember when you are considering whether to object.

4 points to remember when considering an objection
Only consider an objection once you have seen all the information relating to an application. Objections based on speculation or inaccurate information waste everyone's time.
Objections should be received by Planning Service within 14 days of the application being advertised. Planning Service is not obliged to consider objections received after this period, although in practice they will often do so. Always check with your local Planning Office to find out about timescales.
14 days seems very short – but don't panic! It is often acceptable to write an outline response or holding letter to register your objection, stating that you will need additional time to provide more details. As planners often have to wait weeks to receive responses from statutory consultees, they are often sympathetic. Always check with your local Planning Office first.
Your objection counts! Don't be reluctant to object because you think that one objection will make little difference. Planners do take note of objections. They can also help to inform them by providing local information.

The presentation of your objection letter is also important.

4 points to remember when preparing an objection letter
Keep the letter short and to the point. If you have a lot of relevant information, this could be put in an annex or appendix to the letter.
Only provide comments on planning matters. Environmental issues are valid matters to address, but avoid moral issues or reference to the value of your property which are not planning matters.
Keep to facts. Avoid speculation, hearsay, or criticism of the Department. Make an informed judgement of the effect of the development based on the facts.
Include the following points in your letter. Your name and address – essential for comments to be taken into account The application Reference Number Why you have an interest in the proposal The words "I/We object". This leaves the planners in no doubt as to your purpose for writing. State clearly why you object and set out those matters you want the planners to take into account when making their decision. Give accurate information on why the site in question is important for people or wildlife State what you think the impact of the development will be.

What happens next?

Objection letters are normally acknowledged within 5 working days of their receipt. Objectors should also be kept informed about changes to an application or additional information that has been provided by the developers. However, just to be sure, it is worthwhile to keep in touch with the planning office for up to date information. This also applies to the final decision which can be many months after the initial application.

With each decision, Planning Service issues a **Decision Notice**. Where the decision has been to refuse permission, the Decision Notice sets out the reasons for refusal, and specifies those policies which the proposal is inconsistent with.

Where the decision is to grant permission, the Decision Notice lists any conditions which may be attached to the permission. The Notice may also include informatives, which are recommendations to the applicant, while conditions are mandatory.

The Decision Notice is not automatically sent out to every objector, but can be requested from the Planning Office for a small cover charge. It is very helpful to study the Decision Notice to see how policies have been applied and whether the attached conditions address the concerns you may have had as an objector.

Conditions and Agreements

Planning conditions are an important tool for both planners and campaigners. They can be used to reduce or remove environmental impacts from proposals. Planners often impose environmental conditions on development proposals such as the retention of trees or natural features, or measures to reduce pollution.

Planners welcome suggestions of conditions from interested parties, particularly if they help to make a proposal acceptable. For an objector, recommending conditions can also be a pragmatic way of ensuring that environmental damage is minimised, even if outright refusal is unlikely. There are two types of cases where conditions can be included in an objection letter:

- Where you are objecting subject to certain conditions being imposed. In these cases you feel that certain conditions would remove the reasons for your objection.
- Where you believe that no conditions can prevent significant environmental damage, but could at least reduce the severity of the impact. In such cases suggested conditions should be made **without prejudice** to your objections.

It is helpful to specify what conditions you think are needed in your letter to the planners. However, care needs to be taken in drawing them up. Conditions must meet several criteria before they can be considered by planners. To be usable conditions must be:

- relevant to planning matters
- relevant to the permission
- necessary
- clear and precise
- enforceable, and
- reasonable

Ideally a condition should contain the following information:

- what is required
- when it should be done
- how it should be done, and
- what part of the site or process the condition relates to

Example of a Condition

A poor example of an environmental condition would be:

“minimise disturbance to wildlife”. This is neither clear and precise nor enforceable, even if it is necessary and reasonable.

A better approach would be to say:

“no construction to take place within the area illustrated on the attached map between 1st April and 31st July, to avoid the bird nesting season.”

Whether conditions are followed depends both on individual developers and the enforcement activities of Planning Service (see below). Planning Service is not well resourced with enforcement staff, and they do often rely on members of the public to report non-compliance with conditions.

Planning **agreements** are legally binding agreements between the Department and applicants which can cover many different issues, particularly in major development proposals. They are made under Article 40 of the Planning (NI) Order 1991. It is possible for agreements to be made for nature conservation purposes. An example might be an agreement where a developer undertakes to create and manage a wildlife area within a development site. The agreement might, for example, specify the terms under which the site will be managed by the developer.

A planning agreement can also require a developer to provide compensation for habitat lost through development - for example the agreement requiring Derry City Council to manage an area of Lough Foyle for birds in compensation for an area of mudflats lost to airport development.

Another example might be where development is permitted subject to the developer restoring a listed building which occupies part of the site.

Protection of Trees

The loss of mature trees is a common result of many planning decisions.

As a result, there are a wide range of policies for the protection of trees which can be found in many development plans and Planning Policy Statements, including PPS 2. The protection of trees is also statutory and the Department is empowered to impose a **Tree Preservation Order (TPO)** on either individual trees or groups of trees.

Planners will consider imposing a TPO if the trees are under threat and they are of local significance. A TPO takes effect immediately, once the owners of the land are informed, although they do have an opportunity to object to the TPO. Once a TPO is confirmed the trees can only be removed or pruned if they are deemed to be dangerous or a threat to property.

New legislation introduced in 2003 (see Table 4) has strengthened the protection of trees by introducing:

- a new duty to replace trees subject to a TPO which are removed
- a new duty to replace trees which are removed in a conservation area
- an increase in penalties for breaches of a TPO.

Listed Buildings

Many campaigners are concerned about the loss of historic or interesting buildings in their areas. The Department is required by Article 42 of the Planning (NI) Order 1991 to compile a list of buildings of particular architectural or historical interest. At present there are around 8,500 of these Listed Buildings. Once a building is listed, the legislation requires consent to be obtained before a building can be demolished or significantly altered. It is a criminal offence to undertake any such work without Listed Building Consent. It is important to recognise that “building” has a broad definition and can include bridges and walls, and also that protection extends to the interior of a building.

Listed buildings are graded either A, B+ or B. However, these grades are used as an indication of how much grant aid the listed building owner may be entitled to rather than a measure of the protection they receive. Statutory controls should be applied equally to all grades. There is a general presumption in favour of protection of listed buildings, and developers must demonstrate why alteration or demolition is needed.

Environmental Impact Assessment

Many development proposals are accompanied by an Environmental Statement (ES). These are prepared when an environmental impact assessment (EIA) of the proposal has been requested by the planners. EIA is mandatory for some types of development proposal and for others it is at the discretion of the Department, depending on the nature, scale and location of the proposal. Considerations include whether the proposed development is within a “sensitive site” including sites designated for nature conservation interest such as Areas of Special Scientific Interest (ASSIs).

Be aware that Environmental Statements are prepared by developers and their quality is often dependent on the expertise of their consultants. It is important for campaigners to scrutinise these documents carefully to ensure that they are accurate and contain all the required information.

Developments which require EIA include:

- oil refineries
- power stations over a certain size
- chemical installations
- waste incinerators (chemical or special waste)
- roads and runways over a certain length.

Developments for which EIA is discretionary depending on their nature, size and location include:

- peat and mineral extraction
- industrial estates
- flood relief works
- abattoirs
- marinas
- hotel complexes

Many developers now voluntarily submit an ES as part of their application. The Planning (Environmental Impact Assessment) Regulations (NI) 1999 <http://www.opsi.gov.uk/sr/sr1999/19990073.htm> provide full lists of both mandatory and discretionary EIA developments, and a list of matters which should be included in any ES.

The quality of Environmental Statements is highly variable and it is important to read them in detail to establish whether they contain the requisite information. If it does not, mention this in your letter to Planning Service asking them to request additional information from the applicants. Campaigners can read Environmental Statements at their local Divisional Planning Office.

A good Environmental Statement should contain:

- A full and detailed description of the development
- Details of alternative proposals considered by the applicant.

This should explain the reasons why the applicant has chosen the current proposal, and take into account the environmental effects of each alternative.

- A description of the aspects of the environment which are likely to be affected by the development

This often involves the presentation of ecological information about the development site and its surrounds. On occasions time constraints mean that survey work is done at an inappropriate time of year, or insufficient information is gathered. In most cases this is unacceptable and you should insist that the requisite information is gathered before any decision can be made on the proposal.

- A full description of the environmental impacts of the development

This should include all direct and indirect effects, cumulative impacts, and both short and long term effects.

- A list of measures needed to avoid or reduce impacts

Often environmental impacts can be reduced or even avoided if the proposal is modified or certain methods are specified. An ES should contain a range of mitigation measures designed to address the environmental impacts identified. This should include information on how these measures will be implemented and what monitoring will be done to ensure the measures are successful.

The volume of technical detail contained in most Environmental Statements can be daunting, but all must include a non-technical summary which explains the main findings in plain language. Freedom of Information can be used to request a copy of parts of the Environmental Statement on paper or CD rom for a small fee but if you are serious about objecting to a planning application it is better to obtain your own copy of the Environmental Statement, so you have easy access to all the detailed information. This can be expensive as some documents come in several volumes which can cost up to £200. Pooling resources to obtain a copy is certainly the best approach – it is difficult to compile a coherent case without direct access to all of the information.

See Friends of the Earth briefing

http://www.foe.co.uk/resource/guides/environmental_impact_asses1.pdf

Enforcement

Commencing a development without planning permission is not a criminal offence, although this is currently being considered as part of the Modernising Planning Processes reforms. However, Planning Service can require remedial action to be taken and this could include the demolition of an unauthorised building.

Planning Service employs enforcement officers who try to ensure that developments have planning permission and that development is being carried out within the terms of the permission. One of the most common enforcement issues is the breach of planning conditions by developers.

Despite this, Planning Service has few resources to deal with this issue effectively and the public often feels frustrated about the level of enforcement being carried out. Feedback from the public is important and if you suspect that planning regulations are being breached you should call your Divisional Planning Office immediately (see Appendix 1).

Often enforcement issues can be resolved through discussion, but in some cases enforcement action is necessary. This involves the issue of an **Enforcement Notice** which specifies what the person must do to remedy the breach. There is a right of appeal to the PAC against an enforcement notice. Failure to comply with an enforcement notice is an offence and Planning Service can prosecute offenders. Unfortunately the fines imposed by the courts are often minimal and so this does not always act as an effective deterrent.

In 2003 new legislation was introduced to strengthen the Department's enforcement powers (see Table 4). This introduces **Planning Contravention Notices** and **Breach of Condition Notices**. Planning Contravention Notices strengthen the Department's power to obtain information before taking enforcement action. This will help to secure the co-operation of a person in taking corrective action. A Breach of Condition Notice can be served if there is clear evidence that a planning condition has not been complied with. Failure to comply with either Notice is an offence.

Perhaps the most significant development is the provision of stronger **Stop Notices**. This allows the Department to introduce a Stop Notice which has immediate effect, unless the Department specifies otherwise. However, a Stop Notice must be served along with an Enforcement Notice, and this can cause delays which may allow unauthorised development to continue. For this reason the Department has proposed the introduction of "stand alone" or temporary Stop Notices which can be served as soon as a breach or even a threatened breach of planning control is identified.

5.2 Development Plans

Influencing Development Plans

The role and purpose of Development Plans is set out in Section 2. Relatively few people get involved in the plan-making process, but it is important to have a say in decisions which will affect your local area for the next 10 years. Campaigners can influence how areas are zoned (for example for housing, industry or open space), and it is also important to comment on policies in the plan which may be damaging to the environment or compromise sustainable development

There are several opportunities for getting involved:

- **Issues Paper** – where the Department asks for views on the main issues and preliminary proposals relevant to the area in the plan.
- **Draft Plan** – a complete Draft Plan is presented for comments. This gives scope to comment on zonations set out in the maps or the plan policies.
- **Public Inquiry** – most plans are subject of a public inquiry, where objections are heard by the Planning Appeals Commission (see 5.4 below).

When a draft plan is issued there are 6 weeks for objections to be received by the Department, which sends a **Rebuttal Statement** to all objectors in which they either accept the comments and undertake to amend the draft plan, or rebut the objections, stating why they do not intend to alter the plan.

It is extremely important to **write in support** of aspects of the plan which you agree with. This is because some measures designed to protect the environment may receive many objections from developers. If there are no supporters to counter these objections, it may be more difficult for planners to justify their retention in the plan.

Friends of the Earth has produced a policy guide which highlights the key elements which should be contained in a Development Plan. This can be accessed at http://www.foe.co.uk/resource/guides/new_english_planning_system.pdf

Using Development Plans

It is very helpful to consult your Area or Local Plan when preparing a letter objecting to a particular planning application.

The way in which an area of land has been zoned in the Area Plan gives a strong indication of the type of development which would be permitted. For example, if an area of open space has been zoned for housing, there is limited scope for objecting to a housing development for that site. The best tactic here may be to ensure that planning conditions are attached which help to retain any trees, hedges or other features on the site.

Conversely, if an area is identified in the plan as a **Local Landscape Policy Area** or **Site of Local Nature Conservation Importance**, it offers a great deal of scope for objecting to, say, a housing or industrial development at that site. This shows the importance of getting involved during the preparation of the plan itself.

The Plan may also contain helpful policies relating to the protection of particular habitat types such as woodlands or wetlands. The current Fermanagh Area Plan and some of the emerging draft plans contain policies which seek to protect wildlife habitats outside protected sites.

In urban situations, Plans can contain helpful zonations such as **Conservation Areas** or **Areas of Townscape Character**. Conservation Areas are areas of architectural or historical interest which are designated and protected by planning policy. 59 Conservation Areas have been designated since 1975. The draft Planning Reform (NI) Order includes increased protection for Conservation Areas (see Table 5 above). A list of designated Conservation Areas is available at:

http://www.planningni.gov.uk/AreaPlans_Policy/Conservation/CA.htm

Areas of Townscape Character (including Areas of Village Character) are areas of distinct character often because of their historic design or layout which add to the quality of life of local communities. Many of the best examples are designated as Conservation Areas, while the remaining Areas of Townscape Character are identified in Development Plans and protected through relevant policies. A new Planning Policy Statement (Addendum to PPS6), specifically on Areas of Townscape Character, has just been completed (see Table 2 above).

Development Plans should always be used in conjunction with other existing planning policies (see Section 2). For example, while the plan may include some nature conservation policies, *Planning Policy Statement 2 – planning and nature conservation* contains a range of policies for the protection of designated sites.

5.3 Planning Appeals

In Northern Ireland, applicants have the right to appeal against a refusal of planning permission, or against conditions which have been imposed on a planning permission. There is no third party right of appeal, unlike the position in the Republic of Ireland where objectors can appeal against a decision to An Bord Pleanála.

Appeals are heard by the Planning Appeals Commission (PAC) (see Section 4). When an application is appealed, objectors to that proposal can make representations to the PAC.

Many appeals are decided through an exchange of **written submissions**, but other (usually more complex) cases may be determined by a hearing. Hearings are often requested by either the appellant or the Department, and this request will result in either a Formal or Informal hearing.

Informal hearings take the form of a discussion led by the Commissioner. Although parties may ask questions of the other, there is no formal cross-examination.

In a **Formal** hearing, there is a strict order for each party to be heard and questioned. Third party objectors are permitted to present their case and respond to the cases of others. Other parties may also ask them questions, but there is no presumption that objectors will be able to cross-examine the Department or the Appellant. However, there can be opportunities to cross-examine, and this should be clarified with the Commissioner in advance. Objectors are normally heard after the Department and before the Appellant speaks.

Prior to the hearing you should have prepared a **statement of case**, setting out all your arguments.

Key points about an objector's Statement of Case

1. Briefly state whether you support the Department's stance and why.
2. Give a more detailed account of other issues which have not been raised

Key points about an objector's Statement of Case

1. Briefly state whether you support the Department's stance and why.
2. Give a more detailed account of other issues which have not been raised by the Department, but which you consider relevant.
3. Provide a summary if your statement exceeds 1500 words
4. You can use your original objection letter as your Statement of Case if you think it covers all your points.
5. Join together with other third parties if you share a common cause and submit a single Statement of Case.

Currently applicants are allowed 6 months to appeal against a decision. This will be reduced to 3 months as part of the ongoing reform of planning in Northern Ireland (see Table 5). These reforms may also result in some appeal decisions being made by a single Commissioner, rather than by at least four as at present.

Full details of Appeal procedures can be found at www.pacni.gov.uk

5.4 Planning Appeals Commission

When a developer's appeal is upheld by the Planning Appeals Commission (PAC), it can be very frustrating for campaigners who had been encouraged by the Department's original refusal or imposition of conditions.

There is a perception among many campaigners that the PAC allows a very high proportion of appeals by developers. An analysis of the Appeal decisions from the most recent six months (at the time of writing) shows that the majority of appeals were dismissed by the PAC. The breakdown is as follows:

Category	Number	Percentage of Total
Appeal dismissed	169	57%
Appeal allowed	128	43%
Total	297	100%

Source: www.pacni.gov.uk

Most of the appeals relate to planning decisions. However, the figure also includes 10 appeals against enforcement notices being served. Of these 7 were upheld in favour of the Department, while 3 were quashed. These are included in the "dismissed" and "allowed" categories respectively.

However, other recent figures show that a developer can have a better than even chance of success with his or her appeal. In 2002/3 the success rate in appeals was 54%, compared to 36% in England and 14% in the Republic of Ireland (National Trust 2004). These figures certainly give a clear signal to developers about their chances of success, which in turn will

generate even more appeals.

The Northern Ireland Planning Commission expressed concern that the PAC was intent on making policy by applying it in its own way rather than upholding policies that the Department (and other parties) were taking as a starting point (National Trust 2004). The Department itself can become frustrated when it sees that its policies are not being applied in the way it intended.

There could be many reasons for differences in the application of policy, but key factors include:

- Some planning policies are not considered by PAC to be sufficiently clear or workable, which leads to difficulty or inconsistency of application.
- In some cases it is considered that there is insufficient information to back up existing policies.

For example, single dwelling appeals are rarely dismissed by the PAC because the Department cannot provide sufficient information to demonstrate that the loss of habitat caused by the development is “significant”.

Another cause for concern is that the PAC sometimes hears cases under Article 33 of the Planning Order. These are cases which have, for various reasons, not been determined by the Department within the required timescale. This means that cases go straight to the PAC for determination, giving campaigners less opportunity to influence the outcome. In some cases, developers may also use this as a deliberate ploy if they consider that the PAC might consider their case more favourably.

All of this can be extremely frustrating for campaigners, the more so because there is no third party right of appeal to counter the opportunities open to developers. This position is unlikely to change significantly unless Government can be persuaded to reconsider the introduction of a right of appeal for third parties.

5.5 Public Inquiries and Hearings

Article 31 inquiries

Some major planning applications are only decided after a public inquiry. A public inquiry is introduced at the request of the Department under Article 31 of the Planning Order which sets out a special procedure for major planning applications. Whilst all such inquiries are heard by the PAC, it is the Department and ultimately the Minister of the Environment who makes the final decision, after consideration of the Commission’s report.

Public inquiries are held when the Department considers that all interested parties should have an opportunity to have their views considered in public before a decision is made. This is particularly the case for complex or controversial proposals where there are a large number of objectors for example. Under Article 31, the Department can call a public inquiry where the proposal:

- involves a major departure from the relevant development plan;
- is of significance to the whole or a substantial part of Northern Ireland;
- affects the whole of a neighbourhood, or
- relates to certain major road development.

New Public Inquiry Arrangements

However, Planning Service and some developers were concerned at the number of public inquiries being held and the delays this was causing. 35 Article 31 inquiries were called in 2000/01, but this had fallen to 12 in 2001/02. Despite this, Planning Service wanted to reduce this number further and have introduced a number of administrative reforms under the *Modernising Planning Processes* programme. To do this additional non-statutory criteria have been added to those set out under Article 31. This means that Article 31 will now only be applied to:

- certain large developments involving industrial, mixed retail use, retail food and residential proposals;
- proposals having a significant environmental effect; or
- proposals of regional significance.

Planning Service will define and publish the criteria used to decide whether to proceed with a public inquiry. This has been accompanied by performance targets at all stages of the Public Inquiry process. There are no immediate plans to replace the existing Article 31, although this is also under consideration by the Department.

Public Inquiry Procedures

There are various stages to the public inquiry process.

1. **Pre-inquiry stage** – meetings are held to exchange evidence, set a timetable, and explain procedures.
2. **Inquiry stage** – heard by a Commissioner who is appointed by the Chief Commissioner. He/she may be joined by an assessor or another Commissioner if needed.
3. **Post-inquiry stage** – the Commissioner reports to the full Commission which in turn makes a recommendation to the Department. The Department issues its decision. The Commissioners' reports are available to public after the Department has made its decision.

Important Considerations for Environmental Campaigners

Public inquiries can be intimidating, especially when barristers are hired to argue a case. Barristers often attempt to treat public inquiries like a court of law and the participants like witnesses in the dock. A good Commissioner will remind the barrister where they are!

Despite the quasi-judicial atmosphere that can be generated, it can often be very helpful to be able to make your arguments in a public inquiry. By giving oral evidence you can be certain that your argument is being fully considered by the Commissioner, and you may also have the opportunity to direct questions at the opposition team.

Participants are strongly encouraged to pool resources or team up with other participants with similar arguments or evidence. This will save a great deal of time and resources at the inquiry. It also can help to present a stronger, more coherent case if environmental campaigners join forces.

Where objectors have teamed up, pool your resources to hire legal assistance or technical expertise where possible.

Major inquiries can be very time consuming, sometimes lasting for many weeks. If you are participating you need to be aware that schedules can change and you will need to be flexible to attend the key sessions.

Prepare a proof of evidence. This will be submitted at the pre-inquiry stage and will form the basis of your case for the whole inquiry. It is important not to try to introduce new evidence during the inquiry as this will be unpopular, could cause delays and may not be permitted.

Should campaigners get involved in a public inquiry?

It is important to understand that participation in a public inquiry can be a very time consuming, costly and potentially frustrating experience. Campaigners will often be competing against top barristers or consultants who have been hired by the developer. In the face of such opposition, there is certainly no guarantee of success and most victorious campaigns seal their victories before the public inquiry stage is reached.

However there are exceptions and in some cases participation in a major inquiry can contribute to a successful outcome. A notable example is the involvement of Friends of the Earth and other organisations in the public inquiry into a major landfill site at Magheramorne Quarry near Larne in 1997. There is little doubt that the participation of local campaigners in the inquiry played a significant part in the decision to refuse permission for the dump.

Before deciding to become involved, consider the issues identified in the box above.

Hearings

These differ from public inquiries in that they can be requested by an applicant after the Department has reached a preliminary view on a particular issue. The affected party can then request the opportunity to make a case to the PAC before the final decision is made. The

procedures are similar to those for public inquiries.

Area Plan Inquiries

These involve a wide range of issues and objections relating to many aspects of a plan. If you have made objections to a draft plan, which have not been addressed by the Department in its rebuttal, then you will be invited to participate in the public inquiry. The procedures are similar to those for Article 31 inquiries.

Proposed Changes to Area Plan Inquiries

Some changes to the way in which public inquiries into development plans are operated are being proposed by the Department in the draft Planning Reform (NI) Order 2005. This will allow for an independent examination by the PAC into objections or alterations of a development plan rather than a public local inquiry. Objectors will still have the right to be heard by the PAC provided they have made a request to be heard.

These changes are also detailed in Table 5 above.

5.6 Judicial Review

Judicial Review is very much a last resort for someone who has fundamental concerns about a planning decision. This process allows people with sufficient interest in a case to ask a judge to review the lawfulness of any decision, for example where it is considered there has been an abuse of statutory power or a procedural irregularity.

Judicial Review can only be used where there is no right of appeal or all other appeal opportunities have been exhausted. It is not equivalent to or a substitute for a third party right of appeal. Instead, Judicial Review is applicable in only a very few cases and is not open to anyone who simply is not satisfied with a decision by the Department or PAC.

The process is a very lengthy and potentially very costly one. It is strongly advised that legal advice is sought before any application for Judicial Review is made. An application must be made **within 3 months** of the planning decision being made.

To be successful, the applicant must satisfy the court that they have a sufficient interest in the case and that the case is arguable. If the leave application is successful, a hearing in court will normally be granted.

A hearing will usually involve the exchange of detailed affidavits between parties. The preparation of these affidavits involves a great deal of work by the claimant, their solicitors and the instructed barrister, who will argue the case in court.

Once the hearing is completed it may take many months, or even years in some cases, for the judge to make a decision.

The length and expense of this process underlines the need for initial legal advice to assess the strength of the case and the potential costs involved in seeking the review.

APPENDIX 1

Useful Addresses

Note that these were correct at the date of publication. Contact Friends of the Earth (Northern Ireland) office if required for updated information.

Government Departments

Department of the Environment Planning Service

Planning Office (with Council areas covered)	Contact Details
Headquarters	Millennium House 19-25 Great Victoria Street Belfast BT2 7BN Tel: 028 9041 6700 Email: planning.service.hq@nics.gov.uk
Ballymena (Antrim, Ballymena, Carrickfergus, Larne, Magherafelt)	County Hall 182 Galgorm Road Ballymena County Antrim BT42 1QF Tel: 028 2565 3333 Email: divisional.planning.office.ballymena@nics.gov.uk
Belfast (Belfast, Newtownabbey, Castlereagh)	Bedford House 16-22 Bedford Street Belfast BT2 7FD Tel: 028 9025 2800 Email: divisional.planning.office.belfast@nics.gov.uk
Craigavon (Armagh, Banbridge, Craigavon, Newry and Mourne)	Marlborough House Central Way Craigavon County Armagh BT64 1AD Tel: 028 3834 1144 Email: divisional.planning.office.craigavon@nics.gov.uk
Downpatrick (Ards, Down, Lisburn, North Down)	Rathkeltair House Market Street Downpatrick County Down BT30 6EA Tel: 028 4461 2211 Email: divisional.planning.office.downpatrick@nics.gov.uk
Londonderry (Derry, Limavady)	Orchard House 40 Foyle Street Londonderry BT48 6AT Tel: 028 7131 9900 Email: divisional.planning.office.londonderry@nics.gov.uk
Omagh (Cookstown, Dungannon and south Tyrone, Omagh, Strabane)	County Hall Drumragh Avenue Omagh County Tyrone BT79 7AF Tel: 028 8225 4000 Email: divisional.planning.office.omagh@nics.gov.uk

Coleraine (sub division of Londonderry) (Ballymoney, Coleraine, Moyle)	County Hall Castlerock Road Coleraine County Londonderry BT51 3HS Tel: 028 7034 1300 Email: divisional.planning.office.coleraine@nics.gov.uk
Enniskillen (sub division of Omagh) (Fermanagh)	County Buildings 15 East Bridge Street Enniskillen BT74 7BW Tel: 028 6634 6555 Email: divisional.planning.office.enniskillen@nics.gov.uk

Environment and Heritage Service

Branch	Contact Details
Natural Heritage (conservation of natural environment, designated sites)	Commonwealth House 35 Castle Street Belfast BT1 1GU Tel: 028 9025 1477 Email: sonia.ramshaw@doeni.gov.uk Website: www.ehsni.gov.uk
Built Heritage (conservation of built environment, archaeology)	5-33 Hill Street Belfast BT1 1FY Tel: 028 9054 3034 Email: bh@doeni.gov.uk
Environmental Protection (water quality, pollution investigation, waste management)	Calvert House 23 Castle Place Belfast BT1 1FY Tel: 028 9054 6614 Email: EP@doeni.gov.uk

Other Statutory Bodies

Organisation	Contact Details
Council for Nature Conservation and the Countryside	5-33 Hill Street Belfast BT1 1FY Tel: 028 9054 3076
Planning Appeals Commission	Park House 87-91 Great Victoria Street Belfast BT2 7AG Tel: 028 9024 4710 Email: info@pacni.gov.uk Website: www.pacni.gov.uk

Non Governmental Organisations

Organisation	Contact Details
Community Technical Aid	445-449 Ormeau Road Belfast BT7 3GQ Tel: 029 9064 2467 Email: info@communitytechnicalaid.org Website: www.communitytechnicalaid.org
Friends of the Earth	7 Donegall Street Place Belfast BT1 2FN Tel: 028 9023 3488 Email: foe-ni@foe.co.uk Website: www.foe.co.uk/northern_ireland/ Planning website: www.yourplanningrights.co.uk
National Trust	Rowallane House Saintfield County Down BT24 7LH Tel: 028 9751 0721 Website: www.nationaltrust.org.uk
Northern Ireland Environment Link	77 Botanic Avenue Belfast BT7 1JL Tel: 028 9031 4944 Email: info@nienvironmentlink.org Website: www.nienvironmentlink.org
RSPB	Belvoir Park Forest Belfast BT8 4QT Tel: 028 9049 1547 Email: rspb.nireland@rspb.org.uk Website: www.rspb.org.uk
Ulster Architectural Heritage Society	66 Donegall Pass Belfast BT7 1BU Tel: 028 9055 0213 Email: info@uahs.co.uk Website: www.uahs.co.uk
Ulster Wildlife Trust	3 New Line Crossgar County Down BT30 9EP Tel: 028 4483 0282 Email: info@ulsterwildlifetrust.org Website: www.ulsterwildlifetrust.org
Wildfowl and Wetlands Trust	Castle Espie Ballydrain Road, Comber County Down BT23 6EA Tel: 028 9187 4146 Email: info.castlespie@wwt.org.uk

	Website: www.wwt.org.uk
WWF	13 West Street Carrickfergus County Antrim BT38 7AR Tel: 028 9335 5166 Website: www.wwf.org.uk

APPENDIX 2

Further Reading

Brooke, C.E. (1996). *Natural conditions – a review of planning conditions and nature conservation.* The RSPB, Sandy, Bedfordshire.

Dowling, J.A. (1995). *Northern Ireland Planning Law.* Gill and Macmillan.

Friends of the Earth (2001). *How to win. Saving wildlife sites.*

National Trust (2004). *A Sense of Place: Planning for the Future of Northern Ireland. Report of the Northern Ireland Planning Commission*

Orbinson, W. & Farningham, A. (2002). *Northern Ireland Planning Policy.* SLS Legal Publications (NI)

Orbinson, W. & Farningham, A. (2003). *Index to Northern Ireland Planning Policy.* SLS Legal Publications (NI).

Planning Appeals Commission (2002). *Procedures for planning appeals.* PAC, Belfast

Planning Service (2003). *Modernising Planning Processes Implementation Plan.* DOE NI

Royal Town Planning Institute (1999). *Planning for Biodiversity. A good practice guide.* RTPI, London

RSPB (1995). *Wildlife impact – the treatment of nature conservation in environmental assessment.*

Turner, S. & Morrow, K. (1997). *Northern Ireland Environmental Law.* Gill and Macmillan

Useful websites

Friends of the Earth Northern Ireland
www.foe.co.uk/ni

Friends of the Earth main web site
www.foe.co.uk

Friends of the Earth planning:
www.YourPlanningRights.co.uk

Friends of the Earth Freedom of Information:
www.RightToKnowOnline.org

APPENDIX 3

Glossary of terms

Area of Townscape Character

Area of historical or architectural interest identified in Area Plans

ASSI Area of Special Scientific Interest designated under the Environment (NI) Order 2002

Biodiversity Strategy

Recommendations made by the Northern Ireland Biodiversity Group and ratified by Government

Conservation Area Area of high architectural or historical interest within towns, designated under the Planning (NI) Order 1991 and identified in Development Plans

DCAN Development Control Advice Note – guidance to planners and developers on specific issues

DRD Department of Regional Development – responsible for some aspects of strategic planning

DOE Department of the Environment

EHS Environment and Heritage Service - an agency within the Department of the Environment

EIA Environmental Impact Assessment – process whereby the environmental impacts of certain projects are assessed. EIA is mandatory for some types of development, and discretionary for others depending on the nature, scale and location of the proposal.

ES Environmental Statement – the document produced as part of an environmental impact assessment.

Enforcement Taking remedial action against breaches of planning control

Judicial Review Review by judge into legality of decisions by public bodies

Material Consideration any issue which relates to the use and development of land and is relevant to the planning process

PAC Planning Appeals Commission – independent body established to hear planning appeals and inquiries.

Permitted Development Development which does not require planning permission such as certain agricultural and forestry developments

Planning Service Section of the Department of the Environment responsible for planning

PPS Planning Policy Statement – sets out NI-wide planning policy on key issues

Prematurity Making a planning decision before the relevant development plan has been completed or adopted

Ramsar Convention International Convention on the protection of wetlands

RDS Regional Development Strategy - strategic plan for NI until 2025

Rebuttal Statement Statement from the Department responding to objections to a draft Area Plan

Reserved Matters Issues still to be addressed between receipt of Outline and Full planning permission

RPA Review of Public Administration

SAC Special Area for Conservation designated under the EU Habitats Directive

Service Level Formalised agreement to provide certain services

Agreement between Government Departments or sections

SPA Special Protection Area for birds designated under the EU Birds Directive

Strategic Environmental Exercise to assess environmental impact of plans and

Assessment (SEA) programmes rather than individual projects, for which EIA is required

Statutory Consultees Statutory bodies consulted on planning matters by Planning Service

Third Parties People with an interest in a planning issue (for example a planning application) but who are not the applicant or the decision maker. Often third parties are objecting to the planning application.

TPO Tree Preservation Order